Backpacker Working Group

\underline{DRAFT} Final Report

August 2006
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About the Backpacker Working Group

The Backpacker Working Group is an inter-governmental agency working group convened to investigate and report on options “to reduce the incidence of backpacker operations in New South Wales that jeopardise the safety of visitors, unfairly impact on the amenity of local communities, and tarnish reputable backpacker operations”.

The Working Group was established in June 2005 by the Minister for Tourism, Sport and Recreation, the Hon Sandra Nori MP, in response to increasing community and governmental concerns about “illegal and unlawful backpacker operations”.

Membership of the Working Group includes representatives from the Department of Local Government, Tourism NSW, the Department of Planning, NSW Office of Fair Trading, NSW Fire Brigades, the Local Government and Shires Associations of NSW, YHA NSW Ltd and the Backpacker Operators Association of NSW. Representatives from the City of Sydney Council also regularly attend Working Group meetings and provide information and assistance as necessary.

About this Report

In arriving at the recommendations in this report, the Backpackers Working Group considered a multiplicity of issues affecting the short-term accommodation industry, ranging from residential tenancy law to “touting” and fire safety.

As part of our deliberations, the Group investigated the strategies employed in other States and Territories to limit the proliferation of “illegal backpackers”. In addition to this, the Group considered a range of ancillary issues, including short-term accommodation and overcrowding. As part of this inquiry, the
findings of 2005 Aegis Consulting Report on policy options for Combating Unsafe and Illegitimate Backpacker Accommodation in NSW released by the Australian Tourism Export Council, were discussed at length by the Group.

The Aegis Report dealt primarily with the risks associated with short-term bed or room based accommodation being let to transient travellers. The adverse impacts of this form of accommodation identified in the Report included occupant safety; loss of tax revenue; compromised reputation as a tourist destination; and unfair competition. While these findings and matters informed our recommendations, the focus of the Group (and the scope of our report) has been restricted to the Priority Issues outlined for the Working Group by the Minister.

Notwithstanding this, as a Group we recognised that there are no easy solutions to this complex problem. We acknowledge that addressing the issue of "illegal backpackers" in New South Wales will require the co-ordinated effort and long-term commitment of all government agencies. In this context, our report should only be seen as the foundation for ongoing investigation of backpacker and short-term accommodation issues in New South Wales.

**Terms of Reference**

Formally established in June 2005, membership of the Backpackers Working Group was finalised in late July 2005. The inaugural meeting of the Group was held on 2 August 2005, with the Group meeting regularly after that.

In September 2005, the Terms of Reference for the Group were agreed, as follows —

The Terms of Reference for the Backpacker Working Group are to investigate and report on options to reduce the incidence of backpacker operations in NSW which
jeopardise the safety of visitors, unfairly impact on local communities and tarnish reputable backpacker operations. Specifically, the Working Group is to —

- Review the existing legislative and regulatory requirements to ensure they are adequate;
- Consider whether change to legislative provisions are required and make any necessary recommendations;
- Consider the coordination between government agencies, the backpacker industry and local government and make any necessary recommendations;
- Recommend ways to educate backpackers and communities;
- Review and make recommendations in relation to:
  - Advertising and touting for illegal backpacker operations
  - Compliance and enforcement
  - The experience in other Australian states;
- Consider any further recommendations the Working Group believes necessary to meet the terms of reference.

Much of the deliberations of the Working Group have concerned identification of the scope of the problem; defining what constitutes "illegal backpackers"; and distinguishing backpacker accommodation from other forms of short-stay accommodation.

A number of sub-committees were also formed by the Working Group to consider discrete issues and report back to the Group.

On 10 March 2006, the Minister for Tourism directed the Working Group to focus on the following issues as a matter of priority ("Priority Issues") —
- Laws to prevent illegal backpackers advertising for business in shops, public places, bus stops and in newspapers (to help starve illegal operators of customers);

- Prescribing the maximum number of people who can be accommodated under a lease for a residential building at one time;

- Using Local Environmental Plans to impose conditions to discourage the use of residential buildings as backpacker accommodation; and

- Changes to the Local Government Act to enable local councils and Fire Brigades to enter and inspect illegal backpacker operations.

The Working Group considered the Priority Issues in detail, identifying areas for review, clarification and action. A detailed response to each Issue is provided in this report.

**Extent of the Problem**

The deliberations of the Working Group have not been able to clearly quantify the extent of the "illegal backpacker accommodation" problem. To date, reports of such accommodation to the Working Group have been largely anecdotal. For instance, the Industry provided an account of a three-bedroom apartment in a central Sydney residential complex that reportedly had a total occupancy of nineteen (19) people (twelve (12) in beds and seven (7) people sleeping on the floor).

The only documented example of "illegal backpacker accommodation" provided to the Group was in correspondence from a Sydney youth hostel. This correspondence identified two central Sydney residential apartment blocks as providing "illegal" accommodation. The informant was a person on a student visa who stayed three nights in one of the apartments. During the stay, it was alleged that between eighteen (18) and twenty-one (21) people were accommodated in the premises each night. The hostel proprietor estimated that
throughout Sydney there are more than five hundred (500) residential apartments being rented for similar accommodation purposes.

The correspondence received by the Group confirmed the findings of the Aegis Report. The Report states that at the time of inquiry there were "at least 150 residential premises in Sydney alone operating as commercial backpacker accommodation" (pp.37 and 40). The accommodation was said to be concentrated in the suburbs of Glebe, Ultimo/Pyrmont, Manly, Bondi and Coogee.

In August 2005, Aegis Consulting prepared a similar report for Backpacking Queensland, but did not attempt to quantify the extent of illegal backpacker accommodation in that State. It did, however, express concern about the use of caravan parks and motels for illegal backpacker accommodation (p.18) and recommended that the Queensland Government fund an industry audit to gauge the true extent of such illegal premises (p.11).

In light of this, the Working Group agreed that a survey of selected local authorities in New South Wales would be beneficial in determining the extent of unlawful backpacker accommodation in the community. The Group also hoped to gain some insight into the experience of local authorities in responding to this issue at the local level.

As part of this inquiry, the Group highlighted the following matters as being of particular importance —

- the number of backpacker-related complaints received by councils;
- the use and effectiveness of the ‘powers of entry’ provisions (s.118 A-N of the Environmental Planning and Assessment Act 1979);
- instances of serving notices and the outcomes of enforcement; and
the use of the circumstantial evidence provisions for backpacker-related prosecutions (s.124AA of the *Environmental Planning and Assessment Act* 1979).

In developing a survey model, the Working Group was made aware of the research of Dr Fiona Allon of the University of Western Sydney. Dr Allon is a CCR Research Fellow and Investigator on the Australian Research Council (ARC) funded research project, *Backpacker cultures, residential communities, and the construction of tourist spaces and landscapes* (2004-2007). This project which looks at backpacker tourism generally, and the problems Local Government face in relation to backpackers within residential communities specifically. It is understood that this research project directly canvasses the matters identified for inclusion in the Working Group's survey.

