Research Brief

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Residential Tenancies and Other Consumer Acts Amendment Bill 2012

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NB: *Readers should note that this Research Brief was current at the time of its preparation prior to the conclusion of debate on the Bill by the Victorian Parliament. For further information please visit the Victorian Legislation and Parliamentary Documents website @ http://www.legislation.vic.gov.au.*

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Introduction

On 14 August 2012, the Minister for Consumer Affairs, the Hon. Michael O'Brien, introduced the Residential Tenancies and Other Consumer Acts Amendment Bill 2012 ('the Bill') into the Legislative Assembly. The Bill essentially proposes to amend the *Residential Tenancies Act 1997* ('the principal Act') to establish a register of rooming houses and the *Public Health and Wellbeing Act 2008* to make further provision for the registration of rooming houses.

Additionally, it proposes to amend the *Business Licensing Authority Act 1998* to make further provision for delegation powers and also proposes to amend the *Consumer Affairs Legislation Amendment (Reform) Act 2010* and the *Sale of Land Act 1962* to make further provision for the sale of lots in a plan of subdivision and for other purposes.

The Bill in its entirety is beyond the scope of this research brief, which will mainly focus its discussion on the changes to rooming house provisions.

1. Second Reading Speech

Rooming Houses

In his second reading speech for the Bill on 15 August 2012, the Minister for Consumer Affairs stated that the Bill introduced a suite of significant amendments to rooming houses.[1] He elaborated, that the Bill's amendments to rooming houses are threefold: to establish a new state-wide register of rooming houses; to introduce a duty on rooming house owners to comply with minimum standards and to make minor amendments relating to the registration of rooming houses.[2]

Mr O'Brien advised the House that local councils are responsible for registering rooming houses within each of their own jurisdictions in Victoria and that a key feature of the Bill is the establishment of an online state-wide register of rooming houses, consolidating the existing registers of rooming houses maintained by each local council.[3]

The rooming house register to be hosted by Consumer Affairs Victoria will consolidate the local councils' information including: the addresses of registered rooming houses, details of their proprietors and the status of a rooming house's registration.[4]

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[1] Mr O'Brien initially explained that a rooming house is a form of shared accommodation whereby residents occupy a room either alone or with others, and shared cooking, bathing and toileting facilities. See Victoria, Legislative Assembly (2012) *Debates*, 15 August, Book 10, p. 3144.
[2] ibid.
[3] The Minister informed the House that this was part of a broader register of prescribed accommodation required under the *Public Health and Wellbeing Act 2008*.
[4] ibid.

During his second reading speech, the Minister explained how the state-wide rooming house register would benefit both current and potential rooming house residents, councils and other arms of government. He noted for example, that the rooming house register would allow councils to identify large-scale rooming house operators, enable evaluation of the state's rooming house sector, promote better compliance with statutory minimum standards for rooming houses and enable suspected unregistered rooming houses to be checked against the register.[5]

He also discussed provisions in the Bill that address the Residential Tenancies (Rooming House Standards) Regulations 2012 which will prescribe minimum privacy, safety, security and amenity standards for all rooming houses in Victoria from 31 March 2013.

He added that 'under the Residential Tenancies Act 1997 it will be an offence, once the minimum standards come into operation, for a rooming house owner to provide a rooming house resident with a room, facility, service or common area that does not comply with those standards'.[6]

Accordingly, Mr O'Brien further added that the Bill will introduce a new duty for a rooming house owner (or operator), to comply with the minimum standards. The amendment will give new powers to rooming house residents to give breach of duty notices to owners who breach the standards. If a breach is not remedied, residents can seek redress in relation to the breach of duty in the Victorian Civil and Administrative Tribunal. This is additional to the existing powers that Consumer Affairs Victoria already has to take legal action to address instances of non-compliance.

Finally, in relation to rooming houses, the Minister stated that the Bill makes minor amendments to the Public Health and Wellbeing Act 2008 'to enable councils to consider compliance with these standards as part of the decision whether or not to register a rooming house'.[7]

Residential Parks

In relation to residential parks, Mr O'Brien explained that the Bill will extend certain protections available to a prospective resident for the purchase of a site agreement (a long term lease for a site in a residential park) to the prospective purchaser of the dwelling agreement (for the moveable manufactured dwelling that is to be located on a site).

According to the Minister the owners of residential parks often sell dwellings to prospective residents as a package with a particular site. Currently prospective residents of residential parks are able to rescind their site agreement but not their dwelling agreement. Mr O'Brien explained that this could potentially place undue pressure on a prospective resident who has already purchased a dwelling to sign an

[5] ibid.
[6] ibid., p. 3146.
[7] ibid.

undesirable site agreement or may deter a person who has also purchased a site agreement who wishes to rescind that site agreement from doing so, because he or she has already purchased a dwelling to locate on the site and is not able to rescind that agreement.

The new provisions will enable a site tenant to rescind a dwelling purchase agreement within 20 days after being provided with a proposed site agreement, or if the site tenant rescinds their site agreement.[8]

Delegation Powers of the Business Licensing Authority

The Minister informed the House that the Bill also makes amendments extending the delegation powers of the Business Licensing Authority to its staff for relatively straight forward decisions about licence and permission applications. Decisions that are sufficiently complex that must be made by a member of the authority may be prescribed in regulations as decisions that the authority cannot delegate.[9]

Off-the-Plan Sales of Land

Mr O'Brien also stated that from 1 December 2012 the notice warning requirements[10] for off-the-plan sales of land under the Sale of Land Act 1962 will be amended to require that these warnings be included in a 'conspicuous notice' in the contract rather than on the front page, as stakeholders had different views about what constitutes the front page.

He further stated that the Bill removes a purchaser's right to rescind a contract for an off-the-plan sale of land, for a failure to include the notice in the contract (which would have otherwise come into effect on 1 December 2012). According to the Minister, the removal of this right recognises that the rescission is a disproportionate remedy for such a failure.[11]

[8] Residential Tenancies and Other Consumer Acts Amendment Bill 2012, Explanatory Memorandum, p. 5.
[9] Victoria, Legislative Assembly (2012) *Debates*, 15 August, Book 10, p. 3146.
[10] The Minister explained that a notice warning purchasers includes: that they can negotiate the deposit amount payable under the contract, up to a maximum of 10 per cent of the purchase price; there may be a lengthy period between signing the contract and becoming the registered proprietor of the land; and that the value of the land may change in that time. ibid.
[11] ibid.

2. Background

This background section is intended to capture a few of the main issues, incidents and reports that have emerged in regulating rooming houses, and offers a brief background to the findings and recommendations in the 2009 coronial investigation into the deaths of two rooming house residents and the 2009 Rooming House Standards Taskforce. Interested readers are advised to consult the cited reports for more detailed information.

To clarify, much of the stakeholder comment, media reports and inquiries have tended to focus on privately operated rooming houses which may or may not be registered and operate for profit as opposed to community managed, not-for-profit rooming houses.

