

**NSW GOVERNMENT RESPONSE TO  
THE LEGISLATIVE ASSEMBLY SOCIAL POLICY COMMITTEE INQUIRY  
INTO INTERNATIONAL STUDENT ACCOMMODATION IN NSW**

**May 2012**

**Terms of Reference:**

To inquire into and develop proposals for legislation, where appropriate, or other measures to address:

1. The objectives of the Private Member's Bill introduced by the Member for Ryde in the last Parliament (*Environmental Planning & Assessment Amendment (Boarding Houses) Bill NSW 2010*).
2. Factors affecting the supply of and demand for affordable student accommodation and other accommodation used by students, particularly in relation to international students and implications for the export education industry.
3. The appropriateness of existing standards for affordable student and other accommodation used by students.
4. Appropriate or minimum standards for student accommodation, and the adequacy of current legislation in ensuring that such standards are achieved.
5. The current extent of unauthorised student accommodation operations in NSW.
6. The appropriate framework for the on-going operation of affordable student accommodation and other accommodation used by students, including the adequacy of local government powers to identify unauthorised operations and enforce compliance with the relevant laws.

**Recommendation 1: page 34 - The Committee recommends that the Affordable Housing Taskforce specifically considers affordable student housing as part of its review, considering questions such as:**

- **Whether the State Environment Planning Policy on Affordable Rental Housing (ARH SEPP) is successfully achieving the outcome of affordable housing for students;**
- **Whether purpose built student accommodation can provide affordable housing for all students, or whether some form of subsidy is required; and**
- **Whether an adequate balance has been struck between State planning policies for affordable student housing and the powers of local councils to determine what developments are appropriate for their communities.**

**Response**

Consideration is supported in principle.

The Government established the Affordable Housing Taskforce in May 2011 to lead the development of initiatives for local strategies which will encourage a wide range of housing types to meet the needs of key workers, people with special needs, the homeless and other groups in need. The Taskforce is considering affordable student housing as part of its work.

International and domestic students living away from home have a number of housing options, including on-campus halls, residential colleges, private rental or share accommodation, student hostels, boarding houses and student apartments. This housing can be delivered by the universities, university-related organisations or by the market. Where rooms are smaller and services are based around shared facilities, affordable accommodation options can often be provided for students without requiring a subsidy. Where affordable student housing is not available, students may seek accommodation in the broader affordable housing market, in competition with low-income households.

The *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP) aims to increase the supply and diversity of affordable rental and social housing in NSW. The ARH SEPP initiatives include:

- Providing floor space incentives for townhouses and residential flat buildings where permissible;
- Making secondary dwellings ('granny flats') permissible in all residential zones with complying development provisions to streamline approvals;
- Providing incentives for the development of "new generation" boarding houses;
- Streamlining approvals for NSW Government housing projects of up to 20 units;
- Simplifying approvals for group homes in residential areas, and
- Compensatory payments system for loss of low cost housing or boarding houses.

The ARH SEPP includes provisions relating to residential flat buildings, "new generation" boarding houses and granny flats which have the potential to increase affordable accommodation for students as well as people on low to moderate incomes.

Information provided by Macquarie University and the Universities of Sydney, New South Wales, Western Sydney, Newcastle and Wollongong indicates that over ten years these universities intend to double their total stock of student housing beds from the 2009 level of 17,794 beds.

The Taskforce is examining approaches for the development of Local Affordable Housing Strategies. These local strategies are intended to be developed by local councils, and be informed by a demand and supply analysis so the local needs can be identified upfront and appropriate mechanisms developed to provide for affordable housing options to meet local needs. This approach allows councils to work with educational institutions to plan for the needs of students while taking local issues into account. The Taskforce is currently developing guidelines to assist councils in developing and implementing local affordable housing strategies.

**Recommendation 2: page 35 - The Committee recommends that the NSW Planning System Review specifically considers student housing, addressing questions such as:**

- **Whether student housing is adequately defined in the NSW planning framework;**
- **Whether there is merit in formulating specific standards to guide the development of student housing; and**

- **Whether there are sufficient opportunities and incentives within the planning system to encourage the sustainable development of appropriate and affordable student housing.**

### **Response**

Consideration is supported in principle.

The NSW Planning System Review is considering a range of issues relating to student accommodation. In addition, student accommodation issues have been considered as part of the review of the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP), particularly in relation to the definition of university student accommodation, the formulation of standards to guide the development of student housing, and the creation of incentives to encourage the development of student accommodation in the vicinity of university campuses. The Government expects to bring forward draft amendments to the Infrastructure SEPP in the near future.