Approached by the Group, Dr Allon confirmed the relevance of the research project's area of study to the focus of the Working Group. Given the considerable skill of Dr Allon in applied research, and the extent of the ARC project, the Working Group decided to defer undertaking a survey of councils until the results of the analysis of the ARC research project become available.

Due for release in 2007, it is expected that Dr Allon's research will elucidate the experience of councils in tackling the problem of unlawful backpacker accommodation in the community, providing data in support of the Working Group's findings and final recommendations.
Defining “Backpacker Accommodation”

Defining what is “backpacker accommodation” is extremely difficult. Who constitutes a "backpacker", what types of accommodation should be included in the definition, and issues around length of stay were just some of the matters discussed in detail by the Working Group.

The Working Group noted that there has been recent debate within the tourism fraternity as to whether the term “backpacker” actually identifies a real market segment. It was highlighted that “backpackers” are the only group of tourists defined solely by the type of accommodation they use. So, by this definition, a traveller who stays only one night in a backpacker hostel would become a “backpacker”, regardless of the purpose of their visit, motivation for their travel, or, indeed, any other accommodation that they might use during their stay.

Despite the difficulties that the terms “backpacker” and “backpacker accommodation” pose in regard to identifying a class of travellers and land use, the Working Group agreed that adopting a common definition was fundamental to progressing any reforms.

In this context, the Group decided that the definition of “backpacker accommodation” would need to be linked to both the types of operations and scope of premises to be considered.

Acknowledging definitional complexities, the Group agreed that the types of premises to be considered would be “residential premises operating as commercial (backpacker) accommodation without development consent”. “Commercial” accommodation would be taken in its broadest application.
In arriving at this definition, the Group referred to and supported the definition of "backpackers accommodation" adopted in the Standard Instrument (Local Environmental Plans) Order 2006 No. 155 as an appropriate starting point. This Order will apply to all councils under the Environmental Planning and Assessment Act 1979.

The Standard Instrument (Local Environmental Plans) Order 2006 is commonly known as the "LEP Template". The definition of "backpackers accommodation" in the Order is —

Backpackers’ accommodation means tourist and visitor accommodation:

(a) that has shared facilities, such as a communal bathroom, kitchen or laundry, and
(b) that will generally provide accommodation on a bed basis (rather than by room).

This definition came into force on 31 March 2006. Prior to this, the Working Group was actively engaged in discussing the applicability and limitations of earlier versions of this definition. Discussions included the merits of identifying backpacker accommodation on a "bed basis" rather than a "room basis" (as establishing criterion), as well as the applicability of the 2005 definition of "backpackers accommodation" meaning "a building used for the purposes of providing temporary accommodation for tourists, travellers or persons engaged in recreational pursuits".

While identifying a commercial backpacker operation can be challenging in practice, the provision of accommodation on a "bed basis" in the definition should make identification easier for enforcement authorities. As such, the Working Group has reviewed and supports the 2006 version of the definition of "backpacker accommodation" provided in the Standard Instrument (Local Environmental Plans) Order 2006 as being more comprehensive in capturing unlawful backpacker operations.
With this as our starting point, amendment of complimentary definitions in the *Standard Instrument (Local Environmental Plans) Order 2006* was also suggested by some members of the Working Group. In particular, strengthening the definition of "residential flat building" has been proposed to limit the maximum occupancy levels in residential premises. This issue is discussed in detail in the section of our report on Residential Tenancy Issues.

In dealing with the definitional difficulties associated with identifying "illegal backpacker operations" in practice, some members of the Working Group raised concerns with "commercial activity" as an identifying criterion.

The Group recognises that a common factor in determining whether the use of a premise for the provision of short-term accommodation to visitors or tourists will be lawful or not will depend, in part, upon whether the activity or use is for "commercial" benefit. In this context, "commercial" means a land use involving financial transactions for profit.

The Working Group acknowledges the occupation of a dwelling by a tourist or a visitor on a short-term basis is not, itself, an unlawful use. Some members of the Group further believe that this form of use remains lawful, irrespective of whether there is any financial gain or other benefit to the owner of the dwelling, or the purpose of the occupant's travel.

The use of a dwelling for the short-term accommodation of tourists or visitors will, in most circumstances, be lawful (without the need to obtain development consent). This type of letting includes traditional "weekenders" or holiday homes. However, this use will become unlawful (without development consent) at the point at which the letting satisfies the definition of "backpacker accommodation" under the *Standard Instrument (Local Environmental Plans) Order 2006*. This transition from "lawful" to "unlawful" use in the planning legislation remains unclear.
The Group recognises that such uncertainty is potentially damaging for tourism in New South Wales and may lead to conflicts between councils and property owners. In this regard, some members of the Group have recommended that the definitions provided in the *Standard Instrument (Local Environmental Plans) Order 2006* be amended to remove ambiguities in terms of the lawful and unlawful use of premises for short-term accommodation. In particular, suggestions have been made that the legislatives provisions should clearly state that the use of a premise for short-term accommodation is lawful without development consent, or that short-term holiday letting be declared "exempt or complying development".

To effect this distinction, the provisions of the *Environmental Planning and Assessment Act 1979* would need to more clearly distinguish traditional forms of backpacker accommodation (hostel or bed intensive layouts) that would (rightly) require development consent, from other forms of short-term accommodation that would not.

**"Illegal" or "Unlawful"?**

It is important to note that "backpacker premises" can only be "unlawful", not "illegal". The provision of backpacker accommodation is not an "illegal" use of land in and of itself.

However, the use of a particular premise for backpacker accommodation can be unlawful if there is no development approval or consent for that use. Development approval for backpacker accommodation is sought under the *Environmental Planning and Assessment Act 1979*. The process for approval is governed by that Act and includes public notification and consultation before consent can be granted.
For the purpose of this report, the Working Group has confined its recommendations to backpacker accommodation operating without development consent, that is, "unlawful backpacker operations". This is in recognition of the primacy of this type of use of residential premises in terms of government, community and industry concerns.

Typically, the types of backpacker operations to be considered by the Working Group are run out of residential houses or apartments, without the knowledge or approval of the local council. This form of accommodation poses a significant health and safety risk to occupants and neighbouring residents, and overwhelmingly results in adverse amenity impacts for the local community.

Although we have focused only on "unlawful operations", the Group acknowledges that the issue of "lawful" backpacker accommodation operating "unlawfully" may need further review. This extended focus would capture backpacker premises that have development consent, but are operating outside the scope of that consent, or contrary to the provisions of that consent. A key issue in this regard would be approved backpacker premises that do not have sufficient fire safety procedures or control mechanisms.