Rooming Houses in Victoria

Reports from the Department of Human Services (DHS) and the Rooming House Standards Taskforce note that historically rooming houses were a common accommodation choice in the early twentieth century.[12] These rooming houses tended to be large-scale operations and provided housing for between 5-10 per cent of Melbourne's population. Residents tended to be mostly single men. From the 1920s onwards preferences for self-contained accommodation led to traditional rooming houses being redeveloped for other purposes.[13]

The decline in numbers of large private rooming houses in the inner city led to the development of the Director of Housing's Rooming House Program in the early 1980s.[14] The DHS Report noted that in 2011 this program included around 86 properties housing up to 1400 residents.[15] These community managed not-for-profit rooming houses are owned by the Director of Housing, managed by registered housing agencies, regulated through the *Housing Act 1983* and subject to the Department's *Community Housing Standards*. They include a variety of rooming house styles, such as large rooming houses with private bedrooms and shared facilities, smaller rooming houses and self-contained bedsits or units.[16]

In recent years a 'new model' of private rooming houses has emerged in which small rooming houses, often suburban homes with multiple bedrooms or 'commercial properties not designed as residential accommodation' are being modified to accommodate a growing rooming house market.[17] The Taskforce report states:

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[12] Department of Human Services (DHS) (2011) *Proposed Residential Tenancies (Rooming House Standards) Regulations: Regulatory Impact Statement*, Melbourne, Department of Human Services, p. 16. See also Rooming House Standards Taskforce (2009) *Chairperson's Report*, Victorian Government, Melbourne.
[13] Rooming House Standards Taskforce (2009) op. cit., p. 6.
[14] DHS (2011) op. cit., p. 16.
[15] ibid.
[16] ibid.
[17] Rooming House Standards Taskforce (2009) op. cit., p. 6.

> Much of this growth is difficult for enforcement agencies to monitor if operators do not willingly comply with regulatory requirements as these premises often appear indistinguishable from other forms of residential or commercial property.[18]

Rising house prices and a competitive rental market has created an environment in which rooming houses can be a profitable industry. Many rooming house operators lease a property from a landlord then sublet individual rooms. The Taskforce Report used a case study of a four bedroom house in Reservoir that has had its lounge room converted into a fifth bedroom with four adults and six children living in the house.
The house had no communal areas other than the kitchen and bathroom. Each adult resident paid $230 or $260, which totalled $4248 per calendar month for the property, however the property was rented from the landlord for $1300 per calendar month, which equated to a profit of $2948 per month for the rooming house operator.[19]

As noted, rooming house operators can make a substantial profit because they can charge a high amount of rent to people who have few housing options available to them. A survey of 228 residents currently living in private rooming houses in greater Melbourne, which was conducted by HomeGround in 2007, noted that for these residents 64 per cent of their Centrelink income was spent on single room rent.[20]

The HomeGround report and DHS report noted that major concerns for residents were the cost of the accommodation, poor standards of accommodation and lack of safety and security within accommodation.[21]

Client Profile

According to an Australian Institute of Health and Welfare (AIHW) report residents that typically occupy rooming houses are generally the homeless, aged and frail, low income, single, and people with a disability.[22] The Taskforce Report stated that the low-income singles are the main group identified in rooming house accommodation, and that this group may be characterised by factors such as previous poor rental histories, previous evictions and homelessness, which may preclude them from competing for other rental opportunities.[23] The Taskforce Report also noted that this 'client profile brings with it an array of other issues', such as disability, mental health problems, drug and alcohol abuse and poor health.[24]

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[18] ibid.
[19] Rooming House Standards Taskforce (2009) op. cit., p. 7.
[20] HomeGround (2008) "Call this a Home?": Private Room Housing Standards in Melbourne', *HomeGround Services - Bulletin #3*, March 2008, accessed 21 August 2012, <http://www.homeground.org.au/assets/_private-rooming-house-bulletin-march-20082.pdf>.
[21] HomeGround (2008) op. cit.; DHS (2011) op. cit., p. 28.
[22] Australian Institute of Health and Welfare (AIHW) (2007) *Community housing data collection 2005-06: results for the trial collection of unit record level dwelling and organisation administrative data*, AIHW Welfare and Housing working paper no. 56, AIHW, Canberra, p. 23.
[23] Rooming House Standards Taskforce (2009) op. cit., p. 9.
[24] ibid.

Nonetheless, following the 2007 HomeGround research project and stakeholder comment reported to the Taskforce, the Taskforce Report also noted that there are new trends in resident groups with rooming houses increasingly accommodating younger residents (the largest group being in the 26-34 age range, followed by those aged 22-25) and those who 'do not have complex needs but are simply unable to obtain private rental accommodation in Melbourne's tight rental market'.[25] There has also been an increase in single parents with children and other families, as well as international students, living in rooming houses.[26]

The Taskforce Report also noted that because of the vulnerabilities of the resident profile, residents were often reluctant to pursue issues with rooming house operators for fear of being evicted.[27] A 2011 report by The Salvation Army Rooming House Project also stated that many rooming house residents 'felt trapped by the lack of affordability of private rental' and believed that rooming house living was their 'only option'.[28] The Salvation Army Report noted that privately run rooming houses are often run 'beneath the scrutiny of government and welfare services'.[29] The Report stated:

> A major difficulty in providing services to this group of people is the 'invisibility' of both the rooming houses and their occupants… Many rooming house occupants are unaware of their rights, or of locally available services. Coupled with this is a high degree of fear about speaking up against rooming house proprietors for fear of being evicted.[30]

Furthermore, the Taskforce Report stated the following:

> Complex corporate structures can exist behind lease arrangements, obscuring management responsibilities and making it hard for residents, advocates and enforcement agencies to pursue claims against the operators.[31]

Regulating the Rooming House Sector

Several reports have been influential in the development of regulations and legislation designed to improve standards of rooming houses, in particular the Rooming House Standards Taskforce and the Victorian Coroner's Report which made recommendations that have mostly been incorporated into legislation that went through Parliament earlier this year. The DHS Regulatory Impact Statement provided an analysis of the costs and benefits of certain legislative changes and sought stakeholder comment regarding options for proposed regulations. This section will outline briefly those reports, prior to examining the current legislative framework.

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[25] ibid.
[26] ibid., p. 10.
[27] ibid., p. 12.
[28] The Salvation Army Adult Services (2011*) No Room to Move? Report of the Outer West Rooming House Project*, Kensington, Salvation Army, p. i.
[29] ibid.
[30] ibid.
[31] Rooming House Standards Taskforce (2009) op. cit., p. 7.

Several notable campaigns, media reports and incidents have increased awareness of substandard conditions in rooming houses, such as the 2007 'Call this a home?' campaign. Furthermore, on 1 October 2006, two young people, Leigh Sinclair and Christopher Giorgi, died in a fire at a rooming house in Brunswick, Victoria after becoming trapped in their room.[32] The fire started in the restaurant on the ground floor of the rooming house and was caused by poorly maintained electrical wiring.

In September 2009, Victorian Coroner Peter White found that their deaths could have been prevented had the rooming house operators complied with fire safety measures, such as doors that unlock from the inside, working smoke detectors and sprinkler systems. The Coroner was also critical of Moreland City Council for failing to successfully administer inspections for fire safety compliance of the property, despite being aware of the hazardous conditions at the property and despite issuing warnings in respect of the property.

The Coroner recommended that many changes be made to systems and legislation to ensure that rooming houses abide by planning regulations, health and safety requirements, such as having an emergency management plan, and that more substantial penalties be introduced for non-compliance. The Coroner also recommended that Consumer Affairs Victoria play a leading role in the administration of the Health Act Prescribed Accommodation Regulations.

