



**Response by the
Registered Accommodation Association of Victoria (RAAV) to
Consumer Affairs Victoria Options Paper
for the Review of the Residential Tenancies Act**

24 February 2017

Preface

This submission is provided to Consumer Affairs Victoria (CAV) by the Registered Accommodation Association of Victoria (RAAV) on behalf of its 110 members who own and/or operate around 380 Registered Rooming Houses throughout Melbourne and in key regional cities including Geelong, Ballarat, Bendigo, Shepparton, the Latrobe Valley and Wangaratta.

These members represent around one third of Registered Rooming Houses in Victoria. Many of these members also own and operate other private rental properties which are strongly focused on the low rental end of the market and are vitally concerned about the outcomes of the Review.

RAAV's landlords are particularly concerned that inappropriate over-regulation without further consultation will cause all of the unintended consequences listed in the options paper under 'managing regulatory risk'. RAAV highlights that, compared with regular landlords, RAAV's landlords are most familiar with the client groups referred to in this section, hence their experiences should be further investigated and valued highly by the review board.

As the Options Paper was only circulated by CAV during the Christmas holiday period, many RAAV members, who are able to make a meaningful contribution, have not been available to undertake the detailed research and response required to the 183 options and 224 consultation questions contained in the Options Paper. Consequently, RAAV appreciated receiving an extension of time to undertake some of this detailed research which consumed a considerable amount of time by members of a special subcommittee.

RAAV is concerned that 141 or 77% of the options in the Paper favor tenants and residents without adequately addressing the wellbeing of the other key stakeholders. Only 11 or 6.01% of the options are landlord or private rental focused or are to their advantage. This is especially concerning with the number of standalone options contained in the document which give an appearance of a "fait accompli" being proposed for those matters. Not only this, there are some options such as 11.25B and 11.26 which have an addition within the options to enable a tenant to rely on a "90 day Notice" to end a fixed term lease with a 14 day "Notice to Vacate" which reduces the contract by 78 days or in the case of a 1 year fixed lease, by 21%. Most casual readers would not realize this.

Adopting the Options without adequate input from the owners and operators may produce a watershed of owners and operators being unwilling to continue to provide low cost housing to disadvantaged and vulnerable persons and withdrawing from the affordable accommodation sector.

Given the short time to provide a comprehensive response to all the options and questions, this response has focused on five areas which will have critical implications for the Registered Rooming House sector if those options are implemented as they stand. Along with responses to the questions in Chapter 9, RAAV's response focuses on the following key issues:

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- *Questions 134 and 135 Individual letter boxes in Registered Rooming Houses;*
- *Questions 151 to 215 – Termination of Tenancies;*
- *Questions 121, 122, 123, 124, 125 and 126 – Rooming house residency agreements;*
- *Question 21 – Disclosing a landlord’s personal contact details;*
- *Questions 88, 92, 93 and 94 – Substandard property remedied and minimum standards.*

It is essential that further consultations with the owners and operators need to be undertaken as the options have the potential to seriously affect the continued viability and operation of Registered Rooming Houses. As an example, Option 9.4, Enhanced inspection powers for CAV rooming house inspectors, is an additional violation of privacy of residents and many of whom now react aggressively to continual inspections of “their home”.

The Appendix contains other issues which concern RAAV and which may affect both Registered Rooming Houses and the standard rental market.

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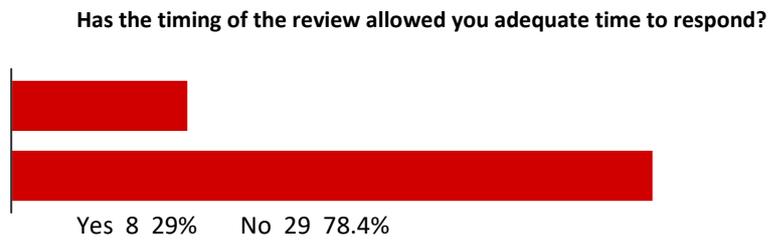
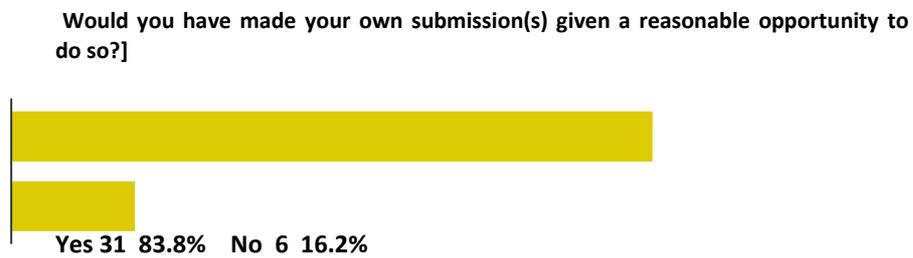
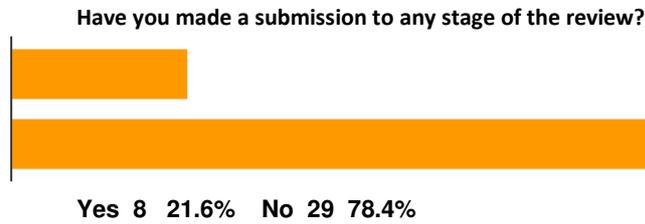
Executive Summary

- The Options paper aims to make renting fair for tenants and landlords/rooming house operators. Whilst this is a good aim, the Options Paper raises many issues which do not achieve this aim.
- Page 136 of Chapter 9 of the Options Paper states, “More broadly, other chapters in this paper examining issues arising in general tenancies discuss principles which may have applicability to the regulation of rooming houses”.
- RAAV agrees with the above statement.
- The Options Paper was only circulated by CAV early in January during the Christmas holiday period. Many RAAV members, who are able to make a meaningful contribution, have not been available to undertake the detailed research and response required to respond and consider the 183 options and 224 consultation questions.
- RAAV believes that the Review of the Residential Tenancies Act (1997) is so wide reaching that it will have significant implications for the supply side of the sector and that more detailed discussion is required on issues already identified by RAAV. These issues have the potential to severely affect the supply of affordable accommodation for vulnerable and disadvantaged persons.
- Consequently and given the time constraints, RAAV’s response to the questions in the Options Paper includes answers to only a few of the general tenancies sections’ questions which RAAV believes will have impact on both the general tenancies and Rooming House sectors.
- RAAV’s response is contained in three sections of this submission:
 - **Section 1:** Responding to comments from some stakeholders about rents charged by rooming house operators and a review of the impact of the Options on Rooming Houses.
 - **Section 2:** Individual responses to five key issues that concern RAAV. Details responses were sent to CAV ahead of this final submission to allow CAV time to consider RAAV’s concerns before the extended deadline of 24 February. These responses were in relation to:
 - Question 21: Disclosing a landlord’s full name and address (Options 4.8A and 4.8B);
 - Questions 88,92,93 and 94 (Options 8.25A and 8.15B; Options 8.13B and 8.3): Sub-standard property remedies in the context of minimum standards;
 - Questions 134 and 134 (Option 9.12): Operator to provide mail box for each room and ensure sorting of mail;
 - Questions 121, 122, 123, 124, 125 and 126 (Option 9.5): Rooming house residency agreements;
 - Questions 151 to 215 – Termination of Tenancies

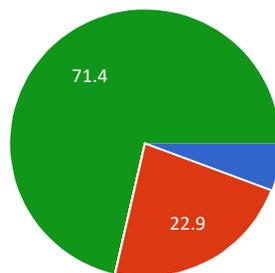
These responses have been summarized in Section 2 and the full responses are contained in the Appendices.