**Recommendation 3: page 38 - The Committee recommends that the NSW Government consider introducing travel concessions for all international students.**

### **Response**

Consideration is supported in principle.

In November 2011 the Government established an International Education and Research Industry Taskforce to prepare an Industry Action Plan covering education exports, International Education, Research and Industry Precincts, and innovation in education delivery. The issue of travel concessions has been raised as an issue for consideration in the work of the Taskforce, which is to submit its Industry Action Plan by November 2012.

In order to be granted a student visa, international students must demonstrate to the Commonwealth Government through the Department of Immigration and Citizenship that they have the capacity to cover the cost of air fares, course tuition fees and living costs for the duration of their stay in Australia. Living costs include the costs of transportation. For visa purposes, the Commonwealth sets living costs at a minimum of \$18,000 per year, but advises students that living costs may vary depending on location and that it is the student's responsibility to determine the costs of living and studying in Australia.

**Recommendation 4: page 41 - The Committee recommends that the NSW Government gives consideration to introducing legislation to mandate the implementation and regulation of reasonable standards for Homestay.**

### **Response**

Consideration is supported in principle, noting that strong legislative provisions already exist.

Homestay is an important form of accommodation for international students choosing to study in NSW and the Government supports maintaining high standards in the

homestay industry for the benefit of both international students and accommodation providers.

Legislative requirements already exist for international students under the age of 18 years under the Commonwealth *Education Services for Overseas Students Act 2000* (ESOS Act) and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*. Before a student visa can be granted to a student under 18 years of age, the Commonwealth Government must be satisfied that there are appropriate accommodation, support and general welfare arrangements in place for the period that the student will be under 18 while in Australia. In addition, NSW child protection legislation regulates to ensure the welfare needs of students under 18 years are met, including homestay providers conducting Working with Children Checks where necessary.

All international students in NSW Government schools and TAFE NSW who live in homestay arrangements are accommodated by providers contracted by the NSW Department of Education and Communities (DEC). Under these contractual arrangements, DEC requires homestay providers to comply with its standards for homestay accommodation.

Many homestay providers are small owner-operated businesses with a long history and an excellent reputation. Providers in the homestay industry are taking steps to ensure a high quality of service to students in homestay arrangements. For example, the Australian Homestay Network, which operates in all States and Territories, has adopted eight standards relating to: online registration for students and hosts; insurance for hosts; training for hosts; signed agreements stating obligations for hosts; documents to orientate foreign students; documents to guide students and outline responsibilities of hosts; emergency phone support for students and hosts; and management of payments made on behalf of students to hosts.

The Government's International Education and Research Industry Taskforce is considering issues relating to international students as part of the development of its Industry Action Plan. This consideration includes options such as the development of best-practice standards for homestay providers. The Taskforce is required to submit its Industry Action Plan by November 2012.

**Recommendation 5: page 42 - The Committee recommends that the NSW Government and the NSW Commission for Children and Young People, give consideration to suitable clearance and ongoing management processes designed to effectively protect International Students in Homestay arrangements.**

### **Response**

Consideration is supported in principle, noting that strong legislative provisions already exist.

NSW child protection legislation already requires homestay providers to undergo Working with Children Checks where they provide accommodation for children under the age of 18 years. These processes are managed through the Department of Education and Communities' (DEC) and the NSW Commission for Children and Young People in conjunction with education providers.

In addition, the Commonwealth *Education Services for Overseas Students Act 2000* and Standard 6 of the National Code 2007 require education providers to provide the opportunity for students to access welfare-related support services to assist with issues that may arise during their study, including course progress and attendance requirements and accommodation issues. Standard 5 of the Code imposes additional requirements in relation to the accommodation, safety and wellbeing of international students under the age of 18 years.

The Government's International Education and Research Industry Taskforce is considering issues relating to international students as part of the development of its Industry Action Plan. This consideration includes options such as improvements in the homestay accommodation industry. The Taskforce is required to submit its Industry Action Plan by November 2012.

**Recommendation 6: page 54 - The Committee recommends that the NSW Government consider introducing legislation to implement 'occupancy agreements', based on 'occupancy principles', to cover all international and other student residents in accommodation not subject to the *Residential Tenancies Act 2010*.**

### **Response**

Legislation is supported, with some limitations.

The Government proposes to introduce principles-based occupancy rights for residents of registrable boarding houses based substantially on the model already operating in the ACT. Public consultation will take place shortly on a draft Bill for a new Boarding Houses Act that will introduce a registration requirement for all boarding houses accommodating 5 or more residents. Registration will not be required for accommodation and housing provided by an educational body. In proposing the scope of the registration requirement, the Government has taken into account the risks present in boarding houses of different types and scale, and the existence of other regulatory and non-regulatory arrangements to mitigate those risks.

The proposed occupancy principles are as follows:

- *An occupant is entitled to live in premises that are:*
  - *Reasonably clean*
  - *In a reasonable state of repair*
  - *Reasonably secure;*
- *An occupant is entitled to know the rules of the premises before moving in;*
- *An occupant is entitled to the certainty of having an occupancy agreement in writing if the occupancy continues for longer than 6 weeks;*
- *An occupant is entitled to quiet enjoyment of the premises;*
- *A landlord is entitled to enter the premises/room at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes;*
- *An occupant is entitled to 8 weeks notice before the grantor increases the amount to be paid for the right to occupy the premises;*

- *An occupant is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction;*
- *An occupant must not be evicted without reasonable notice;*
- *A landlord and occupant should try to resolve disputes using reasonable dispute resolution processes; and*
- an occupant is entitled to be given a written receipt for the payment of any money to the landlord.

Residents of registrable boarding houses and their operators will be given access to the Consumer, Trader and Tenancy Tribunal (CTTT) in order to provide a low cost mechanism for dispute resolution. The draft Bill will also include provisions for the introduction of a standard occupancy agreement.

**Recommendation 7: page 54 - The Committee recommends that the NSW Government consider introducing legislation to give landlords or 'grantors' and student residents outside the current scope of the *Residential Tenancies Act 2010* access to the Consumer, Trader and Tenancy Tribunal to assist in the resolution of disputes.**

#### **Response**

Legislation is supported, with some limitations.

The NSW Government proposes to provide access to the CTTT for residents and operators of registrable boarding houses in order to provide a low-cost mechanism for dispute resolution. Boarding houses accommodating five or more residents will be required to register under the new Boarding Houses Act.

Where the proposed occupancy principles are not followed, a resident or landlord could apply to the CTTT for resolution of the matter. It is also proposed that NSW Fair Trading provide free-of-charge advice on parties' rights and responsibilities relating to occupancy agreements. This advice would be provided by telephone and at Fair Trading Centres.

**Recommendation 8: page 54 - The Committee recommends that the NSW Government consider providing individuals with the ability to enforce the Local Government (General) Regulation 2005, Schedule 2 in a low-cost tribunal, such as the Consumer, Trader and Tenancy Tribunal.**

#### **Response**

Not supported.

Local councils currently have the power to issue an order in response to a complaint from a resident of a boarding house that the operator is not complying with the standards for places of shared accommodation prescribed by the Local Government (General) Regulation 2005. The NSW Government proposes to extend those standards to smaller boarding houses with 5 to 11 residents that are not currently covered by the Regulation.

The Government proposes to strengthen the powers of local councils to enforce compliance with standards by introducing a circumstantial evidence provision based

on existing provisions in the *Environmental Planning and Assessment Act 1979* relating to backpacker accommodation and brothels, that would provide for the use of circumstantial evidence by a court in proceedings for a warrant or to remedy relevant offences by registrable boarding houses.

Compliance with the standards would also be improved by the proposed introduction of a requirement that local councils within 12 months of registration of a boarding house and after providing the operator with reasonable notice, inspect the boarding house to determine compliance with planning, building and fire safety requirements and make any necessary orders. Exceptions will apply where such an inspection has taken place within the 12- month period prior to registration.

The proposed granting of access to the CTTT will provide boarding house residents with a further mechanism for bringing complaints about the operation of a boarding house. The Government considers that, in light of the new measures, ability to enforce the Local Government (General) Regulation 2005 in a low-cost tribunal is not required.

**Recommendation 9: page 56 - The Committee recommends that NSW universities work with the NSW Government to provide more detailed advice regarding accommodation options and students' rights to international students before their arrival in Australia, including:**

- **provision of a register of boarding houses; and**
- **advice that if students use a registered boarding house, they will be living in accommodation with mandatory standards and regular Government inspections.**

### **Response**

Supported in principle.