Prior to the release of the Coroner's report, then Victorian Premier John Brumby announced on 15 July 2009 the establishment of the Rooming House Standards Taskforce as part of the State Government's strategy to 'take action on those predatory operators of intentionally sub-standard rooming houses who prey on some of the most vulnerable members of our community'.[33]

The report made 32 recommendations in the following four areas:

1. Improving standards of safety and amenity
2. Mandatory registration of operators and premises
3. Strengthening compliance and enforcement
4. Increasing the supply of alternative affordable rental housing

In August 2011, the Department of Human Services released a Regulatory Impact Statement (RIS) regarding the Proposed Residential Tenancies (Rooming House Standards) Regulations and sought community and stakeholder feedback regarding the proposed changes. [34]

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[32] State Coroner Victoria (2009) *Record of investigation into the death of Leigh Sinclair and Christopher Giorgi*, State Coroner Victoria, Melbourne.

[33] See Rooming House Standards Taskforce (2009) op. cit. See also Victorian Government (2009) *Victorian Government Response to the Rooming House Standards Taskforce Chairperson's Report*, October, Melbourne, Victorian Government.

[34] Department of Human Services (2011) *Proposed Residential Tenancies (Rooming House Standards) Regulations: Regulatory Impact Statement*, Melbourne, Department of Human Services.

The Current Legislative Framework

Legislation relating to rooming house operations exists in several Acts and Regulations, including the *Residential Tenancies Act 1997*, the *Public Health and Wellbeing Act 2008*, the *Building Act 1993*, the Residential Tenancies (Rooming House Standards) Regulations 2012 and the Building Regulations 2006.

Under the *Residential Tenancies Act 1997* a rooming house is defined as a building where one or more rooms is available for rent and the total number of people who may occupy those rooms is four or more people. The Minister for Housing may also declare a building owned or leased by the Director of Housing to be a rooming house under section 19 of the Act. It is also a requirement under section 67 of the *Public Health and Wellbeing Act 2008* for rooming house operators to register their rooming house with the local council if they intend to rent out one or more rooms to four or more people.

In section 124 of the Residential Tenancies Act, a rooming house owner must give the resident a written statement in a form approved by the Director setting out in summary form the resident's rights and duties and a copy of the house rules. The penalty for non-compliance is 10 penalty units.[35] Consumer Affairs Victoria has released a rooming house guide for residents and operators and a statement of resident's rights and duties which operators are expected to provide to every resident on or before the day they move in. This statement outlines the rights and duties of residents and informs residents of the minimum standards they should expect at the rooming house and provides information on rent, repairs, utility bills and so forth. [36]

In December 2008, regulations were introduced to cover rooming houses of four or more people in the Health (Prescribed Accommodation) Regulations 2001 which set in place requirements for rooming houses regarding the room size, maintenance, cleanliness, ratio of toilet and shower facilities, number of people that can be accommodated in one room, discharge of sewage and supply and quality of drinking water.

Following the RIS and submissions received in relation to the proposed rooming house regulations, the Residential Tenancies (Rooming House Standards) Regulations 2012 were made on 28 February 2012 to require rooming houses to comply with minimum standards relating to privacy, security, safety and amenity.[37] The changes which will apply from 31 March 2013 include that:

- residents' rooms be fitted with locks that can be unlocked from inside without a key;
- each resident has access to food preparation areas;

[35] 10 penalty units is $1408.60 for the 2012-13 financial year (penalty units are set out in the *Monetary Units Act 2004* and are indexed annually to take into account inflation).
[36] Consumer Affairs Victoria (2011) *Rooming Houses: A Guide for Residents and Operators,* Melbourne, Department of Justice.
[37] See also Victorian Government (2012) *Victoria Government Gazette*, no. G 8, p. 348.

- there are dining facilities to accommodate the maximum number of residents;
- all gas and electrical installations be checked at least once every two years and that rooming house owners keep records of these checks and make them available to the Director of Consumer Affairs Victoria;
- there is at least one toilet and one bath or shower for every ten people;
- there is a continuous and adequate supply of hot and cold water;
- there is adequate and well-maintained hard-wired smoke alarms.

In August 2012, the Residential Tenancies Amendment Bill 2012 was passed which made changes to the lodgement and paying out of residential tendency bonds and clarified the consequences of a third successive breach of a duty provision.[38]

Growth in Rooming House Tenants

Delivering the keynote address at the inaugural homelessness research conference co-hosted by the Australian Housing and Urban Research Institute (AHURI) and RMIT University held in Melbourne in April this year, Professor Chris Chamberlain, an expert in the area of homelessness data and research, discussed the imprecise and problematic nature in approaches to counting the homeless (people who use rooming houses are defined as tertiary homeless).[39]

He described the flawed 'undercounting' of ABS census data[40] and devised an alternative method using council records.[41]

In 2011 Chamberlain used council records in metropolitan Melbourne to estimate the population of rooming houses and found that the rooming house population in Melbourne had significantly grown from between 2,946 and 3,739 in 2006 to 12,568 in 2011, that most of this growth had taken place in suburban Melbourne and that the rooming house population had increased in diversity, that is, there was a greater

[38] See Victoria, Legislative Assembly (2012) Debates, Book 7, p. 2261.

[39] Tertiary Homelessness refers to people who use rooming houses on a short-term and a long-term basis. See C. Chamberlain (2012) Counting Boarding Houses: Reflections on Homelessness Research in Australia, paper presented at the Homelessness Research Conference Melbourne, 19-20 April 2012, Centre for Applied Social Research RMIT University, p. 3, viewed 24 August 2012, <http://www.ahuri.edu.au/homelessnessresearchconf/prog01.html>

[40] Census collectors have trouble distinguishing rooming houses and therefore classify some dwellings incorrectly. Small boarding houses are often misclassified as private dwellings and are left with a household form rather than an individual form for each tenant. When a household form is delivered to a dwelling that has multiple tenancies, this can lead to confusion about who takes responsibility for completing the census form and can lead to tenants not being recorded. ibid., pp. 7, 11.

[41] But he also noted that the new method was also not a 'precise science'. Chamberlain lists a number of reasons for the undercounting of rooming houses in Council registers including the existence of unregistered rooming houses in municipalities and inadequate record keeping by a minority of councils. He also identified that there were dwellings that did not comply with the building regulations and therefore could not be registered but had not been closed by individual councils because of concerns that 'people would end up on the streets'. Please refer to his paper for a complete explanation of his methodology which included 250 field visits and interviews with council officers, university housing officers and welfare staff. ibid., pp. 5-8.

diversity of welfare recipients including single parents, students, the unemployed and aged pensioners.[42]

3. The Bill

This section will provide an overview of the main provisions of the Bill. For an explanation of the Bill in its entirety, readers are directed to the Explanatory Memorandum.

Purposes of the Bill

Clause 1 outlines the purposes of the Bill. The purposes are:

(a) to amend the *Residential Tenancies Act 1997*—
  (i) to impose further duties on rooming house owners; and
  (ii) to provide for a State-wide register of rooming houses; and
  (iii) to make further provision for matters relating to site agreements and Part 4A dwellings; and
(b) to amend the *Public Health and Wellbeing Act 2008*—
  (i) to make further provision for registration of rooming houses under that Act; and
  (ii) to provide for municipal councils to enter information in relation to rooming houses in the register of rooming houses established under the Residential Tenancies Act 1997; and
(c) to amend the *Business Licensing Authority Act 1998* to make further provision for delegation powers under that Act; and
(d) to amend the *Consumer Affairs Legislation Amendment (Reform) Act 2010* to make further provision for contracts for the sale of lots in a plan of subdivision; and
(e) to amend the *Sale of Land Act 1962* to make further provision for contracts for the sale of lots in a plan of subdivision.