While the Working Group notes that most lawful backpacker operators comply with their conditions of consent, it is recognised that ongoing reforms in this sector are necessary to ensure that "non-compliant" operators are captured and that best practice in the industry is maintained.
Who is Responsible?

The Working Group recognises that the incidence of unlawful backpacker operations is a community-wide problem that requires a community-wide response.

The proliferation of "illegal backpackers" in New South Wales is of significant community and governmental concern. The increasing use of residential premises as backpacker accommodation has seen adverse impacts in terms of residential amenity, fire protection, sanitation and safety.

While responsibility for dealing with unlawful backpacker operations has traditionally fallen to local councils, the Working Group acknowledges that all sectors of the community need to be engaged to effectively deal with this problem. As such, addressing the issue of "illegal backpacker accommodation" will require the co-ordinated effort of all government agencies, local authorities, the industry and affected sectors of the public.

In recognition of this, the Working Group has recommended solutions in this report that incorporate a range of stakeholders. Expanding the role of Owners Corporations, for example, is a key initiative in our proposed regulatory reforms. Empowering individuals to deal directly and effectively with "backpacker" issues in their community is considered essential to curbing the proliferation of unlawful accommodation at the grass roots level.

Underpinning the Group's recommendations, however, is an acceptance that a regulatory response alone will have only limited success in addressing the issue of "illegal backpacker accommodation" in our community. Instead, the Group supports a more collaborative and educative focus in changing existing practices.

In regard to short-term holiday letting, for example, placing new or greater restrictions on the freedom of property owners to rent their premises for
tourist-based accommodation would raise significant concerns in terms of equity and consumer choice. Rather than adopting a prescriptive legislative approach to solely address this issue, the Group endorses greater engagement with representative organisations to encourage and improve tourism-orientated rental practices.

In particular, the Group supports the introduction of a Code of Practice for Holiday Letting, to be drafted in consultation with representative bodies such as the Furnished Property Industry Association, the Real Estate Institute of New South Wales and the Property Owners Association. This Code would establish and promote clear standards of accommodation for the short-term holiday rental sector.

Through increased education and information, coupled with focused legislative change, the Group is confident that "illegal backpacker accommodation" can ultimately be curtailed in New South Wales.

Advertising Issues

The first Priority Issue relates to the development of "laws to prevent illegal backpackers advertising for business in shops, public places, bus stops and in newspapers (to help starve illegal operators of customers)". The Group expressed concerns about the lack of direct correlation between formal advertising prohibitions and "illegal backpacker operations being starved of business".

We also recognised that the current form, content and extent of advertising by the "illegal backpacker industry" is unclear. While there have been some instances of Internet and billposting advertising for unlawful backpacker accommodation, this appears to have been on an \textit{ad hoc} and limited basis.
Instead, much of the "advertising" for unlawful backpacker accommodation would seem to be by "word of mouth" and "outing".

The Group also recognises that regulating advertisements can be legally difficult, particularly where the form (but not the content) of the advertisement is permitted. The regulation of newspaper advertisements, for example, raises complex issues of commercial responsibility and restraint of trade to be effective in practice. This issue of responsibility is further complicated with the on-selling of advertising space to third parties (such as formal advertising space in bus shelters).

As part of the broader issue of advertising, the Working Group considered the practice of touting by illegal backpacker operators. Touting occurs where the "illegal backpacker operator" sends their representatives (usually backpackers themselves) to a point of arrival of other backpackers to entice them to use their accommodation. Touters are often paid on a commission basis and usually target places such as the airport or major train stations.

The industry has expressed concerns that touting has had serious impacts on lawful backpacker operations. Travellers and commuters have complained of being "pestered" by touters at arrival points. Pedestrian congestion and traffic impediment have also resulted in some cases.

While acknowledging the concerns of the industry, the Working Group noted that current legislation adequately provides for councils and other local authorities to address touting and billposting in their areas. The issue would seem to be the application of these legislative powers by the relevant authorities, not the adequacy of the laws themselves.

Section 28F of the *Summary Offences Act* 1988, for example, enables a police officer to give direction to a person in a public place if they reasonably believe
that the person's behaviour or presence is obstructing another person or persons; is obstructing traffic; or constitutes harassment or intimidation.

Similarly, the Group noted that section 632 of the *Local Government Act 1993* allows councils to erect notices in public places to regulate or control the activities in those places. So, for instance, a council might put up a sign prohibiting the distribution of business advertising publications and touting in a public place. Any person who did not comply with the notice would be guilty of an offence, which could have a maximum penalty of $1100.00 applied or penalty notices of $110.00 for these offences can be issued "on-the-spot" by council's authorised officers or by police officers.

The Group also noted that councils, the police and other roads authorities currently have significant powers under the *Roads Act 1993* to deal with things that may cause obstructions or public danger on a public road. For the purposes of that Act, a "public road" also includes the footpath and an "obstruction" would include anything that stops or limits passage along the roadway or the footpath.

However, the Group identified that when touting occurs on private land, the owners of that land will ultimately have responsibility for controlling that activity. In the case of Sydney airport, for example — a common location for "backpacker touting" — the owners are the Australian Federal Government (with leases to private operators). While State Government (through Railcorp) owns and operates all trains and tracks that service the airport, they will sometimes lease out station monitoring, control and security (for instance) to private firms, such as to the Airport Link Company Pty Ltd.

Looking at this issue in detail, the Working Group recognised that regulating activities on private land is complex and problematic. As the law already enables action against touting and billposting in public places, further regulation to
include private land interests and Federal Government property would seem beyond the powers and role of the State Government.

Residential Tenancy Issues

The use of residential premises as unauthorised backpacker accommodation is an issue of significant concern in our community. Distinguishing "illegal backpacker operations" from accommodation shared by overseas students or long-term visitors can be challenging.

While not providing a complete solution, the Working Group considers reform of the residential tenancy legislation as an important starting point for addressing the issue of unlawful backpacker operations in residential premises. It was in this context that the Working Group responded to the NSW Office of Fair Trading's Residential Tenancy Law Reform Options Paper in May 2006 by making a formal submission (see Annexure 1). The Office of Fair Trading is the government authority responsible for administering the tenancy laws.

The issues considered in our submission to the Office of Fair Trading intersected with the Priority Issue identified by the Minister for Tourism of "prescribing the maximum number of people who can be accommodated under a Residential Lease". As such, this section of our report will deal with both the Priority Issue and the content of our submission. It should be noted, however, that our submission concerned specific proposals on reforms to the Residential Tenancy Act 1987 and Regulations presented in the Options Paper, rather than recommendations on overall tenancy law reform.

