



Australian Institute of Building Surveyors

23<sup>rd</sup> October 2009

The Honourable Richard Wynne MLA  
Minister for Housing, Local Government and Aboriginal Affairs  
Level 22, 50 Lonsdale Street  
Melbourne 3000

Dear Minister,

The Australian Institute of Building Surveyors (AIBS) was founded in Victoria in 1962 and has subsequently grown to incorporate representatives from each state and territory within Australia. It is recognised nationally and internationally as the peak professional body representing Building Surveyors and allied professionals in Australia.

It has been granted the charter to be recognised as the Australian Chapter of the International Codes Council (ICC), a global council working towards ensuring the built environment is compliant with regulations and is safe for the public.

AIBS has approximately 2470 members Australia wide, with 649 members in Victoria. Of the 507 Registered Building Surveyors with the Victorian Building Practitioners Board, approximately 450 (88.75%) are members of the AIBS, including a large number of municipal staff. Other members include Registered Building Inspectors who conduct work on behalf of Building Surveyors, as well as various allied professionals such as designers, architects, developers, owners corporation managers.

### **Rooming House Taskforce**

The AIBS welcomes the Government's initiatives aimed at addressing sub-standard and unsafe rooming houses, in particular the Rooming House Blitz Taskforce which is working with local councils to identify unregistered rooming houses, assess them against building standards, register those which comply and issue statutory building notices or orders by council for sub-standard buildings and sanitary conditions.

We look forward to reviewing the Rooming House Taskforce report.

As stakeholders with expertise in and responsibility for administering the building control legislative scheme in Victoria, the AIBS is disappointed it was not invited to make a submission to the Taskforce and takes this opportunity to set out what it considers the inadequacies of the current regime relating to rooming houses and its proposed solutions.

While we acknowledge that the Municipal Association of Victoria and the City of Yarra were representing the view of local government on the Taskforce, we believe it is important for the Victorian Government response to the Taskforce recommendations to take into account the view of Municipal Building Surveyors.

### **The licensing of rooming house proprietors and penalties**

The AIBS believes proprietors of accommodation buildings should be licensed in a similar manner to that set out in the Liquor Control Reform Act 1994 and/or the Prostitution Control Act 1994, with applicants required to pass appropriate character, qualifications and means tests. Licensing should be administered by Consumer Affairs Victoria.

Penalties need to act as a deterrent and should include jail terms for repeat offenders. Coroner Peter White's report identified that the rooming house operators in question had rented 60-70 properties for the same purpose over the past five years and were receiving approximately \$40,000 per week in rent from residents. The current penalties are inadequate.

Life safety is the fundamental reason for the building control regime and penalties should adequately punish those who place people at risk.

AIBS recommends increasing penalties in the Building Act 1993 to be at least in line with those in the Planning and Environment Act. Currently the maximum penalties under the Building Act are 100 penalty units for a natural person and 500 for a corporation and 2 penalty units for and infringement. These are insignificant when compared to the Planning Act penalties of a maximum 1200 penalty units and 10 penalty units respectively.

### **The process for the registration of rooming houses with Local Government**

Local council is the primary authority for enforcing compliance with the Building Act 1993 and the Health (Prescribed Accommodation) Regulations 2001. Section 212 of the Building Act 1993 states:

*"Except where otherwise expressly provided in this Act or the building regulations, a council is responsible for the administration and enforcement of Parts 3 (building permits), 4 (inspection of building work), 5 (occupation of buildings and places of public entertainment), 7 (protection of adjoining property) and 8 (enforcement of safety and building standards) and the building regulations in its municipal district."*

The current system of registration for rooming houses as set out in the Health (Prescribed Accommodation) Regulations 2001 is dated and inappropriate. This was a contributing factor in the Brunswick fire that resulted in two fatalities.

AIBS believes the registration process is deficient, in that an application for registration of prescribed accommodation under the Health Act 1958 is made to the Municipal Health Department. There is no statutory referral process to the Municipal Building Surveyor (MBS).

As a result, the MBS is not informed of the proposed use of buildings for accommodation purposes. This is of particular concern when the application involves changing the use to a Class 1b (boarding houses, guest houses or hostels) or Class 3 (backpacker accommodation, residential parts of hotels or motels, residential parts of schools, accommodation for the aged, disabled or children) building.

Building Regulation 1011 provides that where the use of a building is changed, the building must comply with the standards applicable to the new use. However, there is currently no trigger for mandatory inspection of a building proposed for use as a rooming house. Without an inspection, the MBS cannot ensure a building meets the minimum safety standards.

Health certification does not take into account any of the life and fire safety requirements applicable to buildings under the Building Regulations 2006 and the Building Code of Australia. As a result, an Environmental Health Officer can and may register a building for use as a rooming house even though it does not comply with minimum standards, building regulations and codes.

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## RECOMMENDATION

AIBS recommends that a proposed prescribed accommodation building should not be registered until the local MBS confirms that the use of the relevant building as Class 1b or Class 3 is lawful under the relevant provisions of the Building Act 1993. Where a proposal involves a change of use for a building (eg: 1a to 1b) the applicant should be required to obtain the relevant Building and Occupancy Permits and complete any relevant building works before a Municipal Health Department registration is granted.

The registration of rooming houses and other prescribed accommodation buildings should involve evaluation by the Municipal Health Department and the Municipal Building Surveyor concurrently. Registration should not be granted unless the building has an Occupancy Permit (or Certificate of Occupancy for older buildings) applicable to its proposed use.

