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D20/190942

Ms Melissa Skilbeck
Deputy Secretary, Regulation, Health Protection and Emergency Management
Department of Health and Human Services
50 Lonsdale Street
MELBOURNE VIC 3000

4 September 2020

Dear Melissa

**REGULATORY IMPACT STATEMENT FOR PUBLIC HEALTH AND WELLBEING
(PRESCRIBED ACCOMMODATION) REGULATIONS 2020**

I would like to thank your staff at the Department of Health and Human Services (the Department) for working with the team at Better Regulation Victoria (BRV) to prepare the Regulatory Impact Statement (RIS) for the Public Health and Wellbeing (Prescribed Accommodation) Regulations 2020 (the proposed Regulations). The Public Health and Wellbeing (Prescribed Accommodation) Regulations 2009 (the current Regulations) will expire on 14 December 2020.

The proposed Regulations will be made under the *Public Health and Wellbeing Act 2008* (PHWA), which broadly defines prescribed accommodation, specifies the basic components of the registration system, and delegates various powers to local municipal councils.

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 4 September 2020 meets the adequacy requirements of the SLA.

Background

The current Regulations will sunset in December 2020, having previously been extended for a period of 12 months. The extension was to enable further time for review and consideration of complex cross-portfolio issues. The RIS explains that significant changes to the Regulations are not proposed at this time due to planned or ongoing cross-portfolio reviews that have substantial overlap with the Regulations including:

- the Plan Melbourne 2017-50 5-year Implementation Plan – Action 31 to develop and implement streamlined approvals for specific housing types;
- the Department of Justice and Community Safety review of the *Owners Corporation (Short-stay Accommodation) Act 2018*; and
- the Department of Environment, Land, Water and Planning review of the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2020.

The Department states in the RIS that it will reconsider the appropriateness of the proposed Regulations after the completion of the reviews and within five years of commencement.

The proposed Regulations aim to protect the standard of health for users of prescribed accommodation through requiring minimum standards in relation to cleanliness, hygiene and overcrowding – which are highly relevant in the context of the coronavirus health emergency. The proposed Regulations do this by:

- defining prescribed accommodation as hotels, motels, hostels, student dormitories, holiday camps, rooming houses and some other forms of residential accommodation;
- prescribing standards in relation to numbers of residents, and standards of maintenance, cleanliness, water supply, sewage discharge, refuse disposal and access to toilet and bathing facilities;
- prescribing the details of a registration system for prescribed accommodation and occupants; and
- setting penalties and infringements for non-compliance.

The Regulations are administered by local municipal councils, which register and inspect prescribed accommodation and undertake enforcement. Councils charge fees to cover the costs of administering the Regulations.

There were 4,832 prescribed accommodation facilities registered in Victoria in 2018. Residential accommodation, hotels, motels and rooming houses account for 85% of the sector. The RIS estimates that approximately 13 to 14 million stays in prescribed accommodation are expected per year (excluding the impacts of the coronavirus health emergency).

Analysis

The Department conducts a two-step analysis of options in the RIS. The first step compares the base case of no Regulations with continuing the current Regulations using a multi-criteria analysis (MCA). The second step qualitatively analyses the difference between the current and the proposed Regulations. This approach aims to transparently weigh the costs and benefits of the current Regulations and proposed Regulations. The criteria used in the MCA and their relative weights are:

- Costs to businesses (40%)
- Supply of accommodation (10%)
- Health and wellbeing (50%)

Data is more readily available for the costs of compliance, so the RIS estimates the cost of the Regulations to business over the life of the Regulations, relative to a base case of no Regulations. The proposed Regulations are not expected to change the costs to business compared to the current Regulations, as no significant changes are proposed.

The RIS estimates:

- the substantive cost of ensuring premises meet the standards;
- the time cost to undertake administrative tasks and attend inspections; and
- the fees that councils charge.

Council fees are estimated based on an assumption of full cost recovery and the estimated costs incurred by councils in administering the Regulations.

The total net present value (NPV) of estimated costs to business over ten years is estimated to be \$62.4m, or the equivalent of \$9,926 per business. Of this, \$32.8m is the cost of maintenance, \$12.1m is the cost of council fees, \$10m is administrative costs and \$7.5m is the cost of meeting occupancy requirements. These costs are considered significant and receive a score of -7.

The analysis is sensitive to the assumptions used with significant uncertainty attached to the estimates of maintenance costs and the impact of the coronavirus health emergency on the accommodation sector. The Department explains in the RIS that it has taken a conservative approach to cost estimation and that the estimates represent the “upper bound” of expected costs incurred.

The supply of accommodation criterion identifies a low risk (scored as -2) that the imposition of minimum standards would increase the cost to provide prescribed accommodation – which may lead to a reduction in the total supply of prescribed accommodation. However, any additional costs are likely to be relatively small compared with other costs, with most businesses meeting the standards even without the proposed Regulations.

The Department explains that it is difficult to estimate the exact magnitude of the benefits of the proposed Regulations, which are the increased public health and wellbeing of residents and their avoided healthcare costs. Prescribed accommodation poses acknowledged risks to health and wellbeing due to either the density of living arrangements (for example multiple people in bedrooms) or the use of shared facilities by significant numbers of unrelated people (for example toilets, kitchens, gyms, elevators etc). No estimates exist for the extent to which the benefits will be realised, but the RIS notes that improved domestic hygiene in substandard housing reduced hospital admissions by 38% in NSW and that the costs of housing disrepair to the NHS in the UK are estimated to be £760m per year. This indicates that the benefits may be substantial, and on this basis the health and safety benefits are scored +7.

Remaking the current Regulations scores +0.5, which makes it preferred to the base case of allowing the current Regulations to lapse.

In the second step of analysis, the RIS qualitatively analyses the difference between the current and proposed Regulations. The Department adopts this approach as the difference between the current Regulations and the proposed Regulations is small, and the two options do not score differently in the MCA. The qualitative analysis indicates that the proposed changes improve efficiency and the consistency of the Regulations with other regulatory frameworks.

The Department's preferred option is therefore to make minor changes to the existing regulations, in particular to:

- adopt the definition of 'rooming house' in the Residential Tenancies Act 1997, which would ensure consistency and exclude Specialist Disability Accommodation, which is regulated by the Commonwealth;
- clarify that 'residential accommodation' includes part of a building;
- updating the content of application forms; and
- make technical drafting updates.

Implementation and Evaluation

The Department states in the RIS that while it will continue to apply the existing enforcement strategy, it will work with councils to deliver improvements in enforcement and to be clear about respective roles and responsibilities. The Department notes that it will continue to pay particular attention to monitoring and implementing strategies to limit the transmission of coronavirus in prescribed accommodation.

The Department commits to reviewing the outcomes of the cross-portfolio reviews within five years, and to considering other Government initiatives, the stakeholder feedback received in the course of this RIS and any necessary coronavirus related regulatory responses.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation