

LEGISLATIVE ASSEMBLY

Social Policy Committee

REPORT 1/55 – NOVEMBER 2011

INQUIRY INTO INTERNATIONAL STUDENT ACCOMMODATION IN NEW SOUTH WALES

REPORTS
COMMITTEES

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

Contents

Membership and Staff	ii
Terms of Reference	iii
Chair’s Foreword	iv
Executive Summary	vi
List of Findings and Recommendations	ix
CHAPTER ONE – BACKGROUND	13
TERMS OF REFERENCE	13
OTHER INQUIRIES	14
THE SCALE AND VALUE OF THE EDUCATION SECTOR FOR NSW AND AUSTRALIA	20
CHAPTER TWO – SUPPLY OF ACCOMMODATION	24
FACTORS AFFECTING SUPPLY	24
HOW THE LACK OF SUPPLY IMPACTS ON STUDENTS AND COMMUNITIES	27
PROPOSALS TO INCREASE SUPPLY	28
CHAPTER THREE – RIGHTS, STANDARDS AND ENFORCEMENT	46
EXTENT OF PROBLEM	47
DISPUTE RESOLUTION	49
ADVICE TO STUDENTS	55
ACCOMMODATION STANDARDS	56
ENFORCEMENT	67
PENALTIES	74
DEFINITIONS	75
APPENDIX ONE – LIST OF SUBMISSIONS	81
APPENDIX TWO – LIST OF WITNESSES	84
21 OCTOBER 2011, MACQUARIE ROOM PARLIAMENT HOUSE	84
APPENDIX THREE – SITE VISIT, RYDE AND MACQUARIE UNIVERSITY	86
3 NOVEMBER 2011	86
APPENDIX FOUR – SITE VISIT, CITY OF SYDNEY COUNCIL	92
7 NOVEMBER 2011	92
APPENDIX FIVE – EXTRACTS FROM MINUTES	94

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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.

Chair's Foreword

It gives me great pleasure to present this report, which is the Committee's first report of the 55th Parliament.

There is no doubt that the report addresses a complex policy area; one driven by international demand and influenced by the actions of all three tiers of Australian government and by the public and private sector. Its stakeholders range from the NSW resident who may have spent decades living in a suburb, to the visiting international student who has spent only a few hours in the country.

In completing the inquiry within the timeframe requested, the Committee is aware that this report does not provide a panacea for all of the problems which have arisen through the rapid growth of this highly valuable industry. Rather, it is an exposition of the practical difficulties identified by stakeholders in their evidence to the Committee and any solutions which they have proposed.

Where it appears to the Committee that there is merit in those proposals, then the report makes a number of recommendations. Those recommendations address both the causes of a shortage in the supply of student accommodation and its symptoms of overcrowded or illegal accommodation.

The Committee's recommendations and findings include: a greater focus on the needs of student accommodation within the NSW planning system; the introduction of travel concessions for all international students to improve their opportunities to find suitable accommodation; and legislation to improve the standards of student accommodation and the dispute resolutions and legal protections available to them.

As the Committee concluded its inquiry, the Deputy Premier and Minister for Trade and Investment, the Hon. Andrew Stoner MP, announced on 11 November 2011, that the NSW Government is establishing an international education and research taskforce. The taskforce will work with the NSW Government to develop a 10 year International Education and Research Industry Action Plan for the sector.

I have no hesitation in commending the recommendations and findings of this inquiry to the taskforce, for their consideration.

On behalf of the Committee, I would like to thank all those who have made submissions and given evidence to the inquiry. I would also like to thank the City of Ryde, Macquarie University and the City of Sydney for hosting the Committee's site visits.

I would also like to thank my fellow Committee Members for the enthusiasm and diligence which they have brought to this inquiry.

Finally, my thanks to the committee staff: Vicki Buchbach, Jonathan Elliott, Ben Connors, Amy Bauder and Jenny Whight, for their outstanding professionalism in supporting the inquiry and preparing this report.

A handwritten signature in blue ink, appearing to read 'Bruce Notley-Smith', with a stylized flourish at the end.

Bruce Notley-Smith MP
Chair

Executive Summary

Chapter 1 of this report provides the background to this inquiry. The inquiry terms of reference are set out, as are the processes by which the inquiry was conducted. These included a call for submissions, a public hearing and site visits to the City of Ryde and the City of Sydney.

The Chapter notes that there have been a number of reviews, inquiries and initiatives which are of relevance to the Committee's inquiry. These are:

- The Baird review of the *Education Services for Overseas Students (ESOS) Act 2000 (Cth)*;
- The Senate Education, Employment and Workplace Relations References Committee inquiry into the Welfare of International Students;
- The NSW Government's establishment of the Premier's Council on International Education;
- The strategic review of the student visa program by the Hon Michael Knight AO; and
- The NSW Government's Interdepartmental Committee on the Reform of Shared Private Residential Services (IDC).

Finally, the chapter provides an overview of the scale and value of the international education sector, noting that education services are Australia's third largest individual export item. NSW received the highest export income from international students of all Australian states in 2010, with the income valued at \$6.5 billion.

Chapter 2 of the report addresses the principal question of supply. It reviews the evidence which the Committee received on what factors affect the supply of accommodation for international students and proposed measures to enhance and ensure that supply.

Factors affecting the supply of student accommodation are noted as being:

- The rapid growth of the international education sector, bringing a rise in demand for student accommodation in a country where traditionally domestic demand had been low;
- The impact of the Global Financial Crisis on the financing of infrastructure projects;
- The length of construction timeframes for purpose built student accommodation; and
- A general shortage of affordable housing for low income earners in NSW.

Proposed measures to enhance and ensure supply are noted as being:

- Reviewing the extent to which the NSW Planning System adequately defines student housing and provides guidance and incentives for its construction (Recommendations 1 & 2);
- The introduction of travel concessions for all international students in NSW, in order to increase their opportunities to source appropriate accommodation and improve their personal safety (Recommendation 3);
- Greater utilisation of the Home stay model, where an international student is accommodated by an individual or a family whilst they are studying in Australia. The

mandatory implementation and regulation of standards for the Home stay industry are proposed (Recommendations 4 & 5); and

- Financial incentives and subsidies to increase the supply of affordable rental accommodation for international students.

Chapter 3 of the report examines the evidence received regarding dispute resolution mechanisms and legal protections available to students in accommodation and the proposals which the Committee received to extend greater protection to student residents not covered by the *Residential Tenancies Act 2010*. These include:

- The adoption of 'Occupancy Agreements' to cover the rights of those currently outside the scope of the Residential Tenancies Act (Rec 6);
- Access to the Consumer, Trader and Tenancy Tribunal (CTTT) to be granted to those currently outside the scope of the Residential Tenancies Act (Rec 7); and
- The right of residents to enforce standards for accommodation contained in the Local Government (General) Regulation 2005, Schedule 2 (Rec 8).

The Chapter then goes on to discuss the advice and assistance given to international students about accommodation in Australia and their rights regarding accommodation. Proposals to improve the advice and assistance students receive include:

- Provision of more detailed information to students before their arrival in Australia including the proposed register of boarding houses discussed in 'Standards of Accommodation' (Rec 9).

The information received from stakeholders regarding standards of student accommodation and proposals to improve and maintain the standards of accommodation are considered. These include:

- A system of compulsory registration of all boarding houses with regular inspections (Rec 10);
- Clarification of the planning approval process and the proposed registration process (Rec 11);
- That legislation governing the registration of boarding houses should be compatible with the *Privacy and Personal Information and Protection Act 1998* (Rec 12);
- Simplifying the current system of multiple acts regulating boarding houses by incorporating mandatory standards and all regulations regarding boarding houses into a single Act (Rec 13); and
- Applying the standards contained in the Local Government (General) Regulation 2005, Schedule 2 to all boarding houses (Rec 14).

The Chapter then concludes with a discussion of the extent of unauthorised student accommodation, the practical issues with the regulatory regime for this type of accommodation, and proposals to improve the effectiveness of the regulatory regime contained in the *Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010*. These include:

- Defining the type of evidence that may be relied on by councils when taking enforcement action regarding student accommodation (Finding 1);
- Discussion of the issues involved regarding the proposal to extend the powers of entry of council officers for investigation for enforcement action (Finding 2);

- Discussion of the issues involved regarding the proposal to reverse the onus of proof in enforcement proceedings (Finding 3); and
- Penalties for breaches of the legislation (Rec 15).

List of Findings and Recommendations

RECOMMENDATION 1 _____ 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 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.

RECOMMENDATION 2 _____ 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.

RECOMMENDATION 3 _____ 38

The Committee recommends that the NSW Government consider introducing travel concessions for all international students.

RECOMMENDATION 4 _____ 41

The Committee recommends that the NSW Government gives consideration to introducing legislation to mandate the implementation and regulation of reasonable standards for Homestay.

RECOMMENDATION 5 _____ 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.

RECOMMENDATION 6 _____ 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*.

RECOMMENDATION 7	54
<p>The Committee recommends that the NSW Government consider introducing legislation to give landlords or 'grantors' and student residents outside the current scope of the <i>Residential Tenancies Act 2010</i> access to the Consumer, Trader and Tenancy Tribunal to assist in the resolution of disputes.</p>	
RECOMMENDATION 8	54
<p>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.</p>	
RECOMMENDATION 9	56
<p>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:</p>	
<ul style="list-style-type: none"> • 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. 	
RECOMMENDATION 10	66
<p>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.</p>	
RECOMMENDATION 11	66
<p>The Committee recommends that the interaction of the planning approval process and the proposed registration process be clarified in legislation.</p>	
RECOMMENDATION 12	66
<p>The Committee recommends that legislation governing the registration of boarding houses should be drafted in such a manner that the <i>Privacy and Personal Information and Protection Act 1998</i> applies; OR – that legislation governing the registration of boarding houses should be drafted as an exception to the <i>Privacy and Personal Information and Protection Act 1998</i>.</p>	
RECOMMENDATION 13	67
<p>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.</p>	
RECOMMENDATION 14	67
<p>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.</p>	
FINDING 1	78
<p>The Committee finds that the proposals in the <i>Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010</i> to amend Section 118B of the <i>Environmental Planning</i></p>	

and Assessment Act 1979 are worthy of further consideration in regard to their implications for other investigations conducted under the Act.

FINDING 2 _____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 _____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.

RECOMMENDATION 15 _____ 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.

Chapter One – Background

TERMS OF REFERENCE

1.1 The Premier referred an inquiry into international student accommodation in New South Wales to the Committee on 9 August 2011. The Committee adopted the terms of reference at a meeting on 8 September 2011.

1.2 In the letter referring the inquiry the Premier requested the Committee conduct an inquiry into:

...the supply, operation and regulation of affordable student accommodation and other accommodation used by students in NSW, with particular attention to accommodation for international students, and make recommendations on appropriate legislative reform.¹

1.3 The terms of reference were as follows:

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.

BACKGROUND TO THE INQUIRY

1.4 On 26 November 2010, Victor Dominello MP, member for Ryde, introduced a Private Member's Bill, the *Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010*, which aimed to regulate the operation of boarding houses and other places of shared accommodation. In his Agreement in Principle speech Mr Dominello stated that he intended the bill to serve as a consultation draft to "enable local councils, boarding house operators, tenants' advocacy

¹ Letter from Premier to Committee Chair referring the inquiry, 8 August 2011, p. 1.

groups and the wider community to provide feedback and make recommendations."²

1.5 Mr Dominello's bill lapsed as a result of the prorogation of Parliament on 22 December 2010.

1.6 In his August 2011 letter to the Committee, the Premier highlighted that the inquiry referral was fulfilling a promise he made to refer the issues to a Parliamentary Committee.

CONDUCT OF THE INQUIRY

1.7 The Committee made a public call for submissions by advertising in *The Daily Telegraph* on Wednesday 21 September 2011 and writing directly to key stakeholders, such as councils, universities, student groups and consulates, inviting them to make a submission.

1.8 The Committee received 70 submissions from individuals, residents' groups, councils, universities, student groups, student accommodation providers, consulates and other interest or advocacy groups (See Appendix 1 for a list of submissions).

1.9 The Committee held a public hearing at Parliament House on Friday 21 October 2011 and took evidence from 18 witnesses (See Appendix 2 for a list witnesses).

1.10 The Committee also conducted site visits to the City of Ryde, where a public meeting with residents and council staff was held, Macquarie University, where members inspected university accommodation and the City of Sydney Council (reports on these site visits are included in Appendices 3 & 4).

OTHER INQUIRIES

1.11 This inquiry has been conducted in the wake of a number of other inquiries, reviews and reports on the provision of education and services to international students in Australia.

Baird Review

1.12 In August 2009 the then Federal Minister for Education, the Hon Julia Gillard MP, asked the Hon Bruce Baird AM to review the *Education Services for Overseas Students Act 2000 (Cth)* (ESOS) and report back to the Government with changes designed to ensure Australia continues to offer world-class quality international education. The ESOS Act and associated legislation is the legal framework governing the responsibility of education providers towards students who come to Australia on a student visa.

1.13 The review considered the need for enhancements to the ESOS legal framework in four key areas set out in the terms of reference: supporting the interests of

² Mr Victor Dominello MP, Agreement in Principle Speech, *Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010*, Friday 26 November 2010, <http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/0/472E0B4709310D59CA2577F1002D11FA>, accessed 18 November 2011.

students; delivering quality as the cornerstone of Australian education; effective regulation; and sustainability of the international education sector. This review was recommended by the Bradley Review of Australian Higher Education to take place before 2012. It was brought forward because of the need to address the significant growth in the number of overseas students; the changing composition of the international student body and emerging issues in the sector, including recent attacks against international students.

- 1.14 Following the release of an issues paper on 23 September 2009, Mr Baird held wide ranging consultations with stakeholders including students and their peak bodies, education industry bodies, regulators, state and territory government officials, embassies, and Members of Parliament. The review received around 150 formal submissions and more than 300 people registered with the online discussion forum. The review also considered recommendations from an International Student Roundtable held in September 2009.
- 1.15 Concerns raised during consultations included reports of: false and misleading information provided by some education agents, poor quality education and training, gross over-enrolments, lack of appropriate education facilities, providers paying exorbitant commissions to education agents, limited financial scrutiny of providers, ineffective application and enforcement of regulation, low English language entry requirements, poor social inclusion of students in their institutions and the broader community, inadequate complaints and dispute handling services and some duplication between Commonwealth and states and territories leading to confusion and unnecessary regulatory burden. Deficient and expensive student accommodation and lack of transport concessions were also raised as issues of ongoing concern; however these were out of the scope of the review.
- 1.16 On Tuesday 9 March 2010, Mr Baird presented his final report to Government, with recommendations for legislative changes to better protect international students and the integrity of the Australian international education sector. The report noted that ESOS can play a major role in achieving the objectives of improving education quality, tightening registration, creating stronger, simpler, smarter regulation, informing and supporting student choices and enhancing the student experience. However, it also noted an urgent need to develop, implement and enforce relevant and robust solutions to address those issues outside of ESOS, including student safety, accommodation, employment, transport and health matters.
- 1.17 The Report included recommendations to better support students, including requirements for improved information prior to students coming to Australia and during their stay; an enhanced process to address the role of education agents; more support to study and live in Australia, including having somewhere to go when problems arise, and stronger consumer protection mechanisms. In particular, the Report recommended that all providers must utilise a statutorily independent complaints body as their external complaints and appeals process, and recommended that the *Ombudsman Act 1976* be amended to extend the

Commonwealth Ombudsman's jurisdiction to include those providers without access to such a body.³

1.18 In order to ensure that students can make accurate comparisons about their study options the Report recommended amending ESOS by requiring all providers to provide specific types of information including information about local employment opportunities, the accommodation situation in the locality and safety risks.⁴ In relation to providing better support for international students, the review further expressed the view that international students should have access to equitable travel concessions.⁵ In addition, it stated that providers should play a more active role in securing accommodation for international students⁶.

1.19 At the time of the Baird Report, a number of complementary processes were also in progress, including the development of the Council of Australian Government (COAG) strategy for international students, reforms to the quality frameworks for the vocational education and training sector, the imminent establishment of the national regulators in both the vocational education and training and higher education sectors and the transfer of the marketing functions of Australia's international education brand.

1.20 The Government's response to the Baird Review recommendations:

Following the release of the Final Report, the Government indicated its intention to implement a number of recommendations immediately and consult further with the international education sector on its response to the remaining recommendations.... On 7 December 2010 the Government released the discussion paper Reforming ESOS: Consultations to build a stronger, simpler, smarter framework for international education in Australia to seek feedback on the second phase of its response to the Baird Review. Many questions focussed on the appropriate way to assess and manage risk.⁷

1.21 The first stage response to the recommendations was implemented with the passage of the *Education Services for Overseas Students Legislation Amendment Bill 2010* and enactment of the *Education Services for Overseas Students Legislation Amendment Act 2011* on 8 April 2011. The Act aims to protect international students by further strengthening education providers' registration

³ Bruce Baird, *Stronger, simpler, smarter ESOS: supporting international students*, February 2010, Australian Government, http://www.aei.gov.au/About-AEI/Current-Initiatives/ESOS-Review/Documents/ESOS_REview_Final_Report_Feb_2010_pdf.pdf, accessed 18 November 2011, Recommendation 8, p. 29.

⁴ Bruce Baird, *Stronger, simpler, smarter ESOS: supporting international students*, February 2010, Australian Government, Recommendation 10, p. 36.

⁵ Bruce Baird, *Stronger, simpler, smarter ESOS: supporting international students*, February 2010, Australian Government, Finding (vi), p. xi.

⁶ Bruce Baird, *Stronger, simpler, smarter ESOS: supporting international students*, February 2010, Australian Government, Finding (vii) p. xi.

⁷ Australian Education International, Australian Government, 'Baird Review of the Education Services for Overseas Students (ESOS) Act 2000', <http://shop.aei.gov.au/AEI/GovernmentActivities/InternationalStudentsTaskforce/ReviewESOSAct/Default.htm>., accessed 15 November 2011.

requirements and expanding the role of the Commonwealth Ombudsman for external complaints by international students relating to private providers.

- 1.22 On 6 July 2011, the Government introduced the *Education Services for Overseas Students (Registration Charges) Amendment Bill 2011* and the *Education Services for Overseas Students Amendment (Registration Charges Consequential) Bill 2011* creating a new fee structure and an entry to market charge further streamlining the registration system and strengthening risk management.
- 1.23 On 22 September 2011, legislation was introduced into the House of Representative to amend the *Education Services for Overseas Students (ESOS) Act 2000* as part of the Government's second phase response to the Baird Review recommendations.

Education, Employment and Workplace Relations References Committee Report

- 1.24 In 2009, the Senate Education, Employment and Workplace Relations (EEWR) References Committee conducted an inquiry into the following matters:
- (a) the roles and responsibilities of education providers, migration and education agents, state and federal governments, and relevant departments and embassies, in ensuring the quality and adequacy in information, advice, service delivery and support, with particular reference to:
 - i. student safety,
 - ii. adequate and affordable accommodation,
 - iii. social inclusion,
 - iv. student visa requirements,
 - v. adequate international student supports and advocacy,
 - vi. employment rights and protections from exploitation, and
 - vii. appropriate pathways to permanency;
 - (b) the identification of quality benchmarks and controls for service, advice and support for international students studying at an Australian education institution; and
 - (c) any other related matters.
- 1.25 This inquiry was initiated following a series of attacks upon Indian students in Melbourne and Sydney. These incidents damaged Australia's reputation as a safe destination for overseas students. The reporting of the incidents made headlines in the Indian press. Subsequent investigation by the relevant Australian authorities broadened the focus to consideration of the quality of education being marketed to foreign students. What emerged were frustrations experienced by international students in their dealings with the educational

institutions and with the lack of reliable information to enable them to have realistic expectations about studying and living in Australia.

- 1.26 The Committee made sixteen recommendations addressing a range of problems identified in the course of the inquiry. The Committee noted that travel concessions for international students were available in all states and territories but not in Victoria and New South Wales and recommended that the Commonwealth urge those states to introduce them.⁸ The Committee also recommended that travel concessions be audited and standardised nationally.⁹
- 1.27 To improve students' access to reliable information about accommodation options in Australia, the Committee recommended that education and training providers be required to provide up-to-date information on their website regarding accommodation, including information regarding tenancy rights and responsibilities. In the view of the Committee this could be via a link to the Study in Australia website, or also using localised information.¹⁰

Premier's Council on International Education

- 1.28 In 2010 the NSW Government announced the establishment of the Premier's Council on International Education and 13 initiatives to improve students' experiences of studying, working and living in New South Wales. The new strategy was based on recommendations of the NSW Ministerial Taskforce on International Education which was established in November 2008 and brought together representatives from across the international education sector.¹¹
- 1.29 Among the initiatives, the Government announced that the Minister for Education and Training would write to all NSW international education providers about the importance of taking an active role in providing assistance to post-school international students in securing accommodation during the first semester of their studies in New South Wales.
- 1.30 To improve access to public transport assistance, the Government undertook to investigate a number of strategies including making the pre-purchase of tickets easier; sponsorship; encouraging the purchase of longer-term pre-purchased tickets which offer even greater discounts; and working with the NSW Department of Transport and Infrastructure to provide specific, online information that clearly outlines travel options for international students in New South Wales.

⁸ Parliament of Australia, Senate Education, Employment and Workplace Relations References Committee, *Welfare of International Students*, 25 November 2009, http://www.aph.gov.au/Senate/committee/eet_ctte/international_students/report/report.pdf, accessed 15 November 2011, p. 32.

⁹ Parliament of Australia, Senate Education, Employment and Workplace Relations References Committee, *Welfare of International Students*, 25 November 2009, p. 32.

¹⁰ Parliament of Australia, Senate Education, Employment and Workplace Relations References Committee, *Welfare of International Students*, 25 November 2009, p. 38.

¹¹ NSW Government, *NSW Government Initiatives on International Education 2010: A Response to the Findings of the New South Wales Ministerial Taskforce on International Education*, http://www.internationalstudents.nsw.gov.au/data/assets/pdf_file/0006/79143/NSW_Government_Initiatives_on_International_Education_2010.pdf, accessed 15 November 2011.

- 1.31 The Premier's Council on International Education was also established in response to the safety concerns of the Indian community following alleged attacks that occurred in Victoria. As stated in Parliament by the former Minister for Education and Training, Hon Verity Firth MP, the Premier's Council on International Education would ensure that the Government would be working more closely with the NSW Police Force as well as universities and colleges to raise awareness among international students of their personal safety, to improve provider quality and to build on social inclusion initiatives.¹²
- 1.32 The continuation of the Premier's Council on International Education is currently under consideration by the new government.

