



Department of Justice

Consumer Affairs Victoria



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Mr P White
Coroner
Coroners Court of Victoria
222 Exhibition Street
MELBOURNE VIC 3000

Our ref: CD/12/351860

Dear Mr White

INVESTIGATION INTO THE DEATHS OF LEIGH SARAH SINCLAIR AND CHRISTOPHER ALAN GIORGI

I refer to your Report of 29 September 2009 into the deaths of Leigh Sinclair and Christopher Giorgi at a Brunswick rooming house in 2006, and enclose the Victorian Government response to your recommendations.

As you will see from the enclosed Government response, additional rooming house reforms, consistent with the recommendations of your Report, have been introduced since Dr Claire Noone wrote to you about the Report on 22 December 2010.

I should also mention that further progress has occurred on a number of the matters that Dr Noone listed in her letter of 22 December 2010.

The amendments to the *Residential Tenancies Act 1997*, described in the earlier letter, have now come into effect. Additionally, the Residential Tenancies (Rooming House Standards) Regulations 2012 were made on 28 February 2012. These Regulations prescribe minimum standards for rooming houses that cover privacy, safety, security and amenity. Consumer Affairs Victoria (CAV) will be responsible for enforcing the standards, which will apply to rooming houses from 31 March 2013.

Since July 2009, more than 1,000 rooming house inspections have been conducted under the Rooming House Compliance Monitoring Program, which is being led by CAV with the assistance of local government. There has also been a significant increase in the number of rooming houses registered with individual municipal councils under the *Public Health and Wellbeing Act 2008*. There were 1,096 rooming houses registered at January 2012, compared to 511 at October 2009.

A copy of the Government response will be published on our website.

Yours sincerely

Phil D'Adamo
Acting Director
Consumer Affairs Victoria

Encl.

CORONER'S REPORT INTO THE DEATHS OF LEIGH SINCLAIR AND CHRISTOPHER GIORGI

Coroner's Recommendation	Government Response
<i>"Consumer Affairs Victoria to henceforward play a leading role in the administration of the Health Act Prescribed Accommodation Regulations, and related matters"</i>	
<p>1. That CAV embark on a campaign to identify and ensure that rooming house operators and the owners of rooming house premises and their managing agents, are aware of their obligations and the health, safety and planning requirements in regard to rooming houses. This campaign should give particular emphasis to the requirements of the Building Code of Australia as it applies to class 3 buildings. To help inform this campaign I recommend that a consultative process be implemented to assist in the identification of the location of unregistered low cost boarding houses and address in particular the potential fire safety problems within. Properly interested persons who might join this process should include the Tenants Union of Victoria, the Council to Homeless Persons, relevant Municipal Council representatives, the Real Estate Institute of Victoria, the MFB and CAV.</p>	<p><i>Response</i> Supported</p> <p><i>Discussion</i> Consumer Affairs Victoria (CAV) has implemented a marketing and education program targeting operators, residents and real estate agents. CAV has also worked with the Registered Accommodation Association of Victoria to develop their best practice handbook for rooming house operators (see discussion for response to Recommendation 9 for further details about this guide).</p> <p>CAV has developed a centralised process for identification of unregistered rooming houses.</p>
<p>2. That CAV personnel be given powers of search and entry and with the support of suitably experienced Municipal Council employees and MFB officers, take the lead in ensuring compliance with the Health Act Prescribed Accommodation Regulations, the Planning and Environment Act and the Building Code fire safety provisions, in regard to all class 3 boarding house premises. This recommendation anticipates that having first identified unregistered premises, CAV would then monitor the registration process and further advise Municipal Councils concerning possible closures and/or prosecutions, in appropriate cases. Personnel who might be appointed to CAV to assist, should include those with proven skills in the administration of the Building Code in particular, but might also include experienced real estate agents able to investigate and identify the existence of for profit businesses, providing class 3 accommodation.</p>	<p><i>Response</i> Supported in principle</p> <p><i>Discussion</i> Closer working arrangements between CAV and Metropolitan Fire Brigade (MFB) officers and Municipal Building Surveyors and Environmental Health Officers, including joint inspections and enforcement action, are fully supported by Government and are underway.</p> <p>Building Surveyors are currently empowered and remain the appropriately qualified and experienced professionals to undertake any assessment of compliance with fire and life safety issues that are predominantly within the <i>Building Act 1993</i>, Building Regulations 2006 and the National Construction Code.</p> <p>In relation to the recommended powers of the Director of CAV to act on rooming house owners and operators who are in breach of their responsibilities, the <i>Residential Tenancies Amendment Act 2010</i> included expanded powers of the Director to initiate investigations and compliance action, enhance evidence gathering and enable representative actions to be undertaken by the Director. These provisions have taken effect.</p>
<p>3. That the Director, CAV implement a licensing system for all rooming house operators with each such business to be managed by a nominee who shall be the person in charge, with such persons to be fit and proper persons having regard to criteria to be established by the Director.</p>	<p><i>Response</i> Supported in principle</p> <p><i>Discussion</i> The Coalition Government is considering establishing a State-wide register of rooming houses and will be consulting in the near future with local councils and other relevant stakeholders.</p>