The extent to which "illegal backpacker operations" utilise Residential Tenancy Agreements or leases has been questioned by the Office of Fair Trading. The Working Group acknowledges that little data currently exists on whether such Agreements are being entered into by unlawful operators. Equally, to what
degree the tenancy laws have been used to stop actions to close unlawful backpacker operations is also unknown. However, the anecdotal experience of some councils confirms the use of tenancy laws by "unlawful backpackers" to remain in residential premises.

Prescribing Maximum Occupant Numbers

The Working Group acknowledges that any limitation on the number of tenants permitted under a Residential Tenancy Agreement would need to be fluid enough to include extended families and multiple children. For example, a two bedroom flat may accommodate eight (8) or more persons. While this number may not be acceptable in "backpacker" situations, it may be acceptable in some familial relationships (being two couples with two or more children each).

An expansive approach to setting any "maximum number" also acknowledges issues in New South Wales in terms of housing affordability; aged care; disability care; unemployment etc. The Office of Fair Trading also supports the most inclusive approach to this issue, so as to capture extended family units.

In terms of our objectives, some members of the Group expressed the concern that establishing a maximum number of tenants at the higher end of the spectrum would impede prosecution and may in fact encourage "illegal backpackers" to enter residential leases. Others were concerned that the failure to set a maximum number for permissible tenants would make enforcement action against "illegal backpackers" even more difficult.

While the Group recognised issues of overcrowding as key, determining an acceptable number of tenants for a premise proved complex.

New South Wales' tenancy law provides significant protection to tenants, and the removal/eviction of tenants under this system can be lengthy. With this in
mind, the Working Group decided that establishing a maximum number of
tenants that can be accommodated under a residential lease might be counter to
the Group's aims.

However, while support was not given to establishing a maximum number of
persons under a Residential Tenancy Agreement or lease, the factors that
generated the demand for capping occupation levels still required address.

Some members expressed concern that any attempts to control occupancy
numbers would be problematic and may result in unintended negative impacts in
terms of housing affordability issues. Impediments in enforcing occupancy
levels were further noted as a disincentive to this form of regulation.

Other members continued their support for a limitation on occupant levels,
noting that it would facilitate the ready identification of 'compliant' and 'non­
compliant' residential premises by authorised officers during the inspection of
premises.

One model for tackling this issue considered by the Working Group came from
the City of Sydney Council. Like the Working Group, City of Sydney Council
recognises that the use of residential apartments for unauthorised short-term
tourist accommodation is a growing problem in some areas of New South Wales.
Apart from safety and amenity impacts, the Council has also identified the
unfair competition "unlawful backpackers" presents to legitimate short-term
accommodation operators. The Council also highlighted the overall adverse
impact "unlawful backpacker operations" have on the standard of tourist
accommodation in New South Wales, and the overall "experience of Sydney".

In May 2006, City of Sydney Council passed a resolution adopting five (5) new
criteria in their standard conditions of development consent for residential
apartments. Among these was the imposition of a condition that —
"no more than two adult people shall occupy any bedroom and no bedroom shall contain more than two beds. This excludes children and children's beds, cots or basinets".

The Group noted that — as this condition can only be applied to new or future developments — the use of conditions of consent that limit occupancy levels will not address the issue of existing "unlawful backpackers" in residential apartments.

The Group also noted that any condition of development consent prescribed by a council would be at that council's discretion. As the matters for inclusion in a development consent are not subject to any express legislative direction, the inclusion of a condition to this effect would ultimately be a matter for each council to determine.

Some concern was also expressed by members of the Group as to whether the introduction of provisions to deal with overcrowding in conditions of development consent exceed the powers of a council as consent authority under the Environmental Planning and Assessment Act 1979.

While the conditions specified by City of Sydney Council were considered a positive start, some concern remained as to the mis-use of such provisions, particularly for temporary bedding arranged for visitors or overnight stays. How to capture "illegal backpackers" without including "slumber party participants" and "interstate relatives" remains an issue for further consideration by the Working Group.

Notwithstanding this, the Group gave in-principle support to the initiative of the City of Sydney Council in addressing this issue.

To compliment possible changes to standard conditions of development consent, the amendment of the definition of "residential accommodation" and "residential
"residential accommodation means a building or place used predominantly as a place of residence, but does not include tourist and visitor accommodation"

"residential flat building means a building containing 3 or more dwellings"

Strengthening of these definitions to include a maximum of two (2) adults and two (2) beds per bedroom (other than children's beds, cots or bassinets) has been promoted by some members of the Group. Alternatively, a provision that states that, "the total number of beds should not exceed double the number of approved bedrooms" has also been put forward.

The Working Group recognises that any amendment of the definitions in the Standard Instrument (Local Environmental Plans) Order 2006 may also require a corresponding amendment of the Environmental Planning and Assessment Act 1979.

Amendment of this Act has also been considered in terms of establishing maximum occupancy levels for premises with existing development consent(s). It has been suggested that the Act be amended to retrospectively provide for a definition of (existing) residential flat developments that means "the accommodation of only two (2) adult tenants per bedroom".

It is clear that the Working Group remains divided on the issue of setting maximum occupancy levels for residential premises. While there are benefits in limiting residential occupancy in terms of identifying "illegal backpacker
premises”, how this is to be legislatively achieved without impeding on civil rights and liberties is an ongoing concern.

Further, how parity is to be achieved between the different Acts and Regulations that intersect with the issue of “illegal backpackers” is unclear, particularly when the objectives of these Acts and Regulations may be divergent.

Given the complexity of this issue, the Working Group recommends further and more detailed investigation of the current legislative provisions affecting backpacker accommodation. Importantly, how the current legislative provisions are, or can be, applied in practice will require significant consideration before any process of reform should be undertaken.

Submissions on Tenancy Law Reform
The Working Group supported the Office of Fair Trading’s proposal for the continued exclusion of agreements concerning “boarders and lodgers” from the Residential Tenancy Act 1987 and Regulations. Further, we recommended the introduction of legislation or legislative provisions specifically to protect this category of residents.

It was not our intention that the Group’s submissions to the Office of Fair Trading on legislative reform (to address the issue of unlawful backpacker operations) affect “boarders and lodgers”. However, it is recognised that residential premises are sometimes being mis-used for short-term stay accommodation on a bed or room basis, creating significant amenity and other impacts for owners and neighbouring residents.

The Group noted the comments by the Office of Fair Trading that under the current law, “operators and occupants of short-term accommodation not
specifically excluded, such as backpacker hostels and serviced apartments, may be unclear on whether the tenancy laws apply" [Options Paper at 5].

The Working Group was made aware of situations where Residential Tenancy Agreements had been used by unlawful "backpacker operators" to claim a right of occupancy of a residential premise. This meant that these laws (rightly introduced to protect tenants from eviction and other actions) could be utilised by unlawful backpacker operators this was not the intention of these laws.