Amendments to the Residential Tenancies Act Relating to Duties on Rooming House Owners

Clause 4 will insert new section 120A into the Residential Tenancies Act. The new section will impose a further duty on rooming house owners specifying that they must comply with applicable standards in relation to rooming house rooms, services/facilities and common areas. The Explanatory Memorandum states:

> New section 120A will enable a rooming house resident to serve the owner of a rooming house (the definition of which includes a person who conducts the business of operating a rooming house) with a breach of duty notice, requiring a breach of any applicable rooming house standard to be rectified within the required time period. In the event a breach is not rectified as required, a resident may apply to the Victorian

[42] RMIT University Australia (2012) 'Research unveils Melbourne's rooming house boom', RMIT University website Newsroom, viewed 24 August 2012, <http://www.rmit.edu.au/browse/RMIT%20News%2FNewsroom%2FNews%2FMedia%20Releases%2Fby%20title%2FR%2F;ID=zqmognlcn3qpz;STATUS=A?QRY=media>.

> Civil and Administrative Tribunal for a compensation or compliance order relating to the breach of section 120A.[43]

Clause 6 will insert new section 209A(ab) into the Act to provide that the Victorian Civil and Administrative Tribunal (VCAT) must hear an application for a compensation or compliance order relating to a breach of new section 120A within 5 business days.
Clause 7 will insert new section 211(bb) into the Act to provide that VCAT may consider 'in the case of a breach of an applicable rooming house standard, whether the rooming house owner has been convicted of or found guilty of an offence under section 142B for the same breach'. Section 142B of the Residential Tenancies Act provides for offences for breaches of prescribed rooming house standards by rooming house owners.

Amendments to the Residential Tenancies Act Relating to Part 4A - Site Agreements and Site-Tenant Owned Dwellings

Clauses 8 to 12 of the Bill relate to Part 4A of the Residential Tenancies Act that refer to site agreements and site-tenant owned dwellings. Part 4A of the Act was introduced by the previous government as part of the Residential Tenancies Amendment Bill 2010 and commenced operation on 1 September 2011. In the second reading speech for that Bill, the former Minister for Consumer Affairs, the Hon. Tony Robinson, stated that new Part 4A would provide 'a regulatory framework for site tenancy arrangements between residents who own their own dwelling but lease the underlying land and park operators'.[44] The Part was introduced in response to a growing market of people, for example retirees and pensioners, who were seeking manufactured dwelling ownership and long-term tenancies.

Mr Robinson stated that even though the dwellings are classified as 'movable', they are 'increasingly quite sophisticated and substantial and are not in fact easily or inexpensively moved'.[45] He also outlined that some dwellings were worth substantial sums of money (at that time between $150,000 and $300,000) and therefore, may be the owner's only significant asset. The Residential Tenancies Amendment Bill 2010 sought to address concerns that 'Residents often fail to obtain an adequate term for their site lease that is commensurate with the investment they have made and feel vulnerable because of the difficulties in moving their dwelling'.[46]

In its current form, Part 4A provides protections for dwelling owners with regard to signing the site agreement on which their dwelling is located, however the same protections are not afforded to owners in the purchase of the dwelling itself. In the second reading speech for the current Bill, the Minister for Consumer Affairs, stated that:

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[43] Explanatory Memorandum, Residential Tenancies and Other Consumer Acts Amendment Bill 2012, p. 4.
[44] Victoria, Legislative Assembly (2010) *Debates*, Book 11, 12 August, p. 3313.
[45] ibid.
[46] ibid.

> This could potentially lead to a situation where a residential park owner exerts significant pressure on a prospective resident, who has already bought a dwelling but who has either not seen or had the opportunity to closely review a site agreement, to sign an undesirable site agreement.[47]

The Minister stated that the current Bill will make amendments to Part 4A to 'ensure that, in certain circumstances, the purchaser of a manufactured dwelling can rescind the contract for that dwelling'.[48] The clauses of the Bill relating to the amendment of Part 4A are outlined below.

Clause 8 of the Bill will insert new section 206JA into Part 4A of the Residential Tenancies Act. The new section, which contains seven subsections, relates to a cooling off period for Part 4A dwelling purchase agreements.

The Explanatory Memorandum details the changes made by the new section:

> New section 206JA provides that a site tenant may rescind a Part 4A dwelling purchase agreement within 20 days after being provided with a proposed site agreement, or if the site tenant has entered into a site agreement, at the time the site tenant rescinds the site agreement under section 206J of the Residential Tenancies Act 1997. Rescission is effected by giving written notice that the agreement is rescinded to the site owner or the site owner's agent.[49]

Subsection (5) specifies that if a site tenant rescinds a dwelling purchase agreement in accordance with new section 206JA, the site tenant is entitled to a refund of all money paid under the agreement.

Subsection (6) will void any term in a dwelling purchase agreement to the extent that it purports to restrict, modify or exclude new section 206JA.

Clauses 9 to 12 of the Bill make provision for the rescission of part 4A dwelling purchase agreements to be within the jurisdiction of VCAT.

Amendments to the Residential Tenancies Act Relating to Rooming House Registration

Clause 17 of the Bill will insert new sections 142E to 142L into the Residential Tenancies Act. New section 142E provides for the establishment of a state-wide Rooming House Register. Under subsection (1), the Director of Consumer Affairs Victoria must establish and maintain the register. Subsection (2) outlines the purpose of the register:

> (2) The purpose of the Rooming House Register is to provide a consolidated State-wide register of information held by Councils about rooming houses—

[47] Victoria, Legislative Assembly (2012) *Debates*, Book 10, 15 August, p. 3145.
[48] ibid.
[49] Explanatory Memorandum, Residential Tenancies and Other Consumer Acts Amendment Bill 2012, p. 5.

(a) to assist the Director to monitor compliance with this Act and the regulations; and
(b) to assist Councils to monitor compliance with Part 6 of the *Public Health and Wellbeing Act 2008* and regulations made under that Act to the extent that that Part and those regulations apply to rooming houses; and
(c) to promote compliance with section 142D;[50] and
(d) to enable research into, and evaluation of, the State's rooming house sector; and
(e) to assist the public to identify registered rooming houses and the proprietors of registered rooming houses.

New section 142F specifies the information to be included in the Register. Subsection (1) states that, for each registered rooming house, the register must contain the following information:

(a) the particulars prescribed under the *Public Health and Wellbeing Act 2008* for the purposes of section 71(c) of that Act in relation to the registration of rooming houses;
(b) the information required under section 71(ca) of the *Public Health and Wellbeing Act 2008*;
(c) the conditions (if any) imposed under section 73(2) of the *Public Health and Wellbeing Act 2008* to which a registration is subject;
(d) the date of expiry of the registration;
(e) if applicable, the date of, and grounds for, the cancellation, suspension, transfer or variation of registration of the rooming house under section 76 of the *Public Health and Wellbeing Act 2008*;
(f) the contact details of the owner of the rooming house premises;
(g) the contact details of the proprietor of the rooming house;
(h) any other prescribed particulars.

Subsection (2) provides for the information the register must contain about rooming houses that have had their registration cancelled or their request for registration renewal refused. This information includes: the information referred to in subsection (1)(a) and (b); the expiry date of the rooming house's registration before it was cancelled or a registration renewal was refused; and the date of, and reasons for, cancelling or refusing to renew the registration.