Knight Review

- 1.33 In December 2010, the Commonwealth Government commissioned the Hon Michael Knight AO to conduct the first strategic review of the student visa program. The aim of the review was to look at how the student visa program could best support Australia's international education sector while at the same time preserving the integrity of Australia's migration program.
- 1.34 Mr Knight made his final report on 30 June 2011 with 41 recommendations. These included a series of measures to improve the competitiveness of Australia's universities in the global market for international students; an addition to the eligibility criteria for a student visa; an extension of students' permitted hours of work from 20 to 40 hours per week; an increase in graduates' post-study work rights; and streamlining of visa processing for universities.¹³
- 1.35 The Government supported in principle all of Mr Knight's recommendations, and the first phase of implementation of the recommendations commenced on 5 November 2011. Stage two of the implementation is due to take place in mid 2012 and the third and final stage is due to take place in 2013.¹⁴

IDC

- 1.36 Since 2008 the NSW Government has been exploring a new framework for accommodation standards in boarding houses through its Interdepartmental Committee on the Reform of Shared Private Residential Services (IDC) which includes representatives of eight relevant NSW agencies. In December 2010, the IDC issued a Discussion Paper which explored a range of options for boarding house sector reform as well as improving experiences for residents, and increasing the supply of boarding house accommodation by providing incentives for industry operators. In evaluating the options, the IDC considered a number of earlier reviews conducted in NSW and nationally. The IDC took into account reforms implemented in other jurisdictions as well as considering the views of a

¹² Parliament of NSW, Legislative Assembly, Hansard, Questions Without Notice, 24 February 2010, Item 16 <http://bulletin/Prod/parlment/hansart.nsf/0/5C013B37760064D4CA2576DB00827016>

¹³ Michael Knight, *Strategic Review of the Student Visa Program 2011*, 30 June 2011, Australian Government, <http://www.immi.gov.au/students/pdf/2011-knight-review.pdf>, accessed 10 November 2011.

¹⁴ Australian Government, Department of Immigration and Citizenship, *Fact Sheet – Stage One Implementation of the Knight Review Changes to the Student Visa Program*, November 2011, <http://www.immi.gov.au/students/pdf/stage-one-knight-review-changes-fact-sheet.pdf>, accessed 10 November 2011.

range of government agencies, residents, advocates, operators and providers of support services.

1.37 The Discussion Paper put forward seven preferred options for reform:

- a consistent regulatory framework in the form of new legislation;
- a differential registration system for boarding houses that takes into account the differing needs of clients;
- a legislative requirement for a principles based approach to occupancy rights and responsibilities for all boarding houses;
- accommodation and operational standards for all boarding houses to be contained in one key piece of legislation specific to boarding houses where appropriate and feasible;
- service standards for proprietors providing accommodation services to vulnerable residents;
- appropriate incentives to assist boarding house proprietors to remain viable;
- greater engagement from the non-government sector in providing services to boarding house residents.¹⁵

THE SCALE AND VALUE OF THE EDUCATION SECTOR FOR NSW AND AUSTRALIA

Composition of the international education sector

1.38 The international education sector is made up of:

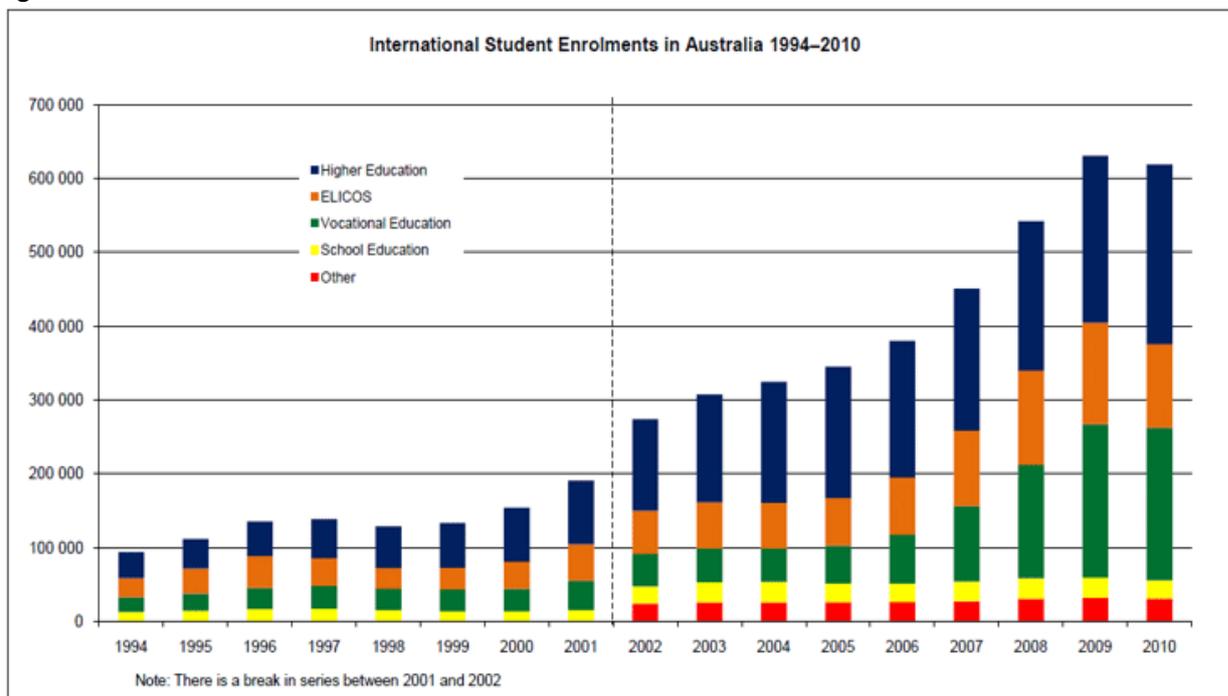
- i) Universities and private higher education providers;
- ii) Vocational education and training (VET) providers¹⁶;
- iii) English language intensive courses for overseas students (ELICOS); and
- iv) Secondary school providers.

¹⁵ NSW Interdepartmental Committee on Reform of Shared Private Residential Services (IDC), *Boarding House Reform Discussion Paper*, August 2011, Department of Family and Community Services NSW, Ageing, Disability and Home Care, http://www.adhc.nsw.gov.au/_data/assets/file/0019/250417/Boarding_House_Reform_Discussion_Paper_Nov2011.pdf, accessed 18 November 2011.

¹⁶ This includes both private and public providers offering VET courses. Private VET providers are those such as employer training organisations, industry associations, and registered training organisations such as business colleges. Public VET providers include government-funded TAFE colleges, agricultural colleges and some higher education institutions.

1.39 The number of student enrolments across all these parts of the international education sector has increased over the past ten years. The table below provides a snapshot of enrolment trends nationwide from 1994.¹⁷

Figure 1: International Student Enrolments in Australia 1994-2010¹⁸



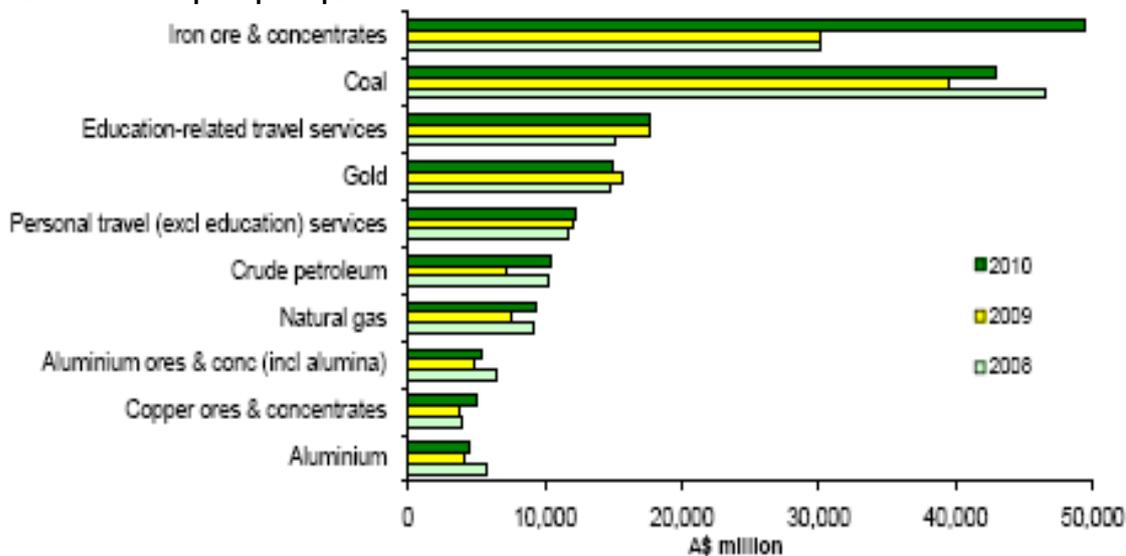
1.40 Education services are Australia's third largest individual export item, valued at \$17.7 billion a year (see Figure 2). Education-related travel services cover expenditure, such as tuition fees and living expenses, by foreign students in Australia.¹⁹

¹⁷ Australian Education International, *International Student Data 2010*, from <http://www.aei.gov.au/research/International-Student-Data/Pages/InternationalStudentData2010.aspx>, accessed 10 November 2011.

¹⁸ Australian Education International, *International Student Data 2010*, from <http://www.aei.gov.au/research/International-Student-Data/Pages/InternationalStudentData2010.aspx>, accessed 10 November 2011. Please note that the sources of information used to calculate the number of enrolments changed in 2001 and as such comparison of the pre and post 2001 figures is of limited validity.

¹⁹ Australian Bureau of Statistics, 1350.0 – Australian Economic Indicators, Jan 2002, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1350.0Technical%20Note650Jan%202002?OpenDocument>, accessed 10 November 2011.

Figure 2: Australia's principal exports²⁰



Based on ABS trade data on the DFAT STARS database and ABS catalogue 5302.0.

- 1.41 An April 2009 Access Economics report claims that each international student contributes an average of \$28,921 in value added to the Australian economy, including the associated visits from friends and family.²¹
- 1.42 In 2010 there were 230,290 international students in NSW, which includes students in higher education, VET, ELICOS, secondary school and other non-award or enabling courses.²² Of these 84,398 were enrolled in higher education, 82,061 in VET, and 45,957 in ELICOS courses.
- 1.43 The income generated in NSW in 2010 by education services for international students was \$6.5 billion. NSW received the highest export income from international students of all Australian states in 2010, with a 36.7% share.²³ The figure below provides a survey of export income by all states and territories in Australia.

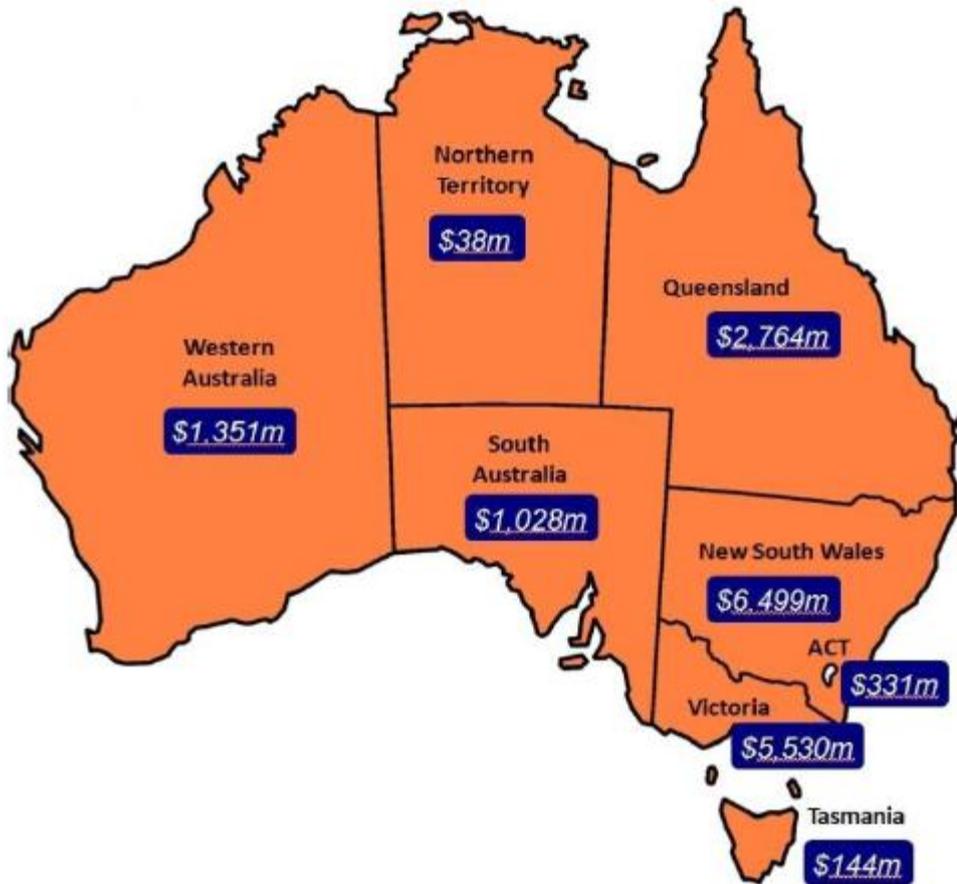
²⁰ Market Information and Research Section, Department of Foreign Affairs and Trade, *Composition of Trade Australia 2010*, <http://www.dfat.gov.au/publications/stats-pubs/cot-cy-2010.pdf>, accessed 10 November 2011

²¹ Access Economics, *The Australian education sector and the economic contribution of international students*, http://www.pieronline.org/_Upload/Files/TheAustralianEducationSectorandtheEconomicContributionofInternationalStudents-246.pdf, accessed 10 November 2011.

²² Australian Government, Australian Education International, 'International student data 2011', http://www.aei.gov.au/research/International-Student-Data/Documents/INTERNATIONAL%20STUDENT%20DATA/2011/Pivot_Basic.zip, accessed 14 November 2011.

²³ Australian Government, Australian Education International, 'Research Snapshot: Export Income to Australia from Education Services in 2010', May 2011, <http://aei.gov.au/research/Research-Snapshots/Documents/2011061803%20Export%20Income%202010.pdf>, accessed 15 November 2011.

Figure 3: Education services export income by state and territory²⁴



²⁴ Australian Government, Australian Education International, 'Research Snapshot: Export Income to Australia from Education Services in 2010', May 2011, <http://aei.gov.au/research/Research-Snapshots/Documents/2011061803%20Export%20Income%202010.pdf>, accessed 15 November 2011.

Chapter Two – Supply of accommodation

- 2.1 The key issue for this inquiry is the identification of those factors which affect the supply of accommodation for students and of measures to enhance and ensure that supply.
- 2.2 This Chapter reviews the evidence the Committee received on what those factors are and what steps can be taken to ensure that the international education sector (worth \$6.5 billion to NSW in 2010) remains viable and provides a positive experience both for international students and those communities with whom they interact.

FACTORS AFFECTING SUPPLY

The rapid growth of the industry and the impact of the GFC

- 2.3 In 2010, the Hon Bruce Baird AM, completed his review of the *Education Services for Overseas Students Act 2000 (Cth)*. In presenting the report to the then Deputy Prime Minister and Minister for Education, the Hon Julia Gillard MP, he noted that:

Extraordinary growth in the sector, from 228 119 students in 2002 to 491 565 students in 2009 resulting in an industry worth \$17.2 billion in 2008-09, has enhanced Australia's cultural richness, strengthened diplomatic ties and delivered great economic benefits to Australia. It has also put a number of pressures on the sector in terms of education quality, regulatory capacity and infrastructure.²⁵

- 2.4 During the course of its inquiry, the Committee heard evidence from the global education provider Navitas, that the increase in demand from international students for accommodation in Australia posed particular difficulties for the country because historically this had not been a requirement for most domestic students. This meant that Australia was starting from a low base compared to its market competitors:

Australia is the only English speaking, higher education system where domestic students primarily study at their local university. The prevailing model that has developed in Australia has therefore been a commuter student model. Prior to 2000 those students requiring student accommodation represented a relatively small minority of the overall student population on most Australian campuses...

This is in stark contrast to other major higher education markets such as the UK, the US, Canada and New Zealand all of whom have traditionally seen large numbers of students require purpose built accommodation.²⁶

- 2.5 Navitas noted in its submission to the Committee there had been significant investment by both the universities and private sector in providing new, purpose-

²⁵ Bruce Baird, *Stronger, simpler, smarter ESOS: supporting international students*, February 2010, Australian Government, http://www.aei.gov.au/About-AEI/Current-Initiatives/ESOS-Review/Documents/ESOS_REview_Final_Report_Feb_2010_pdf.pdf, accessed 18 November 2011, Recommendation 10, p. 36.

²⁶ Navitas, *Submission 27*, pp. 2 -3.

built accommodation in NSW, with supply almost doubling over the last five years.

- 2.6 However construction timeframes for student accommodation were relatively long, with a typical purpose-built student accommodation project taking from two to five years to complete, meaning that there would be a lag of supply to demand as infrastructure responded to market growth.²⁷
- 2.7 The Committee heard evidence from New South Wales, Macquarie and Wollongong universities that their efforts to address the shortfall in student accommodation had been impacted by the economic climate.
- 2.8 Macquarie and Wollongong Universities noted that, in order to be viable, developments needed to achieve a threshold of 200 -250 beds, and that following the Global Financial Crisis it was proving very difficult to raise the levels of debt required for projects of that scale:

Mr COOMBS: Deirdre [Deirdre Anderson, Macquarie University, p. 38] mentioned financing. We did that before the GFC. So Transfield, through a company called Campus Living Villages, developed that. We provided the land and they get about a 40-year lease over the land and then we are able to control the price increases to keep it reasonable for students. We did not have to guarantee the supply of beds for that. But it was the last deal of its kind that was done before the GFC. Now you cannot get finance for that, as Deirdre said. We would have to guarantee supplying the student with beds, then you have got all the risk, so you may as well be operating it yourself...

Mr ISRAEL: Perhaps if I could comment on that, because the University of Wollongong tried to follow a similar model to the UNSW experience post-GFC with land that we had at our disposal on campus. Absolutely, the financial and commercial arrangements that came through that negotiation was such that most of the risk would have landed with the university at significant additional cost to capital in comparison to what the university could achieve if it directly funded the beds.

So that is the path we have taken. However, the issue for us is that we operate within a credit-rating framework and we are concerned to protect the university's credit rating so we are pushing now towards the ceilings of borrowings within the credit-rating framework to facilitate that further development.²⁸

- 2.9 Similarly Mr Iain Rothwell, Navitas, told the Committee that:

The GFC at the moment has created a major funding problem. There is no doubt that you just will not get - I do not think there has been a student housing facility come to market in the last three years. You cannot get debt on it basically at the rate that would be required. So you need high levels of debt but you need it structured at a very low rate. It is not a commercial development. It is really

²⁷ Navitas, *Submission 27*, pp 5 – 6; and Mr Iain Rothwell, General Manager, Special Projects, Navitas, *Transcript of evidence*, 21 October 2011, p. 11.

²⁸ Mr Jason Aaron Coombs, Director of Strategy, University of New South Wales, and Mr Damien Israel, Department Vice Principal (Finance and IT), Wollongong University, *Transcript of evidence*, 21 October 2011, p. 42.

acquiring infrastructure more equivalent to a toll road. And you need a debt facility that is similar to that.²⁹

- 2.10 It was acknowledged that any university funding for student accommodation also needed to compete with other infrastructure demands such as research and teaching facilities, seen as 'more core business' by those institutions.³⁰

The general shortage of low cost accommodation

- 2.11 The Committee heard evidence that the increase in demand from international students for accommodation coincided with a general shortage of affordable housing for low income earners in NSW.

- 2.12 For example, the City of Sydney told the Committee that:

During 2002-2009 the average rent for a two bedroom dwelling in the inner city rose from \$350 per week in 2002 to \$500 per week in 2009. This particularly impacts the very low, low and moderate income groups (which includes students) wishing to live in the inner-city.³¹

- 2.13 The result was that International students came into competition with other groups seeking low cost housing and were often outbid by those groups.

- 2.14 Mr Greg Woodhams, Willoughby City Council, informed the Committee that:

One of the issues that we grapple with at Chatswood is the competition, if you like, between student accommodation and what we want for essential workers because a lot of staff come from the Central Coast because they cannot afford to live in the area and they can outbid the student accommodation. So I think that is some of the dynamic of pushing the students to illegal boarding houses where the essential workers may want to have more formalised accommodation in units in affordable housing. But both of them are competing for the same housing stock and I do not know how to resolve it.³²

- 2.15 Those international students who were only studying for a short period of time were particularly disadvantaged in the accommodation market because standard leases, which were generally for longer periods, were unsuitable for their needs.

- 2.16 Ms Deirdre Anderson, Macquarie University, cited her experience of Ryde:

One of the limitations that we believe we currently have within the Ryde area is that many of the students that live in the area come through Navitas or the early-accelerated English programs. They tend to be live in Ryde for anywhere between 6 and 20 weeks, making it very difficult for them to access the normal

²⁹ Mr Iain Rothwell, General Manager, Special Projects, Navitas, *Transcript of evidence*, 21 October 2011, p. 13.

³⁰ See Navitas, *Submission 27*, p 7 and Ms Deirdre Anderson, Deputy Vice-Chancellor, Macquarie University, *Transcript of evidence*, 21 October 2011, p. 38.

³¹ City of Sydney Council, *Submission 66*, p. 11.

³² Mr Greg Woodhams, Director, Environmental Services, Willoughby City Council, *Transcript of evidence*, 21 October 2011, p. 28.

leasing arrangements that most people would attempt to involve themselves in. We believe that is the most vulnerable group followed by our first-year students.³³

HOW THE LACK OF SUPPLY IMPACTS ON STUDENTS AND COMMUNITIES

- 2.17 The Committee heard evidence on the effects that a shortage of student accommodation was having on students and communities. These included unauthorised and overcrowded student housing and which was having detrimental effect on neighbourhoods.
- 2.18 Mr Alan Patrick, Marsfield Against Residential Suffocation, described the effect of providing education services, without matching the demand for accommodation, to the Committee:

One-third of Macquarie University up until a year or so ago were international foreign students. That is magnificent really, but where do they live? 1500-1800 beds is all that the university can provide on and off campus.

You may as well have the Olympics and say: Athletes, come from around the world. We will give you the best venue, running track, shot put, cycling, roads, traffic control lights, but you will find somewhere to stay on your own. Not good enough. Not good enough.³⁴

- 2.19 As a result of overcrowding in poorly maintained and sometimes unauthorised accommodation, residents in the Marsfield/Ryde area had experienced disruption and loss of visual amenity:

Grass grows to lengths that are outstanding, steroidal growth of grass because the lawns are just not maintained. So the maintenance of properties fall down because that is an expense. We see that the investors are not interested in spending money. They are interested in accumulating it. So the visual amenity of the streets in Marsfield has fallen down. There is no two ways about it.³⁵

- 2.20 The Committee received numerous submissions from concerned residents in the Ryde area and heard from a number of them at its public consultation on 3 November 2011.³⁶

- 2.21 The submission from Marsfield Against Residential Suffocation, noted that the 'root cause of the problem was the number of people living in one house'. A properly run shared accommodation with, for example, five students in five genuine bedrooms, would in all likelihood have no greater impact on neighbours than a normal family home.³⁷

³³ Ms Deirdre Anderson, Deputy Vice-Chancellor, Macquarie University, *Transcript of evidence*, 21 October 2011, p. 39.

³⁴ Mr Alan Patrick, Marsfield Against Residential Suffocation, *Transcript of evidence*, 21 October 2011, p. 2.

³⁵ Mr Alan Patrick, Marsfield Against Residential Suffocation, *Transcript of evidence*, 21 October 2011, p. 6.

³⁶ See submissions to the inquiry from affected residents on the Committee's web page:

<http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/V3ListSubmissions?open&ParentUNID=DC9D582CB59FCC16CA2579050015E108> and Appendix 1.