By relying on Residential Tenancy Agreements, it becomes more difficult for local authorities to take enforcement action against persons occupying a residential premise, even where those premises are clearly used for multiple, short-term stays rather than as a permanent residence for a specified number of people.

Current difficulties in enforcement action against "illegal backpackers" relying on Residential Tenancy Agreements would also seem affected by the powers to address unlawful backpacker operations generally being under legislation not considered in tenancy hearings.

To explain, where a Residential Tenancy Agreement exists, the applicable law to be considered by the Tribunal is the Residential Tenancies Act 1987 and Regulations. Other legislation regulating backpacker accommodation will not usually be considered by the Tribunal in the hearing process.

Historically, the Residential Tenancies Act 1987 and Regulations work to protect tenants from unfair eviction and will provide adequate periods of time to find other lodgings. However, when used by unlawful "backpacker operators", these laws can prevent the removal of backpacker operators and short-stay users from residential premises, sometimes up to several months.
To limit potential mis-use, the Working Group recommended that the "exemptions from the Act" be expressly extended to include "backpackers". This was suggested so as to provide greater certainty on the application of tenancy law and to afford the protection of "tenancy rights" to those who were intended to benefit from those laws.

To make this clear, the Working Group recommended the express definition (and exclusion) of "backpackers" in the Residential Tenancies Act 1987. We supported adoption of the definition of "backpacker accommodation" as provided in the Standard Instrument (Local Environmental Plans) Order 2006 No 155. The Order states that —

Backpackers' accommodation means tourist and visitor accommodation:

(c) that has shared facilities, such as a communal bathroom, kitchen or laundry, and

(d) that will generally provide accommodation on a bed basis (rather than by room).

It is the firm opinion of the Working Group that where premises are being used for the purpose of backpacker accommodation, the benefits and protections of the Residential Tenancies Act 1987 should not apply.

In keeping with this, the Working Group strongly opposed the Office of Fair Trading's proposal to "allow parties to excluded tenancies to agree that the tenancy laws shall apply to them". If approved, we believe that this would allow excluded parties, such as backpackers (if adopted), to enter into Residential Tenancy Agreements and unfairly benefit from protections under the tenancy law.

The Working Group also noted that there is no minimum rental period under a Residential Tenancy Agreement. As such, this proposal could also legitimise an illegitimate use of a residential premise, thereby limiting the enforcement or compliance actions that could be taken by an authorised authority or others.
Notwithstanding this, the Group recognises that the issue of minimum rental periods in relation to unlawful "backpacker" premises is complex, particularly in regard to enforcement or compliance actions. Accordingly, the Working Group did not support or oppose the proposal to "introduce a requirement for a minimum fixed period" for residential tenancy agreements in the Options Paper, at this stage.

Although not expressing a formal position on this issue to the Office of Fair Trading, discussion on the use of minimum fixed terms for residential leases continued amongst the Group. Some members suggested establishing a minimum fixed term of two or three months (sixty to ninety days) for residential leases. It was argued that such terms would both encourage longer leases and prevent shorter-stay residents from benefiting from protections under the tenancy laws.

Similarly, the Working Group gave in-principle support to the proposal to "give greater flexibility under the tenancy law to long term leases exceeding 10 years" and that persons be "exempt from the tenancy laws or agreements where the tenant's principal place of residence is elsewhere". However, we did express concern as to the potential misuse of these provisions in terms of sub-letting and in establishing a premise as unlawful backpacker accommodation.

Importantly, the Group strongly supported the proposal to "expand the list of grounds on which a tenancy may be terminated to include reasons such as major repairs or renovations or the need for the landlord or family member to live in the premises". We recommended that further provisions be introduced to include termination on the grounds of "residential amenity", such as excessive
noise, number of occupants, anti-social behaviour, sub-letting without permission etc.

As part of our recommendation, the Working Group promoted the introduction of "on-the-spot" inspection powers for landlords or managing agents where a premise is believed to be operating as "unlawful backpacker accommodation". We recognised that the current requirement of seven (7) days notice before inspection is onerous (and ineffective) in terms of establishing a use of a premise as "unlawful backpacker accommodation" (s.24(b) of the Residential Tenancies Act 1987).

However, the Group were also mindful of the rights of tenants to the quiet enjoyment of their residence (s.22 of the Residential Tenancies Act 1987).

To balance these rights, we suggested the introduction of provisions akin to those found in section 124AA of the Environmental Planning and Assessment Act 1979. Section 124AA provides that circumstantial evidence can be relied upon to find that a particular premise is being used as "backpacker accommodation". This evidence includes (but is not limited to) evidence of persons entering and leaving the premises (including leaving luggage) consistent with backpacker accommodation; advertising as express or implied backpackers accommodation; layout of rooms; number and arrangement of beds, etc.

The Working Group promoted the adoption of circumstantial evidence provisions as a pre-requisite to trigger "on-the-spot" inspection rights. We believe that a right of action to the Tenancy Tribunal and/or significant penalties could be introduced to remedy circumstances where the landlord or their agent evokes "on-the-spot" inspection powers without sufficient evidence.

Further, the Group proposed that the power to terminate tenancies be extended to third parties (through prior determination or identification by the
We noted that the tenancy law currently only allows termination by the owner or resident of the property. Extending the termination of tenancy powers to specific third parties — such as strata schemes, authorised authorities and/or neighbouring residents — would deal with situations where a landlord knows or allows their premises to be used as unlawful “backpacker accommodation”, but does nothing about it.

In particular, this recommendation recognises that illegal and unlawful backpacker operations is a community-wide problem that requires a community-wide response. Extension of the termination of tenancy provisions to third parties would empower identified sections of the community and authorised authorities to actively address the issue of illegal backpacker accommodation in their areas.

We believe that such provisions would provide an effective balance between the rights of residents and the rights of landlords and others in regard to the issue of illegal backpacker accommodation.

**Regulation through Local Environmental Plans?**

Another issue discussed in detail was the Priority Issue encouraging “the use of Local Environmental Plans (LEPs) to impose conditions to discourage the use of residential buildings as backpacker accommodation”.

Overall, the Group acknowledged that “discouraging” the use of residential buildings as “backpacker accommodation” is, in fact, a lesser standard than exists under the current planning law. The Working Group re-affirmed that a residential building cannot be lawfully used as “backpacker accommodation” without first obtaining development consent from a council or the Land and Environment Court.
As part of the planning approval process, an application for consent to use a premise as "backpacker accommodation" must undergo public notification and consultation. The application will be then determined on merit, following the requirements of section 79C of the *Environmental Planning and Assessment Act* 1979. This procedure is the same whether the application is for a "change of use" of the premises or for building and/or development works.

When a residential building is used as "backpacker accommodation" without development consent, a council can issue orders for "cessation of use" under the *Environmental Planning and Assessment Act* 1979, and/or commence proceedings in the Land and Environment Court for closure of the premises.

