



Residential Tenancies and other Consumer Acts Amendment Bill 2012 in August 2012.

The following are key points from a submission sent to the Minister which highlighted RAAV's concerns about privacy implications in the Bill.

Privacy implications

Implications of the proposed amendments

RAAV generally supports the bill to introduce a centralised rooming house register to be controlled by the Director of Consumer Affairs Victoria. This is consistent with the aims of the Report of the Rooming House Standards Task Force.

However RAAV is concerned with various information that may be published or available to the public in relation to privacy issues of registered rooming house Owners (proprietors) and Operators.

Many rooming house Owners and Operators deal with difficult and challenging tenants with complex needs. These dealings can be intense – at times marked by conflict with the operator, but more often conflict with co-residents or visitors, for which the tenant naturally turns to the operator to rectify. Dealings and conflicts may occur on a daily basis, but also at any time of the day or night.

Increasingly, through lack of public housing affordability, and increased pressures on charitable organisations, rooming houses are also being used for crisis accommodation. For those using a rooming house to escape domestic violence, the implications of a central register of rooming houses are that a list of possible addresses within a municipality is now more readily accessible to perpetrators of domestic violence. The *Residential Tenancies and other Consumer Acts Amendment Bill 2012* (the Bill) alters the longstanding rule that RAAV and charitable organisations have adopted in not broadly advertising the whereabouts of crisis accommodation for personal security reasons.

Privacy implications

The main focus of the RAAV's attached comments on the Bill is on its adverse privacy implications for registered owners and operators. Their experience is that a significant number of the residents they are asked to accommodate have serious mental illness, or exhibit aggressive or violent behaviour.

Accordingly, the privacy and personal security interests of Owners and Operators must be paramount considerations for the Bill, given it establishes a public register containing the personal details of owners and Owners and Operators, which can be readily matched and used in combination with other publicly accessible information.

The attachment highlights three specific privacy concerns about the Bill.

(1) Power to publish information in the Rooming House Register and form of publication

Clause 17 of the Bill inserts new sections 142E to 142L into the Residential Tenancies Act 1997 (the Act).

Proposed section 142H provides that:

- the Rooming House Register may be kept in any form the Director of Consumer Affairs Victoria thinks appropriate, and
- the Director may *publish* the Rooming House Register, *or any details in it*, in any manner or form that the Director considers appropriate.

It is unclear whether section 142H is to be read as subject to the broader obligation of both Consumer Affairs Victoria and all local councils to administer a public register as much as reasonably practicable in accordance with the Information Privacy Principles of the *Information Privacy Act 2000* (as required by section 16(4) of that Act).

It is also unclear whether the powers under section 142H are to be read consistently with proposed section 142J which further provides that the Director may permit a member of the public to inspect, free of charge, certain information from the Register about each registered rooming house. That is, as drafted, section 142H would still appear to give members of the public an alternative, more informal means of accessing personal information about Owners and Operators, in addition to their formal rights under section 142J. Section 142J(3) states what information must not be publicly accessible, but there remains a potentially large amount of information collected for the register for which the position is wholly unclear.

The Bill intends an online portal. As noted in the Victorian Privacy Commissioner's current Guide to Administration of Public Registers, and in several of its case notes, one of the most significant privacy risks associated with public registers administered in online form, is the broader reproduction of information (current or otherwise) via secondary search engines like Google.com. Maintaining rigour around online registers is increasingly challenging for administrators. If inadequate attention is given to the means by which online information can be sourced by the public, Owners and Operators risk exposure of personal information (such as residential address of themselves and their family members, date of birth, etc) that could be coupled with other information (e.g. a vehicle registration obtained through regular visits to premises) and misused (e.g. for identity theft, or personal security threats).

Accordingly, the Bill should clarify that:

1. the powers in section 142H remain subject to section 16(4) of the *Information Privacy Act* and
2. the *only* means by which members of the public are entitled to access information held on the register, is via the right under section 142J (and not via the broader publication of

information given effect to via section 142H. Alternatively, make the power to publish information in section 142H also subject to section 142J(3).

(2) Information prescribed for inclusion on the Rooming House Register

As noted, proposed section 142J provides that the Director may permit a member of the public to inspect, free of charge, certain information from the Rooming House Register about each registered rooming house.

The specific categories of information that are stipulated in the Bill (that is, address of the rooming house and name of the incorporated or individual operator) are proportionate and necessary inclusions to fulfil the register's aim.

However, as drafted, section 142J describes as an open and inclusive list of matters for inclusion, because it leaves to regulations, additional information which may be included and available for inspection.

Allowing additional personal information about Owners and Operators to be stipulated in regulations (which are not subject to the same level of scrutiny as the Bill) gives insufficient protection for the privacy and personal security interests of Owners and Operators. All *Information Privacy Act* rights would also be ousted, because notwithstanding the appropriateness of publication of additional information sanctioned via regulations, the disclosure is treated as 'authorised under law'.

The Bill places the onus on the operator to take measures to protect personal safety through an application for suppression – possibly at a point when it is too late, because the problematic information has already been published, and relations with one or more tenants have suddenly changed, intensifying the personal safety risk for the operator and members of their family.

Owners and Operators are likely to have to bring about a number of precautionary changes to personal information management as a result of the Bill, as a matter of course. These may include a change to status as silent voter on the electoral roll, suppression of telephone listings (which are wholly ineffective when print phone books are used), and suppression of residential address from land title records to which the public has a right of access. For incorporated Owners and Operators with no official place of business, they would be required to nominate through ASIC, the business address of an agent such as that of a tax accountant, or risk residential address being included on the Rooming House Register, or indirectly accessed via existing ASIC register searches. This is particularly so given incorporated Owners and Operators will not be able to take the benefit of an application for suppression (proposed section 142K).

Decisions about what personal information concerning teaching, nursing, medical or legal professionals is publically accessible have not been left to regulations. In the interests of consistency with the approach taken to the regulation of these other traders and professionals, and given the complex needs of some of the individuals who are likely to make use of the register, it is imperative that the Bill clarify *exactly* what information may be publicly accessed. If it does so, then Owners and Operators with a past or potential experience of personal safety concerns can best prepare and adjust their affairs in advance.

(3) Application under section 142K to restrict publication of information

Finally, it is strongly suggested that for the purposes of applications for suppression, the distinction between Owners and Operators who are individuals and those who are incorporated be removed and that the Director of Consumer Affairs Victoria merely take the incorporated status of an operator into account when deciding an application. Information about incorporated entities is typically a mix of personal and non-personal information within the meaning of the *Information Privacy Act*. The public have an existing right to access details of company directors and their dates of birth, and registered addresses (which are required to be street addresses and so may be residential addresses in a portion of cases). Privacy and security interests are still just as relevant for incorporated Owners and Operators in these circumstances.

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President.