³⁷ Marsfield Against Residential Suffocation, *Submission 16*, p. 3. Other submissions to the inquiry from affected residents may be viewed on the Committee's web page

- 2.22 Ms Natalie Karam, Arc @ UNSW Limited, gave the Committee her personal experience of seeking accommodation in Pymont:

...I went to look for a place to rent in Pymont and I walked into one of the bedrooms and there were five beds in the one bedroom when I went to inspect that place.

CHAIR: What were they charging?

Ms KARAM: Generally the going rate for these places would be between \$200 to \$250 a week for one bed.

CHAIR: For a room with five beds?

Ms KARAM: That is correct. There are several examples like that.³⁸

- 2.23 Similarly Mr Thomson Ch'ng, Council of International Students Australia, told the Committee that:

...you look for accommodation places and the photos seem to be very nice, but when we come to Australia the reality is different. A lot of us get very disappointed definitely. When we are having Skype conferencing with our family and our friends back in our home country we would not want to show them the background where they have seven of our friends living in the one place. Our places back in our home community are much more comfortable than this one and that does not make sense because we come to a different country and obviously in Australia, with Sydney especially, one of the top ten cities of the world, and we want - we expect something different.³⁹

- 2.24 Issues of rights, standards and enforcement are addressed in the next chapter of this report.

PROPOSALS TO INCREASE SUPPLY

Planning reform

- 2.25 During the course of the inquiry the Committee received a number of proposed planning reforms aimed at increasing the supply of student accommodation.

Planning instruments

- 2.26 The Committee received submissions and heard evidence from stakeholders on the effects of the State Environment Planning Policy on Affordable Rental Housing (ARH SEPP).
- 2.27 For the Property Owner's Association of NSW Inc, the ARH SEPP was a 'step in the right direction' which encouraged the construction of student accommodation; however they were of the view that it 'falls short on many fronts'. Noting that heritage buildings 'form the bulk of existing legitimate accommodation facilities in established areas of Sydney', the Association recommended the removal of the

<<http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/V3ListSubmissions?open&ParentUNID=DC9D582CB59FCC16CA2579050015E108>>

³⁸ Ms Natalie Karam, Chair, Arc@UNSW Limited, *Transcript of Evidence*, 21 October 2011, p. 48.

³⁹ Mr Thomson Ch'ng, National Secretary, Council of International Students Australia, *Transcript of evidence*, 21 October 2011, p. 57.

heritage constraint in the ARH SEPP and the mitigation of red tape in order to provide 'greater certainty to operators wishing to expand supply of legitimate accommodation'.⁴⁰

2.28 The Property Council of Australia requested that consideration be given to whether *SEPP 65 – Design Quality of Residential Flat Development* compliance should be required for boarding houses used for student accommodation given the associated time and cost implications. The Council noted that a 2010 discussion paper on possible changes to the *State Environmental Planning Policy (Infrastructure) 2007* had not been progressed. The paper discussed a defined 'University Student House' with an associated complying development regime.⁴¹

2.29 In its submission Randwick City Council considered whether the ARH SEPP was achieving the objectives of facilitating affordable housing which did not impact adversely on neighbourhoods:

The new Boarding House standards in the Affordable Housing SEPP require certain levels of amenity to be achieved for new boarding houses. It is however noted that the SEPP standards may make it more expensive to rent out, given the higher amenity standards e.g. bathroom and kitchenette.

On the other hand, local residents have expressed concerns to the Council about the small dwelling size permissible under the SEPP, and the potential impacts to the surrounding neighbourhood, in terms of traffic, parking and general amenity levels.⁴²

2.30 Whilst acknowledging that the ARH SEPP positively addressed the rental needs of a wide range of tenant groups, the University of Newcastle questioned whether the ARH SEPP adequately addressed the needs of international students. The University noted that the requirements for an on-site manager 'can increase rental costs beyond an affordable level' and that the large scale of such accommodation facilities could present a security concern for those travelling away from home for the first time and dealing with communication and cultural challenges.⁴³

2.31 The City of Newcastle commented that it was 'unclear yet whether the ARH SEPP is resulting in better outcomes in terms of student accommodation quality'. The Council was of the view that:

- The communal living room provisions in the ARH SEPP needed to be clarified;
- The assumptions in the ARH SEPP about lower car use may be unfounded in areas as they rely on better transport than may actually be achieved;
- The ARH SEPP has limited controls for design and landscaping; and

⁴⁰ Property Owner's Association of NSW Inc., *Submission 42*, p. 3.

⁴¹ Property Council of Australia, *Submission 17*, p. 2.

⁴² Randwick City Council, *Submission 60*, p. 4.

⁴³ University of Newcastle, *Submission 54*, pp. 2-3.

- Privately developed boarding houses might not be achieving appropriate outcomes in terms of student specific housing.⁴⁴

2.32 The Committee received a number of submissions and heard evidence in relation to the effects of the ARH SEPP on council planning powers.

2.33 It was the City of Ryde's position that local planning controls be the determinants of boarding house applications. The Council was developing its own boarding house policy and favoured an exemption from ARH SEPP (once certain State Government requirements were met).

2.34 The Hon. Victor Dominello, MP, Member for Ryde, was of the view that:

We need to immediately repeal the Affordable Rental Housing SEPP and return power to local council.⁴⁵

2.35 For Marsfield Against Residential Suffocation :

The SEPP is a jaundiced, biased instrument which delivers little local government control, so thus the residents get angry and cranky and disrupted.⁴⁶

2.36 In her submission to the inquiry, Dr Gloria Mao was of the view that:

...the ARH SEPP is being used as a mechanism for property developers to overstep local council development controls.⁴⁷

Definitional issues for student accommodation

2.37 Several submissions to the Inquiry cited the lack of a definition of student housing in the NSW planning system, as an issue which adversely affected supply. For example, the Property Council of Australia was of the view that:

Student or university housing is not specifically defined in the context of the NSW planning system; student housing is typically characterised as a boarding house. As such, the delivery of student housing, whether on or off campus, does not receive any specific or dedicated incentives beyond those offered to boarding housing...⁴⁸

2.38 Macquarie University informed the Committee that:

Student accommodation is a unique form of residential development with its own distinct issues and considerations. However, within the NSW Planning System there is no clear Student Accommodation Policy and, moreover, student accommodation is not specifically defined. (Instead, it typically tends to be characterised as boarding house accommodation.)⁴⁹

⁴⁴ City of Newcastle, *Submission 56*, pp. 4-5.

⁴⁵ The Hon. Victor Dominello, MP, Member for Ryde, *Submission 40*, p.5.

⁴⁶ Mr Alan Patrick, Marsfield Against Residential Suffocation, *Transcript of evidence*, 21 October 2011, p. 2.

⁴⁷ Dr Gloria Mao, *Submission 36*, p. 1.

⁴⁸ Property Council of Australia, *Submission 17*, p 1.

⁴⁹ Macquarie University, *Submission 15*, p. 3.

- 2.39 Macquarie University considered that this lack of clarity adversely affected universities and other developers when considering, designing and applying to develop student accommodation. It was of the view that:

The current incentives offered under the ARH SEPP (and perhaps those under the National Rental Affordability Scheme (NRAS) should be reviewed and extended to encourage the delivery of sustainable, appropriate student accommodation.⁵⁰

- 2.40 The City of Newcastle submitted that:

There are currently no standards applicable to student housing apart from those referred to under the ARH SEPP [Affordable Housing State Environment Planning Policy] in terms of room size, location and zonings.⁵¹

- 2.41 And:

...while the ARH SEPP aims to assist housing affordability, it is of concern that the use of privately developed boarding houses may not be achieving appropriate outcomes in terms of specific student housing (eg. International students potentially exposed to greater difficulties in finding reasonable accommodation or subject to rorts/scams).⁵²

- 2.42 The submission noted that the Affordable Housing State Environment Planning Policy had introduced boarding houses as a permissible use in residential zones where they had been previously prohibited and that whilst this was unpopular with residents it had addressed the need for boarding houses near the University.

- 2.43 Amendments to the Affordable Housing State Environment Planning Policy in May 2011 had 'significantly constrained' boarding houses in residential areas requiring that sites could only be located within 400m of a Local Centre or Mixed Use zone. The City of Newcastle stated that:

Whilst in theory this requirement is strategically appropriate, there are assumptions about the nature of those zones and where educational facilities actually operate which is not accurate in reality.⁵³

- 2.44 Navitas contended that student housing was a unique category of housing which required its own specific planning controls.

...other alternatives are around the planning process and recognising student accommodation as a specific category rather than as a hostel or medium or high density development, but as a specific category.

As I said, it might, for example, have changes in relation to the design requirements of house, it might have been changes in relation to the parking requirements. The other aspect is that most international students do not have cars. They rely on public transport. So there is no use burdening a development, for example, with a car parking requirement, certainly visitor parking perhaps. But for the residents most of them do not have cars. So they are the sort of initiatives.

⁵⁰ Macquarie University, *Submission 15*, pp. 2-3.

⁵¹ City of Newcastle, *Submission 56*, p. 3.

⁵² City of Newcastle, *Submission 56*, p. 5.

⁵³ City of Newcastle, *Submission 56*, p. 4.

I guess there is two aspects to the supply. One is encouraging the universities themselves to engage in these developments and the alternative is to create an environment for the private sector.⁵⁴

- 2.45 Willoughby and Ryde city councils were of the view that affordable housing and student accommodation were essentially the same but Willoughby City Council gave an example of where they had wanted to facilitate an application for student accommodation and had encountered a lack of any standards to guide the developers:

Recently we had a development application for student accommodation, a nine-storey residential building with common areas and a manager with reduced car parking requirements. That was approved. But we had all the residents in the area opposing it but the council wanted to support that sort of development. So the difficulty we had was trying to establish standards for that sort of development to happen easily. So whilst we want to facilitate it, there was not the guidance in any standards that we could rely on to help developers build those sorts of buildings which are well located, well designed with all the safety and accommodation that the students need.⁵⁵

- 2.46 The University of New South Wales submitted that whilst student housing fitted the NSW Government Community Housing Division's description of community housing, universities were not recognised as providers of community housing and 'student accommodation remains outside all policy areas for affordable housing'.⁵⁶

- 2.47 For Macquarie University and the University of New South Wales uncertainty about how affordable housing is defined and where student accommodation fitted that definition had made it difficult to access funding under the National Rental Affordability Scheme:

Even in the last couple of years our ability to access NRAS funding, our ability to understand minimum requirements of student accommodation is somewhat difficult to make any sense of. Such things as floor space capabilities, type of community environment that you want to build within that accommodation becomes almost at the whim of the developers. We believe that part of being solve this issue is to consistently have benchmarks of what does affordable housing mean and what does student housing within that context require...

...We believe that we can follow a similar strategy to what we have seen, particularly in the city of Melbourne, around development and management controls and also about the way in which they are managing definitions of shared housing and student accommodation. The New South Wales Government can learn a lot from the Victorian Government.⁵⁷

⁵⁴ Mr Iain Rothwell, General Manager, Special Projects, Navitas, *Transcript of evidence*, 21 October 2011, p. 15 and Navitas, *Submission 27*, p 6.

⁵⁵ Mr Greg Woodhams, Director, Environmental Services, Willoughby City Council, *Transcript of evidence*, 21 October 2011, p. 24 and p.30.

⁵⁶ University of New South Wales, *Submission 20*, p. 4.

⁵⁷ Ms Deirdre Anderson, Deputy Vice-Chancellor, Macquarie University, *Transcript of evidence*, 21 October 2011, pp. 38 - 39

- 2.48 The City of Sydney Council gave evidence to the Committee that it did include student housing in its definition of affordable housing and had 'supported the universities in their applications for DAs for affordable housing, purpose-built affordable housing units within their boundaries.'⁵⁸

Encouraging small scale, low impact providers

- 2.49 Randwick City Council raised with the Committee the option of extending the current provisions which apply to bed and breakfast accommodation to student accommodation or boarding houses. This might enable small scale low impact places of accommodation to take up some of the demand:

Mr WERESZCZYNSKI: The other thing, I agree with Scott [Scott Cox, Ryde Council p.25], in that it may be a good idea to look at formally exempting the fair dinkum one or two lodgers scenario for people, so that there is no confusion with that being an alleged, unauthorised place of shared accommodation, but also perhaps addressing supply and looking at the provisions of 'complying development' and expanding those to small-scale low impact places of shared accommodation for student accommodation. Similar to the lines of the provisions for bed and breakfast.

Mr SIDOTI: So complying developments do not actually accommodate boarding houses as such?

Mr WERESZCZYNSKI: Purely at the current moment, it only relates to small-scale bed and breakfast accommodation. It could quite easily be extended if it was appropriate with appropriate standard and controls to student accommodation or boarding houses.⁵⁹

Strategic planning

- 2.50 For Willoughby City Council there needed to be better strategic planning allowing for targeting of planning controls and incentives:

Roman [Mr Roman Wereszczynski, Randwick City Council] has talked about the use of complying development, with better strategic planning to find out where is the best location for the accommodation to happen and then target the planning controls including complying development for those areas to encourage them. That is probably going to be around universities and around major transport nodes and then guiding the planning controls to enable that to happen. One aim is to try and remove as much of the regulatory controls on boarding house operators to just make it easier for them. So that is the regulation side of the housing.

Then for the incentive side, you need to find the economic factors that are constraining it and that is usually going to be floor space ratio and development yield. So freeing up the development potential to allow some retail or mixed uses to be able to cross-subsidise the boarding house component. The boarding house component can occupy its own stratum and then you can sell off the rest of the

⁵⁸ Mr Andrew Thomas, Executive Manager, City Planning, City of Sydney Council, *Transcript of evidence*, 21 October 2011, p. 7.

⁵⁹ Mr Roman Wereszczynski, Manager, Health, Building and Regulatory Services, Randwick City Council, *Transcript of evidence*, 21 October 2011, p.26. See also Randwick City Council, *Submission 60*, p. 3.

building in other suites to be able to subsidise the boarding house. But unless those economics work out, they will not come together.⁶⁰

- 2.51 Ryde Council's submission to the inquiry included a research report which they had commissioned on the issue of unauthorised boarding houses and the provision of student accommodation.
- 2.52 The report discusses means of increasing housing stock and affordability through existing components of the ARH SEPP (such as planning concessions and floor-space bonuses) and concessions on levies and chargers for developers building affordable accommodation for the rental market.
- 2.53 The report also acknowledged that new affordable rental developments in low density residential areas faced community and council opposition but saw the permitting of 'granny flats' in main dwellings as one means of increasing affordable housing options without loss of local amenity.⁶¹

The view of the Committee

- 2.54 There are a number of reviews currently in train which, in the Committee's view could provide the necessary processes and expertise to consider in detail the issues which the Committee's inquiry has identified.
- 2.55 Firstly, the Committee commends the actions of the NSW Government in establishing an Affordable Housing Taskforce, under Mr Andrew McAnulty, which will harness the skills of planning experts to drive new planning policies aimed at delivering affordable housing which meets community needs and respects local character.⁶²

RECOMMENDATION 1

The Committee recommends that the Affordable Housing Taskforce specifically considers affordable student housing as part of its review, considering questions such as:

- **Whether the 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.**

⁶⁰ Mr Greg Woodhams, Director, Environmental Services, Willoughby City Council, *Transcript of evidence*, p. 30.

⁶¹ City of Ryde Council, *Submission 22*, Attachment 1, p. 47.

⁶² NSW Government, Planning and Infrastructure, 'The Affordable Housing Taskforce, Fact Sheet: August 2011', <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=BQlIfkKWJM%3D&tabid=313&language=en-AU>, August 2011, accessed 7 November 2011.

- 2.56 Secondly, the Committee notes the work currently being undertaken by the NSW Government to establish an independent panel to review the *Environmental Planning and Assessment Act 1979*, along with the broader planning system.

RECOMMENDATION 2

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.**

Transport concessions

- 2.57 During the course of the inquiry the Committee considered the likely effects of cheaper transport on the supply of accommodation to international students.

Greater accommodation choices

- 2.58 The cost of transport was identified as an issue which influenced students' choice of accommodation, with many students seeking accommodation within walking distance of the educational institution, because they could not afford to travel further afield.

- 2.59 Ms Heather Richards, Council of International Students Australia, told the Committee that:

If you look at the amount it would cost you for a whole week, you might be looking at say an extra \$40 in transport so when you compare the cost of accommodation that obviously is a factor. So if, for example, you look at accommodation in Newcastle city it can actually be quite cheap, say \$120 a week, considering that is next to the beach and everything, that is really cheap, whereas accommodation close to the university may be \$100 per week, \$110 or \$130. And if you are looking at potentially \$40 transport costs as well that means that the accommodation is not really feasible anymore. So I would say that is an issue.⁶³

- 2.60 The submission from Wollongong Undergraduate Students' Association noted that many international students living in private rental accommodation in the Illawarra were locating themselves in the more expensive suburbs of North Wollongong in order to access free transport provided by the University or the NSW Government.

⁶³ Ms Heather Richards, Vice President, Council of International Students Australia, *Transcript of evidence*, 21 October 2011, p. 56.

- 2.61 The submission recommended the NSW Government introduce public transport concessions for international students as this would improve student's access to private rental accommodation.⁶⁴
- 2.62 Currently the NSW Government provides travel concessions to domestic students subject to certain eligibility criteria. Students on temporary visas, such as full fee paying overseas students, are not eligible except when in receipt of an approved Australian Government International Exchange or sponsorship program.⁶⁵
- 2.63 The University of Newcastle submitted that:
- Provision of public transport concessions to international students would support students' capacity to seek accommodation in other suburbs with more affordable rent consistent with reasonable market value.⁶⁶
- 2.64 The submission from the Consulate General of the People's Republic of China also cited travel costs as a factor in international student housing and proposed travel concessions as a means of increasing their accommodation options.⁶⁷
- 2.65 In relation to Sydney, Marsfield Against Residential Suffocation, viewed travel concessions as a short term solution to the problems of students 'clustering' in particular areas:
- The short-term solution is you give students cheaper travel. Therefore, there is the chance of them being accommodated and spread in a broader base around Sydney rather than just have to be on the doorstep.⁶⁸
- 2.66 Willoughby City Council and City of Ryde informed the Committee that travel concessions could alleviate overcrowding in their areas:
- CHAIR:** A number of the submissions have suggested that international students should be provided with subsidised public transport, a student discount, which may seek to push students to live further away from the campus. Do you have any views on that?
- Ms DE CARVALHO:** Seems reasonable. It certainly would bring Chatswood in to make it much more interesting to live there because we feed to Macquarie, but we also feed to the city campuses and we have the Gore Hill TAFE and the College of Law at St Leonards.
- CHAIR:** Apparently New South Wales and the Victoria are the only States that do not do it
- Mr COX:** It certainly would assist in Ryde.⁶⁹

⁶⁴ Wollongong Undergraduate Students' Association, *Submission 18*, pp. 2-4.

⁶⁵ NSW Government, Transport for NSW, 'Travel concessions for young people and students', <http://www.transport.nsw.gov.au/content/travel-concessions-young-people-and-students>, accessed 8 November 2011.

⁶⁶ University of Newcastle, *Submission 54*, p.1.

⁶⁷ Consulate General of the People's Republic of China, *Submission 47*, p.1. – 3.

⁶⁸ Mr Alan Patrick, Marsfield Against Residential Suffocation, *Transcript of evidence*, 21 October 2011, p. 5.

Student safety

- 2.67 Whilst Wollongong University felt that travel concessions would have a direct impact, Macquarie University did not consider that they would necessarily provide international students with cheaper accommodation given the lack of affordable accommodation in Sydney. They would however assist in terms of student safety:

CHAIR: I asked earlier witnesses about what had been their experience with providing subsidised transport where it did have the effect of dispersing the student diaspora. Can you reassure the Committee anymore that that might--

Ms ANDERSON: If they were dispersing somewhere in Sydney that had affordable accommodation, it would be fantastic. But it is not just an issue, it is a problem in our example within Ryde and the broader Ryde area. Affordable housing is an issue for Sydney and New South Wales. So I could not say that it would make a difference, but what I can say is that it would keep them safer because they would be able to live closer to a train line or a bus location. It would minimise the need for them to take accommodation that is so far away from any public transport. They cannot afford to use public transport so they are walking everywhere in vulnerable environments working very late at night in terms of trying to get access to employment. So I think that it is part of the solution, it is not the whole solution. In answer to your question, if they were being dispersed to somewhere where there was accommodation it would help, but at the moment affordable housing is an issue right across Sydney.

Mr PENNINGTON: I would like to comment on the question of transport concessions. Certainly it is our direct experience that it would make a difference.⁷⁰

- 2.68 For Charles Sturt University, travel for students attending regional universities was an issue which impacted on safety and their accommodation options, with the University recommending travel concessions for all students.⁷¹

Equity

- 2.69 Navitas considered subsidised public transport to be a factor which could alleviate the problems of students clustering around educational institutions but they also informed the Committee that concessions for international students was perceived as an issue of equity:

I have just been at the Australian International Education Conference in South Australia. It is one of the issues that comes up about both New South Wales and Victoria. It is seen from the student perspective as an equity issue I think. It is quite symbolic. I know Government has done some financial analysis of it. I actually think that there is an opportunity to look a little bit harder at that. That in fact the issue really is about treating students similarly to domestic students. I am not sure of the

⁶⁹ Ms Noni De Carvalho, Senior Development Planner, Willoughby City Council and Mr Scott Cox, Manager, Environmental Health and Building, City of Ryde, *Transcript of evidence*, 21 October 2011, p. 31.

⁷⁰ Ms Deirdre Anderson, Deputy Vice-Chancellor, Macquarie University and Mr Nigel Pennington, General Manager Accommodation Services, *Transcript of evidence*, 21 October 2011, p. 41.

⁷¹ Charles Sturt University, *Submission 25*, p. 2.

costs. There is very wide divergent views about the costing of it. It would be perceived very favourably.⁷²

- 2.70 The Committee notes that the negative perceptions of international students in relation to their lack of travel concessions, was also a matter which was commented upon in the Baird review and the report of the Senate Standing Committee on Education, Employment & Workplace Relations into the Welfare of International Students.⁷³

The view of the Committee

- 2.71 The Committee acknowledges that the availability of affordable accommodation is also an issue for domestic students, who currently receive travel concessions, and that extending the concession to international students is unlikely to entirely resolve the question of supply.
- 2.72 However, based on the evidence it has received, the Committee considers that transport concessions for international students will improve their opportunities to source appropriate and affordable accommodation and help to alleviate overcrowding in particular areas.
- 2.73 The Committee is also of the view, that travel concessions for international students would improve their personal safety by allowing them to use public transport rather than walking in particular areas, or at particular times, which may place them at risk.
- 2.74 The Committee is conscious of the \$6.5 billion value of the international education sector to NSW and regards the extension of travel concessions to all international students as an important element in securing the State's position as the largest provider of international education.
- 2.75 The Committee recommends that the NSW Government consider introducing travel concessions for all international students. However, in making this recommendation, the Committee does not wish to be prescriptive on how those travel concessions are funded. The Committee considers the question of whether travel concessions are directly funded by Government, or through other means, requires further investigation and is properly a question for Government.

RECOMMENDATION 3

The Committee recommends that the NSW Government consider introducing travel concessions for all international students.

⁷² Ms Helen Zimmerman, Executive General Manager, Navitas English, Navitas, *Transcript of Evidence*, p. 14.