The "Study in Australia" online portal hosted by the Commonwealth provides a range of information for international students, including information on personal safety, student support services and tenancy and employment rights and responsibilities. The portal is linked to State and Territory websites including the website of NSW Fair Trading, which provides a consumer guide for international students on a range of topics including accommodation. Under the proposed registration system for boarding houses, a public register will be established including the business name, address and tier of registration of all boarding houses.

All boarding houses are currently required to comply with planning, building and fire safety requirements. These requirements are enforced by local councils. Compliance with standards will be strengthened through the introduction of a requirement that local councils within 12 months of registration of a boarding house and after providing the operator with reasonable notice, inspect the boarding house to determine compliance with planning, building and fire safety requirements and make any necessary orders. Exceptions will apply where such an inspection has taken place within the 12- month period prior to registration.

Issues relating to student accommodation have been raised as part of the NSW Planning System Review. A Green Paper containing recommendations for a new

planning system is currently being prepared for the Minister for Planning and Infrastructure for release by the end of May 2012. Once the Green Paper has been released, the Government will consult with the Vice Chancellors of NSW universities on how accommodation options for international students can be improved.

**Recommendation 10: page 66 - The Committee recommends that the NSW Government consider introducing legislation to provide for compulsory registration of all boarding houses with a system of regular inspections.**

**Response**

Legislation is supported, with some limitations.

The Government proposes to introduce legislation requiring registration of all boarding houses with five or more residents. All boarding houses are currently required to comply with planning, building and fire safety requirements. These requirements are enforced by local councils. Compliance with standards will be strengthened through the introduction of a requirement that local councils within 12 months of registration of a boarding house and after providing the operator with reasonable notice, inspect the boarding house to determine compliance with planning, building and fire safety requirements and make any necessary orders. Exceptions will apply where such an inspection has taken place within the 12- month period prior to registration.

**Recommendation 11: page 66 - The Committee recommends that the interaction of the planning approval process and the proposed registration process be clarified in legislation.**

**Response**

Supported.

Drafting of the proposed boarding houses Act will reflect requirements for approval under the planning system.

**Recommendation 12: page 66 - The Committee recommends that legislation governing the registration of boarding houses should be drafted in such a manner that the *Privacy and Personal Information and Protection Act 1998* applies; OR – that legislation governing the registration of boarding houses should be drafted as an exception to the *Privacy and Personal Information and Protection Act 1998*.**

**Response**

Supported.

The *Privacy and Personal Information and Protection Act 1998* (PIPA Act) permits agencies to collect personal information where it is reasonably necessary for a lawful purpose. The Government considers that the information proposed for collection in the register of boarding houses is within the current parameters of the PIPA Act and therefore does not require a specific exemption.



**Recommendation 13: page 67 - The Committee recommends that the NSW Government consider introducing legislation to incorporate mandatory standards, all regulations for boarding houses and a system of inspection for all boarding houses into a single statute.**

**Response**

Legislation is supported, with some limitations.

The Government proposes to introduce a new Boarding Houses Act incorporating:

- the existing provisions of the *Youth and Community Services Act 1973* and the currently proposed amendments to those provisions;
- provisions governing the register; and
- provisions governing principles-based occupancy rights.

The new Act will also include clear cross-referencing of provisions in other legislation that impose requirements on boarding houses. The new legislation will be supported by a new website to be operated by NSW Fair Trading, which will contain information about occupancy right, standards and other relevant matters.

**Recommendation 14: page 67 - The Committee recommends that the NSW Government consider introducing legislation to provide for the application of Local Government (General) Regulation 2005 to all boarding houses.**

**Response**

Amendment of the regulation is supported, with some limitations.

The Government proposes to extend the requirements for places of shared accommodation to all boarding houses accommodating five or more people.

**Recommendation 15: page 80 - The Committee recommends the NSW Government review penalty provisions in relation to the operation of illegal boarding houses. The Committee recommends that the review consider:**

- **increased penalties for offences, to reflect the significant impact that illegal boarding houses can have on neighbouring residents, the welfare of students, and the reputation of NSW as an educational service provider; and**
- **the definitions of key terms such as 'proprietor' and 'boarding house', which will be crucial to the enforcement of any regulatory regime.**

**Response**

Supported.

The Government proposes to create new offences under the Boarding Houses Act in relation to the new requirements for registration of boarding houses, with significant penalties for non-compliance.

- Failing to register/provide registrable information: 100 penalty units (\$11,000) for individuals, and 200 penalty units for corporations (\$22,000);

- Providing false/misleading information: 30 penalty units (\$3,300) for individuals, and 60 penalty units (\$6,600) for corporations; and
- Failing to notify a change in particulars: 10 penalty units (\$1,100) for individuals, and 20 penalty units (\$2,200) for corporations.