Subsection (3) specifies the information that the register may contain with regard to rooming houses for which registration applications have been refused. This information includes: the date of the registration application; the address of the rooming house; the reasons for the registration refusal; the ABN or ACN (if the applicant is a body corporate); the applicant's name and their ABN or date of birth (if an individual).

Subsection (4) provides that the Director of Consumer Affairs Victoria may record details in the Register about an exemption granted to a rooming house owner from a rooming house standard.

[50] Section 142D of the Residential Tenancies Act requires the owner of a building (or the owner's agent), who is not a rooming house owner, to alert the Council if the owner or agent has reason to believe that the building is being used as an unregistered rooming house.

New section 142G refers to the compilation of information for inclusion in the Rooming House Register. Subsection (1) specifies that a Council must enter the information required under ss 142F(1) or (2) for each rooming house in their municipal area that: is registered; or has had their registration cancelled; or has had their application for registration renewal refused. Subsection (2) provides that a Council may enter the details specified in s 142F(3) for rooming houses in the municipal district that have had their registration applications refused.

Subsection (3) specifies:

> The information required to be entered under subsection (1) must be entered at the time the Council issues, renews, transfers, varies, cancels, refuses to renew or suspends registration of a rooming house in accordance with Division 4 of Part 6 of the *Public Health and Wellbeing Act 2008*.

Subsection (4) is a transitional provision and provides that, despite subsection (3), details of rooming houses already registered at the commencement date of the new section must be entered into the Register within 2 months.

New section 142H specifies that the Director of Consumer Affairs Victoria may keep the Register in any form the Director considers appropriate. The Director may also publish the Register, or any of its details, in any manner or form the Director considers appropriate.

New section 142I relates to access and amendment of the Register. Subsection (1) specifies that the Director must allow Councils to have access to the Register. Subsection (2) provides that Councils may amend or revoke entries on the Register if the Council considers it necessary to maintain the accuracy of the information. Subsection (3) empowers the Director to amend entries about an exemption granted under s 142F(4) if necessary to maintain the accuracy of the information.

New section 142J refers to the inspection of the Register. Subsection (1) states that the Director must permit the following persons to inspect the Register for the purposes of carrying out their functions or duties: the Secretary to the Department of Justice; the Secretary to the Department of Human Services; the Secretary to the Department of Health; and persons employed in these Departments under Part 3 of the *Public Administration Act 2004*.

Subsection (2) provides that the Director may allow a member of the public to view, free of charge, particular information on the Register. With respect to each registered rooming house, this information includes: the address; if the proprietor is a body corporate, its name and ABN or ACN; if the proprietor is an individual, the person's name and, if applicable, the person's ABN; and any other prescribed information. Under subsection (3), the public is not permitted to inspect information that has been restricted under new section 142K or information referred to under s 142F(3) (which relates to rooming houses that have been refused registration).

New section 142K relates to restrictions on access to personal information on the Register made available under section 142J(2). This new section allows an individual who is an applicant for the issue, renewal or transfer of a registration of a rooming house, or a proprietor of a registered rooming house, to apply to the Director of Consumer Affairs to restrict public access to some or all of the individual's personal information (e.g. an individual may prefer for their name to be restricted from public access). The Director may restrict public access if the Director is satisfied that 'exceptional circumstances exist justifying the restriction of public access to that personal information'.

The new section also provides for a person to apply to the Director to release restricted personal information. The Director may release the information if satisfied the release is in the public interest and may also impose conditions on the release.

New section 142L refers to the rights of review of a person whose interests are affected by a decision of the Director under new section 142K. The new section specifies that the person may apply to VCAT for a review of the decision.

Clause 18 of the Bill inserts new section 511(1)(ga) into the Residential Tenancies Act. This new section will expand the range of matters that can be prescribed in the regulations to incorporate the particulars to be included in, and other matters in relation to, the Rooming House Register.

Amendments to the Public Health and Wellbeing Act 2008 Relating to Rooming House Registration

Clause 19 of the Bill will insert new section 71(ca) into the Public Health and Wellbeing Act. This new section will provide that an application for a rooming house registration must include the applicant's ABN or ACN (if the applicant is a body corporate) or the applicant's ABN or date of birth (if the applicant is an individual).

Clause 20 of the Bill will amend section 73(1)(c) of the Public Health and Wellbeing Act to specify that a Council may require that alterations or improvements be made to a rooming house prior to registration in order to ensure compliance with the rooming house regulations made under the Residential Tenancies Act.

Clause 21 will insert new section 73A into the Public Health and Wellbeing Act. This new section will provide that Councils must enter details of registered rooming houses, or rooming houses that have had their registration cancelled or registration renewal refused, in the Rooming House Register under the Residential Tenancies Act. Councils are given discretion whether or not to enter details of rooming houses for which registration has been refused on the Register.

Clause 22 inserts new section 76(2)(ab) into the Public Health and Wellbeing Act. This new section will empower a Council to consider, as part of the grounds for determining a registration application, whether the applicant, registration holder,

prescribed accommodation or premises do not meet or comply with the Rooming House regulations.

Amendments to the Business Licensing Authority Act 1998

Clauses 24 and 25 of the Bill will amend the Business Licensing Authority Act 1998. The Business Licensing Authority is an independent regulator established under the Business Licensing Authority Act.[51] The Authority is responsible for the licensing and registration of: estate agents; owners' corporation managers; travel agents; motor car traders; second-hand dealers and pawnbrokers; and sex work service providers.[52]
The Authority is constituted of: a Chairperson and a Deputy Chairperson (both appointed by the Governor in Council); as well as any other person appointed by the Governor in Council as a member of the Authority.[53] A person is not eligible to become a member unless they are an Australian lawyer of not less than five years standing.[54]

Section 11(a) of the Act currently specifies that the Authority cannot delegate decisions regarding licence and permission applications to its staff. In his second reading speech for the Bill, Mr O'Brien stated that 'A number of these [licence and permission application] decisions are relatively straightforward, and now, after the authority's years of operation, its experienced staff could be making them under delegation determined by the authority'.[55] He stated that the amendments made by the Bill would allow for this to occur.

Clause 24 of the Bill will substitute a new section 11(a) which will provide that the Authority may not delegate 'a prescribed power or function'. The effect of this substitution will be that the Authority will be able to delegate any of its functions or powers (except for a prescribed power or function) to its staff.

Clause 25 will insert new section 26 into the Act which will provide for a regulation-making power under the Act. The Explanatory Memorandum states: 'Certain licensing-related decisions are likely to be prescribed, in regulations authorised to be made under this section, as decisions the Business Licensing Authority may not delegate'.[56]

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[51] Business Licensing Authority (2012) *2011-12 Business Licensing Authority Annual Overview*, Melbourne, BLA, p. 4, viewed 29 August 2012, <http://www.bla.vic.gov.au/resources/5073458f-1b3d-4abb-b3d7-c4e1ddb653fa/annual+overview++-+business+licensing+authority+-+2011++2012.pdf>.
[52] Business Licensing Authority (2012) 'Who We Are', BLA website, viewed 29 August 2012, <http://www.bla.vic.gov.au/home/about+us/who+we+are/>.
[53] Business Licensing Authority Act 1998, s 5(1). The Authority currently comprises two full-time members (the Chairperson and the Deputy Chairperson) and one sessional member. The Authority is assisted by a Registrar and staff from Consumer Affairs Victoria. Business Licensing Authority (2012) op. cit., p. 4.
[54] Business Licensing Authority Act 1998, s 5(2).
[55] Victoria, Legislative Assembly (2012) *Debates*, Book 10, 15 August, p. 3146.
[56] Explanatory Memorandum, Residential Tenancies and Other Consumer Acts Amendment Bill 2012, p. 12.