- **Section 3:** Responses to the questions in Chapter 9 – Rooming Houses.
- RAAV has reviewed the 183 Options in the Options paper and 77% of the options in the Paper favor tenants and residents and only 11 or 6.01% of the options are landlord or private rental focused. 31 options or 16.94% have a neutral effect. RAAV’s findings are contained in Appendix 7.

- RAAV also conducted a brief survey of members about key issues in the Options Paper. 37 responses were received representing around one third of RAAV’s members who operate approximately 120 Registered Rooming Houses. Their responses are contained in various sections of the submission. Four key responses follow.



What do you believe will be the general effect of adopting the proposed options



Good for both tenants and landlords	2	5.7%
Good for tenants and a disaster for landlords	8	22.9%
Good for landlords and a disaster for tenants	0	0%
A disaster for the whole rental market	25	71.4%

- These responses confirm RAAV’s belief that more discussion is required with RAAV who is the key stakeholder in providing affordable accommodation for vulnerable and disadvantaged persons.**

Section 1

1.1 Putting the record straight about rooming houses rents

RAAV has noted that the status of rooming houses as affordable accommodation has been questioned - both in the general news by some advocacy groups and in this Options Paper.

Unfortunately, the comments made fail to take into account the true nature of the rent charged in rooming houses. For instance, comparisons were made between rents for a single room apartment and a rooming house.

These comparisons do not allow for the fact that the rent fee in a rooming house is not just simply for the renting of space in a residence, as is the case with most standard rentals, but include many extra items that a standard residential rent figure doesn't. For instance, the rental figure in a rooming house will include Gas, Electricity and Water bills.

Added to this, rooming houses are fully furnished in the bedrooms, common areas and kitchens. The items that a rooming house operator pays for and provides as part of the rent include beds and often bedding, tables, cupboards, washing machines, dryers, kitchen utensils, access to computer terminals and the like. This cost, averaged out over weeks, will be between 40 to 60 dollars a week per tenant.

On top of this the Registered Rooming House operator is required to provide a much more intensive management presence than a standard private landlord who might visit their property once every 6 to 12 months. The Registered Rooming House operator will have to visit their property on average up to several times a week to ensure proper management of their tenants and the building.

Added to this has been an increasing requirement on operators to pay for and deal with the extensive regulatory requirements and regular site visits from councils and CAV compliance officers to meet standards. This will include the Licensing requirements.

With the benefit of the above information it can be seen that the comparison being made by advocacy groups does not include all of the relevant information. In fact, if you just allow for costs mentioned above and don't allow for the extra management cost the median figure that has been used by them drops from \$195 dollars by one advocacy group per week to \$135 dollars per week.

This figure compares very favourably to the cost for individuals to rent single person accommodation in Melbourne in areas such as Abbotsford and Footscray. The rents in these areas can range from between 250 to 400 dollars per week. These rents don't include, as in registered rooming house, all bills and a fully furnished house. Even a shared room (8 persons) at the VHA generally costs around \$33 per person per night or around \$200 per week.

Added to this, the registered rooming houses have to conform to a much higher amenity and safety level due to the regulations in the rooming house sector than private landlords of normal dwellings don't have to meet.

RAAV requests CAV to take these matters into consideration when the incorrect impression is given by some stakeholders.

1.2 A review of the impact of the options on tenants and landlords

RAAV has analysed the impact that implementing minimum standards will have on tenants and landlords.

The chart in the Appendices shows that 141 or 77% of the options in the Paper favor tenants and residents without adequately addressing the wellbeing of the other key stakeholders. Only 11 or 6.01% of the options are landlord or private rental focused or are to their advantage. 31 options or 16.94% have a neutral effect.

Section 2

Questions on five key issues which concern RAAV

**Issue 1: RAAV's response to Questions 134 and 135 and Option 9.12
Operator to provide mail box for each room and ensure sorting of mail.**

Under this option, a rooming house operator would be required to provide one secure mail box for each room of the rooming house, and would be required to ensure that mail for residents delivered to the rooming house's external mail box was sorted into the internal mail boxes.

Executive Summary in details submission

- There appears to be no evidence produced in the Options Paper that this issue is of any real concern to tenants and has not been mentioned prior to this paper.
- There is not one comment in the EY Sweeney report that secure mail was a serious issue to tenants. EY Sweeney, when contacted, has confirmed that this issue was not even raised once in all of the surveys that were done with tenants.
- Introducing this change will cause an extreme administrative burden, potential legal exposure and cost to Registered Rooming House Operators in an already heavily regulated sector.
- It is important to understand the different sort of rooming houses that exist in the industry. Most Class 1b rooming houses are owned and operated by landlords who have full time employment or other business interests and do not have resident managers.
- Operators would be required to visit the rooming house daily to pick up the mail at the front of the house, sort it into individual tenants' mail boxes creating unacceptable management overheads that simply won't be able to be borne by the majority Class 1B rooming houses in Victoria.
- To impose management structures, extensive regulation etc on smaller Class 1b rooming houses that simply don't have the economics to cope with it, would result in extremely poor outcomes.
- RAAV estimates the cost of providing the secure mail service would be up to \$28,166.67 per year for a Class 1b rooming house involving around 2 hours per day including travel time.
- Rents would need to be increased to cover the additional overheads.
- **A Regulatory Impact Statement (RIS) must be done for this option.**

General Comment:

When considering regulating rooming house operators to manage tenants mail it is very important to first understand the different sort of rooming houses that exist in the industry and the consequences of this regulation based on the type of rooming house. As you have identified in section 9.1 under "Issue" on page 139 of your Options Discussion Paper there are different sorts of rooming houses being "Traditional", "New Model" and "New Generation". What is an even more important categorisation of rooming houses is their size and the number of people they accommodate.