⁷³ Bruce Baird, *Stronger, simpler, smarter ESOS: supporting international students*, February 2010, Australian Government, http://www.aei.gov.au/About-AEI/Current-Initiatives/ESOS-Review/Documents/ESOS_REview_Final_Report_Feb_2010_pdf.pdf, accessed 18 November 2011, p. 41; Parliament of Australia, Senate Standing Committee on Education, Employment and Workplace Relations, *Welfare of International Students*, 25 November 2009, http://www.aph.gov.au/Senate/committee/eet_ctte/international_students/report/report.pdf, accessed 15 November 2011.

Homestay

- 2.76 Whilst accommodation affiliated with education providers and the private rental market were common choices for international students the Committee also considered the option of Homestay.
- 2.77 Homestay is where an international student is accommodated by an individual or a family whilst they are studying in Australia. The host provides the student with their basic needs in return for a fee. This income is tax free (non assessable) for up to 2 students being hosted.⁷⁴
- 2.78 The University of Newcastle explained in their submission to the inquiry that their Homestay program:
- ...offers accommodation to international students with families in the community. This option provides students with a host family and opportunities to practise their English and participate in the daily activities of a local family.⁷⁵
- 2.79 Navitas considered that whilst Homestay was 'seen as a safe way of coming into the country and getting the flavour of it' but whilst there had been a big emphasis on Homestay:
- That has changed. But I think it is not necessarily that student preferences have changed. It may be that there is difficulty in finding a homestay close to where they are studying...
- ...I just think that every generation students change, so that there are other options that they look at as well.⁷⁶

Standards for Homestay

- 2.80 Dr Chris Martin, Tenants Union of NSW, gave evidence to the Committee on some difficulties with Homestay arrangements:
- We have had reports particularly from the Tenants Advice Service that there are problems, usually around people arriving and what they get is not quite what they were promised in terms of the quality or size or the degree of sharing that they will be experiencing at particular rent levels. Some of these people are really taking advantage of the lack of knowledge of international students as to local market conditions. That is a grievance that comes up from time to time too. And problems with getting bonds back.⁷⁷
- 2.81 The submission from the City of Ryde included a research report commissioned by the City. The report noted that Homestay 'appears to be an ideal option for increasing the range and volume of student accommodation' within the City. However it identified 'Homestay provided in a non-compliant environment' as a particular concern.

⁷⁴ Australian Homestay Network, 'Host Frequently Asked Questions', <http://www.homestaynetwork.org/public/host-faqs>, accessed 8 November 2011.

⁷⁵ University of Newcastle, *Submission 54*, p. 1.

⁷⁶ Ms Helen Zimmerman, Executive General Manager, Navitas English, Navitas, *Transcript of Evidence*, p. 12.

⁷⁷ Dr Chris Martin, Senior Policy Officer, Tenants' Union of NSW, *Transcript of Evidence*, 21 October 2011, p. 35.

The main issue is the perceived high cost in relation to the services provided. Homestay is charged at \$260 including all meals...At focus groups students also raised issues about poor quality food, such as fish fingers, sandwiches and burgers being served as meals by Homestay hosts.⁷⁸

- 2.82 The Committee also received a submission from the Australian Homestay Network (AHN), which was established 5 years ago in response to a need for improvement in the Homestay business.
- 2.83 AHN operates in every state and territory on mainland Australia, and processes over 10,000 applications annually. AHN provided the Committee with a summary of the 8 standards it requires of providers and clients of Homestay:
1. An online portal which supplies individual logins for agents, hosts, students and the University where appropriate 'real time' data and reports relating to current placements, arrivals and history can be monitored and accessed.
 2. A professional approach to ensuring that there is appropriate insurance cover for Hosts as determined by Industry from time to time and in line with Industry expectations.
 3. Documented and guaranteed training for host families and supporting data to demonstrate the training has taken place.
 4. A documented agreement to be signed by all host families outlining the appropriate policies and host obligations.
 5. A documented and comprehensive approach to student orientation.
 6. A student policy which guides student expectations and outlines responsibilities of the host family and Homestay provider.
 7. A 24/7 emergency and critical incident phone support strategy which meets an acceptable and professional standard.
 8. An ongoing strategy for the management and accountability of all payments made on behalf of the student homestay host.⁷⁹
- 2.84 In relation to standard 6, for example, expectations of the Homestay host include providing adequate, healthy meals prepared in a clean environment and respecting the student's culture, customs, language and beliefs.
- 2.85 The submissions of the AHN, the Australian Council for Private Education and Training (ACPET), Navitas, Sydney University Postgraduate Representative Association (SUPRA) and the Australian Human Rights Commission were supportive of ensuring greater compliance with standards across the industry.⁸⁰
- 2.86 On the other hand Wollongong University considered that care needed to be taken in drafting standards, to allow the continuation of Homestay as a popular and useful arrangement.⁸¹ The Committee notes that the Senate inquiry into the

⁷⁸ City of Ryde, *Submission 22*, Attachment 1, p. 45.

⁷⁹ Australian Homestay Network, *Submission 64*, pp. 4-19.

⁸⁰ See Australian Homestay Network, *Submission 64*, p. 1; Australian Council for Private Education and Training, *Submission 38*, p. 5; Navitas, *Submission 27*, p.8., Australian Human Rights Commission, *Submission 53*, p.7; and Sydney University Postgraduate Representative Association, *Submission 61*, p. 4.

⁸¹ University of Wollongong, *Submission 26*, p. 5.

welfare of international students, while commending the AHN on its work, considered that mandatory industry standards 'should involve appropriate industry consultation and a careful assessment of the costs and benefits.'⁸² However, the Knight Review of the student visa programme considered that state regulators would be well advised to ensure effective oversight of Homestay providers.⁸³

The view of the Committee

- 2.87 The Committee is of the view that Homestay is an important part of the solution to the shortage of accommodation for international students.
- 2.88 It has the capacity to offer both safe accommodation and the opportunity to interact with families and communities in a mutually beneficial way. For many young people, away from their home countries for the first time, these are particularly important factors.
- 2.89 Homestay also has the potential to provide a far quicker solution to the shortage of student accommodation than longer term measures such as the further construction of purpose built student accommodation. In this regard the short and long term solutions should, in the Committee's view, be seen as complementary to one another.
- 2.90 On the question of regulation, the Committee acknowledges that there is always a balance to be found between the need to set standards and the risk of over regulating an industry which functions through a degree of flexibility. That being said, mandating the implementation and regulation of reasonable standards for Homestay is unlikely to remove any suitable providers from the industry. Indeed the greater risk to the industry would be to allow operators with poor or dangerous practices to tarnish the Homestay concept and undermine those providers who are committed to safe and effective standards.
- 2.91 In this regard, the Committee would consider the AHN's eight standards as a suitable model, particularly if used in conjunction with a requirement to implement child and youth risk strategies. Here the Committee commends AHN both for setting its standards (developed by University of Sydney - Centre of English Teaching) and for its commitment to Queensland's prevention and monitoring system of people working with children and young people – the Blue Card System.

RECOMMENDATION 4

The Committee recommends that the NSW Government gives consideration to introducing legislation to mandate the implementation and regulation of reasonable standards for Homestay.

⁸² Parliament of Australia, Senate Standing Committee on Education, Employment and Workplace Relations, *Welfare of International Students*, 25 November 2009, p. 40.

⁸³ Michael Knight, *Strategic Review of the Student Visa Program 2011*, 30 June 2011, Australian Government, http://www.immi.gov.au/students/_pdf/2011-knight-review.pdf, accessed 10 November 2011, p. 72.

RECOMMENDATION 5

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.

- 2.92 The Committee's consideration of Occupancy Agreements in relation to Home stay is discussed in the following chapter under Rights of Students in Accommodation.
- 2.93 Finally, the Committee notes the research commissioned by the City of Ryde which explores means of promoting Homestay within the LGA with the aim of increasing levels of interest in the arrangement and promoting its cultural benefits, as well as considering alternatives to the Homestay model.
- 2.94 The Committee commends the City of Ryde Council for the work it has undertaken and looks forward to Council's further consideration of the report's recommendations.

Financial incentives/subsidy

- 2.95 The Committee took evidence from a number of witnesses on a number of financial measures which they considered might increase the supply of affordable rental accommodation for international students.

National measures

- 2.96 For Dr Chris Martin, solutions to the shortage could be found in the way in which housing was taxed:

When we talk about the housing supply problem that New South Wales and the country has, we can be specific about it. It is specifically a shortage of low-cost rental accommodation. So many of the policy levers at different levels of Government are set against that sort of accommodation. The most powerful levers are at the Commonwealth level and in particular the way we tax housing, or more particularly do not tax housing, is the most powerful driver. In particular negative gearing has not contributed to an expansion in the net supply of rental. It has created more landlords and tenants but not necessarily in net terms more rental accommodation. It has also low-cost rental accommodation dropping out of the system over time as investors concentrate on acquiring only properties that they think will appreciate with capital gain, pursuing the capital gain.

CHAIR: Out of left field, should perhaps negative gearing be restricted to new developments?

Dr MARTIN: Yes.

CHAIR: Have sunset clauses on the existing negatively geared--

Dr MARTIN: Yes. There is any number of ways you could improve the current system, whether that is restricted to new construction, restrict the period for which it can be claimed. Otherwise tie it to low-cost rental. There is any number of improvements that may be made in relation to negative gearing.

It is something that the State and Commonwealth need to be involved in together, but a reform of land tax, particularly to broaden the base to include owner-occupied housing but at a reduced rate. The Henry Review's proposal was along those lines. We are aware they have recently been modelled by researchers for the Australian housing development research institute and their modelling was on the basis of revenue neutrality, abolishing stamp duties while they are at it and the modelling suggested that you can get decreases in the cost of land while maintaining revenue neutrality and getting rid of stamp duties. That is a very promising area of reform. Necessarily there has to be cooperation with the Commonwealth so that all States were moving together on it.

They are some of the big picture issues in housing affordability. But they will directly affect the supply of low cost rental, including for students but not just students.⁸⁴

State measures

2.97 For the City of Sydney:

Appropriate student accommodation must be affordable. Whilst student housing models can be developed at the higher end of the market, models must also be developed at the moderate and low end. The City's experience with affordable housing is that development of accommodation for low income groups are unlikely to be feasible without some subsidy. Therefore, funding for research into and implementation of such models is required.⁸⁵

2.98 The University of New South Wales suggestions included:

- a) Broadening the definition and policy settings related to community and affordable housing to include student accommodation.
- b) Setting a target to increase the number of beds managed by universities and affiliated organisations.
- c) Engaging the Premier's Council on International Education to further discuss and recommend actions on this issue.
- d) Identifying land in public ownership (local or State Government) near to major university campuses that could be developed for student accommodation.
- e) Engaging the Commonwealth on:
 - I. The follow on policy to the National Rental Affordability Scheme to recognise the role student accommodation can and does play in future supply and its uniqueness in policy settings.
 - II. Commonwealth land adjacent to university campuses that could be developed for student accommodation.

⁸⁴ Dr Chris Martin, Senior Policy Officer, Tenants' Union of NSW, *Transcript of Evidence*, 21 October 2011, p. 35.

⁸⁵ City of Sydney Council, *Submission 66*, p. 20. See also Property Council of Australia, *Submission 17*, p. 2.

f) Establishing incentives including cash, interest free or discounted loans and grants of land to universities to reduce the cost of accommodation to students.

g) Defining university projects including student accommodation as infrastructure for the purposes of the Restart NSW Infrastructure Fund.

h) Developing a “Sectoral State Infrastructure Strategy Statement” for the university sector including student accommodation under Goal 19 of the NSW 2021 State Plan.⁸⁶

2.99 The submission from the Wollongong Undergraduate Students' Association suggested that State governments could enter into joint development projects with universities, citing the example of the Queensland University of Technology's Kelvin Grove Campus as a model.⁸⁷

2.100 Charles Sturt University also encouraged State Government to work with universities through innovative finance schemes akin to the Education Investment Fund or the Defence Housing Scheme model.⁸⁸

The Committee's view

2.101 With regard to the proposals it received on reforming the tax system in order to expand affordable housing, the Committee recognises the importance of inter-governmental cooperation in order to ensure that the international education sector has a sustainable future in Australia.

2.102 It notes the submission from the Australian Government Department of Education, Employment and Workplace Relations, which states that 'accommodation issues were discussed as part of the development of the Council of Australian Governments (COAG) International Student Strategy for Australia (ISSA)'.⁸⁹ The purpose of the strategy is to support a high-quality experience for international students, in order to ensure a sustainable future for quality international education in Australia. The strategy will be reviewed in its five-year timeframe to determine how effectively its initiatives are delivering the desired outcomes and how well the strategy is achieving its purpose.

2.103 The Committee acknowledges the work of COAG in developing strategies to improve the experience of international students in Australia and its work on the related issue of housing affordability.

2.104 It encourages COAG to specifically consider the shortage of affordable accommodation for international students during the course of its review of the ISSA.

2.105 The Committee notes proposals that the NSW Government develop financial incentives and undertake joint development projects, in order to address the

⁸⁶ University of New South Wales, *Submission 20*, p. 5.

⁸⁷ Wollongong Undergraduate Students' Association, *Submission 18*, p. 5.

⁸⁸ Charles Sturt University, *Submission 25*, p. 1.

⁸⁹ Australian Government Department of Education, Employment and Workplace Relations, *Submission 57*, p. 1.

shortage of suitable affordable accommodation for students. The Committee is of the view that these proposals merit further consideration.

- 2.106 With regard to broadening the definition and policy settings related to community and affordable housing to include student accommodation, the Committee has made recommendations in relation to the Affordable Housing Taskforce and the NSW Planning System Review (see paras 2.54 – 2.56).

Chapter Three – Rights, Standards and Enforcement

- 3.1 This Chapter considers the legal difficulties that can be faced by students regarding their accommodation. It outlines the current dispute resolution mechanisms and legal protections and makes recommendations for reform. It details improvements that could be made to the accommodation advice provided to students, as well as legislative proposals to improve standards of student accommodation. Finally, this Chapter reviews the enforcement of laws and regulations regarding illegal boarding houses.
- 3.2 The Committee notes much of the evidence and submissions that it received apply to all residents of rental accommodation. However given the Terms of Reference for the inquiry, the Committee is limiting its comments to international and domestic students, unless specifically noted.
- 3.3 In reviewing the legal framework around student accommodation, the Committee is mindful of the NSW State Government's Interdepartmental Committee (IDC) on Reform of Shared Private Residential Services. The IDC's consideration of reform of the boarding house sector in NSW is relevant to several issues the subject-matter of this inquiry:

An Interdepartmental Committee on the Reform of Shared Private Residential Services (IDC) was established by the NSW Government in mid 2008 to explore an overarching, centrally administered regulatory framework which would cover accommodation and standards, and occupancy protection, balancing these with financial viability issues to ensure the ongoing availability of board house style accommodation.

The IDC comprised senior representatives from eight NSW government agencies and was tasked with considering:

- the various regulatory regimes applying to the sector and the role of various agencies involved in regulation and/or provision of services to boarding house and private group home residents;
- any gaps in those regulatory regimes that may impact on the health, safety and well being of residents, including occupancy rights and responsibilities;
- the impact of the decline of the licensed sector, both on residents and to Government, and options for stalling that decline; and
- assessing available information on shared private residential services, particularly any gaps and opportunities for enhancement of information such as location and capacity.⁹⁰

⁹⁰ NSW Interdepartmental Committee on Reform of Shared Private Residential Services (IDC), *Boarding House Reform Discussion Paper*, August 2011, Department of Family and Community Services NSW, Ageing, Disability and Home Care,

- 3.4 The Committee heard from Ms Patterson of the Division of Local Government, Department of Premier and Cabinet, that following release of the IDC's discussion paper in December 2010 and targeted consultation with stakeholders, a report was prepared and has been submitted to Cabinet for its consideration.⁹¹
- 3.5 Accordingly many of the issues considered by the Committee may be impacted by the Government's action in response to the IDC report.

EXTENT OF PROBLEM

- 3.6 The Committee heard evidence regarding the difficulties international students face in relation to accommodation.
- 3.7 The Tenants' Union of NSW stated that many international students live in accommodation outside the mainstream rental sector especially in share housing, boarding houses, lodgements in private housing and educational halls of residence, part of the 'marginal rental sector'.⁹²
- 3.8 Dr Martin from the Tenants' Union of NSW gave evidence that:
- We have indicated that the main issue about student accommodation from our experience and from the experience of the Tenants Advice and Advocacy Services with whom we work is the experience of international students particularly in marginal rental accommodation. By marginal rental accommodation I mean that sector that is not covered by the State's mainstream residential tenancy laws.⁹³
- 3.9 Dr Martin stated that, based on the Tenants' Unions' casework and communication with student organisations, international students often also have difficulties with mainstream rental accommodation in New South Wales. Problems international students particularly face are:
- not knowing the 'going' rate for rents locally
 - difficulties obtaining the return of bonds
 - being treated dishonestly by unscrupulous landlords.⁹⁴
- 3.10 Although international students are a small part of the clients of the Tenants' Union 'they experience some of the most unfair and abusive practices by landlords in the New South Wales rental housing system'.⁹⁵
- 3.11 Redfern Legal Centre stated that they are contacted almost daily 'by international students living in appalling conditions and they often face immediate and arbitrary evictions or rent increases'.⁹⁶

http://www.adhc.nsw.gov.au/_data/assets/file/0019/250417/Boarding_House_Reform_Discussion_Paper_Nov2011.pdf, accessed 18 November 2011.

⁹¹ Ms Karen Patterson, Division of Local Government, Department of Premier and Cabinet, *Transcript of evidence*, p. 17.

⁹² Tenants' Union of NSW, *Submission 2*, p. 2.

⁹³ Dr Chris Martin, Senior Policy Officer, Tenants' Union of NSW, *Transcript of Evidence*, 21 October 2011, p. 32.

⁹⁴ Dr Chris Martin, Senior Policy Officer, Tenants' Union of NSW, *Transcript of Evidence*, 21 October 2011, p. 33.

⁹⁵ Tenants' Union of NSW, *Submission 2*, p. 1.

3.12 The UNSW Students Association stated that it receives information indicating that it is common for students who complain to be threatened by their landlord, for example with deportation.⁹⁷

3.13 The Committee also notes the examples given by the Redfern Legal Centre:

Case Studies:

In one example seen by our service, a young female student was evicted from a CBD unit at 11pm on a Sunday night for not being able to pay an on-the-spot rent increase. Having no money she was forced to walk all night to a friend's place in the suburbs, arriving at 6am the next day. As she was not covered by the Act we could not assist her to move back into the property or to apply to the Consumer, Trader & Tenancy Tribunal for compensation for the arbitrary eviction. While we were able to negotiate to have some bond returned, if the head-tenants had refused then our client would have had to apply to the NSW Local Court to have this returned. The cost and complexity involved in this would have meant she would not have pursued it further.

In another example, a student was told she would be sharing a room with one female. She returned from work that evening to move in and found out she had paid to reside in a basement with six males. She felt intimidated and unable to dispute this situation. She instead decided to leave, but was unable to get her bond or rent back. Not having any tenancy law or the jurisdiction of the Consumer, Trader & Tenancy Tribunal meant she was unable to get her bond back.

In another example, a resident was told another person was moving in and because there were no beds left she would have to share her bed.⁹⁸

3.14 The Tenants' Union stated that in its opinion the worst affected international students are those sharing bedrooms in unlawful boarding houses. Even those students in reasonably well-managed legitimate boarding houses and college-type halls of residence are disadvantaged in terms of their legal rights and access to dispute resolution.⁹⁹

3.15 The Committee heard evidence that it is extremely difficult to estimate the extent of unauthorised boarding house student accommodation and overcrowded, informal share student accommodation. Local councils are often unable to take enforcement action in response to complaints. Accordingly much of the evidence as to the extent of the problem is anecdotal.

3.16 Evidence of stakeholders such as neighbouring residents affected by boarding houses, local councils, the Tenants' Union of NSW and Redfern Legal Centre and student associations suggested that the amount of unauthorised or overcrowded accommodation is substantial and can cause significant problems to affected stakeholders.

3.17 The City of Sydney Council stated in its submission:

⁹⁶ Redfern Legal Centre, *Submission 44*, p. 3.

⁹⁷ Ms Natalie Karam, Chair, Arc@UNSW Limited, *Transcript of Evidence*, 21 October 2011, p.48.

⁹⁸ Redfern Legal Centre, *Submission 44*, p.4.

⁹⁹ Tenants Union of NSW, *Submission 24*, p.3.

Overcrowding is a particular concern for new migrants and international students who live in accommodation which has significantly higher rates of overcrowding than the general population. The Australian Bureau of Statistics estimates that 26% of new migrants and 27% of full-time international students in Australia live in a property that is overcrowded, and requires at least one extra bedroom.¹⁰⁰ This compares to 11% for domestic full-time students and 8% for the total population (excluding overseas visitors). The ABS also notes that it is likely that there was an undercount of new migrants, and overcrowding may in fact be higher for these groups than indicated by the Census.¹⁰¹

3.18 Navitas submitted:

The rapid growth of international student numbers that have increased from approximately 150,000 per year in 2000 to a peak of over 620,000 in 2009 with numbers falling in both 2010 and 2011 to approximately 600,000.¹⁰²

3.19 The submission of the Consulate-General of China stated:

The third kind of students' accommodation is to rent a room or living room shared with others at comparatively cheaper prices, but with worse living conditions. Very often, 7-9 students or even more live in the same house or unit and sometimes, they might have to fight for bathroom, which is very inconvenient. Meanwhile, the students' privacy and the safety of their belonging cannot be guaranteed. Most of Chinese students choose this kind of accommodation for the prices are cheaper.¹⁰³

3.20 The Consulate-General of the People's Republic of China expressed concern about the security and interest of Chinese students in NSW.¹⁰⁴

DISPUTE RESOLUTION

3.21 The legal protections available to students regarding accommodation has a significant impact on their welfare and standards of accommodation.

3.22 The IDC's discussion paper of December 2010 identifies better protection of residents' rights, including occupancy rights, as one of the objectives of boarding house sector reform.

3.23 Evidence from the Tenants' Union of NSW, Redfern Legal Centre, NSW Fair Trading and others described the legal protections and dispute resolution processes available to student residents of accommodation. The rights enjoyed by students will depend on whether their residency is subject to the *Residential Tenancies Act 2010*, which is administered by NSW Fair Trading. Accommodation is subject to the Act where it has been rented under a traditional residential rental lease and the student has a written lease.

¹⁰⁰ Submission notes that this is based on the Canadian National Occupancy Standard applied to the 2006 Census of Population and Housing

¹⁰¹ City of Sydney Council, *Submission 66*, p.8. Figures cited in the submission are based on Australian Bureau of Statistics (ABS) (2011) *Position Paper-ABS Review of counting the Homeless Methodology*, 2050.0.55.002, Canberra:ABS

¹⁰² Navitas, *Submission 27*, p.3.

¹⁰³ Consulate General of People's Republic of China, *Submission 47*, pp.2-4.

¹⁰⁴ Consulate General of People's Republic of China, *Submission 47*, pp.2-4.