These registration offences will be available in addition to the existing offences under the *Environmental Planning and Assessment Act 1979*, which carry a maximum penalty of 10,000 penalty units (\$1.1 million) and a further daily penalty of up to 1,000 penalty units (\$110,000). In addition, the *Environmental Planning and Assessment Regulation 2000* provides for penalty notices of the following value to be served in relation to the operation of boarding houses.

- \$750 for individuals and \$1,500 for corporations (Class 1b building) or \$1,500 for individuals and \$3,000 for corporations (Class 3 building) where development is permitted but no planning permission has been obtained.
- \$1,500 for individuals and \$3,000 for corporations where development is prohibited in the area.

The Government considers that the new requirement for registration, the associated penalties for failing to register and the proposed requirement for councils to inspect premises within 12 months of registration should create strong incentives for operators to comply with planning requirements.

The definition of key terms will be finalised during the drafting of the proposed Boarding Houses Act. The Government proposes that the definition of a 'boarding house' for registration purposes be based on the following elements.

1. a "boarding house" is a building or complex of buildings that:
  - a. is currently required to be licensed under the *Youth and Community Services Act 1973*; or
  - b. is occupied or available for occupation by five or more residents, who are not members of the family of the business owner or caretaker, where residents have a right to occupy one or more rooms as a principal place of residence, in return for the payment of a fee, but do not have a right to occupy the whole premises.
2. notwithstanding 1(b) above, a boarding house does not include hotel accommodation, motel accommodation, serviced apartments, bed and breakfasts, backpackers accommodation, student accommodation provided by an educational body, accommodation that is specifically linked to the provision of health, aged or disability care (e.g. a nursing home or other aged care facility), a retirement village, residential parks, crisis accommodation, group homes, accommodation for employees in connection with their work (or contractors in connection with their service contracts), or any arrangement to which the *Residential Tenancies Act 2010* applies or ought to apply.

**Finding 1: page 78 - The Committee finds that the proposals in the *Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010* to amend Section 118B of the *Environmental Planning and Assessment Act 1979* are worthy of further consideration in regard to their implications for other investigations conducted under the Act.**

**Response**

Not supported.

Under the *Environmental Planning and Assessment Act 1979*, councils already have powers to take samples or photographs in connection with any inspection. These powers are commensurate with the risks present in boarding house operations.

The Government considers that powers to take films, audio, video or other recordings in connection with inspections are more appropriately reserved for substantial or state significant development for which the Minister for Planning is the consent or approval authority. These evidence-gathering powers are directly linked to the greater risks posed by larger developments, such as major industrial or agricultural enterprises, and are based on similar powers available to the environmental regulator.

**Finding 2: page 79 - In relation to unauthorised boarding houses or other places of shared accommodation, the Committee finds sufficient evidence to support the argument that councils' current powers of entry are inadequate.**

**The Committee has heard from residents, councils and other stakeholders on the problems caused by those whose practices exploit students, endanger health and damage communities.**

**However, whilst the Committee recognises the significant public interest in addressing this matter, it notes the important questions of property rights and individual freedoms which are raised by proposals to remove the requirement that a council officer first obtain a search warrant before entering a private residence.**

**The Committee finds that these matters require further detailed analysis (including comparative analysis of other jurisdictions) before any definitive conclusions may be made.**

**Finding 3: page 79 - In relation to powers of entry, the Committee finds that balancing the need to satisfy the burden of proof with property holders' rights requires further detailed analysis (including comparative analysis of other jurisdictions) before any definitive conclusions may be made.**

**Response**

Noted.

The Government proposes to introduce a circumstantial evidence provision based on existing provisions in the *Environmental Planning and Assessment Act 1979* relating to backpacker accommodation and brothels, providing for the use of circumstantial

evidence by a court in proceedings for a warrant or to remedy relevant offences by registrable boarding houses including offences in relation to the registration system. This change will assist local councils in obtaining a warrant to gain entry to a property for enforcement purposes.

The Government considers that the available evidence was not sufficient to justify the creation of a power to enter residential premises without the owner's permission or warrant. This would have constituted a significant extension of existing powers and would not necessarily resolve the problem given the potential for a boarding house owner to legally challenge the entry, and the need for the council to then establish to another authority that it had a "reasonable belief" in deciding to seek entry.