For this purpose it is useful to consider the rooming house sector to be broken up into class 1b rooming houses (predominately "New Model" and "New Generation") and class three rooming house ("Traditional"). Class 1b rooming houses have a maximum of 12 tenants and RAAV surveys suggest the

average is about 7 tenants. Class 3 rooming houses tend to house many more people than 12 and have no limit on the number of possible tenants. Each of the two types of rooming houses have these characteristics:

Class 1b Rooming House - They are normally residential houses that have been converted to rooming houses. They tend to be located in the middle to outer suburbs. Based on surveys of our members the average number of tenants in these rooming houses is seven but can be up to twelve. There is no on site manager who attends the rooming house on a daily basis or has an office on site.

To have an onsite manager would simply make the operation of these rooming houses financially unviable. Most members report attending their 1B rooming house on average twice a week (weekdays and weekends) and taking phone calls and other communications from tenants three to five times a week.

Class 3 Rooming House: A class 3 Rooming House tends to be a purpose built multi level Residential building located traditionally in the inner-city areas. They house many more people than 1b rooming houses and often have various configurations of accommodation. These rooming houses are run on a much more commercial basis such as having dedicated office areas and often a manager who will attend the office on a daily basis. The economics of this sort of rooming house makes it feasible to have a manager.

The management structure of 1b rooming houses, as opposed to class 3's, is that the 1bs don't have dedicated staff managing the rooming house. The smaller 1B rooming houses are often owner operated by a husband and wife or other proprietary partner arrangements. By requiring a 1B rooming house operator to attend the house on a daily basis during the week and then spend time sorting through the tenant's mail will be an extreme management over head.

This cost will make any RHO 1B rooming house completely unviable financially.

RAAV would like to suggest the following three options in relation to the securing of mail in rooming houses..

Option 1:

- No Change to current legislation. RAAV believes that this is not an issue of any substance and it is certainly not worth causing extreme financial and administrative cost.

Option 2:

Mandate some simple amenity and procedures in rooming houses that allows for the orderly collection of mail. For instance:

- The main letterbox should include an optional lockable feature.
- Encourage operators to provide a mail collection box in a common area of the rooming house where collected mail should be placed there by tenants if collected by them.

Option 3:

- Consumer Affairs Victoria negotiates with Australia Post to allow the placing of mail boxes at the front of rooming house that allow the identification of room numbers.

Note: RAAV recommends that the reader accesses **Appendix 1** for the full response to these questions.

Issue 2: RAAV's responses to Questions 151 to 215 - Termination of Tenancies in details submission

Executive Summary in RAAV's response sent to CAV:

- Statistics in the Victorian Renting Research Report prepared by EY Sweeney indicate the majority of tenants and landlords find the current legislation to be working well. We therefore see little need to make any drastic changes.
- Areas that could do with some improvement are:
 - the 120 day notice to vacate for no specified reason should be reduced to a maximum of 90 days for general tenancies and 14 days for rooming houses;
 - a duty to pay rent should be included as a responsibility for tenants in general tenancies along with late payment penalties across all tenancy types;
 - there should be better ability to remove tenants swiftly, with police assistance if required, for violence or damage.
- Some of the highest risk suggestions in the issues paper are:
 - introducing a termination order process as this would only create a more adversarial process;
 - requiring a conviction before action could be taken for illegal use as this could lead to huge delays and stress.
- Research by RAAV in answering Question 151 indicates that as many as 40,000 hearings could be forced on VCAT costing over \$2 million per year for application fees alone.
- RAAV recommends that a Regulatory Impact Statement (RIS) must be undertaken on these options as there will be significant financial impact on the rooming house sector in implementing other options in this Options Paper.

Additional comment on Termination of Leases not included in individual response made earlier

Consultative questions 209 and 210

RAAV believes that considerable consultation is required to review the three options. RAAV recommends that the status quo is maintained and in particular that owners of rooming houses retain the right to use notices to vacate for no specified reason just as the facility is also provided to landlords under general tenancies.

Note: As there are 64 questions in this section of the Options Paper, RAAV suggests that the reader accesses RAAV's full response in Appendix 2 for each question.

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Issue 3: RAAV's response to Questions 121, 122, 123, 124, 125 and Option 9.5

Under this option, allow Rooming House residency agreements with a specified occupancy period, and remove use of tenancy agreements for occupancy of rooms in Rooming Houses.

Key issues in the detailed response

- Given the affordability issue in Melbourne many ordinary tenants now turn to Rooming Houses to be able to live in the area they want to at an affordable price.

- RAAV does not believe that an assumption should be made that every Rooming House tenant is vulnerable.
- RAAV contends that creating rules based on one group of people, that are not representative of the Rooming House population as a whole, is not appropriate.
- The fact that tenants will be able to come and go with 2 days notice will make the accommodation more like a motel, backpackers or crisis accommodation.
- The circumstance that a tenant can have a fixed term and not the landlord is not fair or balanced.
- By far the majority of Rooming Houses offer longer term accommodation because both the tenant and the landlord want some certainty about the length of stay.
- It is very important that if you mandate residency agreements in Rooming Houses then you must allow there to be fixed term agreements that a tenant can't give notice on until the end of the fixed term. Not to do so will only create the very situations in houses that you are trying to avoid while decreasing the amount of affordable accommodation that is available.
- It is therefore all the more important to align the maximum bond to the general tenancies maximum bond period and make it 1 month for fixed term residency agreements.
- The cap should be moved to 28 days or when the room is filled, whichever is the lesser.
- A fixed term agreement should mean that tenants should not be allowed to break the agreement during the period of the agreed fixed term.

RAAV's commentary on the option "9.5 Tenancy agreements in Rooming Houses" includes:

The approach of mandating Part 3 residency agreements in Rooming Houses is not an issue in itself; the inability to allow a fixed term agreement that will bind tenants to time commitments however threatens the viability of many forms of Rooming Houses in Victoria. The Options Paper states that taking away the ability of Rooming House Operators to have fixed term is explained as a protection by some TAAPS organisations for vulnerable people being taken advantage of. The problem with this argument is that not all people in Rooming Houses can be considered vulnerable.

While well intended, the failure to allow a fixed term in a Rooming House will cause many Rooming House operators to be put in a commercially unviable position given their inability to have any certainty about length of agreement and occupancy in their Rooming Houses. RAAV contends that creating rules based on one group of people that are not representative of the Rooming House population as a whole is not appropriate. RAAV does recognise though that there needs to be checks and balances that allow for vulnerable people not to be unfairly treated or taken advantage of.

RAAV has consistently found through surveys that over 50% of our members use Fixed Residential Tenancy Agreements that mostly vary from 1 to 12 months in length. In the Options Paper reference is made to Rooming Houses being "frequently chaotic". RAAV believes that by allowing people to come and go as they chose (with 2 days notice) will cause Rooming Houses to actually become "frequently chaotic".