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	Coroner's Recommendation	Government Response
4.	<p>I further recommend that the Health Act Prescribed Accommodation Regulations be amended to require operators to prepare and publish an appropriate emergency management plan to comply with criteria to be established by the Director of CAV, in consultation with the Chief Fire Officer of the MFB.</p>	<p><i>Response</i> Supported</p> <p><i>Discussion</i> A head of power to make regulations prescribing minimum standards relating to the safety, privacy, security and amenity of rooming houses was included in the <i>Residential Tenancies Amendment Act 2010</i>. The Residential Tenancies (Rooming House Standards) Regulations 2012 were made on 28 February 2012. The new regulations include regulation of a fire evacuation diagram, whose procedures are prominently displayed. The form of this new regulation was subject to consultation through the Regulatory Impact Statement (RIS) process, including consultation with the MFB.</p>
<p><i>“Amendments to the Prescribed Accommodation Regulations and the Building Regulations designed to facilitate improved oversight of the Boarding House Industry”</i></p>		
5.	<p>That the Health Act Prescribed Accommodation Regulations be amended to require that the regulations apply to all residential premises, where more than one room within a residential building is to be offered for lease, or where more than two persons are normally resident in such a room.</p>	<p><i>Response</i> Supported in principle</p> <p><i>Discussion</i> The underlying principle of ensuring that all genuine rooming houses are subject to regulation is supported.</p> <p>Following the fire, the Health (Prescribed Accommodation) Regulations 2001 were amended in 2008 to reduce the threshold in their definition of a rooming house from six to four persons so as to align with the definition in the <i>Residential Tenancies Act 1997</i>. This change captured smaller rooming houses that until then were avoiding coverage under these regulations. It is not necessary to reduce the threshold to two persons to capture these small rooming houses.</p> <p>However, the recommendation as proposed could also result in share houses and some other private leasing arrangements being regulated by rooming house regulations. This would extend the compliance requirements of the current regulatory system to situations where there is no evidence of a real or substantial risk warranting an intervention.</p>
6.	<p>That the Health Act Prescribed Accommodation Regulations be amended to require a boarding house operator to provide and display a certificate issued by a building surveyor, which certifies that the property complies with the Building Code of Australia. Further, that such a certificate is to be issued as a condition precedent to the first use of premises or part of premises as a boarding house and be updated at least every three years thereafter.</p>	<p><i>Response</i> Supported in principle</p> <p><i>Discussion</i> The Government will investigate how compliance certificates can be developed to provide operators and residents assurance that a rooming house premise achieves minimum fire and life safety standards. The Government will also investigate how such certificates can be a prerequisite of registration of premises as a rooming house.</p>