- 3.24 For accommodation which is subject to the Act, NSW Fair Trading provides advice to both tenants and landlords, and both have access to the Consumer, Trader and Tenancy (CT&T) Tribunal for low-cost dispute resolution. Rental bonds are lodged with NSW Fair Trading, rather than being held by landlords.
- 3.25 The Residential Tenancies Act does not apply to those students who are:
- residents of boarding houses
 - lodgers in private homes
 - occupants in share houses without a written agreement
 - residents of accommodation provided by education providers.¹⁰⁵
- 3.26 The NSW Tenants' Union describes such residents as 'marginal renters' with 'few practical rights or remedies'. There is no legal requirement to have a formal agreement setting out the students' rights and responsibilities. Student residents have a common law agreement which is often inadequate and will not cover important matters, such as the minimum period of notice required for a landlord to evict a tenant.¹⁰⁶
- 3.27 If a dispute arises there is often confusion among landlords and student residents as to their respective rights and obligations. Students must deal with a complicated legal system covering their rights. In some instances, students not subject to the Residential Tenancies Act may have rights under the Australian Consumer Law but the extent of these rights is unclear. If the status of their 'tenancy' is not clear, they may apply to the Tenancy Division of the CT&T Tribunal, but must make complicated arguments regarding jurisdiction¹⁰⁷. Students may be able to take action under the *Consumer Claims Act 1993* (NSW) in the General Division of the Consumer Trader and Tenancy Tribunal but only if their landlords fit the legal definition of being 'in business'¹⁰⁸ and the remedies available are limited.¹⁰⁹
- 3.28 Students who are not in a position to avail themselves of the dispute resolution mechanisms outlined above may seek to resolve disputes by commencing legal proceedings. Legal action is not a practical option for most students. The Redfern Legal Centre noted that the practical effect of this is that students who wish to pursue the maintenance of a hot water system would be required to apply for an order for Specific Performance in the Equity Division of the Supreme Court of NSW.¹¹⁰
- 3.29 The Tenants' Union noted that landlords who do not have access to the CT&T Tribunal also find legal proceedings to be impractical. As a result the Tenants' Union asserted that many landlords deal with disputes by evicting tenants.

¹⁰⁵ Tenants Union of NSW, *Submission 24*, p. 9.

¹⁰⁶ Tenants' Union of NSW, *Submission 24*, p. 9.

¹⁰⁷ Redfern Legal Centre, *Submission 44*, p. 6.

¹⁰⁸ Tenants' Union of NSW, *Submission 24*, p. 12.

¹⁰⁹ Redfern Legal Centre, *Submission 44*, p. 6.

¹¹⁰ Redfern Legal Centre, *Submission 44*, p. 6.

- 3.30 The NSW Fair Trading gave evidence as to why the Residential Tenancies Act has limited application, stating that the Act does not apply to the classes excluded, such as boarding houses, because the relationship between landlords and tenants is different in important respects. Some of these are: residents under Residential Tenancies Act agreements have exclusive possession of premises, whereas boarding house residents share common areas; and the periods residents stay in premises under the Residential Tenancies Act are quite different to the periods expected in boarding houses.¹¹¹

Proposals to protect the rights of international students

- 3.31 The UNSW Students Association noted the lack of protections for student residents not covered by the Residential Tenancies Act and submitted the Act should be extended to these residents, or a similar regime of rights created. The Association submitted student boarders, including international students, and lodgers should have access to the CTT Tribunal.
- 3.32 The Council of International Students in Australia agreed that boarders and lodgers should receive the same rights as tenants under the Residential Tenancies Act. In particular, the Council sought the mandatory lodgement of bonds, as the recovery of bonds was one of the key problems encountered by students. The Council submitted that there is also considerable confusion among international students as to whether they are 'tenants' or not, and that provision should be made for a fixed reasonable period of termination, which is not legislated for non-RTA accommodation.¹¹²
- 3.33 The Tenants' Union recommend two reforms that would improve accommodation standards and the protection of students' rights: compulsory registration and accreditation of boarding houses; and a system of 'principles-based' occupancy agreements to provide occupancy rights for those residents of accommodation not subject to legislation such as the Residential Tenancies Act.¹¹³

Occupancy agreements: 'Prescriptive' versus 'principles-based' approach

- 3.34 Most Australian states and territories have enacted legislation covering some categories of 'marginal' rental accommodation, such as boarding houses. These legislative approaches feature either a 'prescriptive' approach or a 'principles-based' approach. Agreements in relation to accommodation not covered by the Residential Tenancies Act are referred to as 'occupancy agreements', as distinct from the accommodation agreements that are governed by the Residential Tenancies Act.
- 3.35 The 'prescriptive' approach outlines in detail the terms and conditions of agreements, with particular reference to notice periods for evictions and rental increases. This approach has been used in the legislative regimes in Victoria, Queensland, South Australia, the Northern Territory and Tasmania.

¹¹¹ Mr Jeremy Tucker, Manager, Consumer Policy, NSW Fair Trading, *Transcript of evidence*, p. 52.

¹¹² Ms Heather Richards, Vice-President, Council of International Students Australia, *Transcript of evidence*, p. 55.

¹¹³ Tenants' Union of NSW, *Submission 24*, p. 3.

- 3.36 The 'principles-based' approach provides that occupancy agreements must comply with certain 'occupancy principles' that are simple and non-prescriptive. For example, a principle may be that a resident is entitled to reasonable notice of rent increases, and also provide for matters such as receipts for rent paid.
- 3.37 The intention of the principles-based approach is to provide a flexible framework that can be adapted to suit different types of accommodation. For example, notice periods that are reasonable for short-term accommodation may be different to what is reasonable for long-term accommodation.¹¹⁴
- 3.38 The Tenants' Union supported the 'principles-based' occupancy agreements system of the Australian Capital Territory under the Residential Tenancies Act 1997 (ACT). Redfern Legal Centre also supported the ACT system, with some modifications.¹¹⁵
- 3.39 Under this system, all landlords and residents would have recourse to the CT&T Tribunal for dispute resolution. The CT&T Tribunal would apply the principles when determining disputes arising from occupancy agreements.
- 3.40 NSW Fair Trading also supported 'principles-based' occupancy rights as outlined in the IDC Discussion paper of December 2010. The Department told the Committee it believes that such a scheme could strike the best balance between residents' rights and limiting the introduction of regulation that may impact on the viability of boarding houses.¹¹⁶
- 3.41 The Committee notes the submission of the Property Owners' Association of NSW:
- Additional provisions, legislation and/or regulations that place constraints on operators will create greater burdens and stifle legitimate supply. It will also lead to more underground operators who will take up the surplus demand for accommodation.¹¹⁷
- 3.42 NSW Fair Trading also submitted that a system for adopting occupancy rights would need to consider 'the impact of any such rights on supply of boarding style accommodation'.¹¹⁸

Standard Regulations

- 3.43 A feature of the system of occupancy agreements, as used in the Australian Capital Territory, is provision for making standard regulations under the legislation to prescribe additional terms for occupancy agreements. To date the Australian Capital Territory government has not prescribed any standard regulations, however specific regulations can be made for a particular category of accommodation, for example student housing or boarding houses.

¹¹⁴ Fair Trading NSW, *Submission 30*, p. 4.

¹¹⁵ Tenants Union of NSW, *Submission 24*, p.9; and, Redfern Legal Centre, *Submission 44*, p. 5.

¹¹⁶ NSW Fair Trading, *Submission 30*, p. 52.

¹¹⁷ Property Owner's Association of NSW Inc, *Submission 42*, p. 4.

¹¹⁸ NSW Fair Trading, *Submission 30*, p. 5

- 3.44 For instance, the length of time students may utilise accommodation may vary considerably, from students residing in colleges for the full academic university year to students staying for shorter periods, such as international students enrolled in English language courses for 11-15 weeks.¹¹⁹
- 3.45 Accordingly protections such as a specified minimum period of notice of eviction, in addition to the principles of the occupancy agreements¹²⁰, could be included in regulations for the different categories of accommodation.

Other issues

- 3.46 The submission of NSW Fair Trading stated that boarding or rooming houses in NSW are subject to several pieces of legislation.
- 3.47 The Local Government (General) Regulation 2005 also prescribes standards for certain boarding houses.
- 3.48 However, NSW Fair Trading notes that while these regulations do provide some standards for boarding house accommodation, they cannot be enforced directly by residents. Instead as submitted by the Division of Local Government, under the *Local Government Act 1993* councils may issue an order to an owner, occupier or manager to take such action as is necessary to bring a place of 'shared accommodation' into compliance with the standards of the Act. A place of 'shared accommodation' is defined by the Act as including a boarding house, houses let in lodging, common lodging houses and backpackers' hostels.¹²¹ When relying on the Act, residents require a third party to enforce their rights.

The Committee's view

Occupancy agreements

- 3.49 The Committee heard concerns that the rights of students in accommodation not subject to the Residential Tenancies Act are not sufficiently protected. The Committee particularly noted the submission of the Redfern Legal Centre that NSW and Western Australia are the only Australian states that do not have legislative protection for boarders and lodgers.
- 3.50 The Committee notes the advantages of introducing occupancy agreements that are supported by statutory protection of rights, with recourse to the Consumer Tenancy and Tenants Tribunal. Any statutory amendment would clarify which forms of accommodation are governed by the Residential Tenancies Act and which forms of accommodation require occupancy agreements. The Committee is aware of concerns that further regulation of accommodation that is not currently governed by the Residential Tenancies Act may threaten the viability of the boarding house sector. However, the Committee also heard evidence that regulation in other jurisdictions had not proved so onerous as to threaten the viability of legitimate boarding houses.

¹¹⁹ Ms Helen Zimmerman, Executive General Manager, Navitas English, Navitas, *Transcript of Evidence*, 21 October 2011, p. 11.

¹²⁰ Redfern Legal Centre, *Submission 44*, p. 11.

¹²¹ Department of Premier and Cabinet, Division of Local Government, *Submission 43*.

- 3.51 The Committee notes that adoption of occupancy principles so that all residents have some statutory protection of their rights would preclude possible attempts by unscrupulous operators and landlords to create housing arrangements which would evade occupancy agreements.
- 3.52 Additional reforms in relation to streamlining the regulation of the boarding-house sector and increasing the viability of the sector, discussed in other parts of this report and outlined in the IDC's discussion paper, will also assist the sector.
- 3.53 The Committee is aware that the IDC's preferred option 'is to introduce a legislative requirement for a principles-based approach to occupancy rights and responsibilities for all boarding houses'.¹²²
- 3.54 The Committee noted the Tenants' Union and Redfern Legal Centre support the application of occupancy agreements to all residents not subject to the Residential Tenancies Act¹²³ i.e. including residents of homestay arrangements.

RECOMMENDATION 6

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*.

Access to the Consumer, Trader and Tenancy Tribunal

- 3.55 With reference to the discussion above, the Committee considers that access to a low-cost tribunal to resolve disputes that are currently outside the scope of the Residential Tenancies Act between landlords or grantors and student residents would be appropriate. Access to such a tribunal would be available to all international and domestic students, regardless of the type of accommodation they use, providing students with access to a more practical method of protecting their rights.

RECOMMENDATION 7

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.

RECOMMENDATION 8

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.

¹²² NSW Interdepartmental Committee on Reform of Shared Private Residential Services (IDC), *Boarding House Reform Discussion Paper*, August 2011, Department of Family and Community Services NSW, Ageing, Disability and Home Care, p. 5.

¹²³ Tenants' Union of NSW, *Submission 24*, p. 9., Redfern Legal Centre, *Submission 44*, p. 5.

ADVICE TO STUDENTS

3.56 The Committee heard evidence on the importance of providing information about housing to international students, particularly to English language students studying short term courses and first year students.¹²⁴ The Committee also heard evidence that, in circumstances where there was a system of compulsory registration of boarding houses, universities could provide a list of registered boarding houses to students with a recommendation they stay only in a boarding house on the list.¹²⁵

3.57 The importance of international students having a single source of information and advice in relation to accommodation was raised during the Inquiry.¹²⁶ The Committee was advised that the Overseas Student Ombudsman is currently limited as to the type of students it can advise and matters on which it can provide advice and assistance.¹²⁷ Navitas argued:

International students are consumers. They need to understand their rights as consumers and to be protected. Other than recently, there hasn't been any clear point of access really. There are mechanisms that providers have to assist students. In every State there has been means that people can go to, whether it is the Office of Fair Trading - it has been quite diverse and been very difficult if you do not know the system. As a result of the Baird Review one of the things was a recommendation about an overseas student ombudsman.

We feel the difficulty is that it only applies for international students who are on a student visa. For many students, particularly international students, nearly 50 per cent of them are coming in on working holiday and tourist visas as well. So really what we are saying is that it is important that students have a clear avenue where concerns they have can be addressed or they know that they are going to get advice and support that they can then go and deal with it. And it really should be for all international students, no matter what visa type they are on.¹²⁸

3.58 The Committee also heard from Navitas that the maintenance of a telephone advisory service would be of great assistance. Navitas suggested that the Overseas Student Ombudsman provide this service:

While standards for the private rental market are desirable the practicalities of audit and enforcement are a significant impediment to effective benchmarking or evaluation. The most effective approach would be to provide students with a 'help line'. Currently international students (on a Student Visa) have access to the Overseas Student Ombudsman (OSO) however this access is not available to international students on Visitor or Working Holiday Visas or for matters beyond issues with education providers...

¹²⁴ Ms Deidre Anderson, Deputy Vice-Chancellor, Students and Registrar, Macquarie University, *Transcript of Evidence*, p. 39; Ms Natalie Karam, Chair, Arc@UNSW Limited, *Transcript of Evidence*, 21 October 2011, p. 49; Ms Heather Richards, Vice President, Council of International Students Australia, *Transcript of evidence*, 21 October 2011, p. 55.

¹²⁵ Ms Natalie Karam, Chair, Arc@UNSW Limited, *Transcript of Evidence*, 21 October 2011, p. 49.

¹²⁶ Ms Helen Zimmerman, Executive General Manager, Navitas English, Navitas, *Transcript of Evidence*, p. 15; Mr Iain Rothwell, General Manager, Special Projects, Navitas, *Transcript of evidence*, 21 October 2011, p. 16.

¹²⁷ Navitas, *Submission 27*, p. 8.

¹²⁸ Ms Helen Zimmerman, Executive General Manager, Navitas English, Navitas, *Transcript of Evidence*, p. 15.

[Navitas Recommendation]

...That Governments need to collaborate to establish a clear, accessible information and complaint handling body for all international students that covers accommodation and work rights matters, The OSO is the logical body.¹²⁹

The Committee's view

3.59 With an awareness of the complicated nature of residents' rights, the Committee is of the view that the establishment of a central body that provides advice regarding the rights and obligations of students and assistance in the resolution of disputes relating to accommodation would be of great assistance to international students. The Committee notes a body such as the Overseas Students Ombudsman's Office may be well placed to provide this service to all international students.

RECOMMENDATION 9

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.**

ACCOMMODATION STANDARDS

3.60 Standards for accommodation are complicated due to the number of differing types of student accommodation. Students live in all forms of housing and considering the standards of international student accommodation may therefore involve consideration of standards of all accommodation.

3.61 The Committee heard the following from NSW Fair Trading in relation to current standards:

As a minimum, all residential accommodation must comply with all applicable building standards, fire safety standards, and waste disposal and health and hygiene requirements contained in the Building Code of Australia, and planning and local government legislation.

Over and above these requirements, the standards which apply to student accommodation will depend in part on whether the accommodation is covered by the *NSW Residential Tenancies Act 2010*.

Under the Residential Tenancies Act, a landlord must provide premises in a reasonable state of cleanliness and fit for habitation, comply with statutory obligations regarding the health and safety of the premises, and ensure that premises are in a reasonable state of repair and reasonably secure. The landlord

¹²⁹ Navitas, *Submission 27*, p.8.

must not interfere with the supply of gas, electricity, water, telecommunications services or other services unless this is necessary to avoid danger or enable maintenance.

....

Boarding or rooming houses in NSW are subject to a number of different pieces of legislation, including the following:

(i) The *Environmental Planning and Assessment Act 1979* (EP&A Act). This Act regulates planning processes and permissions in NSW, and applies the Building Code of Australia.

Division 3 of the *State Environment Planning Policy (Affordable Rental Housing) 2009*, made under the EP&A Act, also relates to boarding houses. Among other things, the SEPP provides that adequate kitchen and bathroom facilities must be available to each boarder and no boarding room is to be occupied by more than 2 adult lodgers.

(ii) The Local Government (General) Regulation 2005, Schedule 2, applies to large boarding houses (housing more than 12 residents or with a floor area of more than 300 square metres). The Regulation provides, among other things, that:

- local councils can determine the maximum number of persons to be accommodated in shared premises. If councils do not make any determination on this issue, each person accommodated in a bedroom or dormitory must have a floor area of 5.5 square metres (for accommodation of at least 28 days duration) or 2 square metres in other cases (as provided by the Public Health (General) Regulation 2002).
- adequate light and ventilation must be maintained in shared premises;
- any kitchen facilities and food utensils must be kept in a clean and healthy condition, in good repair and free from insects and vermin;
- all parts of the premises and all furniture and fittings, beds and bed linen must be kept in a clean and healthy condition, and free from vermin;
- appropriate furniture and fittings must be provided and maintained in good repair;
- if the place is one in which persons can board for 7 or more days, an adequate number of beds (each provided with a mattress and pillow and adequate supply of clean bed clothing), adequate storage space, and window coverings must be provided.¹³⁰

3.62 The evidence received by the Committee indicated that unauthorised boarding houses and overcrowded, informal share accommodation were the two chief areas of concern.

3.63 If a house or apartment is not a boarding house with the necessary commercial character, and instead is a genuine share house with simply a larger number of

¹³⁰ NSW Fair Trading, *Submission 43*, pp. 3-4.

students living in it than it was designed to accommodate, it is overcrowded informal student accommodation. If accommodation is not by definition a boarding house, there is no legislative definition of 'overcrowding' nor legislation prescribing minimum bed space.

3.64 The *Environmental Planning and Assessment Act (1979)* (the 'EP&A Act') regulates NSW planning processes and permissions and applies the Building Code of Australia. For example, Division 3 of the State Environmental Planning Policy (Affordable Rental Housing) 2009, under the EP&A Act, makes provision that adequate bathroom and kitchen facilities must be made available to boarders and there can only be 2 adult boarders per room. However, this only applies to approvals for new boarding houses since the SEPP came into force.

3.65 There are initiatives by some Councils in relation to this issue. For example, the City of Sydney Council stated in its submission:

Since 2006, the City has imposed development consent conditions limiting occupancy to two adults per bedroom in all residential flat buildings to address health, safety and amenity concerns that result in overcrowding. The City can only take action in buildings that have this condition on their consents following its implementation in 2006.¹³¹

3.66 The Committee notes that an apartment with 3 bedrooms shared by 8 students, is not breaching any laws. Unless there are unauthorised building works such as partitions in rooms, or breach of a specific regulation i.e. fire or health regulations a Council can take no action, and there are no applicable standards other than in tenancies legislation. Accordingly standards in such a house or apartment cannot be regulated by government.

3.67 However, in strata accommodation there are actions stakeholders can take. The City of Sydney Council stated in its submission:

There are also a number of actions that owners and the legal entity created to manage a strata scheme, the owners corporation, can take to deal with the overcrowding and unauthorised uses, for example:

- individual owners can restrict, or forbid, sub-leasing;
- stipulate a maximum number of occupants under the residential tenancy agreement;
- building managers (if there is one) can audit access keys, which may help identify units that may possibly be overcrowded; and
- use of by-laws, notices and orders under the *Strata Schemes Management Act 1996*.

These alternative tools may also provide a means of addressing overcrowding and unauthorised use issues before resorting to the highly intrusive and sensitive nature

¹³¹ City of Sydney Council, *Submission 66*, p. 7.

of powers of entry. Hence, alternative tools should be considered where appropriate.¹³²

- 3.68 There are significant problems with detecting and taking enforcement action regarding unauthorised and overcrowded student accommodation. These measures, if they were publicised to stakeholders would enable owners and owners' corporations to take action in response to problems, where the premises are apartments, when local councils may not be able to do so. Measures such as the auditing of access keys are not open to councils, and the information gathered could be passed on to local councils to assist with their investigations and enforcement action.

Victorian system of registration and inspection

- 3.69 The *Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010* proposes a system of registration of boarding houses with NSW Fair Trading. The Agreement in Principle speech compares the regulation of boarding houses in New South Wales with the regulatory regime in Victoria, where boarding houses must be registered with local councils.¹³³
- 3.70 Under the *Public Health and Wellbeing Act 2008 (Vic)*, operators of boarding houses must register boarding houses with the relevant local council if it is intended to rent out 1 or more rooms to 4 or more people.
- 3.71 Minimum standards for boarding houses are detailed in:
- the *Residential Tenancies Act 1997 (Vic)*
 - Building Regulations 2006
 - Part 5 of the Public Health and Wellbeing Regulations 2009.
- 3.72 Local Council officers may inspect boarding houses for safety, health and other reasons, and may do so randomly or in response to complaints.
- 3.73 Officers from Consumer Affairs Victoria may inspect boarding houses to ensure that if bonds have been paid, they have been lodged with the Residential Tenancies Bond Authority and may inform residents and operators of their rights and responsibilities. Fire inspections may also be carried out by the fire authorities.¹³⁴

¹³² City of Sydney Council, *Submission 66*, p. 22.

¹³³ Mr Victor Dominello MP, Agreement in Principle Speech, Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010, Friday 26 November 2010, <http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/0/472E0B4709310D59CA2577F1002D11FA>, accessed 18 November 2011.

¹³⁴ Consumer Affairs Victoria, Department of Justice, *Rooming houses: A Guide for Residents and operators*, 2011, pp. 6, 9, 12, [http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Renting/\\$file/rooming_houses_a_guide_for_residents_and_operators.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Renting/$file/rooming_houses_a_guide_for_residents_and_operators.pdf), accessed 18 November 2011.

NSW regulatory system

- 3.74 Boarding houses in NSW must be licensed under the *Youth and Community Services Act 1973* by the Department of Family and Community Services, Ageing, Disability and Home Care if there are more than 2 occupants with a disability living in the boarding house. Otherwise they are unlicensed.¹³⁵

Proposals for reform

- 3.75 The IDC has indicated in its Discussion Paper its preferred option is a scheme of compulsory registration of boarding houses. Under the scheme information would be supplied to a single agency about relevant aspects of the boarding houses, which would assist in assessing the risks relating to each boarding house so that inspections and audit facilities could be directed to ensure standards are met. An online registration system would reduce the administrative burden on operators. There would be penalties for failing to register boarding houses.¹³⁶
- 3.76 The Committee noted the IDC's preferred system is a differential registration system for all boarding houses with additional requirements where residents have differing needs i.e. disabilities. The Committee notes its Terms of Reference are limited to international and other students and limits its comments to boarding houses with student residents.¹³⁷
- 3.77 The Tenants' Union of NSW submitted that the Register of boarding houses should be maintained and administered by a single office, named the Residential Services Registrar, which would be responsible for matters including:
- assessing applications for registration and accreditation
 - monitoring compliance with standards
 - cancelling registration and accreditation and
 - referring breaches for prosecution where necessary.¹³⁸
- 3.78 As noted in the Agreement in Principle speech, a system of compulsory registration would provide important information about the status of the boarding house sector assisting in policy development and liaison with stakeholders in the sector.
- 3.79 The Committee heard from Councils on whether a register of boarding houses should be maintained by local government; and if so, how the additional costs for administering the system could be accommodated:

¹³⁵ NSW Interdepartmental Committee on Reform of Shared Private Residential Services (IDC), *Boarding House Reform Discussion Paper*, August 2011, Department of Family and Community Services NSW, Ageing, Disability and Home Care, p. 2.