The proposal to remove tenancy agreements would automatically reduce and limit maximum bonds, in these circumstances, from 1 month down to 2 weeks. It must also be kept in mind that the clientele represent the greatest risks of rent arrears and damage compared to more mainstream tenants. Combine these issues with the current delays in reaching an order of possession and that it is proposed that termination processes in Rooming Houses be changed in a way that takes longer to even serve notice.

The fact that Rooming House operators are able to offer agreements that have fixed periods allows them to keep the rents extremely affordable as they have the certainty about the tenant's length of stay and so a lower rate of vacancy. What you propose is that this reasonable certainty is taken away.

By far, the vast majority of tenants who use Rooming Houses accept that there is a fixed term and have no issue with it. We find it would be an unnecessary change to take away the ability to agree on fixed terms with people who are quite happy to do so. That will put the current successful model of operation and the provision of affordable accommodation at risk.

If there is a fixed term, the landlord must be allowed to request and lodge one month's rent as bond. This would allow the landlord to have enough security to cover rent arrears and potential damage.

RAAV recommends that the reader accesses Appendix 3 which has the full response.

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Issue 4: RAAV's response to Question 21

This question raises concerns from CAV that the failure of a landlord to disclose a landlord's full name and address can preclude a court or tribunal from being able to make an enforceable order in favour of a tenant.

The question asks which of the options 4.8A and 4.8B is fairer. Although this question is contained in Chapter 4 and relates to general tenancies, it also has concern for rooming houses. Neither option is acceptable to the registered rooming house sector as outlined below.

RAAV recognises that there may be legal implications to be addressed but we believe that the proposal that landlords provide their details for legal proceedings is fraught with danger.

Many rooming house operators cater for clientele who have mental disabilities or drug or alcohol issues. Clearly the risk is that although 'legal proceedings' is suggested for the reason for this disclosure the problem will occur when a tenant or an applicant uses the home address information for other purposes. This might include harassment or assault.

In terms of fairness it would appear very unbalanced if a tenant was able to easily establish the home address of a landlord after a tenancy has ended and the tenant has parted with possession, particularly as this same luxury is not afforded to the landlord under the proposal.

Based on severe concern about personal safety, RAAV proposes that we keep the status quo and do not mandate the provision of home addresses or contact details which may be made available to the public.

RAAV recommends that the reader accesses Appendix 4 for the full response.

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**Issue 5: Response to Questions 88, 92, 93, 94:
Sub-standard property remedies in the context of minimum standards – Options 8.15A and 8.15B; Option 8.13B and Option 8.3.**

Key issues:

- RAAV's operators have first-hand experience with minimum standards and existing remedies as RAAV contributed significantly to the Residential Tenancies (Rooming House Standards) Regulations 2012.
- In principle RAAV is prepared to offer conditional support and consultation to the development of a set of minimum standards that apply safety provisions because as it stands, the entire Section 8 represents some of the most dangerous proposals in the document for both tenants and landlords.
- It appears the proposals of this section were formed without adequate input from the supply side and consequently the options presented are unworkable that the safest option by far is to keep the status quo.
- RAAV's landlords are worried that the provisions of Section 8.3 are most likely to be exploited by opportunistic tenants. Furthermore we are concerned that alleged vulnerable tenants will actually not benefit from the proposed provisions.
- RAAV has undertaken a preliminary assessment of the costs of the proposed standards which would likely cost the industry a low end estimate in excess of 1 Billion dollars in capital expenditure. Just pricing two of the ongoing costs, sees a figure of over 116 million dollars cost annually (see spread sheet).
- The response highlights new risks that landlords would face under conditional letting, complete prohibition and property standards. Tenants could recover all rent ever paid, gain immunity from the no-fault termination provisions, etc. ... and never have to move out. RAAV recommends that this provision be removed.
- RAAV seeks clarification of what "reasonably" means.
- **RAAV believes that the upfront cost to industry is conservatively estimated in excess of \$1 billion and that this will affect a large proportion of the 546,891 Victorian landlords (Source: *DHHS Rental Report for September 2016 quarter*). Consequently RAAV believes that a Regulatory Impact Statement will be required prior to any proposal being presented to Parliament.**

Other comments:

History has shown that in general the property market fairly and efficiently balances the rights and obligations of both parties with minimal government intervention. However, under this review, there is now a suite of proposals that aim to govern the property market better with the view to shift the balance of power towards the tenant by an allegedly small, required and tolerable amount.

RAAV's operators have first-hand experience with minimum standards and existing remedies as the Residential Tenancies (Rooming House Standards) Regulations 2012 have now been in force since May 2013.

Although RAAV can contribute to a minimum set of standards (and would naturally be considered to have a valid and an experience based contribution to make), we note that it's not necessarily the minimum standards on their own that are problematic but rather the proposals under 8.15 A & B (conditional letting and complete prohibition and their interaction with minimum standards and other provisions in the document - for example urgent repairs).

It is our view that standards should only be introduced if they were reasonable.

A reasonableness test would need to be conducted both in terms of costs and in terms of consequences related to breaching of the standards as the consequences and costs related to breaching of the standards are potentially many times the cost of seeking compliance.

RAAV has undertaken a preliminary assessment of the costs of the proposed standards which would likely cost the industry a low end estimate in excess of 1 Billion dollars in capital expenditure. Just pricing two of the ongoing costs, sees a figure of over 116 million dollars cost annually (see spread sheet).

RAAV has conservatively estimated the cost to include all of the most measurable minimum standards adapted from existing rooming house provisions would cost the individual landlords up to \$7,717 each or in excess of \$1 billion upfront for the entire industry.

However please also note that the costing of several minimum standards features has deliberately been omitted for reliability of calculation, such that if they were included the costs to both the individual landlord and the entire industry would be significantly higher.

As specific examples, we suggest that costs to install and maintain heating and cooling could be around \$367 million which is enough to discourage many landlords from remaining in the market. This would be of particular concern for rooming houses where a change in this area could greatly affect the financial viability of operations that normally include the provision of unlimited utilities and cater to the group referred to as 'vulnerable and disadvantaged'.

In RAAV's view, the proposals contain specific scenarios where landlords need further protection to remain in the market such that when a landlord should "reasonably" not be aware of a breach of the standards then they should have immunity from some of the remedies. RAAV seeks clarification of what "reasonably" means.

Tenants could recover all rent ever paid, gain immunity from the no-fault termination provisions including 'renovation' and 'sale of property', get compensation, have rent capped and never have to move out in the case where the landlord is unable to rectify all breaches or unwilling to try to achieve full compliance for fear of failing in their attempt.