Amendment to the Consumer Affairs Legislation Amendment (Reform) Act 2010 Relating to Off-the Plan Contracts

Clause 26 of the Bill will amend section 57(2) of the Consumer Affairs Legislation Amendment (Reform) Act 2010. Section 57(2), which is yet to commence[57], proposes to insert new section 9AA(1A) into the Sale of Land Act 1962. Currently, new section 9AA(1A) will require that a contract for an off-the-plan sale of land must include on the front page of that contract, a notice to the purchaser specifying:

> the disclosure of certain matters relating to off-the-plan sales including that the amount of deposit is negotiable, that a substantial period of time may elapse between when the contract is signed and when the purchaser becomes the registered proprietor of the lot, and that the value of the lot may change in the period between when the contract is signed and when the purchaser becomes the registered proprietor of the lot.[58]

Clause 26 will amend existing section 57(2) of the Consumer Affairs Legislation Amendment (Reform) Act to replace the requirement that warnings be placed on the 'front page' with a specification that the contract must contain a 'conspicuous notice' that includes the warnings.

Amendment to the Sale of Land Act 1962 Relating to Off-the-Plan Contracts

Clause 27 of the Bill is related to changes proposed by clause 26. Clause 27 will amend section 9AE of the Sale of Land Act 1962 which refers to the rescission of a prescribed contract. The amendment will ensure that a purchaser's right to rescind a contract for an off-the-plan sale of land 'does not extend to circumstances in which a vendor has failed to include warnings required under section 9AA(1A) of that Act in the contract for the sale of the lot'.[59] In the second reading speech for the Bill, the Minister for Consumer Affairs stated that this provision recognised that 'rescission is a disproportionate remedy for a failure of this kind'.[60]

4. Stakeholders

Stakeholder opinion on the issue of rooming houses has been canvassed in several significant reports, which have been referred to in the background section of this paper.[61] The general issues raised by advocacy groups concern: the impact of current standards on the 'health, safety and wellbeing of residents'; resident rights regarding inspections; appeal rights against decisions made by inspectors; and loss of public

[57] Section 57(2) of the Consumer Affairs Legislation Amendment (Reform) Act 2010 is due to commence on 1 December 2012 unless earlier proclaimed.
[58] Explanatory Memorandum, Consumer Affairs Legislation Amendment (Reform) Bill 2010, p. 28.
[59] ibid., p. 13.
[60] Victoria, Legislative Assembly (2012) *Debates*, Book 10, 15 August, p. 3146.
[61] See: Department of Human Services (2011) op. cit.; Rooming House Standards Taskforce (2009) op. cit.

housing stock.[62] Landlord representatives (Registered Accommodation Association of Victoria and the Real Estate Institute of Victoria) generally raised concern that stricter controls and standards may result in a reduction of availability in the rooming house sector.[63]

Local governments raised a diverse range of issues in their stakeholder comment. Some of the most relevant to the current Bill include: concern that poor standards in rooming houses were contributing to health and safety risks; the capacity of councils to enforce new standards with current resources; the adequacy of penalties; and the consequences of closing down rooming houses for breaches of the regulations.[64]

A brief overview of some of the recent media commentary from stakeholders on these issues is provided below.

Registration and Licensing

According to *The Age* various welfare agencies argue that 'without a central registry of rooming house operators…any standards will be rendered virtually useless because there will be no accountability'.[65] This view was attributed to Cath Smith, chief of the Victorian Council of Social Services, who was reported as saying that new standards would not work without a central registry because it would be unclear who was responsible for implementation.[66] Similar issues were identified by Toby Archer from the Tenants Union, who was reported as saying:

> Since the rental industry contracted, there are all these dodgy operators out there who have seen that they can almost get away with murder and literally make millions of dollars out of it.[67]

In a submission to the Family and Community Development Committee, the Frankston City Council suggested requiring operators of rooming houses to obtain a planning permit and then list appropriate exceptions.[68] Similarly, *The Age* has reported that tenant advocates have campaigned for a 'fit and proper person test' that rooming house operators would need to satisfy as a condition of getting a rooming house license.[69]

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[62] Department of Human Services (2011) op. cit., pp. 72-75.
[63] ibid.
[64] ibid.
[65] R. Sexton (2012) 'Delay in action on rooming houses', *theage.com.au*, March 14, viewed 22 August 2012, <http://www.theage.com.au/victoria/delay-in-action-on-rooming-houses-20120313-1uyh6.html#ixzz248Aoqtbf>.
[66] ibid.
[67] F. Tomazin (2011) 'New rules on rooming houses key in on safety', *theage.com.au*, August 14, viewed 23 August 2012, <http://www.theage.com.au/victoria/new-rules-on-rooming-houses-key-in-on-safety-20110813-1is6h.html>.
[68] Frankston City Council (2010) Submission to the Family and Community Development Committee, *Inquiry into the Adequacy and Future Directions of Public Housing in Victoria*, October, viewed 21 August 2012, <http://www.parliament.vic.gov.au/fcdc/inquiries/article/875>.
[69] F. Tomazin (2011) 'Bad rooming houses to be left unchecked', *theage.com.au*, August 21, viewed 22 August 2012, <http://www.theage.com.au/victoria/bad-rooming-houses-to-be-left-unchecked-20110820-1j3ne.html>.

Toby Archer from the Tenants Union has questioned whether the proposed register will be sufficient in this respect, commenting that 'If there's no capacity for authorities to strike people off the register, then it will serve no purpose'.[70]

Enforcement and Compliance

According to Tenants Union policy worker Mike Williams the new standards for rooming houses will only be effective if they are coupled with a 'proper enforcement regime' and a state-wide registration and licensing system.[71] He was further reported as stating that: '[This would allow] enforcement of penalties for those operators who do not register or who fail to comply with health and safety laws'.[72]

Carolyn Atkins, the acting chief of the Victorian Council of Social Service, was reported as saying that the introduction of fines for failing to meet minimum standards would help to tackle the issue of 'rogue operators'.[73] She further stated that:

> Too often operators of rooming houses exploited vulnerable Victorians who have had no other option but to stay in rooming houses that are unsafe, unhealthy and grossly expensive.[74]

UnitingCare Sunshine and Broadmeadows (UCSB) chief executive Joy Nunn was reported as also supporting the introduction of fines as a way of enforcing minimum standards for rooming houses.[75] However, Norwood Association team leader Brad Wilde raised some concern about the potential impact of placing pressure on rooming house operators. He was reported as saying that although conditions are often poor in rooming houses, there should be the option to waive fines for landlords that are trying to do the right thing:

> There are landlords doing this out of the goodness of their hearts. Rather than close down their houses, the government needs to help them fund improving the standard of living. Otherwise they're contributing to the cycle of homelessness.[76]

This issue was also raised in the DHS Regulatory Impact Statement by the Registered Accommodation Association of Victoria (RAAV), which expressed concern over the 'impact of increased standards on the viability of the rooming house sector'.[77] Similar issues were also flagged by local councils in the Department of Human Services' Regulatory Impact Statement.[78]

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[70] ibid.
[71] N. Price (2012) 'Rooms above the board: on the spot fines crack down on dodgy operators', *Melbourne Leader*, 13 August, p. 5.
[72] ibid.
[73] R. Sexton (2012) 'Slum lords on notice in rooming house push', *The Age*, 3 August, p. 6.
[74] ibid.
[75] S. Zevenbergen (2012) 'Rooming house shonks on notice', *Hume Weekly*, 14 August, p. 4.
[76] M. Cunningham and B. Millar (2012) 'Unwanted results from "rooming" laws', *Maribyrnong Weekly*, 15 August, p. 7.
[77] Department of Human Services (2011) op. cit., p. 73.
[78] ibid.