¹³⁶ NSW Interdepartmental Committee on Reform of Shared Private Residential Services (IDC), *Boarding House Reform Discussion Paper*, August 2011, Department of Family and Community Services NSW, Ageing, Disability and Home Care.

¹³⁷ NSW Interdepartmental Committee on Reform of Shared Private Residential Services (IDC), *Boarding House Reform Discussion Paper*, August 2011, Department of Family and Community Services NSW, Ageing, Disability and Home Care, p. 11. See also Tenants' Union of NSW, *Submission 24*, pp. 4-5.

¹³⁸ Tenants' Union of NSW, *Submission 24*, p. 7.

Mr WOODHAMS: Could I just talk about the registration process? Because that is one of the aspects of the bill. I think there is value in having some sort of mechanism to register lawful boarding houses. Whether councils want to accept that additional responsibility I guess depends on each council. For a proper database to be assembled though that would mean mandating it for all councils to undertake that registration process. I would have to say that we would be reluctant to take on more of those responsibilities because once you have a registration system it not only has to be maintained annually but it also then shifts the responsibility to make sure that the fire safety has been checked in those properties, so that means more inspections. So it sort of snowballs into more and more allocation of resources into that area.

Mr SIDOTI: But with inspections that you would get paid for?

Mr WOODHAMS: No.

Mr SIDOTI: No. So when you do a health inspection for a restaurant there would be a fee.

Mr WOODHAMS: There can be for-

Mr SIDOTI: So if there was a fee applicable, that is a different story?

Mr WOODHAMS: Yes.

Mr SIDOTI: See it could be like a registration system similar to what we passed recently with regards to caravan parks. To a certain degree we do not know how many caravan mobile home parks there are in Sydney. So by having a registration and it is pretty much cost there will not be a huge cost associated to the actual person. But there has been some sort of registry, so you know you can regulate the industry or if there is an issue effecting the industry you have someone to contact. But I could understand why local council would not want to be burdened with additional cost shifting, which has been a big issue for a long time.

CHAIR: Ryde's submission suggests that it supports compulsory registration, but it believes that councils may be the most appropriate people to maintain that register of inspections.

Mr COX: Yes. On the assumption that it is cost neutral.

CHAIR: Okay. Does Randwick have an opinion?

Mr WERESZCZYNSKI: I would think local government would be the appropriate location for such a registration because it follows the approvals process in that obviously to be registered one's premises would need to be lawfully able to be used for that particular purpose and it would need the development consent or complying development, whatever it was, exempt development, or it is an existing place of shared accommodation.

So I would think that local government - it really has taken us back a few years to prior to 1993 when there was a licensing systems and the like in place. Not that I can go back that far. Under the *Local Government Act 1919* it was covered in ordinance 42 or maybe 39.

Mr SIDOTI: So there is consensus subject to dollars.

Mr COX: Correct.

...

Mr WERESZCZYNSKI: I guess in Randwick's opinion there does not need to be a fee associated with the registration, it just needs to be mandatory, so that the registrations are forthcoming. But the fee for the inspection service would obviously need to apply. I cannot see that being much of a problem as long as it is a reasonable fee and it goes within the fees and charges pricing policy process.¹³⁹

- 3.80 Accordingly Willoughby, Ryde and Randwick Council stated they would agree to perform the inspections, provided that it was 'cost-neutral.'
- 3.81 The online registration system could be complemented by an online inspection system where local councils could enter the results of their inspections for the use of the officer maintaining the register.
- 3.82 The City of Sydney Council suggested clarification of how the development approval process and registration process will interact, for instance would premises that have not received planning approval be allowed to register. The Committee agrees such matters would need to be clarified in the legislation.¹⁴⁰

Privacy issues

- 3.83 The Committee notes the comments of the NSW Parliament's Legislation Review Committee in relation to proposed section 156A(11) of the Private Member's Bill, which states that the provisions of the Bill regarding notification and the maintenance of the register of boarding houses have effect regardless of anything to the contrary in the *Privacy and Personal Information Protection Act 1998*.¹⁴¹
- 3.84 This may have the effect of ousting the authority of the *Privacy and Personal Information and Protection Act 1998* and, because of this, may later interfere with the privacy rights of individuals.¹⁴²
- 3.85 The Legislation Review Committee stated it would only accept encroachment on rights of privacy where there was a 'compelling interest to do so'. The Legislation Review Committee stated it was not clear whether the circumstances detailed in the Bill met that condition.¹⁴³

¹³⁹ Mr Scott Cox, Manager of Environmental Health and Building, City of Ryde, Mr Roman Wereszczynski, Manager, Health, Building and Regulatory Services, Randwick City Council, Mr Greg Woodhams, Director, Environmental Services, Willoughby City Council, Transcript of evidence, 21 October 2011, pp. 27-28.

¹⁴⁰ City of Sydney Council, *Submission 66*, Appendix B, p. 3.

¹⁴¹ Parliament of NSW, Legislation Review Committee, *Legislation Review Digest*, No 17 of 2010, 30 November 2010, pp. 56-57.

¹⁴² Parliament of NSW, Legislation Review Committee, *Legislation Review Digest*, No 17 of 2010, 30 November 2010, pp. 57.

¹⁴³ Parliament of NSW, Legislation Review Committee, *Legislation Review Digest*, No 17 of 2010, 30 November 2010, pp. 56-57.

Accommodation and operational standards

3.86 The Committee notes the preferred option of the IDC Discussion Paper regarding accommodation and operational standards:

Standards could be introduced for all boarding houses for matters such as accommodation and boarding house operations, for example, fire safety, power of entry and food safety and standards for those providing meals.

Such an approach would reduce the current complexities and streamline regulation by incorporating the many components of existing legislation into one new piece of legislation. It may be expedient to keep some components in existing legislation, however they will be referenced in the new piece of legislation for ease of use.

Standards would cover all boarding houses regardless of the services they provide and who lives there, such as:

- maximum number of boarders and lodgers
- fire safety requirements
- light and ventilation
- kitchen facilities
- general cleanliness of the premises, including bathrooms
- furniture and fittings
- adequate number of beds, mattresses, pillows, clean supply of blankets, blinds / curtains or similar devices
- adequate storage space in bedrooms and common areas
- record keeping requirements, for example receipts for tariffs and fees charged
- arrangements for establishing and managing tenancy agreements
- complaints handling systems
- residents rights to privacy and confidentiality, freedom from abuse and neglect and relevant reporting requirements
- resident rights to service providers and advocates
- power of entry for monitoring purposes.

The IDC's preferred approach is to have accommodation and operational standards for all boarding houses contained in one key piece of legislation specific to boarding houses where this is appropriate and feasible.¹⁴⁴

¹⁴⁴ NSW Interdepartmental Committee on Reform of Shared Private Residential Services (IDC), *Boarding House Reform Discussion Paper*, August 2011, Department of Family and Community Services NSW, Ageing, Disability and Home Care,

- 3.87 The Committee also notes the evidence of Mr Greg Woodhams of Willoughby City Council, regarding the complexity of the current legislative framework and the difficulties this could present for Councils:

There is a whole suite of legislation that deals with boarding houses and accommodation. One of the difficulties that councils find is the transfer of these responsibilities to council to have to deal with the multitude of legislation in resolving issues across multiple legislations as well as require resources and funds to adequately deal with the issue.

...

So I think there is a neat framework that needs to be built so that it can operate robustly across all councils and through the different agencies to enforce the legislation.¹⁴⁵

Other legislation and issues bearing on standards

- 3.88 The Committee received evidence from NSW Fair Trading and the Division of Local Government regarding the Local Government (General) Regulation 2005. Schedule 2 of the regulation applied to 'large' boarding houses which are defined as holding more than 12 residents or having a floor area over 300 square metres and specifies matters including minimum floor area for residents and cleanliness of kitchens and the premises generally. However, it does not apply to 'small' boarding houses which NSW Fair Trading submitted is 'a significant gap in regulatory protection for students and other persons in such accommodation.'¹⁴⁶
- 3.89 Evidence from the Division of Local Government stated that it is unknown why Schedule 2's application is limited in this way. The limitation was carried over from the *Local Government Act 1919* and the Committee heard that it is 'likely' the limitation was made so regulation of 'small' boarding houses was not overly onerous or expensive.¹⁴⁷
- 3.90 The Committee notes the submission of the Property Owner's Association of NSW, which recommended against further regulation of boarding houses. The Association considered that increased regulation would reduce the amount of industry accommodation.¹⁴⁸
- 3.91 This concern was raised by other stakeholders, including the City of Sydney Council, which stated:

A registration framework may lead to the imposition of higher boarding house standards and therefore put at risk the ongoing viability of boarding house operations by marginal operators, who may not necessarily represent best practise

http://www.adhc.nsw.gov.au/_data/assets/file/0019/250417/Boarding_House_Reform_Discussion_Paper_Nov2011.pdf, accessed 18 November 2011, p. 12.

¹⁴⁵ Mr Greg Woodhams, Director, Environmental Services, Willoughby City Council, Transcript of evidence, pp. 20-21.

¹⁴⁶ NSW Fair Trading, *Submission 30*, p. 5.

¹⁴⁷ Department of Premier and Cabinet, Division of Local Government, *Submission 43*, p. 3.

¹⁴⁸ Property Owner's Association of NSW, *Submission 42*, p. 4.

but provide important accommodation for the most isolated and vulnerable members of the community.¹⁴⁹

Overcrowded student housing

3.92 As noted above, there is no provision for regulating standards in this category of student accommodation under existing regulations.

3.93 City of Sydney Council stated in its submission:

In November 2010 the Lord Mayor of Sydney, Clover Moore MP, introduced a Strata Legislation Amendment Bill which includes amendments to limit the number of adult occupants to two per bedroom in strata schemes to address overcrowding and the resulting damage that is burdened on owners. The bill aims to legislate this limitation in all strata schemes.¹⁵⁰

3.94 The *Strata Legislation Amendment Bill 2011* was introduced to the NSW Legislative Assembly on 11 November 2011. The objective of this bill is to address overcrowded informal share accommodation in strata properties.

The Committee's view

3.95 In light of the submissions and evidence, and considering the issues raised by the Terms of Reference, the Committee's view is that the Government should consider a system of compulsory registration of all boarding houses along with a system of regular inspections as proposed by the IDC Discussion Paper. It is the Committee's view that these actions would go some way to dealing with many of the concerns raised during the inquiry, including ensuring greater protection of students and avoiding many of the problems associated with unauthorised accommodation. In this context, the Committee acknowledges the IDC's ongoing review.

3.96 The option being considered by the IDC to consolidate the relevant parts of the present distinct statutes that bear on boarding houses, including boarding houses that are used by international students, into a single statute governing all aspects of boarding house regulation, may assist in overcoming practical problems with the regulation of boarding houses used by international students. It may also assist those boarding houses who find it difficult to understand their obligations under current legislative regime.

3.97 The Committee considers that a register of boarding houses would greatly assist with advising international students regarding accommodation options, prior to their arrival in Australia. The register could be provided to universities and other tertiary education providers who could refer international students to it prior to leaving their home country, with the assurance that the accommodation on the register meets certain standards and is regularly inspected by government.

3.98 Given its relevant experience in administering the Residential Tenancies Act, one option would be for NSW Fair Trading to administer the Register of Boarding Houses and the Office of Residential Services Registrar. An alternative would be

¹⁴⁹ City of Sydney Council, *Submission 66*, p. 19.

¹⁵⁰ City of Sydney Council, *Submission 66*, p. 8.

to locate the Register or Registrar in local government, as the Committee considers that the inspection system should be carried out by local councils. Again, the Committee notes this matter may be considered by the IDC

- 3.99 The Committee's view is that, given the lack of statutory occupancy rights for student residents of boarding house and other accommodation not subject to the Residential Tenancies Act, and the basic nature of the standards mandated under the Local Government (General) Regulation 2005, including hygiene and furniture and fittings, the application of the Regulation to all boarding houses may have an important effect on standards.
- 3.100 The Committee notes the concerns of stakeholders that further regulation may threaten the viability of the boarding house sector. However the Committee's view is that these reforms would prevent the abuse of student residents, and that the streamlined regulation will increase viability of boarding houses.

RECOMMENDATION 10

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.

RECOMMENDATION 11

The Committee recommends that the interaction of the planning approval process and the proposed registration process be clarified in legislation.

- 3.101 The Committee considers that inspections under the new regime could be undertaken by local councils, given their present responsibilities under the Local Government Act and Environmental Planning and Assessment Act. However, the Committee notes that matters, such as how to make the new inspections 'cost-neutral' would need to be considered by the Government and the overall proposal would require consultation between the Government and local councils.
- 3.102 With regard to the *Privacy and Personal Information and Protection Act 1998*, the Committee notes the views expressed by the Legislation Review Committee in the last Parliament.¹⁵¹

RECOMMENDATION 12

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*.

- 3.103 On the question of mandatory standards, after considering the submissions and evidence received, the Committee supports the IDC's preference for mandatory standards for all boarding houses to be incorporated into a single piece of legislation, with a system of inspection.

¹⁵¹ Parliament of NSW, Legislation Review Committee, *Legislation Review Digest*, No 17 of 2010, 30 November 2010, p. 57.

- 3.104 The Act would incorporate all regulations for boarding houses, replacing the current system where a number of statutes apply. If it is not appropriate to remove a section from another statute and place it in the primary Act, there should be a clear reference to the section in the primary Act.

RECOMMENDATION 13

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.

Overcrowded student housing

- 3.105 The Committee encourages the NSW Government to consider appropriate means of publicising to stakeholders the measures which owners and the owners' corporations of strata schemes may take to deal with overcrowding and unauthorised use of apartments by student residents. Publication of these measures should also include an explanation that information gathered by these measures may be relevant to corresponding enforcement action through local councils, and should be made available to local councils where appropriate.

Local Government (General) Regulation 2005

- 3.106 The Committee's view is that given the lack of statutory occupancy rights for student residents of boarding house and other accommodation not subject to the Residential Tenancies Act, and the basic nature of the standards mandated by Schedule 2 relating to matters including hygiene and furniture and fittings, the legislation should be amended to apply to all boarding houses.

RECOMMENDATION 14

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.

ENFORCEMENT

- 3.107 The Committee notes the objective of the *Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010* to provide for regulation of boarding house accommodation and other types of shared accommodation.
- 3.108 In particular the Committee notes the Bill seeks to address a number of perceived issues with the regulatory regime of 'illegal', unauthorised, boarding houses. The Bill aims to regulate more effectively unauthorised boarding houses in houses and apartments and associated issues such as overcrowding and health and safety concerns for the residents of boarding houses and their neighbours.
- 3.109 In the Agreement in Principle speech for the Bill, Mr Dominello stated the legislative regime governing boarding houses is 'hopelessly inadequate'¹⁵² and

¹⁵² Mr Victor Dominello MP, Agreement in Principle Speech, Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010, Friday 26 November 2010, <http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/0/472E0B4709310D59CA2577F1002D11FA>, accessed 18 November 2011.

suggested amendments to improve the legislative regime to overcome difficulties local councils have with evidence gathering and enforcement action against unauthorised boarding house operators, and to strengthen the penalties to provide a greater deterrent.

- 3.110 This section of the report will deal primarily with the issues involved with the powers of local government to investigate and take enforcement action regarding boarding houses or other places of shared accommodation.
- 3.111 'Unauthorised' boarding houses and share accommodation are used here to describe several different types of student accommodation that fall within the Terms of Reference of the inquiry.
- 3.112 Based on the evidence and submissions received, unauthorised boarding houses may have one or more of the following features:
- They accommodate more residents than they were designed for;
 - They do not having planning permission for their current use;
 - Planning legislation prohibits their use as a boarding house; and
 - The layout of the premises breaches various regulations, including fire or health regulations.

Boarding houses and overcrowded share accommodation

- 3.113 It is important to distinguish between a boarding house that is run for commercial purposes, and a house or apartment that is shared accommodation.
- 3.114 An operator of a boarding house is required to apply for planning permission from the local council if the boarding house is to operate in an area zoned to allow this purpose. If the operator does not obtain permission, the use is unauthorised. Alternatively, the area zoning may prohibit boarding houses.
- 3.115 A house or apartment may be genuinely shared by international students without the commercial nature of a boarding house. An example would be a 3 bedroom apartment shared by 8 students. This would usually be described as 'overcrowded share accommodation'.
- 3.116 Both these categories of accommodation may cause the problems described in evidence and submissions, such as loss of amenity to neighbours, excessive garbage, parking problems, fire and health risks.
- 3.117 The Committee heard evidence from councils regarding an attempt to establish a minimum area per person in sleeping accommodation:

Ms DE CARVALHO: ...the essence of our submission was the fact that we as a council had attempted to find a solution in the absence of a legal structure that we could operate in to seek to control what we had known in our community. In doing that we sought to use a clause in the Public Health Act to give us a legal basis to establish a minimum area per person in sleeping accommodation and apply that in the local provisions of our LEP.

We were advised by the Department of Planning, despite the fact that we objected to this, that it was not a matter that should be dealt with under the standard template LEP. They subsequently removed it from our LEP, but I must say the LEP has not been gazetted. It is still a bit up in the air. But we had sought to put it in as an amenity provision in the local provisions and that is quite significant because we did not seek to apply to anything outside the application for Willoughby. What it would do is it would have given us an amenity standard for all sleeping accommodation in Willoughby. Should we have an issue reported to us we would have grounds for our Compliance staff to take action...¹⁵³

3.118 The Committee also heard evidence regarding the distinction between overcrowded shared accommodation and boarding houses:

Mr SIDOTI: Just from your experience, particularly in local government, there is nothing stopping you, is there, if you have a three-bedroom house putting 14 people in there?

Mr WERESZCZYNSKI: Well, I guess you should obtain the required approval by council.

Mr SIDOTI: But would you need that if it is a residential house?

Mr WERESZCZYNSKI: You need development consent to use your premises as a boarding house or a place of shared accommodation.

Mr SIDOTI: But this is what has been happening from my understanding, I can buy a house and I get \$400 a week for the house. But if I get 12 students in there and I do not make any modifications to building, it remains as a three-bedroom house and you are sharing the kitchen, the bathroom and then there might be three or four in one bedroom. So it might not be called a boarding house as such but it is a residential house being used for what probably is the unwritten rule that it is a three-bedroom house for a family. But then there are complications of what constitutes a family and then how many people you can have in there, because I do not think there is a number limit to the number of people, if I am correct.

Mr WERESZCZYNSKI: You are absolutely correct.

Mr SIDOTI: And that frustrates I think the adjoining residents where they see 15 people going in and out of there.

Mr WERESZCZYNSKI: It is sometimes a fine line as to whether or not it is a place of shared accommodation. If there is a group of people, as you are suggesting, whether there is 6, 10, 12, 14 or whatever, if they are simply sharing that dwelling then it may well not be a place of shared accommodation and it is simply a dwelling being used by a lot of people and causing I guess some issues.¹⁵⁴

3.119 Ms De Carvalho, Willoughby City Council, spoke of the difficulties in proving that a dwelling was being used as a boarding house:

¹⁵³ Ms Noni De Carvalho, Senior Development Planner, Willoughby City Council, Transcript of evidence, 21 October 2011, pp. 20-21.

¹⁵⁴ Mr Roman Wereszczynski, Manager, Health, Building and Regulatory Services, Randwick City Council, *Transcript of evidence*, 21 October 2011, p. 23.

Ms DE CARVALHO: Correct, that is right. For exactly that reason we did not single out boarding houses or anything as a general amenity provision. We sought to have it in our LEP because you may not be trying to prove that the parties are staying in the dwelling or that there is some form of arrangement such that you satisfy the definition of a boarding house because you have to prove that it is "let in lodgings". That can be very difficult to approve assuming of course you have gained entry, as Roman was speaking about.

We have had some success with asking owners' corporations to keep a diary, but I would not say that the problem in Willoughby is as big as perhaps what other areas have. But where we have had the issue, the owners' corporations in the apartment building has been assisting in trying to monitor what are the comings and goings of units, leading to sometimes council also taking action because building works have occurred such as to construct partitions inside the unit to accommodate increased numbers of sleeping areas.

CHAIR: Just on that, with the ratio to people per square metre, or square metres to persons, I remember discussing this many years ago, how would you address an issue where you have a very large family in a small house? My experience was I was seven people in a three-bedroom house which was just the norm many years ago. How would you address the various sized families and the square meterage?

Mr SIDOTI: Perhaps by the names.

Ms DE CARVALHO: The other thing is establishing permanence to it and whether or not the parties are related. If they are related in a family situation it is a different scenario to a group of unrelated people. Sometimes in some of the situations Roman has spoken about, you could equally finally gain entrance to a place and they will say: "This is not permanent. These people are visiting." So you have to prove permanence, but you also have to prove that they are unrelated parties.¹⁵⁵

3.120 The *Environmental Planning and Assessment Act 1979* (the 'EP&A Act') regulates NSW planning processes and permissions and applies the Building Code of Australia. The State Environmental Planning Policy (Affordable Rental Housing) 2009, under the EP&A Act, provides that adequate bathroom and kitchen facilities must be made available to boarders and there can only be 2 adult boarders per room. However, this applies to new boarding houses since the SEPP came into force. There are other requirements regarding boarding houses outlined in the 'Standards' section of this Report. Whilst there have been initiatives by individual councils such as Willoughby Council, overall there is no limit on the number of people who can live in a house or apartment. Accordingly, unless there is a breach of a specific regulation, such as unauthorised building works or a breach of health or fire regulations, councils generally cannot take action in response to overcrowded informal shared accommodation.

3.121 The Committee notes that councils lack power to take action regarding this category of accommodation. The Committee heard evidence that any legislation would have to be flexible in order to accommodate large families residing in premises:

¹⁵⁵ Ms Noni De Carvalho, Senior Development Planner, Willoughby City Council, Transcript of evidence, 21 October 2011, pp. 23-24.

Mr WERESZCZYNSKI: One of the reasons may be that the Department of Planning do not want to control the family situation where you have many members of the family that just so happen to live in a two or a three bedroom house or flat. If there are a lot of kids and then they may be in breach. It may be a fair dinkum family situation that ends up being in breach of that particular requirement, so you need to exempt the fair dinkum family scenario.

Mr SIDOTI: The system should be flexible enough to accommodate that zoning by names and that they are part of the same family.¹⁵⁶

Obtaining evidence

- 3.122 Section 118B of the Private Member's Bill extends specifically the powers of authorised officers when investigating to take films, audio, video or other recordings, in addition to samples and photographs which are the only medium currently allowed.
- 3.123 This would increase the specific means available to authorised officers investigating unauthorised accommodation and may assist with the current evidentiary problems experienced by councils have. However the City of Sydney Council stated the proposed section would increase these powers for all investigations under the Environmental Planning and Assessment Act, not just investigations of the matters the subject of the Private Member's Bill.¹⁵⁷
- 3.124 The issue of the appropriateness of extending these powers to all investigations under the Act is beyond the Terms of Reference of the Inquiry.
- 3.125 The Committee heard from councils and other stakeholders that boarding houses are usually operated in residential premises.
- 3.126 If unauthorised boarding houses are suspected, the councils' powers of entry and inspection could be exercised under the Local Government Act and Environmental Planning and Assessment Act.
- 3.127 Councils cannot enter residential premises under these powers unless consent is given or a search warrant is obtained.
- 3.128 Other circumstances in which councils may enter residential premises are where they are inspecting work that has been authorised, or in relation to the assessment of an application for a building certificate.¹⁵⁸
- 3.129 The Agreement in Principle speech of the Private Member's Bill describes the difficulty of obtaining evidence to prove the existence of unauthorised boarding houses and if access is denied, search warrants are difficult to obtain. Randwick City Council informed the Committee that the Agreement in Principle speech's

¹⁵⁶ Mr Roman Wereszczynski, Manager, Health, Building and Regulatory Services, Randwick City Council, *Transcript of evidence*, 21 October 2011, p. 26.