Under options 8.15A & 8.15B (Conditional Letting and Complete Prohibition) a tenant or applicant can:

1. delay, a tenancy before they have moved in;
2. seek compensation;
3. seek compliance with any outstanding minimum standards; and...

The Landlord would:

1. be prevented from subsequently issuing a notice of no-fault termination;
2. face restrictions on rent increases;
3. risk fully refunding any rent paid;
4. risk being denied of any financial gains;

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5. be prohibited from subsequently reletting the property until it is fully up to standard;
6. face a criminal penalty;
7. be publicly embarrassed via media;
8. be required to rectify all breaches.

Even if new provisions were not used in this manner the mere threat that it could happen would be enough for many suppliers of accommodation in the affordable accommodation sector would decide that it's safer to exit the market and avoid the risks.

The Review of the RTA must ask why would any landlord remain in the market by offering older properties to the State's most vulnerable and disadvantaged tenants if they risk losing everything they had and more than what they started with?

Section 3

Response to Questions 114 to 137 in Chapter 9 – Rooming Houses

RAAV's Answers to the Questions

Option 7.1 Maximum bond amounts and rent in advance. Currently A rooming house resident cannot be charged a bond amount that exceeds 14 days' rent.

Consultation Question 64.

Would any of the options for limiting maximum bonds and rent in advance result in unintended consequences?

This should be reviewed in conjunction with Option 9.5 which proposes allowing rooming house residency agreements with a specified occupancy period, and removes use of tenancy agreements for occupancy of rooms in rooming houses. If this were to be accepted then, many residents who are used to enjoying the peace and quiet of staying in a place where one month's bonds are lodged would instead have to endure some more hectic environments where other residents have 'less to lose' by unacceptable behaviour.

RAAV believes that it is option 9.5 that is likely to have an unintended consequence by inadvertently limiting bonds to 2 weeks. So if the regulator wishes to propose fixed term residency agreements, then the bond allowed should be aligned to one month as is the case in general tenancies.

RAAV's research

RAAV's members were asked "Do you believe a tenant who argues hardship should automatically limit your claim to a maximum of 50% of the bond in a lease break scenario"?



Yes	0	0%
No	35	94.6%
Neutral	2	5.4%

9.1 Rooming house definition and emerging accommodation models

Stakeholder consultation suggested that the definition of rooming house under the RTA should be amended to better capture emerging accommodation models that should be regulated as rooming houses, and to distinguish accommodation that is not a rooming house.

Due to interdependencies with the Public Health and Wellbeing Act 2008, the RTA definition cannot be considered in isolation as part of this review.

Stand-alone option 9.1 - Future inter-governmental project to consider whether rooming house definition requires amendment to capture emerging accommodation models.

Consultation Question 114

What other related issues ought to be canvassed if an intergovernmental project like the one described in option 9.1 were to be convened?

Rooming House definition needs consistency across all Acts, most notably the National Construction Code, so an amendment would need to be done in the Victorian Building Regulations. It would assist discussion if the Options Paper outlined what “emerging accommodation models” supported by stakeholder source are being promoted.

It would be good to define what is/is not a rooming house. However if it was to include all that look like or meet the current definition of a rooming house there would be a collapse of the housing market as it would capture huge numbers of share houses, student accommodation, large extended family groups, etc.

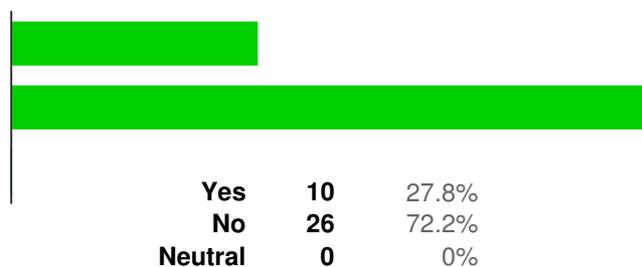
Unfortunately this proposal creates additional uncertainty to the many landlords who have used the current rooming house definition to operate as registered landlords outside of the definition and to the lower compliance requirements. It would be more beneficial to create consistency in the interpretation of the current definition across the building departments of all Councils.

The proposal indicates that the regulator has misunderstood the alleged issue and strangely has not proposed RAAV’s involvement, as this would be crucial to the success of such an unnecessary project.

RAAV as the peak industry body must be consulted on this to avoid potential disaster. The absence of reference to councils’ building departments in both the proposal and the question indicate a misunderstanding by the regulator.

RAAV’s research

RAAV’s members were asked “Do you agree that the rooming house industry should undergo another project to redefine rooming houses”?



9.2 Declared rooming houses

A building composed of one or more self-contained apartments can only be declared to be a rooming house if it is owned or leased by the Director of Housing. Stakeholder consultation has proposed that similar buildings owned or leased by a registered housing agency should also be able to be declared rooming houses.

Stand-alone option 9.2 – Buildings owned or leased by registered housing agency can be declared rooming houses.

Consultation question 115.

Are there any concerns with permitting registered housing agency buildings to be declared as rooming houses, in the manner outlined in option 9.2?

This could be a major issue for the owner of a privately owned building leased by a registered housing agency.

Under current legislation only an owner can seek that a privately owned property be declared a rooming house. If some owners lose their control over that decision then many owners may stop leasing to registered housing agencies to avoid the risk of accidental non compliance and the cost of retrospectively seeking that compliance. This may trigger disability access requirements which equates to \$45,000-75,000 from the Commonwealth Government's Access All Areas Report).

RAAV believes that RAAV must be consulted to fully address all issues, e.g. the Options paper does not address fully 'self-contained apartment' as this could indicate a separate dwelling, which may be in breach of the rooming house definition.

9.3 Unregistered rooming houses

Stakeholder consultation questioned whether the test for the requirement to notify council of an unregistered rooming house should be amended for building owners and their agents.

Stand-alone options 9.3 – Test where building owner or agent ought to have known premises was unregistered rooming house.

Consultation question 116.

What are the risks, if any, of unintended consequences arising if the clarification in option 9.3 were introduced?

How can one test what someone 'ought' to have known? This could open up a can of worms where the landlord or agent are presumed guilty and then have to prove innocence. It is not possible to comment on this without knowing what the detail of the legislation is proposed. It would also depend very much on how the option is implemented.

It is difficult to understand why the obligation should be put on the owner if the owner is not the operator, e.g. if there is a single lease in place with the owner. This creates the scenario that owners who truly believe they are operating compliant non-rooming houses will face greater penalties than non-owners in the same category and this is unfair.

This option may have some merit in the case of an agent, especially if the agent is complicit in the operation.

Consultation Question 117.

What evidentiary issues, if any, would be raised if the clarification in option 9.3 were introduced?