Chris Povey from the Homeless Persons' Legal Clinic was reported as emphasising the importance of enforcement, stating that: 'Rather than just stacking more regulation on top, you'd really want to see people taking rooming house owners to task with the regulations we've already got'.[79]

5. Other Jurisdictions

This section of the Research Brief looks at the regulation, including requirements regarding the registration, of rooming houses in the other Australian jurisdictions of Queensland, New South Wales, the Australian Capital Territory and South Australia. Queensland is currently the only jurisdiction that has passed legislation requiring the mandatory registration of accommodation-only rooming houses (as well as rooming houses that provide meals and/or personal care services in addition to accommodation). NSW, and to a lesser extent the ACT, are moving towards the introduction of a centralised register for all rooming houses. While South Australia operates a licencing scheme for accommodation facilities that provide meals and personal care, accommodation-only rooming houses are not required to be licenced. Notably, in Queensland, NSW and the ACT, 'rooming houses' are referred to as 'boarding houses'.

Queensland

In 2002, the Queensland Parliament passed the *Residential Services (Accreditation) Act*, which created regulations for the 'residential services industry' including 'boarding houses'.[80] The Act established minimum standards and living conditions for private sector boarding house residents by providing for a mandatory registration and accreditation scheme.[81] The scheme applies to accommodation-only boarding houses and to facilities that additionally provide meals and/or personal care services.[82]

Under the Residential Services (Accreditation) Act, a Queensland boarding house operator must be registered with the Department of Housing and Public Works and accredited in order to operate a boarding house. In order to register, the boarding house operator must demonstrate compliance with certain minimum standards regarding the safety and amenity of buildings and fire safety management. The boarding

[79] F. Tomazin (2011) 'New rules on rooming houses key in on safety', op. cit.

[80] The Residential Services Accreditation Act 2002 refers to 'residential services' and 'service providers' which includes private sector boarding houses and boarding house operators. For the definition of a 'residential service' see section 4 of the Act. For a definition of 'service provider' see section 6 of the Act. Please note that in summarising the provisions of the Queensland Act in regard to boarding houses, this Research Brief uses the term 'boarding house' instead of 'residential service' and 'boarding house operator' in place of 'service provider'. Boarding house accommodation in Queensland is also regulated by the *Residential Tenancies and Rooming Accommodation Act 2008 (Qld).*

[81] Queensland House of Assembly (2002) *Debates*, 6 March, p. 370, viewed 23 August 2012, <http://www.parliament.qld.gov.au/documents/hansard/2002/020306ha.pdf>.

[82] N. Dixon (2002) 'Residential Services (Accreditation) Bill 2002 (Qld): Standards and Accreditation', *Research Brief*, No. 9, Queensland Parliamentary Library, pp. i, 1, viewed 24 August 2012, <http://www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2002/2002009.pdf>.

house operator must also undergo a character test which includes a criminal history check. The criminal history check is also applied to any 'associates' of the boarding house operator that will be involved in the management of the boarding house.[83]

Once registered, a boarding house operator is required to apply for accreditation. The accreditation scheme is designed to ensure that boarding houses comply with agreed industry standards which are set out in the Residential Services (Accreditation) Regulation 2002. Boarding house operators are required to assess the performance of their own service against these standards and undergo an external audit. The Accreditation Act also provides for the appointment of authorised officers to monitor and enforce compliance with the Act, sanctions for non-compliance, and a review procedure for when a boarding house operator disagrees with a registration or accreditation decision made by the department.[84]

New South Wales

In NSW, there are two categories of boarding houses: 'licensed boarding houses' and 'unlicensed boarding houses'. Boarding houses that accommodate more than two people with a disability who need support (meals and/or personal care services) are required to be licensed by the Department of Ageing, Disability and Home Care under the *Youth and Community Services Act 1973* (the YCS Act) and the Youth and Community Services Regulation 2010. Accommodation-only boarding houses are not required to be licensed and are referred to as 'unlicensed boarding houses'. The YCS Act and Regulation do not apply to unlicensed boarding houses.

Local councils have certain responsibilities in relation to licensed and unlicensed boarding houses – under the *Local Government Act 1993* and Local Government (General) Regulation 2005 – in regard to fire safety and basic standards of the premises. However, councils are not required to keep records of boarding houses in their municipality.[85] Since 2009, newly built boarding houses are required to meet certain building requirements provided for in the NSW government's *Affordable Rental Housing – State Environmental Planning Policy 2009*.[86]

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[83] See Parts 2 and 3 of the Residential Services Accreditation Act 2002; N. Dixon (2002) 'Residential Services (Accreditation) Bill 2002 (Qld)' op. cit.; Queensland Department of Housing and Public Works (2012) 'Register a Residential Service: Apply for Registration', viewed 23 August 2012, <http://www.communities.qld.gov.au/housing/housing-services/boarding-houses-and-hostels/register-a-residential-service/apply-for-registration>.

[84] Queensland House of Assembly (2002) *Debates*, 6 March, op. cit. For provisions regarding authorised officers see Part 8, Division 1 of the Residential Services (Accreditation) Act 2002.

[85] NSW Ombudsman (2011) *More than Board and Lodging: The Need for Boarding House Reform*, Special Report, Sydney, p. 3, viewed 22 August 2012, <http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0016/3346/SR-Boarding-Houses.pdf>.

[86] NSW Government (2011) *Boarding House Reform Discussion Paper*, NSW Interdepartmental Committee on Reform of Shared Private Residential Services, p. 1, viewed 22 August 2012, <http://www.adhc.nsw.gov.au/__data/assets/file/0019/250417/Boarding_House_Reform_Discussion_Paper_Nov2011.pdf>; Department of Human Services (2011) *Proposed Residential Tenancies (Rooming House Standards) Regulations: Regulatory Impact Statement*, op. cit. p. 22.

The NSW Ombudsman has repeatedly stated that boarding house accommodation in NSW is inadequate and unacceptable, and has emphasised the need for significant reform.[87] In 2011, the NSW Ombudsman stated in a special report to Parliament that his office has found that existing requirements of boarding houses are often not met and that the Department of Ageing, Disability and Home Care has repeatedly failed to fulfil its responsibilities in regard to monitoring and compliance[88]. He further stated that:

> However, the problems are much larger than poor monitoring and enforcement. The current legislation governing licensed boarding houses and the standards expected in such facilities are inadequate to protect already vulnerable residents from harm and violations of their fundamental human rights. People living in unlicensed boarding houses have even fewer safeguards and protections.[89]

On 10 May 2012, the NSW O'Farrell Coalition Government announced pending reforms to the boarding house sector.[90]

On 11 May 2012, the State Coroner of NSW released her findings into the deaths of six residents at a licensed Marrickville boarding house between June 2009 and August 2010. The Coroner referred to the boarding house as 'Dickensian' and called for reform of the boarding house sector, including mandatory registration of all boarding house operators.[91]

On 29 June 2012, the NSW Government released a draft exposure bill for a new Boarding House Act and an accompanying Position Paper.[92] The Position paper states that the draft Boarding Houses Bill 2012 includes:

- Relevant provisions from the YCS Act plus various amendments;
- The introduction of a centralised register for NSW boarding houses;
- Principles-based occupancy rights to govern the relationship between residents and boarding house proprietors;
- Enhanced accommodation standards for smaller boarding houses;
- Enhanced powers of entry and associated inspection regimes; and

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[87] See NSW Ombudsman (2011) op. cit., p. 4.
[88] ibid., p. ii.
[89] ibid.
[90] A. Constance, NSW Minister for Disability Services (2012) 'NSW Government to Deliver Improved Protections for Boarding House Residents', *Media Release*, 10 May, viewed 22 August 2012, <http://www.adhc.nsw.gov.au/about_us/media_releases/ministerial/nsw_government_to_deliver_improved_protections_for_boarding_house_residents>.
[91] NSW State Coroner, Magistrate M. Jerram (2012) *Inquest into the Deaths of Shaneen Batts, Ilona Takacs, Dorothy Hudson, Ian Birks, Donald Mackellar, Mohammed Ramzan*, Glebe, State Coroners Court of New South Wales, pp. 2, 27, viewed 22 August 2012, <http://www.coroners.lawlink.nsw.gov.au/agdbasev7wr/_assets/coroners/m40160114/hostel%20findings.pdf>.
[92] See Exposure Draft Boarding Houses Bill 2012 (NSW) at <http://www.legislation.nsw.gov.au/maintop/bills> and NSW Government (2012) *Position Paper: Exposure Draft Boarding Houses Bill 2012,* Department of Family and Community Services, viewed 22 August 2012, <http://www.pwd.org.au/documents/temp/Exposure%20Draft%20Boarding%20House%20Bill%202012%20Position%20Paper.pdf>.

- Increased penalties for non-compliance with the regulations.[93]

In regard to the creation of a boarding house register, the Position Paper states that the exposure draft provides for:

> The establishment of a boarding houses registration system that:
> - Requires all boarding houses that meet the definition of "registrable boarding house"[94] to register;
> - Provides basic information about boarding houses in NSW;
> - Provides for the classification of registrable boarding houses as:
> - Tier 1 - boarding houses that are not currently required to be licensed; or
> - Tier 2 - boarding houses that are required to be licensed;
> - Requires Tier 1 and 2 boarding houses to update the Register annually;
> - Includes the charging of a one-off registration fee to operators for each boarding house, with provision for the fee to be varied by regulation; and
> - Requires local councils, within 12 months of registration to inspect the boarding house to determine compliance with planning, building and fire safety requirements and standards applying to all registrable boarding houses.[95]

Stakeholder submissions on the exposure draft closed on 10 August 2012. The Position Paper states that pending cabinet approval of the final Bill, it will be introduced to the NSW Parliament during the spring session of 2012. The Position Paper further states that a Boarding Houses Regulation will be prepared once the Boarding Houses Bill 2012 has passed and will be released for consultation through a Regulatory Impact Statement.[96]

Australian Capital Territory

In the ACT, limited provisions governing boarding house accommodation are split over several pieces of legislation, which primarily include the *Public Health Act 1997*, the *Residential Tenancies Act 1997* and the *Planning and Development Act 2007*.[97]

The ACT Residential Tenancies Act 1997 makes provisions for the legal relationships between boarding house providers and residents but does not license providers or provide for the management of boarding houses. However, under the ACT Public Health Act 1997, a boarding house (with two or more boarders) is a licensable public health risk activity. The ACT Government explains that:

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[93] NSW Government (2012) *Position Paper*, op. cit., p. 2.
[94] The Position Paper states that clause 5 of the Exposure Draft defines 'registrable boarding house' as either a 'Tier 1 boarding house (premises which provide beds, for a fee or reward, for use by 5 or more residents' or a 'Tier 2 boarding house (a residential centre for vulnerable persons)', ibid., p. 6.
[95] ibid., pp. 4-5.
[96] ibid., pp. 13-14.
[97] Further relevant legislation includes the ACT's building, electrical, gas and water Acts. ACT Chief Minister's Department et al. (2010) *Issues and Options for the Regulation of Boarding Style Accommodation*, ACT Government, p. 3, viewed 24 August 2012, <http://www.cmd.act.gov.au/__data/assets/pdf_file/0007/185551/Boarding_Style_Accomodation_Review_-_Discussion_Paper.pdf>.

> A person wanting to manage or control a boarding house with more than two boarders is required to apply to ACT Health for a Boarding House Activity Licence (s 29) and submit a floor plan of the premises with the application. While ACT Health maintains a database of existing licensees, the Public Health Act 1997 does not authorise a public register.[98]

The Public Health Act provides that it is an offence to carry out a licensable health risk activity without an activity license (with a maximum penalty for a person of 50 penalty units). It is also an offence under the Public Health Act to allow unsanitary conditions to exist.[99]

The closure of five accommodation-only boarding houses in Canberra in 2010, under the Public Health Act, led to a government review of the legislation and regulations governing boarding houses. In late 2010, an interdepartmental committee produced a short discussion paper titled 'Issues and Options for the Regulation of Boarding Style Accommodation' and released it for stakeholder comment.[100] The discussion paper included the option of establishing a registration and/or licensing system for boarding houses.[101] In November 2011, it was announced that the ACT Cabinet had agreed to strengthen regulations governing boarding style accommodation, and that legislation giving effect to this decision would be prepared.[102]

South Australia

In South Australia, the *Supported Residential Facilities Act 1992* provides minimum standards and a licensing scheme for residential facilities that provide personal care services in addition to accommodation. Rooming houses that just provide accommodation are subject to some regulation by sections 103-105 of the *Residential Tenancies Act 1995* (SA) and the Residential Tenancies (Rooming Houses) Regulations 1999.[103]

Section 103 of the South Australian Residential Tenancies Act provides that the Rooming Houses Regulations prescribe codes of conduct for rooming house proprietors and residents. Section 104 of the Act then provides that rooming house providers and residents must comply with these codes of conduct or face a maximum fine of $1000 or $200 respectively. The Rooming House Regulations' codes of conduct

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[98] ibid., p. 4.
[99] ibid., pp. 3-5.
[100] ACT Chief Minister's Department et al. (2010) op. cit.
[101] See ibid., pp. 17-20, 22-24.
[102] ACT Government (2011) *Summary of Cabinet Outcomes: 1 November 2011*, p. 1, viewed 24 August 2012, <http://www.cmd.act.gov.au/__data/assets/pdf_file/0007/259864/1_November_2011_-_Summary_of_Cabinet_Outcomes.pdf>.
[103] See South Australian Government (2011) 'Living in a Rooming House', sa.gov.au website, viewed 27 August 2012, <http://www.sa.gov.au/subject/Housing,+property+and+land/Renting+and+letting/Being+a+tenant+renting+privately/Lodging,+boarding+and+sharing+a+private+rental+property/Living+in+a+rooming+house>; Legal Services Commissioner of South Australia (2008) 'Rooming Houses', SA Legal Services Commission website, viewed 28 August 2012, <http://www.lawhandbook.sa.gov.au/ch21s01s01.php>.

set out the basic rights and obligations of rooming house proprietors and residents, including the formulation of 'house rules'.

More broadly, the Housing Improvement (Standards) Regulations (2007) prescribe general standards for 'houses' (including rooming houses) that must be met in order to avoid the house being declared unfit for human habitation under the *Housing Improvement Act 1940* (SA).

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