¹⁵⁷ City of Sydney Council, *Submission 66*, Appendix B, p. 1.

¹⁵⁸ *Local Government Act 1993* (NSW) s.200, *Environmental Planning and Assessment Act 1979* (NSW) s.118 and 118(J).

description is accurate and that unscrupulous operators will deny access and know 'that if we cannot get in, we cannot get any evidence.'¹⁵⁹

- 3.130 If there is a delay in obtaining access, the City of Ryde stated that evidence may be concealed by the time council officers gain entry.¹⁶⁰
- 3.131 Randwick City Council advised that it may carry out surveillance of the premises to observe how many people come and go, but the Council has limited resources and may abandon an investigation due to insufficient evidence.¹⁶¹
- 3.132 Accordingly, these limited powers of entry can lead to significant problems when proving breaches of regulations should councils seek to take enforcement action.
- 3.133 In this regard, the Committee noted the evidence of Willoughby, Ryde and Randwick Councils in relation to the practical problems associated with obtaining evidence. City of Ryde referred to a successful prosecution based on the defendant's admission that he was running a boarding house, but advised that without such an admission, the Council may not have been successful.¹⁶²
- 3.134 Ryde, City of Sydney and Willoughby Councils supported the need for faster and easier access to premises and Randwick Council's submission welcomed the proposed changes for councils' power of access, as outlined in the Private Member's Bill.
- 3.135 The Private Member's Bill propose amendments to the principal Act to enable authorised officers to enter premises without notice in order to obtain evidence in circumstances where they have reasonable grounds to suspect that a boarding house or other place of shared accommodation is being operated unlawfully.
- 3.136 The use of this power would be subject to oversight by the Ombudsman. If councils or authorised officers exceed the limits of the power, the Ombudsman could investigate and recommend an award of damages.

Powers of entry in Victoria

- 3.137 The Committee noted that there are similar powers of entry in relation to boarding houses in Victoria.
- 3.138 The *Public Health and Wellbeing Act 2008* (Vic) requires boarding houses to be registered with the local council if operators intend to rent out one or more rooms to four or more people.

¹⁵⁹ Mr Victor Dominello MP, Agreement in Principle Speech, Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010, Friday 26 November 2010, <http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/0/472E0B4709310D59CA2577F1002D11FA>, accessed 18 November 2011.

¹⁶⁰ City of Ryde, *Submission 22*, p. 2.

¹⁶¹ Mr Roman Wereszczynski, Manager, Health, Building and Regulatory Services, Randwick City Council, *Transcript of evidence*, 21 October 2011, p. 22.

¹⁶² Mr Scott Cox, Manager of Environmental Health and Building, City of Ryde, *Transcript of evidence*, 21 October 2011, p. 25.

- 3.139 If a council officer believes an unregistered boarding house is being operated the officer has powers under the Act, including the power to enter the premises without a search warrant and to gather evidence including taking audio and visual recordings. The Victorian Ombudsman may investigate complaints regarding exercise of these powers.
- 3.140 The Committee notes the comments by the Legislation Review Committee that the proposed powers of entry in the Private Member's Bill are significant. The City of Newcastle noted the proposed oversight by the Ombudsman, it expressed concern at the entry powers:
- It does seem somewhat draconian to imagine Councils being able to enter, without permission, premises where people live and demand they answer questions regarding their identity.¹⁶³
- 3.141 These investigations deal with accommodation that causes serious problems with amenity and inconvenience to nearby residents and the Committee notes the legitimate concerns raised during the inquiry by stakeholders, including residents. The Committee also notes the health and safety and general well-being of for students was raised in submissions and evidence.

Establishing the offence

Circumstantial evidence

- 3.142 The Bill proposes amendments to provide that the Land and Environment Court may rely on circumstantial evidence to establish that premises are being used as boarding houses or other types of shared accommodation.
- 3.143 The City of Newcastle expressed reservations about relying on circumstantial evidence:
- The Bill proposes to give Council officers enhanced rights of entry to premises suspected of being a boarding house and that the Court may rely upon circumstantial evidence in proceedings against an alleged unauthorised boarding house. Similar provisions have been incorporated in recent years into laws regarding investigation of brothels. Informal legal advice supports the view it would be very courageous to go to court on these matters with only circumstantial evidence, notwithstanding the provisions of the relevant Act.¹⁶⁴
- 3.144 Randwick City Council however supported the proposed amendment.¹⁶⁵ Accordingly the proposed amendment may assist councils with the difficulties of satisfying the burden of proof in enforcement proceedings but the extent of this assistance may be limited. The Committee however notes the operation of the proposed section may be affected by proposed section 156.

¹⁶³ City of Newcastle, *Submission 56*, p. 7.

¹⁶⁴ City of Newcastle, *Submission 56*, p. 6.

¹⁶⁵ Randwick City Council, *Submission 60*, p. 3.

Reversal of onus of proof

- 3.145 The Bill proposed reversing the onus of proof, so that if a council has evidence of the premises being altered in a way that is consistent with the premise's use as a boarding house, then it would be for the defendant to prove to the contrary.

PENALTIES

Financial penalties

- 3.146 The present penalties under the *Environmental Planning and Assessment Act 1979* and Environmental Planning and Assessment Regulation 2000 Schedule 5 (Penalty notice offences) in relation to the operation of illegal boarding houses are:
- \$750 for individuals and \$1500 for corporations (Class 1b building) or \$1500 for individuals and \$3000 for corporations (Class 3 building) where the use is permitted but no planning permission has been obtained.
 - \$1500 for individuals and \$3000 for corporations where the use is prohibited in the area. In this course of action, councils would issue an order under s.121(B) of the EP&A Act to cease using premises for the prohibited use and the order is contravened.
- 3.147 There are also procedures for councils to take court proceedings under s.127 of the EP&A Act to seek the penalties under s.126.
- 3.148 As a deterrent, the Private Member's Bill proposes to amend the Environmental Planning and Assessment Regulation 2000 to provide for penalties of between \$5500 for individuals and to \$11000 for corporations, for operating illegal boarding houses, or other places of shared accommodation, as an unauthorised development.
- 3.149 The Private Member's Bill states that these present disincentives are insufficient given the profits boarding houses may generate.
- 3.150 The Committee notes the evidence of Ms Natalie Karam, who represented the University of New South Wales Student Association 'Arc', that she had inspected a one apartment bedroom that had 5 beds in it and the 'going rate' for such accommodation is \$200-\$250 a week for one bed.¹⁶⁶
- 3.151 By way of comparison, the penalties under the Victorian *Public Health and Wellbeing Act 2008*, in relation to unregistered boarding houses, provides penalties of \$7,328.40 for individuals and \$36,642 for corporations.¹⁶⁷

Imprisonment

- 3.152 The EP&A Act contains a maximum penalty of \$1.1 million (10,000 penalty units) for any offences and an additional penalty of \$110,000 (1,000 penalty units) for

¹⁶⁶ Ms Natalie Karam, Chair, Arc @ UNSW Limited, *Transcript of evidence*, 21 October 2011, p. 48.

¹⁶⁷ Office of the Chief Parliamentary Counsel (Vic), 'Penalty and Fee Units,' <http://www.ocpc.vic.gov.au/CA2572B3001B894B/pages/faqs-penalty-and-fee-units> accessed 17 November 2011.

each day the offence continues. Schedule 1 (5) retains these penalties and additionally provides that the person would be liable to a maximum term of imprisonment of six months where the offence caused, or contributed to, appreciable danger or harm.

- 3.153 Mr Dominello noted in the Agreement in Principle speech that the possible penalty in the Australian Capital Territory for operating a boarding house without a licence is a prison sentence of up to 6 months. The Public Health Risk (Boarding Houses) (No 2) Declaration 2000 provides that a boarding house with more than 2 boarders must be licensed. Breach of the obligation may be punished by the above prison sentence and/or financial penalties.¹⁶⁸
- 3.154 The Committee noted the present proposed term of imprisonment relates to operation of a boarding house or other place of shared accommodation without the required authorisation under the Act, in the aggravating circumstances.

DEFINITIONS

- 3.155 The Private Member's Bill makes provision for penalties under the EP&A Act for a 'proprietor' not complying with the obligation to notify details of boarding houses. Penalties are necessary for encouraging compliance and to promote the purpose of the Bill to deter unauthorised boarding houses and believes the appropriateness of the amount of the penalties should be considered by government.
- 3.156 For the purposes of the Bill section 'proprietor' of a boarding house means:
- i. where the boarding house premises are leased- the lessor who is entitled to immediate possession of the premises or
 - ii. in all other cases- the owner of the premises.
- 3.157 The Agreement in Principle speech states that 'this covers the situation where the owner or landlord of the property genuinely does not know what the tenant or head lessee is doing'.¹⁶⁹
- 3.158 The effect of this proposed section is that whoever is operating a boarding house on premises is responsible for complying with the duties of the legislation, and will incur the relevant penalties for non compliance.

Definition of boarding house in Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010

- 3.159 The Private Member's Bill provides a definition of boarding house only for proposed section 156A regarding notification and keeping of a register:

¹⁶⁸ Mr Victor Dominello MP, Agreement in Principle Speech, Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010, Friday 26 November 2010, <http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/0/472E0B4709310D59CA2577F1002D11FA>, accessed 18 November 2011.

¹⁶⁹ Mr Victor Dominello MP, Agreement in Principle Speech, Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010, Friday 26 November 2010, <http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/0/472E0B4709310D59CA2577F1002D11FA>, accessed 18 November 2011.

This section applies to a boarding house in which sleeping accommodation is provided for:

- (a) 5 or more lodgers, or
- (b) 3 or more lodgers in any one bedroom.

3.160 There is no general definition of boarding house for the purposes of the bill. In its comments on the Private Members' Bill, the Legislation Review Committee stated:

The Committee notes that various provisions of this Bill refer to 'boarding houses or other place of shared accommodation'. However, the Bill does not provide for comprehensive definition, despite such definitions being provided for in various State Environment Planning Policies.

Given the various powers foreshadowed by this Bill in relation to boarding houses, including the power for council inspectors to search boarding houses, and the reversing of the onus of proof on proprietors to prove that they are not operating a boarding house, the lack of a comprehensive definition could be considered insufficient and confusing.¹⁷⁰

3.161 An example is proposed section 118J, which would extend the power of entry of authorised officers for premises where the authorised officer has reasonable grounds to believe 'the premises concerned are being used for the purposes of a boarding house, or other place of shared accommodation, of a class prescribed by the regulations...'

Definition of boarding house in Environmental Planning and Assessment Act 1979

3.162 Boarding houses must obtain planning permission under the *Environmental Planning and Assessment Act 1979*. The Committee notes:

Local environmental plans (LEPs) are an integral part of the NSW planning system. In 2006, the NSW Government created a common structure and language for LEPs through a 'Standard Instrument'. One Standard Instrument LEP will replace all existing LEPs in each local government area (LGA)....

The NSW Government is implementing the Standard Instrument LEP across NSW. Accordingly it has identified 67 councils with which it is working to ensure they have Standard Instrument LEPs in place by June 2011. The NSW Government will continue working with all other NSW councils with a view to having Standard Instrument LEPs in place as soon as practicable.¹⁷¹

3.163 Accordingly, local councils in NSW have developed or are presently developing Local Environmental Plans (LEPs) that are to be consistent with the terms of the Standard Instrument (Local Environment Plans) Order 2006.

¹⁷⁰ Parliament of NSW, Legislation Review Committee, *Legislation Review Digest*, No 17 of 2010, 30 November 2010, p. 58.

¹⁷¹ Planning NSW, Implementing the Standard Instrument LEP Program – Questions and Answers, <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=T32N5aDk4aQ%3d&tabid=247>, p. 1.

3.164 The definition that will be used in councils' LEPs for boarding houses under the Standard Instrument (Local Environment Plans) Order 2006 is:

boarding house means a building:

- (a) that is wholly or partly let in lodgings, and
- (b) that provides lodgers with a principal place of residence for 3 months or more, and
- (c) that generally has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (d) that has rooms that accommodate one or more lodgers, but does not include backpackers' accommodation, a serviced apartment, seniors housing or hotel accommodation.¹⁷²

Definition of boarding house in the Affordable Renting Housing State Environmental Planning Policy (SEPP)

3.165 The Committee also notes the position of the IDC and its reference to the definition of boarding house under the Affordable Renting Housing State Environmental Planning Policy (SEPP):

In developing these options, the IDC considered a broad range of elements that the various options might comprise including:

a. Definition of Boarding Houses

It is proposed that a universal definition of a boarding house be introduced, and this could be adopted from the Affordable Rental Housing State Environmental Planning Policy (SEPP). The Affordable Rental Housing SEPP definition could be used:

Boarding house means a building:

- that is wholly or partly let in lodgings, and
- that provides lodgers with a principal place of residence for 3 months or more, and
- that may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
- that has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers, but does not include backpackers' accommodation, a group home, a serviced apartment, seniors' housing or hotel and motel accommodation.

This definition aligns with the provisions for existing land tax exemptions administered by the Office of State Revenue (OSR).¹⁷³

¹⁷² Standard Instrument (Local Environmental Plans) Order 2006, p. 59.

¹⁷³ NSW Interdepartmental Committee on Reform of Shared Private Residential Services (IDC), *Boarding House Reform Discussion Paper*, August 2011, Department of Family and Community Services NSW, Ageing, Disability and Home Care,

- 3.166 The Committee notes that in its present form, the section would extend this power to backpacker hostels, whereas the Private Member's Bill states its focus is on student boarding houses. This is perhaps a separate category of accommodation, though it may be used by international students. The Government may wish to consider whether the proposed power should be extended to this category of accommodation under the Private Member's Bill.
- 3.167 The proposed section also refers to accommodation prescribed by the regulations. Given the significant nature of the power of entry conferred by the section, consideration should be given to defining with more certainty which categories of accommodation the proposed section 118J would apply to.
- 3.168 The Private Member's Bill would grant significant powers to local councils and also reverse the onus of proof in enforcement proceedings regarding unauthorised boarding houses. In light of these considerations, the definitions of boarding house and any other category of accommodation the provisions of the Private Member's bill would apply to should be defined with certainty. Given the IDC's consideration of this issue, and the comparisons raised above and for consistency with other planning instruments, the definition suggested by the IDC could be considered by government and the Committee awaits the Government's decision.

The Committee's view

Obtaining Evidence

- 3.169 The Committee notes the comments of the City of Sydney Council, that proposals in the Private Member's Bill to amend the EP&A Act would increase the powers available to investigating officers for all investigations under the Act.
- 3.170 Consideration of the effects of the amendment on other investigations, under the Act, is beyond the terms of reference for this inquiry.

FINDING 1

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.

- 3.171 The Committee heard evidence in relation to powers of entry for councils. Based on the evidence it has received, it appears to the Committee that the options available for powers of entry are: the present powers of entry with permission or by search warrant; or the extension of those powers to allow entry based on a reasonable suspicion test as proposed in the Private Member's Bill. There appears to be no 'middle solution' between the two options.
- 3.172 While a similar power of entry based on 'reasonable suspicion' exists in Victoria, the Committee notes the Legislation Review Committee's comments on the

http://www.adhc.nsw.gov.au/data/assets/file/0019/250417/Boarding_House_Reform_Discussion_Paper_Nov2011.pdf, accessed 18 November 2011, pp. 10-11.

Private Member's Bill. That committee expressed concern about the extent of this power, as it removes the requirement for council inspectors to obtain a search warrant before entering private residences.

FINDING 2

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.

Establishing the offence

- 3.173 The Committee notes that in some instances there are significant problems with respect to satisfying the burden of proof in enforcement action connected to illegal boarding houses. The Committee refers to comments made by the Legislation Review Committee in which it advised that reversing the onus of proof, by requiring a defendant to disprove the offence that is the subject of the enforcement proceedings, is inconsistent with the presumption of innocence.
- 3.174 The Legislation Review Committee noted that the prosecution should almost always bear the burden of proving the elements of the offence, and that the proposed amendment may adversely affect property holders' rights by requiring them to justify the use of their property and who is permitted to reside there.

FINDING 3

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.

Penalties

- 3.175 The Committee has considered the penalties in the *Environmental Planning and Assessment Act 1979* in relation to the operation of illegal boarding houses. The Committee's view is that the operation of illegal boarding houses should be strongly discouraged.

RECOMMENDATION 15

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.**

Appendix One – List of Submissions

1	Mrs Leisa ROSS
2	*CONFIDENTIAL*
3	Mrs Norma MADSEN
4	MADDEN Mrs Shirley
5	Robert Menzies College
6	Mr Brian GODSELL
7	Mr and Mrs CHIPPENDALE
8	Mr and Mrs HAMILTON
9	NSW Ombudsman, Mr Bruce BARBOUR
10	Australian Catholic University
11	*NAME SUPPRESSED*
12	Mr Neil YAKALIS
13	Mr John KENNY
14	Willoughby City Council
15	Macquarie University
16	Marsfield Against Residential Suffocation
17	Property Council of Australia
18	Wollongong Undergraduate Students Association
19	Mr Geoff CREEK
20	University of New South Wales
21	Ms Julie FERRARI
22	City of Ryde
23	Ms Maryse DELORIE
24	Tenants' Union of NSW
25	Charles Sturt University
26	University of Wollongong
27	Navitas
28	University of Western Sydney
29	*CONFIDENTIAL*
30	NSW Fair Trading
31	The University of Sydney

SOCIAL POLICY COMMITTEE

LIST OF SUBMISSIONS

32	Gosford City Council
33	Arc @ UNSW Limited
34	Shelter NSW
35	Lane Cove Council
36	Dr Gloria MAO
37	Mr and Mrs CHEDRA
38	Australian Council Private Education and Training
39	*CONFIDENTIAL*
40	The Hon Victor DOMINELLO MP
41	Campbelltown City Council
42	Property Owner's Association of NSW
43	Department of Premier & Cabinet, Division of Local Government
44	Redfern Legal Centre
45	Strathfield Council
46	Burwood Council
47	Consulate General of the Peoples Republic of China
48	Accommodation Association of Australia
49	Sydney University Students Representative Council
50	Kingsford Legal Centre, The University of NSW
51	*CONFIDENTIAL*
52	*CONFIDENTIAL*
53	Australian Human Rights Commission
54	The University of Newcastle
55	Newcastle University Students Association
56	The City of Newcastle
57	Department of Education, Employment and Workplace Relations
58	Consulate General of India
59	Council of International Students
60	Randwick City Council
61	Sydney University Postgraduate Representative Association
62	Bankstown City Council
63	Community Relations Commission
64	Australian Homestay Network
65	Mr Mick De Giorgio

LIST OF SUBMISSIONS

66	City of Sydney Council
67	Housing NSW
68	Mr Ryan Ho
69	Warringah Council
70	Mr John Alexander, MP

Appendix Two – List of Witnesses

21 OCTOBER 2011, MACQUARIE ROOM PARLIAMENT HOUSE

Witness	Organisation
Mr Alan Patrick	Marsfield Against Residential Suffocation
Mr Andrew Thomas Executive Manager City Planning	City of Sydney Council
Ms Helen Zimmerman Executive General Manager Navitas English	Navitas
Mr Iain Rothwell General Manager Special Projects	
Ms Karen Paterson Manager Policy and Research	Division of Local Government Department of Premier and Cabinet
Mr Roman Wereszczynski Manager Health Building and Regulatory Services	Randwick City Council
Greg Woodhams Director Environmental Services	Willoughby City Council
Ms Noni De Carvalho Senior Development Planner	
Mr Scott Cox Manager Environmental Health & Building	City of Ryde
Dr Chris Martin Senior Policy Officer	Tenants' Union of NSW
Ms Deidre Anderson Deputy Vice-Chancellor (Students and Registrar)	Macquarie University

LIST OF WITNESSES

Mr Jason Aaron Coombs
Director of Strategy

University of New South Wales

Mr Damien Israel
Deputy Vice-Principal Finance and IT

Wollongong University

Mr Nigel Pennington
General Manager Accommodation Services

Ms Natalie Karam
Chair

Arc @ UNSW Limited

Ms Susan Dixon
Director, Fair Trading Policy

NSW Fair Trading
Department of Finance and
Services

Mr Jeremy Tucker
Manager for Consumer Policy

Mr Tong Sheng (Thomson) Ch'ng,
National Secretary

Council of International Students Australia

Ms Heather Suzanne Richards
Vice President

Appendix Three – Site visit, Ryde and Macquarie University

3 NOVEMBER 2011

Meeting with City of Ryde, Civic Centre, 1 Devlin St, Ryde

Attendees: Mr Scott Cox, Manager Environmental Health and Building
Mr Dominic Johnson, Group Manager Environment and Planning
Mr Sergio Pillon, Environment and Planning
Ms Meryl Bishop, Manager Urban Planning
Ms Lexie McDonald, Urban Planning section

Mr Johnson stated that the Affordable Rental Housing State Environment Planning Policy (SEPP) was the catalyst for the majority of the Council's problems with assessing boarding houses. This was imposed on the whole state without any consultation and meant that boarding houses were now a permitted development in residential areas.

In the Ryde area, in the neighbourhood of Macquarie University, there were hundreds of illegal boarding houses. This is a very divisive issue in the community. The SEPP led to several developers trying to legitimise illegal boarding houses through the Development Application (DA) process.

The Council has adopted a two-pronged approach with efforts on the planning and the enforcement side. Council is trying to manage boarding houses to provide affordable accommodation to students that protects students from fire and other risks such as falling victim to the sex trade. They are also trying to bring the community along so they are with Council rather than opposing.

Boarding houses have a long history in New South Wales but a blanket SEPP in 2009 led to concerns that some suburbs will become boarding house ghettos. Exploitative owners can cause some social problems. They have sought to regularise formerly illegal boarding houses.

Council commissioned a study looking at the social research demand for accommodation (see submission).

Council wants to enforce rules against illegal boarding houses and to comfort the community that new ones will not detract from the character of the neighbourhood.

Mr Cox does land use and building compliance and investigates complaints. He noted the impact of the issue on the resourcing of his unit. There are has limited powers for council staff in gaining access to a property about which there had been a complaint or suspicion of illegal operation. It might take months and months.

The Council had developed an integrate enforcement and education policy for boarding houses. They had found there was limited knowledge about fire safety in boarding houses eg that all bedrooms required smoke alarms.

The amenity of property deteriorates if it is used as a boarding house eg the lawns are not mown, the pool fencing might fall below standards, the pool might not be maintained. However, some boarding houses are well maintained and there are just as many family-occupied residences that are run down. On average, the amenity issues are not the biggest

problem with boarding houses but one way that the community has highlighted the problem. Mr Johnson considered the amenity aspects were exaggerated and in the area around Macquarie University, the neighbourhood is in transition and the neighbours are unhappy about this. When all boarding houses were illegal the Council could close them down but now it can be legal for them to operate, there are concerns about the change in the neighbourhood.