How would it be possible to prove somebody was aware unless it can be proven they were complicit in the operation? Owners and Agents would each have difficulty providing documents that only the other possesses.

Option 9.4 – Enhanced inspection powers for CAV rooming house inspectors

Consultation Question 118.

Could option 9.4 result in better enforcement outcomes in the rooming house sector?

The suggestion that giving CAV inspectors the power to enter rooms in a rooming house would somehow do something about unregistered rooming houses is false. What they need is to target unregistered rooming houses where they could enforce minimum standards.

This option is concerning when aligned with Option 9.3 as the CAV inspector could inspect a room then decide that the owner/agent 'ought to have known' it was an unregistered rooming house, when the owner/agent can only inspect the room every 6 months.

Consideration should be given to the right of quiet enjoyment of tenants in a rooming house or suspected rooming house if CAV inspectors have the ability to access their rooms on demand.

The Registered Rooming House sector is already governed by enough rules. Each new unenforced rule that gets introduced has the potential to dissuade a 'good guy' from staying in the affordable accommodation sector and strengthens the positions of the illegal operators.

9.4 Operation of rooming house without building owner consent

Consultation question 119.

What evidence is there of operators using a building as a rooming house without the consent of the building owner, and causing detriment to residents?

RAAV believes that this scenario is either very rare or does not exist. Various tenancy advocacy groups have made allegations based on either little evidence, no evidence or evidence that has not been cross examined by a suitable responding party. To this end we recommend all current and future requests for change be ignored until each issue is thoroughly investigated. It currently appears that the regulator exercises no mechanisms to cross check claims.

If such a practice is actually happening, it is more likely that these properties would not be registered and that the building would not be compliant with the Building Code or Minimum Standards.

CAV should work with the Registered Rooming House sector to support and encourage registration and adherence to minimum standards which would have a greater impact on establishing a good service that assists residents.

A plan should also be implemented to identifying unregistered rooming houses that are well managed to become compliant and registered thus assisting to maintain rooming house stock in the market for disadvantages and vulnerable persons.

Consultation Question 120.

What other measures could be considered to prevent rooming house operators from using a building as a rooming house without the consent of the building owner?

The pending Licensing of rooming houses will suitably address this issue. It is important to avoid duplication by having measures in two Acts.

9.5 Tenancy agreements in rooming houses

Stakeholder consultation identified concerns about the suitability of tenancy agreements for regulating occupancy of a room in a rooming house, and enabling residency agreements for a specified occupancy period, appropriately tailored for the tenure type.

Stand-alone option 9.5 – Allow rooming house residency agreements with a specified occupancy period, and remove use of tenancy agreements for occupancy of rooms in rooming houses.

Consultation questions 121, 122, 123, 124 and 125.

Q 121 What outcomes would arise under option 9.5 for current occupants of rooming houses, for operators and for the rooming house sector more broadly?

Q 122 Should the cap on rent payable for termination without notice of a residency agreement with a specified occupancy period under option 9.5 be increased from 2 days' rent, and if so, what would be an appropriate cap?

Q 123 Are there rooms in rooming houses that would still require the provisions of Part 2 rather than Part 3, if the measures in option 9.5 were introduced with scope for exemptions?

Q 124 Are there any other factors that would need to be considered for fixed-occupancy residency agreements under Part 3 of the RTA?

Q 125 Does the ratio for determining which self-contained apartments are 'rooms' under the RTA need to be changed, and if so, how?

RAAV has prepared and submitted a comprehensive response to these Questions titled "RAAV's response to Rooming House Agreements" which has been sent earlier to "yoursay", A copy of the full response is included in the Appendices and the key issues are:

Given the affordability issue in Melbourne many ordinary tenants now turn to Rooming Houses to be able to live in the area they want to at an affordable price.

RAAV does not believe that an assumption should be made that every Rooming House tenant is vulnerable.

RAAV contends that creating rules based on one group of people, that are not representative of the Rooming House population as a whole, is not appropriate.

The fact that tenants will be able to come and go with 2 days notice will make the accommodation more like a motel, backpackers or crisis accommodation.

The circumstance that a tenant can have a fixed term and not the landlord is not fair or balanced. By far the majority of Rooming Houses offer longer term accommodation because both the tenant and the landlord want some certainty about the length of stay.

It is very important that if you mandate residency agreements in Rooming Houses then you must allow there to be fixed term agreements that a tenant can't give notice on until the end of the fixed term. Not to do so will only create the very situations in houses that you are trying to avoid while decreasing the amount of affordable accommodation that is available.

RAAV queries why a Rooming House operator would enter into a one sided fixed term arrangement? This option also takes away the security of tenure to a tenant for a long period.

In addition, the potential effect on supply, especially student accommodation, should be recognised as there are also potential insurance, finance and land tax issues which would adversely affect supply.

Q 122. Should the cap on rent payable for termination without notice of a residency agreement with a specified occupancy period under option 9.5 be increased from 2 days' rent, and if so, what would be an appropriate cap?

If the regulator wants to contemplate capping compensation, we would suggest no less than one month be prescribed otherwise we risk losing many of the more professional landlords.

Q 123. Are there rooms in rooming houses that would still require the provisions of Part 2 rather than Part 3, if the measures in option 9.5 were introduced with scope for exemptions?

There are many reasons that both tenants and landlords should enjoy the flexibility of different arrangements to suit different circumstances. There is nothing to gain from restricting their options.

Q 124. Are there any other factors that would need to be considered for fixed-occupancy residency agreements under Part 3 of the RTA?

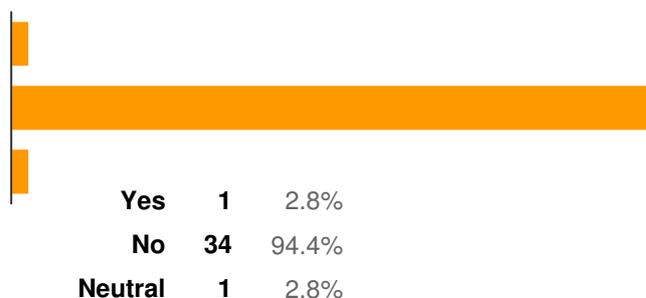
Yes, permit the lodgment of a one month bond.

Q 125. Does the ratio for determining which self-contained apartments are 'rooms' under the RTA need to be changed, and if so, how?

This change would be unnecessary.

RAAV's research

RAAV's members were asked "Should you be prevented from using tenancy agreements in rooming houses?"



9.6 House rules

Stakeholder consultation identified concerns about the content of house rules, and where they should be displayed in rooming houses. If a house rule is declared invalid or was not made in accordance with the RTA, it is argued that a resident should not be compelled to vacate as a result of not observing that rule.