The Group noted that what was intended by the suggestion of "putting conditions in Local Environmental Plans (LEPs) to discourage backpacker accommodation" was unclear. Generally, LEPs do not impose specific conditions on use. Rather, they regulate the overall use of land through zonings etc. Most residential zonings would already prohibit the use of a residential premise as a "backpacker operation". Even if the use of a premise for "backpacker accommodation" was allowed in a zone, the proposal would still require development consent to ensure that it was appropriate.

However, the Group recognised that this issue might need to be re-visited in the context of the current changes to the New South Wales planning system. We noted that the zoning of land may now be altered under the Standard Local LEP. [It was agreed that this issue would be raised by the representatives of the Department of Planning on the Working Group with the appropriate persons in the Department of Planning, with the outcome reported back to the Group. Waiting on the report back by Planning to determine whether the Standard Local LEP affects this.]

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Legislative Amendment

As part of our mandate, the Backpacker Working Group reviewed the relationship of legislation and regulatory requirements in New South Wales to "backpacker issues". Evaluating the adequacy of existing legislative provisions and making recommendations for improvement is one of our key roles.

Local Government Act 1993

In regard to the Priority Issues, the Group considered the proposal to "change the Local Government Act to enable councils and Fire Brigade to enter and inspect an illegal backpacker operation".

The Group noted that the entry of residential premises by the Fire Brigades is for the purposes of inspection for fire compliance. This power of entry is provided by the Fire Brigades Act 1989 (NSW) and the Environmental Planning and Assessment Act 1979. Inspection of "illegal backpacker operations", other than for fire safety compliance, is beyond the legislative power of the Fire Brigades (ultra vires).

The Group also highlighted that the entry of authorised council officers onto private land for the purpose of inspecting "illegal backpacker operations" is a power under the Environmental Planning and Assessment Act 1979, not the Local Government Act 1993. As "backpacker accommodation" is approved and regulated under planning legislation, it was agreed that amendment of the Local Government Act 1993 would not be warranted.

Environmental Planning & Assessment Act 1979

Acknowledging the intent behind the Priority Issue on amending the Local Government Act 1993, the Working Group decided to further explore whether the existing powers of entry under the Environmental Planning and Assessment
Act 1979 are adequate for the purpose of inspecting "illegal backpacker operations". The results of this analysis are detailed in the "Powers or Entry & Inspection" section of this report, below.

**Powers of Entry & Inspection**

In the course of its inquiries, the Backpacker Working Group became aware of the difficulties councils and the Fire Brigade have experienced in taking enforcement action against "illegal backpacker operations". A resounding complaint has been the inadequacies of the 'powers of entry' provisions in the *Environmental Planning and Assessment Act 1979*.

As previously indicated, this Act is the primary legislation used for entry to and inspection of residential and commercial premises by both local councils and the NSW Fire Brigades. It was agreed by the Working Group that the focus of our legislative review would be restricted to reviewing the powers of entry and inspection under that Act and its Regulations.

The Working Group agreed that attention to "illegal backpackers" only is limited in terms of capturing all premises used for backpacker or similar short-term and shared accommodation. Arguably, short-term, shared accommodation can pose an equivalent risk to health and safety, and equal impact on local amenity as "illegal backpacker operations". While review of the impact of these other forms of use is outside of the scope of the Priority Issues, it is recognised that any recommendations for legislative amendment made in this report could be extended so as to capture these additional uses, as well as "illegal backpacker operations".
Powers of Entry — Section 124AA: The Backpacker's Provision

In November 2002, the Environmental Planning and Assessment Amendment (Illegal Backpacker Accommodation) Act 2002 was passed. This Act amended the Environmental Planning and Assessment Act 1979 by inserting a new provision as section 124AA —

**124AA Evidence of use of premises as backpackers' hostel**

(1) This section applies to proceedings before the Court under this Act to remedy or restrain a breach of this Act in relation to the use of premises as a backpackers' hostel.

(2) In any proceedings to which this section applies, the Court may rely on circumstantial evidence to find that particular premises are used as a backpackers' hostel.

**Note.** Examples of circumstantial evidence include (but are not limited to) the following:

(a) evidence relating to persons entering and leaving the premises (including the depositing of luggage) that is consistent with the use of the premises for a backpackers' hostel,

(b) evidence of the premises being advertised expressly or implicitly for the purposes of a backpackers' hostel (including advertisements on or in the premises, newspapers, directories or the Internet),

(c) evidence relating to internal and external signs and notices at the premises (including price lists, notices to occupants and offers of services) that is consistent with the use of the premises for a backpackers' hostel,

(d) evidence of the layout of rooms, and the number and arrangement of beds, at the premises that is consistent with the use of the premises for a backpackers' hostel.

Anecdotal evidence indicates that councils have been reluctant to utilise this provision in enforcement actions against "illegal backpacker operations". It is unclear whether this reluctance is connected to complexities in obtaining
sufficient circumstantial evidence to litigate (absent evidence obtained from the entry of premise: s.124AA(e)), or whether this arises from the assessment of or weight given to circumstantial evidence by the Court (in terms of ruling against illegal operators).

The nature of illegal backpacker operations will often mean that circumstantial evidence based on advertisements, notices and signs (s.124AA(b) and s.124AA(c)) is difficult to obtain. Evidence of persons entering and leaving premises is also unreliable and difficult to establish (in terms of commercial use rather than "visiting" stays) without continued surveillance.

While evidence on the layout of rooms and the number and arrangement of beds (s.124AA(d)) is the most compelling, the difficulties in obtaining this evidence (under the current legislative provisions) are connected to the existing powers of entry provisions.

Currently, there are limitations on both councils and authorised Fire Brigade officers in gaining entry into both class 1(a) single domestic dwellings, as well as sole occupancy units in class 2 and 3 buildings. Without the permission of the owner or occupier, entry can only be obtained into these premises via a search warrant. A search warrant can only be issued by a Court and substantial evidence is required before being granted.

[Insert paragraphs on the experience of Randwick Council in taking 2 years to obtain a search warrant for backpacker prosecution. Vic Smith to confirm details with Randwick Council as per minutes 31 July 2006]
The current provisions for entering premises are located in sections 118A to 118N of the *Environmental Planning and Assessment Act* 1979. In summary, a distinction is made within the Act for entry into commercial premises (s.118A and s.118C) and entry into residential premises (s.118J). Council's entry into a premise to determine its use as an 'illegal backpackers' is hampered by the definition and notice requirements of the Act.

Despite being a commercial undertaking, a "backpackers" operating from a house or apartment block but without development consent would still seem to fall under the definition of "residential premises" in the *Environmental Planning and Assessment Act* 1979. This is because the use of the premises is assumed to be "residential"(until disproved). However, to establish that a residential premise is being used as an illegal (commercial) backpacker operation, a council must generally gain entry into the premises. Herein lies the difficulty.