The Affordable Accommodation SEPP does not make much provision for parking which is at odds with the Council's rules for developments. He noted that while there was no evidence that the lack of parking was a problem for these boarding houses, there was 'a disconnect' between what Council would do and the State law.

The other issue is the risk of boarding houses clustering. There is nothing in the SEPP to prevent clusters of boarding houses such as a rule that there be a certain distance between them. Council would be concerned about the impact of 50 boarding houses next to each other but they do tend to be larger numbers of them around universities. On the other hand, there is also nothing to prevent students renting houses as share houses under any residential control and this has identical impacts as illegal boarding houses.

The Council has received 18 DAs for boarding houses and some infill housing. Of these, 13 have been determined. He believed the number of DAs would have been much greater if the initial applications had been successful as there was many other illegal boarding houses in the area the owners of which might have applied if the transition of the initial ones had been smooth.

Mr Johnson considered that there was a need for legislative change to increase the powers for councils to prosecute on the basis of a 'preponderance of circumstantial evidence'. Often these are pitched as legitimate share houses with tenancy agreements but evidence such as locks on bedroom doors, individual food cookers and complaints by neighbours should be evidence.

Mr Johnson thought there is a role for boarding houses as a legitimate form of community housing but they should be registered and have inspections every one or two years. Each boarding house should have a plan of management, a minimum room size, a limit on total occupancy and a maintenance regime. He saw Councils as the appropriate regulatory authority but that NSW Fair Trading should be maintaining the register.

He believed the SEPP should be 'switched off' in particular areas as for instance has occurred with the urban infill SEPP and that Council should be able to determine the appropriate level and character of boarding houses.

Mr Cox thought that there should be an identified definition for 'share accommodation' in planning legislation as the current definition of boarding houses captures share house arrangements.

Ms Bishop explained that Ryde Council applies the standard Local Environment Plan (LEP) template and drafted a Development Control Plan (DCP) that goes to support the ARH SEPP. But she considered that the SEPP needed to be supported by guidelines as to the particular character of suburbs and how boarding houses fit into that.

Ryde Council staff have drafted guidelines on the internal layout of boarding houses and waste disposal. Boarding houses need management plans to be lodged listing the duties of the managers, house rules and a schedule of cleaning and maintenance. As a condition of consent, boarding houses will need to show compliance with the management plan. These policies will soon go on exhibition.

When asked about the risk of making students homeless if illegal boarding houses were closed down, staff said that they considered the timing of enforcement action to around uni holidays so there were opportunities to find alternative accommodation.

They noted that it was unlikely that legal boarding houses would make commercial sense eg if an illegal boarding house was profitable with 15 tenants but a legal one was limited to eight, the owner might not find this viable and close it down.

Mr Johnson noted that international students were not eligible for travel concessions so they tended to live within walking distance of the university. He doubted that the Ryde community would accept regularisation of boarding houses and many considered that the SEPP should be repealed and were not supportive of the presence of international students.

Public Consultation session

The public were welcomed into the Council chamber and around 60 people were present. The Chair invited registered participants to speak for up to five minutes each.

Mr Neil Yakalis

He had been active in opposing boarding houses and was surrounded by them in his street. He proposed two solutions:

1. travel concessions for international students even if the funding for the concession is built into the course fees students pay
2. Use the Australian National University solution of building low cost modular housing for students that is shipped from China – see 'quicksmart' website so that the stay on campus.

He believed the local community wanted students to stay on campus and would even support high rise development. The vast majority of them are young girls and there is a level of concern for their safety walking long distances late at night.

Ms Marlene Mills

Lives in West Ryde where her neighbours advised they wanted to take in international students but subsequently lodged a DA for a boarding house. She opposed it and it has been withdrawn. She was extremely concerned about the experience of sewerage and rubbish overflowing when the neighbours had six to eight students and she could not understand how the house would cope with more students. Most of these students drove and she remains concerned about the impact on the street of carparking. She has lived there for 35 years and did not think it appropriate for a commercial development to be next door to a low density residential development.

Mr Mike Hilder

Neighbours on either side of his house sold up while he was living in another city for a few years. In February 2009, before the SEPP, his neighbours wanted to build a boarding house with a two storey extension. This was declined but if it had occurred after the SEPP it would have been approved.

He quoted the Macquarie University Annual Report to note that in 2010 there were 12,935 international students which is 34.8% of its enrolment. 80% of course fees come from international students but all the University provides is 1800 beds on campus. In 2010 the university had \$76.2 million in surplus.

He suggested international students have travel concessions so they do not need to live on the doorstep of the university. The new Macquarie University train station is a major benefit. He noted that Macquarie has lots of land and could do a lot more to provide on-site accommodation, especially to improve the safety of young women who are around 55% of the student body and in the first year to help international students find their feet.

Richard Sterndale-Smith

He is a local resident with a few ideas about TOR 6 on appropriate framework for ongoing operation with the aim of protecting students when renting in boarding houses and to protect neighbourhood amenity. Mr Dominello's bill had proposed a single regulatory body funded by boarding house registrations of eg \$100/resident. All tenants should enter residential agreements and local councils should inspect annually. There should also be rules to prevent clustering of boarding houses so that they are a set distance apart of no more than 1 in 10 houses or 1 unit in 5.

Anonymous

She lives in Eastwood between Macquarie Uni and Eastwood Station. Until recently it had been a lovely community where it had been the norm to be able to borrow a cup of sugar from your neighbours. A year ago the next door neighbour had a boarding house approved under SEPP 28 and it had a nightmare to live there ever since. There are six cars parked there. It is overcrowded and there is rubbish everywhere. She is concerned that there was no transparency about the standards of legal boarding houses. She is familiar with the SEPP but still does not see how people can live in such crowded conditions especially in a residential area where the residents have no power to object. They are privatising the profits of the students and the local residents are paying the price.

She pointed out the apparent inconsistency that a minor building alteration on her premises would require a DA with consultation of the neighbours but there was no consultation about the boarding house under the SEPP. She does not understand the haste and the stealth. These premises have significant fire safety risks as there is no fire escape.

Mick De Giorgio

He mentioned that his recent submission to the Committee included 14 recommendations which he thought would address all of the inquiry's issues. He considered that the cause of most of the problem was the Affordable Rental Housing SEPP in 2009 and there was a lot of misinformation about how it worked. He did not consider it accurate that if a development met all the criteria the Council did not have the power to oppose it and he argued that the SEPP did not override the Council's powers under s79E of the Environmental Planning and Assessment Act.

He considered that no-one in government was prepared to listen to the 'bona fide residents' of a particular area. He defined 'bona fide residents' as those that had lived there for a long time, not for between two and four years only in order to be educated. He thought it wrong to subordinate the interest of the 'bona fide residents' to others.

There had been no way to bring these residents together when DAs were lodged. People do not have the knowledge, skill and time to coordinate opposition especially where they face obstruction at the outset.

Mr Alan Patrick (MARS)

He noted the social impact on the residential community of the university. Until 2009 boarding houses were not permitted in low density areas. One councillor told a rally that they did not want to waste council funds contesting a DA that was compliant with the SEPP. He noted that there was a difference between a SEPP which is a policy and the stronger legislative provisions of the EPAA. He thought the onus should be on the university to provide accommodation for its students from whom it drew so much income.

Anonymous

He noted that people seeking low cost accommodation were not represented at the meeting and that low cost accommodation is a problem all over the world. He cautioned against taking

international students for granted and suggested treating them better. He referred to the solution for managing student housing in Whitehorse council in Melbourne.

Mr Chris Bellenger

He represented Robert Menzies College (RMC) at Macquarie University. This is a not for profit Anglican college built in the 1970s with 50% local and 50% international students. College is by no means a refuge of the suburban elite. It does seem that international students are most vulnerable to problems with finding accommodation. If they live on campus, they miss out on the opportunity for the transformational experience of living in Australia. RMC has a new building to be complete by the start of the 2012 academic year for 102 students and are also reconfiguring some older accommodation to be self-catering.

The Hon Victor Dominello MP, Member for Ryde

Only two types of people are suffering under the current arrangements: local residents and international students. They did not plan to come to Australia to live in 'shantyboxes'. He thought it shameful when he discovered this issue in the area where for instance 15 houses in a single street were used as illegal boarding houses and were unkempt with the blinds down. Residents are concerned about the impact on their neighbourhoods. Since the start of this campaign, many of the operators have tidied up the outside of their premises. He noted that there were only 3,000 beds on campus for 13,000 international students so 10,000 were living in the neighbouring suburbs.

His bill only focussed on the enforcement side of the problem. He now thinks that a lot needs to be done on the planning aspect as well so the planning laws do not prescribe to local councils where to put the affordable housing. He has always accepted that there needs to be affordable housing with proper consultation and council approval. There need to be strong enforcement powers to crack down on illegal operators and strong penalties.

Anonymous

He had been an international student himself. Now he recommended that there be better information provided to students. He considered that most international students were quite wealthy. He thought that people who broke law should be punished.

Councillor Vic Tagg

He noted that the Council had spent \$300,000 on contesting a DA in the Local Environment Court and lost. Staff of the Council and the Uni try to work closely together to identify student accommodation.

Anonymous

He owns two boarding houses. He previously had licences for them but there was legislative change. His understanding is that there is no requirement for a licence for a house with fewer than 10 residents and was advised of this by a Council. When the mental hospitals closed, there was a policy shift for previous patients to move to group homes and boarding houses. In the Ryde area, the issue is student accommodation which is different to 'Boarding houses' although he has had student in his boarding houses. He noted that students tended rent rooms on a seasonal basis and in ordinary boarding houses there do not tend to be five or six residents in a room.

Visit of inspection, Macquarie University Student Accommodation

On Thursday 3 November 2011, a delegation of the Committee (Mr Bruce Notley-Smith and Mr John Sidoti) travelled to Macquarie University to meet with the Head of Student Accommodation, Mr Niels Pantenburg and inspect student accommodation at the university.

The Committee visited the following facilities and met the following people:

Robert Menzies College

Mr Chris Bellenger
Master
Mr Bob Whitson
Bursar

Robert Menzies College is an Anglican College affiliated with Macquarie University, which currently houses 210 students. The Committee inspected the college, including a visit to the communal areas, an example of a college room in the existing wings of the college, an example of the kitchen retrofitted in the existing part of the college to allow students a self catering option and the construction site for the new wing of the college which will house an additional 102 students. The Committee discussed the role residential colleges play in providing pastoral and academic support for residents.

Dunmore Lang College

Dr Lewis Rushbrook
Principal and Chief Executive

Dunmore Lang College is an independent residential college affiliated with Macquarie University. The Committee inspected a college room. The Principal outlined the role of the college as a prestige facility which provides high quality facilities which may be out of reach of many students. He mentioned that students had the option of full catering or only dinner.

Macquarie University Village

Mr Godwin Oparah
Director of Operations

Macquarie University Village is comprised of multiple townhouses offering a range of self catered accommodation options, including five, two and one bedroom apartments. The Committee inspected the MUV common areas, including common room, computer rooms and the deck which is under construction as well as a five bedroom townhouse.

Appendix Four – Site visit, City of Sydney Council

7 NOVEMBER 2011

Meeting with City of Sydney Council, Town Hall House, 456 Kent St, Sydney

Attendees (City of Sydney): Andrew Thomas, Executive Manager City Plan
Mary Snell, Principal Lawyer
Nicole Stent, Manager Health Inspections
Sally Peters, Manager Strategic Planning
Anita Leong, Specialist Planner

Committee Members: Mr Bruce Notley-Smith MP, Chair
Ms Sonia Hornery MP

Mr Thomas opened the meeting by introducing his colleagues at City of Sydney Council (City). Mr Thomas suggested that the City did not restate evidence given to the Committee at the public hearing but lead off with comment on the main issues, answering any questions Members may have.

On the issue of compliance, the City noted that overcrowding and unsafe use of residential accommodation was a significant issue. However, it did not just relate to international students, but also to travellers, low income earners and others experiencing difficulties accessing the rental housing market.

Overcrowding was a particular problem for the City in high-rise residential buildings close to the CBD, raising health and safety concerns as well as loss of amenity for other residents.

The City takes enforcement action on overcrowded and unauthorised uses, though this is resource intensive for the City as it experiences difficulty obtaining entry to premises and obtaining evidence to bring before the courts.

Under the *Environmental Planning and Assessment Act 1979* (EP & A Act), City staff can only enter residential premises with the owner or occupiers permission. Whilst amendment to the EP & A Act could improve regulation and enforcement by granting powers of entry, it would be necessary to grant powers of re-entry to verify compliance.

The City suggested that in regard to legislative amendments to the EP & A Act, consideration might also be given to a new piece of legislation

In relation to the *Residential Tenancies Act 2010* it was noted that recent amendments had removed the minimum period for residential tenancy agreements. This provision had been a useful tool for the City's compliance officers who used minimum periods when categorising uses as short-term or permanent residential.

Whilst legislative amendments to assist councils in dealing with these issues were supported, the main problem was one of rental housing affordability. Accommodation in the City was unlikely to be affordable unless there was some form of subsidy – to this end the City cited the recent developments in Glebe and Riverwood which had delivered a mix of social housing, affordable housing and new private housing.

The City suggested promoting the benefits of international students to communities, a job which would be made far easier if the accommodation they were staying in was compliant and properly managed.

Appendix Five – Extracts from Minutes

Minutes of Proceedings of the Social Policy Committee (no. 3)

9.30 am, Thursday, 8 September 2011

Room 1153, Parliament House

Members Present

Mr Grant, Ms Hornery, Mr Notley-Smith and Mr Sidoti.

Apologies

Ms Watson

1. Confirmation of Minutes

Resolved, on the motion of Ms Hornery, seconded by Mr Sidoti:

That the Minutes of Meeting No 2 held on Wednesday 10 August 2011 be adopted.

2. Proposed inquiry into International Student Accommodation in NSW

The Committee noted:

- a) correspondence from the Premier, dated 9 August 2011, referring the inquiry to the Committee;
- b) the *Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010*;
- c) the Agreement in Principle speech by the Member for Ryde.

The Chair advised the Committee that he did not receive the Premier's correspondence until the previous week.

The Committee discussed the terms of reference of the proposed inquiry, its timeline, how submissions should be called for and which stakeholders should be informed about the inquiry.

Resolved on the motion of Ms Hornery, seconded by Mr Grant:

- i) That the Committee commence an inquiry into international student accommodation in New South Wales 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.
- ii) That the Committee provide a final report to the House by the last sitting day of the Spring Parliamentary sitting (25 November 2011)
- iii) That the Committee advertise the inquiry in the *Daily Telegraph* and write to relevant stakeholders including:
- Local Government and Shires Association
 - tertiary institutions
 - students associations
 - the Ombudsman
 - the Division of Local Government in the Department of Premier and Cabinet
 - Tenants Union of NSW
 - Public Interest Advocacy Centre
 - Redfern Legal Centre and other legal centres
 - Accommodation Association of Australia
 - Property Owners Association of NSW.
 - Strata Owners Association;
- with a closing date for submissions of 7 October 2011.

Members discussed possible dates for site visits and hearings and flagged 21 and 24 October 2011.

3. ****

The Committee adjourned at 9.50am until 13 October 2011.

Minutes of Proceedings of the Social Policy Committee (no. 4)

9.32 a.m., Thursday, 13 October 2011

Room 1136, Parliament House

Members Present

Mr Grant, Ms Hornery, Mr Notley-Smith, Mr Sidoti and Ms Watson.

Apologies

There were no apologies.

1. Confirmation of Minutes

Resolved, on the motion of Ms Hornery, seconded by Mr Grant:

That the Minutes of Meeting No 3 held on Thursday 8 September 2011 be adopted.

2. Proposed inquiry into International Student Accommodation in NSW

The Committee noted:

- a) Submissions received to date;
- b) Summary of submissions received;
- c) Other expected submissions, in particular a request for an extension of time by the University of Newcastle which had been granted;
- d) Letter dated 26 September 2011 from Mr David Elliott MP, Member for Baulkham Hills advising that he will not be making a submission;
- e) Letter dated 28 September 2011 from Councillor Susan R. Hoopmann, Mayor, Municipality of Hunters Hill advising that the municipality does not have student lodgings

Resolved, on the motion of Mr Grant, seconded by Ms Hornery:

That the Committee accepts the submissions and agrees

- to publish those submission or parts of submissions that are not confidential in the table on its website and
- to treat as confidential those listed as such in the table.

3. Proposed Hearings and Visits of Inspection as part of the Inquiry into International Student Accommodation in New South Wales

The Committee noted

- a) Arrangements for the hearing scheduled for 21 October
- b) The proposed visit to Wollongong, Sydney CBD and Marsfield area on 3 and 4 November.

4. ****

The Committee adjourned at 9.48 a.m. until Friday 21 October 2011 at 10.00 a.m..

Minutes of Proceedings of the Social Policy Committee (no. 5)

10.10 a.m., Friday, 21 October 2011

Macquarie Room, Parliament House

Members Present

Mr Notley-Smith, Mr Sidoti and Ms Watson.

Apologies

Mr Grant, Ms Hornery.

Officers in attendance: Vicki Buchbach, Jonathan Elliott, Bjarne Nordin, Ben Connors, Amy Bauder, Jacqueline Isles, Jennifer Whight.

1. Inquiry into International Student Accommodation in New South Wales

a. Submissions received to date:

Resolved on the motion of Ms Watson, seconded by Mr Sidoti:

"That the Committee accepts the submissions and agrees to publish those submissions or parts of submissions that are not confidential in the table on its website."

Resolved on the motion of Mr Sidoti, seconded by Ms Watson:

"That the Committee treat as confidential submission no 39."

b. Public hearing:

Committee Members noted the draft questions provided by committee staff and agreed that, if necessary, following the public hearing, any further questions may be put to witnesses in writing.

2. Hearing - Inquiry into International Student Accommodation in New South Wales

The press and public were admitted at 10.12 a.m.

Mr Alan Patrick, Marsfield Against Residential Suffocation, sworn and examined.

Evidence concluded.

Mr Andrew Thomas, Executive Manager, City Planning, Sydney City Council sworn and examined.

Evidence concluded.

Ms Watson MP withdrew at 10.58 a.m.

Ms Helen Zimmerman, Executive General Manager, affirmed and examined.

Mr Iain Rothwell, General Manager, Special Projects, Navitas, sworn and both examined.

Evidence concluded.

The Committee adjourned for morning tea at 11.30 a.m.

The Committee reconvened at 11.45 a.m.

Ms Karen Paterson, Manager, Policy and Research, Division of Local Government, Department of Premier and Cabinet affirmed and examined.

Evidence concluded.

The Chair declared that he was an acquaintance of ROMAN WERESZCZYNSKI, Manager of Health Building and Regulatory Services within Randwick City Council, 30 Frances Street, Randwick who was a witness at the hearing.

Mr Roman Wereszczynski, Manager, Health Building and Regulatory Services, Randwick City Council; Mr Greg Woodhams, Director of Environmental Services, Willoughby City Council; Ms Noni De Carvalho, Senior Development Planner, Willoughby City Council; Mr Scott Cox, Manager Environmental Health & Building, City of Ryde. Each sworn and examined.

Evidence concluded.

The Committee adjourned for lunch at 1.04 p.m.

The Committee reconvened at 1.30 p.m.

Dr Chris Martin, Senior Policy Officer, Tenants' Union of NSW affirmed and examined.

Evidence concluded.

Ms Deidre Anderson, Deputy Vice-Chancellor (Students and Registrar), Macquarie University and Mr Damien Israel, Deputy Vice-Principal Finance and IT, both sworn and examined.

Mr Jason Coombs, Director of Strategy, Office of the President and Vice-Chancellor, University of New South Wales and Mr Nigel Pennington, General Manager Accommodation Services, Wollongong University, both affirmed and examined.

Evidence concluded.

Ms Natalie Karam, Chair, Arc @ UNSW Limited sworn and examined.

Evidence concluded.

The Committee adjourned for afternoon tea at 3.15.

The Committee reconvened at 3.30 p.m..

Ms Susan Dixon, Acting Director, Policy, NSW Fair Trading, Mr Jeremy Tucker, Manager, Consumer Policy, NSW Fair Trading, both affirmed and examined.

Evidence concluded.

Mr Tong Sheng (Thomson) Ch'ng, National Secretary Council of International Students, Australia and Ms Heather Richards, National Vice President, Council of International Students Australia, both affirmed and examined.

Evidence concluded, the witnesses and public withdrew at 4.02 p.m.

Minutes of Proceedings of the Social Policy Committee (no. 6)

9.33 a.m., Friday, 11 November 2011
Room 1043, Parliament House

Members Present

Mr Notley-Smith, Mr Grant and Ms Hornery.

Apologies

Mr Sidoti, Ms Watson.

Officers in attendance: Ms Vicki Buchbach, Mr Jonathan Elliott, Mr Ben Connors, Ms Amy Bauder, Ms Jenny Whight.

1. Confirmation of minutes

Resolved on the motion of Ms Hornery, seconded by Mr Grant, that the minutes of the deliberative meeting of 21 October 2011 be confirmed.

2. Hearing - Inquiry into International Student Accommodation in New South Wales

- Corrected transcript
- Additional information provided by Mr Andrew Thomas, Executive Manager – City Planning, City of Sydney Council

Resolved on the motion of Ms Hornery, seconded by Mr Grant, that the Committee treat some parts of the corrected transcript as confidential and agree to publish other parts of it on its website.

3. Inquiry into International Student Accommodation in New South Wales

- Submissions received to date

The Committee agreed to publish those submissions that are not confidential on its website.

- Request to publish Submission No 53 – Australian Human Rights Commission

Resolved on the motion of Mr Grant, seconded by Ms Hornery, that the Committee agree to allow the Australian Human Rights Commission to publish their submission on their own webpage.

4. General Business

The Committee noted the visits on 3 November to City of Ryde Council and Macquarie University and on 7 November to City of Sydney Council. Discussion ensued.

The Committee discussed the progress of the Inquiry into International Student Accommodation in New South Wales and agreed to meet to discuss the draft report.

The Committee adjourned at 9.52 am until 9.30am on Tuesday 22 November.

Minutes of Proceedings of the Social Policy Committee (no. 7)

9.30 a.m., Tuesday, 22 November 2011

Room 1043, Parliament House

Members Present

Mr Notley-Smith, Ms Hornery and Ms Watson.

Officers in attendance: Ms Vicki Buchbach, Mr Jonathan Elliott, Mr Ben Connors, Ms Amy Bauder.

Apologies

Mr Grant and Mr Sidoti.

1. Confirmation of minutes

Resolved on the motion of Ms Hornery, seconded by Ms Watson, that the minutes of the deliberative meeting of 11 November 2011 be confirmed.

2. Inquiry into International Student Accommodation in New South Wales

The Committee considered the Chair's draft report and discussion ensued.

Resolved on the motion of Ms Watson, seconded by Ms Hornery, that the draft report be the report of the Committee and that it be signed by the Chair and presented to the House.

Resolved on the motion of Ms Hornery, seconded by Ms Watson, that the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.

Resolved on the motion of Ms Watson, seconded by Ms Hornery, that, once tabled, the report be placed on the Committee's website.

Resolved on the motion of the Chair, seconded by Ms Hornery, that the Committee thanked the committee staff for their work, particularly given the short time frame in which the Inquiry was conducted.

The Committee adjourned at 9.50 am, sine die.