Stand-alone options:

Option 9.6 – Display of house rules required in common areas as well as in each resident's room.

Option 9.7 – Development of guidance for model house rules.

Option 9.8 – No termination for breach of house rules if rules invalid or not properly made.

While there may be a number of common house rules that could be applicable across all properties, particularly relating to safety, there are an enormous variety of houses and clientele such that it would be impossible to create model rules. IF there are concerns raised by residents, then perhaps it would be better for CAV to develop guidance on what it considers invalid instead.

Option 9.8 – No termination for breach of house rules if rules invalid or not properly made.

As for 9.7, it would be useful if CAV/VCAT instead provided a list of things that are invalid to include up front and thereby avoid this situation.

Consultation question 126.

Where should house rules be displayed in a rooming house – in residents’ rooms, at the entrance, in one or more common areas, or some combination of these – and why?

House rules should be on display in at least 1 common area and each other living area and provided as terms attached to the agreement. They should be located in a communal area for quick reference on first tour and for subsequent reminders by other residents. Providing any common information to every room is superfluous and would not be easy for the operator to be able to check that they are compliant without disrupting the tenants’ quiet enjoyment.

Consultation Questions 127.

What matters would be most suited for inclusion in model rules under option 9.7, and what types of rules are not appropriate?

Imagine how large and unwieldy a set of “Model Rules” would be if they tried to capture all possible issues that might arise in all houses and if in trying to make it brief how many things might be missed.

An operator should be able to include ‘site specific’ information in house rules otherwise they would not be ‘house’ rules any more.

Three real life scenarios from members are:

Scenario 1: Due to a past arson attack by a resident that caused an adjoining garage to burn down, the operator met with neighbours and work shopped new rules, one of which was ‘No lighting, fuelling or attending to fires’.

Scenario 2: Due to a past fall over the railing and off the porch which resulted in a permanent back injury the operator introduced a new rule ‘no buying, selling or taking of drugs in common areas’.

Scenario 3: After all residents had endured a bed bug infestation the operator introduced a new rule ‘linen must be washed prior to making the bed’.

All these cases have these characteristics in common:

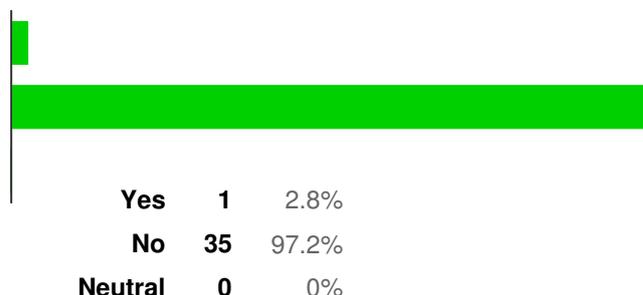
They are based on real experiences;

They protect a resident’s right via health, safety or quiet enjoyment;

They all had to be tailored to a particular site.

RAAV's research

RAAV's members were asked "Should you lose your right to set your own rooming house rules?"



Consultation Question 128.

How can model rules best accommodate the diversity within the rooming house sector, or should there be different model rules for different segments of the sector?

Model rules will fall short of residents' rights. Please refer to the answer in Q127.

Consultation Question 129.

Are there any concerns with the measures proposed in option 9.8?

A breach of house rules must remain an option for termination. If necessary allow 'house rules' and 'cardinal house rules'. Residents would be exempted from termination for breaking any house rule unless it is a 'cardinal house rules'. An example of a cardinal house rule would be 'Do not allow your smoke detector to become damaged and notify the landlord immediately if damaged or faulty'.

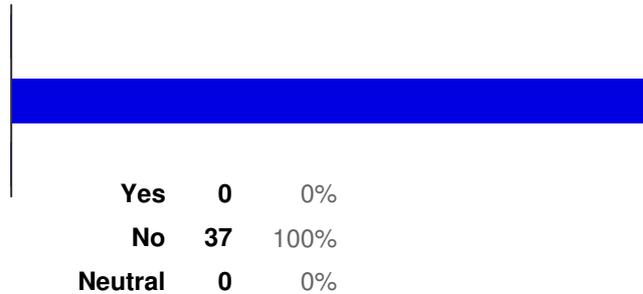
While there may be a number of common house rules that could be applicable across all properties, particularly relating to safety, there are an enormous variety of houses and clientele such that it would be impossible to create model rules. IF there are concerns raised by residents, then perhaps it would be better for CAV or VCAT to develop guidance on what it considers invalid instead.

9.7 Pets in rooming houses

Whilst there are no Options and no Questions in the Options Paper regarding pets in rooming houses, RAAV strongly supports the proposal for no change to the existing regulation.

RAAV's research

RAAV's members were asked "Do you agree that your tenant can keep all pets unless you seek and obtain VCAT orders that you are 'reasonable' to refuse their pets"?



9.8 Rights of entry

The frequency with which an operator may conduct a general inspection of a resident's room was canvassed in stakeholder consultation.

Stand-alone option 9.9 – Two month frequency for general inspection of resident's room with 48 hours' Notice.

Consultation question 130.

Does option 9.9 sufficiently balance the rights residents with the responsibilities of operators with regard to the frequency of general inspections of a resident's room?

Retain one month access to room as there is a requirement for the testing of smoke alarms monthly and changing the general inspection to two monthly could generate confusion with tenants when you still need access every month to ensure this requirement. It is also easier for tenants to remember.

Provision should be made for operators to make inspections if there is good reason to believe that resident's obligation is not being upheld such as assessing any health and wellbeing aspects which need to be addressed.

9.9 Utilities

Stakeholder consultation suggested that operators should be able to charge a resident for water consumption if the room is separately metered.

Stand-alone option 9.10

Operator can charge resident for water consumption for separately metered Rooms.

Consultation question 132

Are there any concerns with permitting operators to charge a resident for water consumption if the room is separately metered, in the manner outlined in option 9.10?

There should be no concerns as charging for water usage would usually only occur in newer type rooming houses. Rooming house operators already have the approval to charge for other utility usage if there are separate meters in the property.

9.10 Minimum standards

Stakeholder consultation suggested that the rooming house minimum standards should include greater specificity about power points and laundry facilities.

Stand-alone option

Option 9.11 – Amend rooming house minimum standards.

Consultation question 133.

Are there any concerns with amending the rooming house minimum standards in the manner outlined in option 9.11?

The minimum standards were proposed by DHS and they went through a rigorous process of rating and selection.

Power points: RAAV's publication *"Running a better rooming house: A best practice handbook for operators"* states that "A resident's room must have at least two workable power outlets (which may be single or one double outlet). These words were approved by CAV for the second edition of the handbook and are repeated in the third edition which was also approved by CAV.