Sections 118C and 118J of the *Environmental Planning and Assessment Act* 1979 outline the circumstances and notice requirements for entry into residential premises —

118J  In what circumstances can entry be made to a residence?

The powers of entry and inspection conferred by this Division are *not exercisable* in relation to that part of any premises being used for residential purposes except:

(a) with the permission of the occupier of that part of the premises, or

(b) if entry is necessary for the purpose of inspecting work being carried out under a development consent (including a complying development certificate), or

(c) under the authority conferred by a search warrant, or

(d) if an application for a building certificate has been made under section 149B in respect of premises used for residential purposes and entry is necessary for the purpose of inspecting the premises in order to issue a building certificate in accordance with sections 149A-149E.
118C Notice of entry

(1) Before a person authorised to enter premises under this Division does so, the council or the person must give the owner or occupier of the premises written notice of the intention to enter the premises.

(2) The notice must specify the day on which the person intends to enter the premises and must be given before that day.

(3) This section does not require notice to be given:

(a) if entry to the premises is made with the consent of the owner or occupier of the premises, or

(b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or

(c) if entry is required urgently and the case is one in which the general manager of the council has authorised in writing (either generally or in the particular case) entry without notice.

It would seem self-evident that where an 'illegal backpackers' is operating from a residential dwelling, permission for entry would not be provided to council officers or the Fire Brigade. Equally, where more than 24 hours notice is provided, it is foreseeable that much of the evidence indicating the use of the premises as an "illegal backpackers" would be removed. As such, these provisions are of little benefit to authorised officers inspecting alleged "illegal backpacker operations".

The exceptions to entry by permission or with notice are when there is a reasonable likelihood of "serious risk to health or safety", or where entry is deemed urgent and authorised by council's General Manager. It would seem that, in practice, there has been a reluctance to use these provisions to gain entry into residential premises. However, even where sections 118C(3)(b) or (c) are relied on, a council or Fire Brigades officer would need to seek, obtain and execute a search warrant if entry into the premises was still refused by the occupants —
118D Use of force

(1) Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under a power conferred by this Division, but only if authorised by the council in accordance with this section.

(2) The authority of the council:

(a) must be in writing, and

(b) must be given in respect of the particular entry concerned, and

(c) must specify the circumstances which are required to exist before force may be used.

118E Notification of use of force or urgent entry

(1) A person authorised to enter premises under this Division who:

(a) uses force for the purpose of gaining entry to the premises, or

(b) enters the premises in an emergency without giving written notice to the owner or occupier,

must promptly advise the council.

(2) The council must give notice of the entry to such persons or authorities as appear to the council to be appropriate in the circumstances.

As indicated in section 118D, forcible entry is only available for "non-residential" premises. Again, it is the (default) definition of an "illegal backpackers" operation as "residential" which is the impediment to entry.

Without the right to forcibly enter an "illegal backpackers" premises (operating from a house or apartment) — even if deemed urgent or serious (118C(3)(c) and (b)) and/or in possession of a search warrant — the powers of entry provisions under the Environmental Planning and Assessment Act 1979 are rendered ineffective in addressing this serious social issue.
To address this, the Working Group proposes legislative reforms based on the re-definition of backpacker premises expressly as "non-residential" premises. The aim is to restrict the notice provisions relating to the powers of entry provisions that currently impede enforcement. Specifically, the following amendments are supported.

Section 118J of the Environmental Planning and Assessment Act 1979

It is proposed that section 118J of the Environmental Planning and Assessment Act 1979 be amended to include a new a sub-section "(e)" which exempts "places of shared accommodation" that have been deemed to be "backpacker accommodation". This amendment would remove illegal backpacker operations from their current "residential premises" status under the Act.

Use of "place of shared accommodation" is the preferred term for this amendment, being more expansive and, unlike the term 'backpackers', is already defined in section 4 of the Environmental Planning and Assessment Act 1979 —

place of shared accommodation includes a boarding house, a common lodging house, a house let in lodgings and a backpackers hostel.

The wording of this amendment would need to expressly refer to "unlawful places of shared accommodation". "Unlawful" would refer to places of shared accommodation operating without consent for that use. This would avoid the capture of "lawful places of shared accommodation", such as boarding houses and approved backpacker or lodging house accommodation.

The requirements for deeming use of a premises as "illegal backpacker accommodation" would replicate the circumstantial evidence provisions outlined in section 124AA of the Environmental Planning and Assessment Act 1979. As a procedural safeguard, additional requirements that this evidence be documented and signed-off ("authorised in writing") by the General Manager.
before being deemed an “unlawful place of shared accommodation” would need to be introduced.

It is proposed that section 118C(3) be amended to include a new a sub-section “(d)” that links with the proposed amendment “118J(3)(e)” (above). This amendment would compliment the proposed changes to the powers of entry provisions in terms of the “notice of entry” that needs to be given.

The wording of sub-section “(d)” would be to the effect that notice does not need to be given “if the premise is deemed to be an unlawful place of shared accommodation in accordance with section 118J(e) of the Act”.

Sections 118D and 118E of the Environmental Planning and Assessment Act 1979

Consideration may need to be given to the appropriateness of amending sections 118D and 118E of the Environmental Planning and Assessment Act 1979 on the “use of force” for entry into a premise.

Section 118L of the Environmental Planning and Assessment Act 1979

Section 118L of the Environmental Planning and Assessment Act 1979 deals with the powers of entry for the NSW Fire Brigades —

118L Special provision with respect to fire brigades

(1) An authorised fire officer within the meaning of section 121ZC may exercise the functions conferred on a person authorised by a council under this Division for the purpose of inspecting a building to determine:

(a) whether or not adequate provision for fire safety has been made in or in connection with the building, or
(b) whether or not such of the provisions of this or any other Act or law as may be prescribed for the purposes of this paragraph have been complied with.

(2) An inspection for the purposes of subsection (1) (a) is not, however, authorised for premises other than places of shared accommodation except:

(a) when requested by the council of the area in which the building is located, or

(b) when requested by a person who holds himself or herself out as the owner, lessee or occupier of the building, or

(c) when the Commissioner of New South Wales Fire Brigades has received a complaint in writing that adequate provision for fire safety has not been made concerning the building.

(3) A council must, at the request of the Commissioner of New South Wales Fire Brigades, make available a person authorised by the council for the purposes of the inspection, and the person concerned is to be present during the inspection.

(4) The Commissioner of New South Wales Fire Brigades must send a report of any inspection carried out under this section to the council concerned.

(5) This Division applies to an authorised fire officer within the meaning of section 121ZC in the same way as it applies to a council and a council employee (or other person) authorised by the council.