### **Duplication and overlap between Health and Building legislation and regulation**

The following matters in the Health (Prescribed Accommodation) Regulations 2001 are also regulated under Building Regulations, the Building Code of Australia and referenced Australian Standards:

- Regulation 6 Overcrowding is also controlled by the relevant Occupancy Permit and the MBS has powers under Part 8 to address overcrowding issues should they occur
- Regulation 6(2) Minimum floor area of bedrooms. Minimum room sizes should be a matter for control under the BCA. A Registered Building Surveyor (RBS) will only refer to the building regulations and the BCA when deciding a Building Permit (BP) application relevant to accommodation buildings - new buildings, alterations or change of use
- Regulation 9 (Water Supply) and Regulation 10 (Drinking Water) are also regulated by the Building Act 1993 and the BCA. In addition there is a Ministers Guideline MG/08 that addresses water supply. An MBS has powers under the Building Act 1993 relating to the fitness of a building for occupation. Obviously reticulated supply of water to an accommodation building is a minimum requirement for occupation
- Regulation 11 Discharge of sewerage and waste water – as with regulations 9 & 10 these requirements are also covered by the Building Act 1993 and the BCA. Connection of sanitary facilities in an accommodation building (or any building for that matter) to an appropriate and lawful sewerage system is well regulated under building regulations, plumbing regulations, water/sewer authority legislation and septic tank regulation. An MBS has powers under part 8 of the Building Act 1993 in relation the fitness of a building for occupation
- Regulation 14 Toilet and bathing facilities – also regulated under the Building Act 1993 and the BCA.

## RECOMMENDATION

AIBS recommends this duplication be dealt with when the Health (Prescribed Accommodation) Regulations 2001 are reviewed in the lead up to their sunseting in 2011.

Environmental Health Officers should be administering matters pertaining to Health issues - sanitation, cleanliness, waste and refuse management.

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Building Surveyors should be administering minimum building controls and standards.

The Regulatory Impact Statement consultation should consider retaining the balance of the current regulations relating to the administration of public health as the domain of the Environmental Health Officer.

### **Essential Safety Measures and ongoing maintenance**

Life safety matters pertaining to accommodation buildings are the responsibility of the local MBS. AIBS believes the ongoing maintenance requirements for rooming houses and other prescribed buildings need to be escalated to include annual inspections.

A Municipal Health Department issued certificate does not ensure that life safety standards have been met or maintained, let alone checked.

### **RECOMENDATION**

AIBS recommends that Essential Services Regimes should be signed off annually by registered AIBS accredited building surveyors, who have complied with the Continuing Professional Development (CPD) requirements. This is important because Victoria is the only jurisdiction in Australia without mandatory CPD.

Further, AIBS recommends:

- Prohibition of internal deadlocks in Class 1b (boarding houses, guest houses or hostels) buildings and application of the principles in Clause D2.21 of Volume 1 of the BCA to all accommodation buildings
- Requiring owners to lodge their annual ESM maintenance reports with the relevant local Council. Enforcement could then be carried out by local MBS by exception. Where the lodgement is not received there could be an automatic penalty notice issued
- Local Councils establish an ESM compliance audit program. The MBS should audit registered buildings. Building owners could also be afforded the option of electing to engage a registered private Building Surveyor to inspect and certify their buildings and lodge the certification documents with Council as an alternative to MBS audit.

### **Resourcing of Municipal Building Departments**

AIBS believes that increased resourcing and staffing of Municipal Building Departments is crucial to ensure that administration and enforcement of building control legislation is carried out effectively and efficiently.

Life safety in the built environment can only be improved with frequent on-site inspections to ensure minimum safety standards are met and maintained. As a result, the role and responsibility of Municipal Building Surveyors will increase, along with their workload and legal liability.

The MBS needs adequate support from suitably qualified people to carry out his or her duties in an effective and proactive manner, in an unfettered environment.

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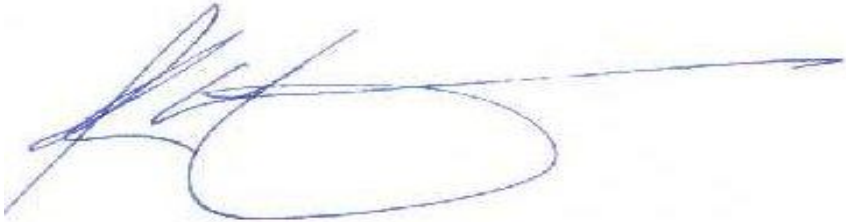
## Conclusion

The Australian Institute of Building Surveyors (AIBS) looks forward to working with the State Government and relevant stakeholders to improve the legislative and regulatory regimes to ensure that events such as the fatal fire at the rooming house in Brunswick are avoided in future.

We would be pleased to have the opportunity to further clarify our position and recommendations.

Should you have any queries or require further information or clarification, please do not hesitate to contact the AIBS staff and office bearers.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Jolly', with a long horizontal flourish extending to the right.

Peter Jolly  
President  
Victorian Chapter

CC:

Mr Rob Spence, Chief Executive Officer, Municipal Association of Victoria  
Mr Tony Arnel, Building Commissioner  
Mr Brian Pound, Executive Officer, Community Housing Federation of Victoria  
Victorian Local Government Chief Executive Officers

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