T

The MFB's comments on minimum power points was clearly to reduce the scenario of residents powering unconventional rooms via power leads from other resident's bedrooms.

There is no certain way of defining what is meant by an 'unoccupied' power point. Also the cost of retrofitting some rooms, especially in older rooming houses with solid brick construction, to change this Standard would be incredibly high and we could see more operators leave the rooming house sector.

Where does one draw the line on this? Tenants may wish to use multiple power outlets in their rooms at the onetime to accommodate simultaneous use of refrigerators, cook top or microwave oven, TV receivers, radios, electric jugs, coffee maker, toaster, charging facilities for mobile phones, bed lamps, etc. This could take the residents' discretionary use to extremes.

The rooming house operator should have the right to determine what can be connected to power points. If overload protected power boards are also provided and used, combined with the requirement of having electrical safety switch installations as part of the minimum standards, then this will overcome any fault that could otherwise create a fire.

Some operators provide refrigerators in rooms to overcome theft in common areas and provide microwaves and other small appliances to make it easier for the residents, especially where cooking facilities are located on a different floor level. We can envisage some operators who provide these additional facilities, returning to having them only in common areas hence reducing the amenity that may be enjoyed by the residents.

RAAV's suggestion

We therefore suggest this standard be left alone as it is working as intended by the MFB as part of the Regulatory Impact Statement process for the rooming house minimum standards.

Laundry facilities: As discussed below, we believe the ratio should be moved to 1 laundry facility for every 12 residents or fraction of that number of persons occupying the accommodation.

The Options paper states that rooming houses require the provision of laundry facilities as currently prescribed for every 10 persons or fraction of that number of persons occupying the accommodation. It also says that this is consistent with the approach taken in the PHWR to assessing the adequacy of available toilet and bathing facilities.

We have noted that you wish to make the number of washing machines aligned the number of people in the house. You propose this fraction as being one washing machine per 10 people and then one more for the next ten or fraction of. While we are not opposed to this concept we believe that your comparison with the available toilet and bathroom requirements is not appropriate.

It is important to note that the PHWA doesn't make any such ratios for the laundry facilities. The use of bathrooms and toilets in a rooming house by tenants is far in excess of their use of the laundry facilities. For comparison purpose, it would not be unreasonable to expect a tenant to use the bathroom facilities at least once and more likely more often than on any given day. The laundry facilities on the other hand we generally observed that most tenants wash their clothes once and possibly twice a week on average. Therefore, the amount of usage between the bathrooms and the laundry facilities is vastly different.

Another fact that has to be considered is that most residential houses which are used for small class 1b rooming houses come with only one laundry facility. These houses are under a 1b building permit can accommodate up to 12 persons. Given that the expense to add a new laundry facility would be very high for the purpose of accommodation only 2 more people., this fact was accepted as part of the Regulator Impact Statement discussion for the creation of the Rooming House Minimum standards. This can be seen in regulations that relate to the number of burners per house which was changed from being four for every 10 people to four for every 12 people. The fact that under a 1b permit the house can have a maximum of 12 people will limit the number of people using the laundry facilities a major reason for the change.

RAAV's suggestion

Given the issue of cost, usage by tenants and building Act restrictions on 1b rooming houses, we would propose that the percentage is changed to be 1 laundry facility for every 12 tenants or fraction of that number of persons occupying the accommodation.

RAAV's research

RAAV's members were asked "Should new and higher rooming house minimum standards be introduced"?



Yes	3	8.3%
No	32	88.9%
neutral	1	2.8%

9.11 Personal security and security of mail

Stakeholder consultation identified concerns around security of mail for rooming house residents.

Stand-alone option

Option 9.12 – Operator to provide mail box for each room and ensure sorting of mail.

Consultation question 134

Under option 9.12, should the RTA specify how an operator must comply with the requirement to ensure external mail is sorted into the internal mail boxes?

RAAV has made a detailed submission on this option to "Have your say" and a copy is included in the Appendices.

The key points are

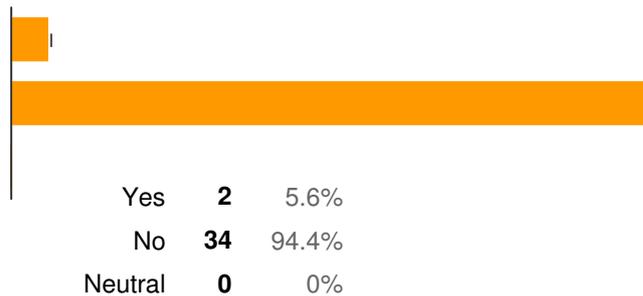
There appears to be no evidence produced in the Options Paper that this issue is of any real concern to tenants.

- There is not one comment in the EY Sweeney report that secure mail was a serious issue to tenants. EY Sweeney has confirmed that this issue was not even raised once in all of the surveys that were done with tenants.
- Introducing this change will cause an extreme administrative burden, potential legal exposure and cost to Registered Rooming House Operators in an already heavily regulated sector.

- It is important to understand the different sort of rooming houses that exist in the industry. Most Class 1b rooming houses are owned and operated by landlords who have full time employment or other business interests and do not have resident managers. Operators would be required to visit the rooming house daily to pick up the mail at the front of the house, sort it into individual tenants’ mail boxes creating unacceptable management overheads that simply won’t be able to be borne by the majority Class 1B rooming houses in Victoria.
- To impose management structures, extensive regulation etc on smaller Class 1b rooming houses that simply don’t have the economics to cope with it, would result in extremely poor outcomes. RAAV estimates the cost of providing the secure mail service would be up to \$28,166.67 per year for a Class 1b rooming house involving around 2 hours per day including travel time.
- Rents would need to be increased to cover the additional overheads.
- **A Regulatory Impact Statement (RIS) must be done for this option.**

RAAV’s research

RAAV’s members were asked “Should you have to receive sort and deliver all your resident’s mail”?



9.12 Quiet enjoyment of other residents

Stakeholder consultation identified concerns that a resident’s duty to ensure the quiet enjoyment of other residents can encompass conduct that occurs outside the property boundary of a rooming house.

Stand-alone option 9.13

Restrict resident’s quiet enjoyment duty to conduct within property boundary of rooming house.

Consultation question 136.

Does option 9.13 adequately balance the interests of the resident in question and the interests of other residents in the rooming house?

Provisions to protect the greater good of all residents should take priority over a single perpetrator of quiet enjoyment.

Consultation Question 137.

Are there legitimate circumstances in which conduct 'near' a rooming house should be captured by this duty owed by residents?

Absolutely as threats and verbal abuse travel over property boundaries such that there is a legitimate need to protect residents and neighbours from a person who breaches their duty but stands just off the property boundary for immunity.