It is proposed that section 118L(2) of the Environmental Planning and Assessment Act 1979 be amended to include a new a sub-section "(d)" that will compliment the changes made to council powers of entry as recommended above.

Note that an authorised fire officer is granted the same authority and powers as an authorised council officer under the Act. The wording of any amendment to section 118L(2) would require further consideration if amendment (in relation to council's powers of entry) was supported.

Consideration would also need to be given to identification of the appropriate senior officer in the Brigade (Commissioner or Assistant Commissioner) to
authorise entry if circumstantial evidence provisions are to apply (per proposed amendments to section 118J(3)).

It would appear that the current powers of entry for both local councils and the NSW Fire Brigade have been inadequate in relation to "illegal backpacker operations". The need for authorised officers to gain entry into premises efficiently and quickly is essential to curb risks associated with "illegal backpacker operations".

The legislative amendments proposed to the Environmental Planning and Assessment Act 1979 above were given unanimous support by the Working Group in its meeting of June 2006.

It was considered that these reforms, if introduced, would enable officers to enter premises without the complications currently experienced in "backpacker" enforcement. Through these measures, council and the NSW Fire Brigades would be better equipped to ensure the health and safety of occupants and neighbouring residents, particularly in regard to fire hazards.

Despite unanimous endorsement by the Group, some members have since queried the need for reform of the Environmental Planning and Assessment Act 1979. In particular, a view was raised that there is insufficient evidence on the current use, and therefore effectiveness, of the existing powers of entry and circumstantial evidence provisions under that Act.

Further, it was stated that "backpacker accommodation" would not fall into the definition of "residential premises" for the purposes of the Environmental Planning and Assessment Act 1979. However, it was again raised that determining that the premise was "backpacker accommodation" without entry into that premise was extremely difficult. As such, the default presumption under the current provisions would be that the premises were "residential". This
presumption would seem further supported where the “illegal backpackers” present a Residential Tenancy Agreement to the authorised officers seeking entry.

While the “data” on the use of the powers of entry and circumstantial evidence provisions should result from the research of Dr Allon, some members argued that this information is unnecessary to support the proposed amendments to the Environmental Planning and Assessment Act 1979. Put simply, it was presented that the amendments of the existing provisions of the Act should be supported “on the face of the provisions” — that the difficulties encountered in terms of entry for inspection were clear in and of themselves.

Given this divergence in opinion, the Working Group .... [The Group needs to decide what it will do in relation to this issue]

**Conclusion**

It is anticipated that this report and our following recommendations, if adopted, will go some way to achieving greater certainty in dealing with “illegal backpacker operations” in residential premises.

While this report responds specifically to the Priority Issues outlined by the Minister for Tourism, the issues identified in our Terms of Reference still require continued development and attention. Importantly, concerns such as those on the adequacy of the Building Code of Australia requirements for backpacker accommodation in terms of fire safety remain key areas for address by the Working Group.

[Any other contributions?]
Recommendations

In addressing the Priority Issues for consideration, the Working Group makes the following recommendations for reform —

1. That the results of the research project, *Backpacker cultures, residential communities, and the construction of tourist spaces and landscapes* (2004-2007), be used to guide or inform any legislative and policy reforms to address "illegal backpacker" issues.

2. That the definition of "backpacker accommodation" provided in the *Standard Instrument (Local Environmental Plans) Order 2006* be adopted as the accepted definition of "backpacker accommodation" for broader legislative and policy reform.

3. That there be further investigation of the issue of "lawful" or approved backpacker accommodation providers operating "unlawfully" or outside of or contrary to their development consent.

4. That the form, mode and extent of advertising by "illegal backpacker operators" be further investigated.

5. That the current legislative provisions to address touting and billposting in public places be endorsed.

6. That private land owners and the Federal Government and its lessees be encouraged to be pro-active in addressing the issue of billposting and "touting" by "illegal backpacker operators" on their land.

7. That there be further investigation of the extent to which Residential Tenancy Agreements are being used by "illegal backpackers".
8. That there be further investigation of the extent to which Residential Tenancy law has been used to stop or close "illegal backpacker accommodation" in residential premises, and the effectiveness of this.

9. (Need a recommendation to address the issue of maximum occupancy levels under Residential Tenancy Agreements and/or Planning law.)

10. That legislation or legislative provisions be introduced to specifically protect "boarders and lodgers" from any reforms in regard to "illegal backpacker accommodation".

11. That the term "backpacker" and "backpacker accommodation" be expressly defined in the Residential Tenancies Act 1987 and Regulations — adopting a definition that incorporates or compliments the definition of "backpacker accommodation" provided in the Standard Instrument (Local Environmental Plans) Order 2006.

12. That "backpackers" and "backpacker accommodation" be expressly excluded from the operation of the Residential Tenancies Act 1987 and Regulations through the existing provisions for "exemptions from the Act". This would stop "illegal backpackers" gaining the protective benefits of the tenancy law.

13. That the Residential Tenancies Act 1987 and Regulations not permit parties to excluded tenancies to agree that tenancy laws will apply to them.

14. (Need a recommendation on minimum rental periods in Residential Tenancy Agreements)
15. That the *Residential Tenancies Act* 1987 and Regulations provide greater flexibility to long-term leases exceeding 10 years and that persons be exempt from the tenancies laws and agreements where the tenant’s principal place of residence is elsewhere.

16. That the list of grounds for termination of a tenancy be expanded under the *Residential Tenancies Act* 1987 and Regulations to include termination on the grounds of residential amenity, such as excessive noise, number of occupants, anti-social behaviour and sub-letting without permission.

17. That section 24(b) of the *Residential Tenancies Act* 1987 be amended to permit “on-the-spot inspection” powers to landlords of managing agents where a premise is believed to be operation as “unlawful backpacker accommodation”.

18. That the *Residential Tenancies Act* 1987 be amended to introduce circumstantial evidence provisions (akin to s.124AA of the Environmental Planning and Assessment Act 1979) as a pre-requisite for invoking an “on-the-spot” power of inspection under the proposed amended section 24(b) of the *Residential Tenancies Act* 1987.

19. That the *Residential Tenancies Act* 1987 be amended to introduce a right of action in the Tenancy Tribunal for mis-use of the “on-the-spot” inspection power under the proposed amended section 24(b), with significant penalties applied.

20. That the power to take action to terminate a tenancy in accordance with the *Residential Tenancies Act* 1987 be extended to include or give “standing” to limited third parties (the class of which is to be
legislatively provided or determined through prior identification by the Tenancy Tribunal).


22. Need a recommendation(s) on amendment of the Environmental Planning and Assessment Act 1979 re powers of entry and inspection.

23. That a Code of Practice for Holiday Letting be drafted in consultation with relevant associations and representative groups to provide and promote standards of accommodation for the short-term holiday rental sector.