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	Coroner's Recommendation	Government Response
7.	<p>That the Health Act Prescribed Accommodation Regulations be amended to adopt the Building Code Fire Safety provisions and to make those requirements applicable to all prescribed accommodation.</p>	<p><i>Response</i> Supported in principle</p> <p><i>Discussion</i> The recommendation is to be implemented through the new regulations under the <i>Residential Tenancies Act 1997</i>, which prescribe minimum fire safety standards for rooming houses, rather than through amendments to the Health Act Prescribed Accommodation Regulations adopting the Building Code Fire Safety provisions.</p> <p>The Residential Tenancies (Rooming House Standards) Regulations 2012 prescribe minimum fire safety standards for rooming houses relating to fire-safe locks on bedroom doors, fire evacuation diagrams, switchboard type circuit breakers and residual current devices, power outlet requirements for each bedroom and gas and electrical safety checks.</p>
8a	<p>That the Government of Victoria amends the Health Act Prescribed Accommodation Regulations, with a view to allowing for the imposition of more substantial penalties for non-compliance. That the Government of Victoria amends the Building Regulations 2006, Regulation 1011, which deals with change of use, to substantially increase the maximum penalty.</p>	<p><i>Response</i> Supported in principle</p> <p><i>Discussion</i> The Government will review the penalties for offences that relate to the change of use of a building.</p> <p>Maximum penalties under the <i>Public Health and Wellbeing Act 2008</i> for failure to register a rooming house have been increased to 60 penalty units for individuals and 300 penalty units for bodies corporate, compared to the maximum penalty for this offence under the <i>Health Act 1958</i> before its repeal of 50 penalty units.</p> <p>The Government has also increased the penalties for non-compliance with rooming house tenancy provisions in the <i>Residential Tenancies Act 1997</i>.</p>
8b	<p>It is further recommended that Municipal Councils in consultation with CAV, support the effectiveness of this legislation by ordering the closure of premises and/or the bringing of criminal prosecutions in appropriate cases.</p>	<p><i>Response</i> Supported</p> <p><i>Discussion</i> CAV and MFB are assisting councils in inspection of rooming houses on a multi-discipline approach.</p> <p>Criminal prosecutions by CAV or local councils will progress in appropriate cases.</p> <p>A closure protocol has been established by the Department of Human Services that assists local councils, homelessness providers, government agencies and other stakeholders to identify rooming houses that are at risk of closure and where possible assist the operator to become compliant, but where this is not possible assist in the relocation of residents.</p>

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Coroner's Recommendation	Government Response
<i>“Tenancy Agreements for Building Owners, Rooming House Operators and Rooming House Tenants and the need to publicly identify where such arrangements exist”</i>	
<p>9. That the Government of Victoria introduce amendments to the RTA which set out the obligations of rooming house owners and operators, under relevant Building, Health and Planning legislation.</p>	<p><i>Response</i> Supported in principle</p> <p><i>Discussion</i> The objective of this recommendation to set out all obligations imposed on rooming house owners and operators in one place is supported.</p> <p>However, amending one Act to duplicate other legislative provisions is not the most effective way of achieving the objective, in part because the technical nature of legislation means that rooming house owners, operators and residents are unlikely to refer to it to determine the obligations of rooming house owners and operators.</p> <p>Instead, the recommendation will be implemented through non-legislative means, including education and information sessions that set out the obligations of rooming house owners and operators in clear, 'plain English' terms.</p> <p>As a joint project between CAV, DHS and the Registered Accommodation Association of Victoria (RAAV), RAAV has issued a new Best Practice Guide for Rooming House Operators and a new A3 poster listing health and community services. CAV has engaged RAAV to undertake a range of agreed activities to educate operators about running a better rooming house, including delivery of a minimum of ten workshops in 2011-12 to operators in consultation with local government and the Municipal Association of Victoria. CAV is proposing that funding be provided to RAAV for further workshops in 2012-13.</p> <p>CAV will shortly issue a revised Rooming House Operators and Residents Guide and a new A4 poster summarising the resident's rights and duties under the Act that the owner is legally obliged to display in each resident's room.</p>
<p>10. That subject to recommendation 12, the Government of Victoria introduce amendments to the RTA, which mandate the use of a prescribed form of agreement for a lease intended for running a rooming house, said agreement to set out the rights and duties of owners and operators as suggested by recommendation 9.</p>	<p><i>Response</i> Supported in principle. (See also the response to Recommendation 9.)</p> <p><i>Discussion</i> The objectives of this recommendation and recommendations 11-13 are to use leases to inform residents of the rights and duties of rooming house owners and operators, and to aid in the identification of rooming houses.</p>

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Coroner's Recommendation	Government Response
	<p>The Government supports the objectives of ensuring that rooming house owners, operators and residents are aware of the rights and duties of owners and operators, and that rooming houses are identified and regulated.</p> <p>The Government has moved to ensure that the interests of residents are protected by enhancing mandatory standards (as recommended elsewhere in the report). In addition, as detailed in the response to recommendation 9, an education campaign will also increase understanding of rooming house regulation through the provision of clear, 'plain English' information, rather than conveying that information to residents through potentially complex legal agreements.</p> <p>The Government has supported these measures with a legislative amendment establishing a duty for landlords and their agents to notify local government where they reasonably believe that their property is being used as an unregistered rooming house. This approach applies to all agents, including non-REIV members and to all private landlords.</p> <p>In relation to the objective of informing residents of the rights and duties of rooming house owners and operators, and as mentioned in the discussion for the response to Recommendation 9, CAV will shortly issue a revised Rooming House Operators and Residents Guide and a new A4 poster summarising the resident's rights and duties under the Act that the owner is legally obliged to display in each resident's room. In addition, a model residency agreement will be made available on the CAV website for operators who opt to use it, which will clearly identify the rights and duties of operators and residents.</p>
11.	<p>Response See response to Recommendation 10</p>
12.	<p>Response Recommendation is for REIV consideration</p>

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	Coroner's Recommendation	Government Response
<p>13.</p>	<p>Institute members should be further required to notify CAV of all recommendation 10 or 12 agreements within 7 days of the commencement of such an agreement. Further that the REIV recommend that its members notify CAV in all cases where a presently existing pro forma Residential Tenancy Agreement is signed or has been signed in respect of properties under their management, where such an agreement purports to exclude the application of existing clause 7. Further, that such notification is to occur within 7 days of the commencement of such an agreement, or 14 days from the commencement of operation of any such policy directive. It is further recommended that together with the abovementioned amendments, the RTA include requirements concerning notification, which are consistent with the above.</p>	<p><i>Response</i> Recommendation is for REIV consideration</p> <p><i>Discussion</i> The requirement to notify CAV or another government agency would introduce a second form of registration. The proposed requirement would need to provide a net benefit to the industry or the community, particularly when compared to existing regulation. This includes a duty introduced by the <i>Residential Tenancies Amendment Act 2010</i> for landlords and their agents to notify local government where they reasonably believe that their property is being used as an unregistered rooming house. The Government will explore ways of improving agents' understanding of rooming house regulations and residents' awareness of their rights.</p>
<p><i>“Administrative and legislative changes designed to make the approvals system more user friendly”</i></p>		
<p>14.</p>	<p>I recommend that the Government of Victoria through the Minister for Local Government now seek long-term arrangements that will best permit legislative compliance while securing a greater efficiency for all concerned. I note that such an exercise is likely to be time consuming.</p>	<p><i>Response</i> Supported in principle</p> <p><i>Discussion</i> The Government will continue to work closely with local governments to develop and implement best practice models for supporting rooming house compliance including improved coordination with councils of compliance and enforcement functions.</p> <p>The responsibility for the delivery of services to best permit legislative compliance whilst securing a greater efficiency for the administration and enforcement of minimum safety standards for rooming houses in a municipal district rests with the chief executive officer of the council. The role of the Minister for Local Government includes to support councils to ensure their chief executive officers appropriately exercise their functions under the relevant acts.</p>
<p>15.</p>	<p>Having regard to the urgency of the need to ensure a safe environment for boarding house tenants, I recommend that Municipal Councils in consultation with CAV move quickly to review their internal communication systems. The objective of such a review is to ensure that all relevant departments (Building, Health and Planning) both closely communicate with one another, and are readily able to access information relevant to a particular premises, regardless of which Council department obtained the information.</p>	<p><i>Response</i> Supported</p> <p><i>Discussion</i> CAV has implemented a program for assisting councils in inspection on a multi-discipline approach, and the MFB and councils are sharing information to ensure fire safety in rooming houses.</p> <p>CAV continues to work closely with the MFB and councils to develop and implement a best practice approach to rooming house compliance including coordination with councils of compliance and enforcement functions across disciplines.</p>

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	Coroner's Recommendation	Government Response
<p>16.</p>	<p>I further recommend that relevant Council staff are given adequate direction and that under the auspices of the Director and the Interdepartmental Committee on Rooming Houses, that guidelines are used to inform staff as to how to proceed to ensure that cross discipline enquiries are dealt with having full regard to both existing legal requirements and efficient administration.</p>	<p><i>Response</i> Supported</p> <p><i>Discussion</i> Direction to council staff on operational issues is a matter for the chief executive officers of councils.</p> <p>The Government proposes to work with councils to develop best practice guidance to serve as a resource for inspectors in interpreting and applying the new Residential Tenancies (Rooming House Standards) Regulations 2012 and existing regulations. The guidance would articulate the force and underlying intent of provisions in the <i>Building Act 1993</i> and the <i>Public Health and Wellbeing Act 2008</i>, as well as considering existing and new provisions in the <i>Residential Tenancies Act 1997</i> and the Residential Tenancies (Rooming House Standards) Regulations 2012. This guidance would also consider the intersection between council and CAV enforcement activity.</p> <p>In 2010, the Department of Health engaged the Municipal Association of Victoria to prepare a guidance manual for local government staff on the roles and responsibilities of authorised officers from 1 January 2010 when the <i>Public Health and Wellbeing Act 2008</i> and the Public Health and Wellbeing Regulations 2009 became applicable. This manual is similar to the best practice guidance that was proposed in the RIS for the new Residential Tenancies (Rooming House Standards) Regulations 2012.</p> <p>A closure protocol has been established by the Department of Human Services.</p> <p>CAV has implemented a program for assisting councils in inspection on a multi-discipline approach.</p>
<p>17.</p>	<p>The BCA does not prohibit the use of deadlocks as the sole means of locking and unlocking bedroom doors in class 3 boarding houses. This is because the Code regulates the locking and opening mechanism, either on doors that are an exit or in the path of travel to an exit - excepting doors within a sole occupancy unit of a class 2, 3 or 4 building. I recommend that the Government of Victoria seek an amendment to Part D2 of the Building Code to exclude doors serving sole-occupancy or double-occupancy rooms in class 3 boarding houses from the exemption.</p>	<p><i>Response</i> Supported</p> <p><i>Discussion</i> The Victorian Government sought an amendment to the Building Code of Australia (now the National Construction Code or NCC). A change was included in the 2011 edition of the NCC which involved inclusion of a new clause D2.21(a)(ii)(B). The 2011 edition of the NCC was adopted on 1 May 2011. This amendment requires a door from a residential room in a rooming house to be readily operable without a key from the side of the door that faces a person seeking egress by a single handed downward action or a pushing action on a single device which is located between 900 mm and 1100 mm above the floor. Retrospective enforcement of this requirement is limited to the actions available to a registered building surveyor under Part 8 of the <i>Building Act 1993</i> (Enforcement of Safety and Building Standards). Despite this, voluntary compliance with this provision will be sought through CAV information materials for operators, owners and real estate agents of premises used as private rooming houses.</p>

"Bedroom/Unit Door Locks in Boarding Houses"

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Coroner's Recommendation		Government Response
<p>18.</p>	<p>As a result and after a consideration of related submissions, I recommend that the Government of Victoria seek an amendment to the BCA to require all class 3 boarding houses to have a single locking device in respect of each boarding house unit, with each such device to be operated by a key from the outside and a lever that cannot be locked from the inside. I note that the Lockwood Commercial 529-929 Exterior Escape Set and the Lockwood 002 Single Cylinder Dead latch with lever handle, both comply with this recommendation.</p>	<p>The Residential Tenancies (Rooming House Standards) Regulations 2012 were made on 28 February 2012. The new regulations include regulation to cover minimum standards for fire-safe locks for rooming house bedroom doors.</p> <p><i>Response</i> Supported</p> <p><i>Discussion</i> See discussion for Recommendation 17</p>