

Submission

No 43

INTERNATIONAL STUDENT ACCOMMODATION IN NEW SOUTH WALES

Organisation: Premier & Cabinet, Division of Local Government
Name: Mr Steve Orr
Position: Acting Chief Executive
Date Received: 5/10/2011



Premier & Cabinet
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Mr Bruce Notley-Smith MP
Chair
Legislative Assembly Social Policy Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

- 5 OCT 2011

Dear Mr Notley-Smith

I am writing in reply to your letter of 19 September 2011 inviting a submission on the terms of reference for the inquiry into international student accommodation.

The following advice is provided in relation to term of reference 4 – appropriate or minimum standards for student accommodation, and the adequacy of current legislation in ensuring that such standards are achieved. The advice is relevant to student accommodation which meets the definition of place of shared accommodation in the *Local Government Act 1993*. According to the Act's Dictionary, place of shared accommodation includes a boarding house, a common lodging house, a house let in lodgings and a backpackers' hostel.

A boarding house or lodging house is further defined in the Act (s516(1A)) as a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence and in which:

- (a) each tariff charged does not exceed the maximum tariff for boarding houses or lodging houses for the time being determined by the Minister by order published in the Gazette, and
- (b) there are at least 3 tariff-paying occupants who have resided there for the last 3 consecutive months, or any period totalling 3 months during the last year.

The Local Government Act gives councils the power to issue orders to operators of places of shared accommodation to ensure they comply with standards set out in the Local Government (General) Regulation 2005. The standards cover maximum number of boarders and lodgers; notices; long term residences; and broad requirements regarding light and ventilation, kitchen facilities, general cleanliness, and furniture and fittings. More detail about relevant provisions in the Local Government Act and Regulation is provided in Attachment 1.

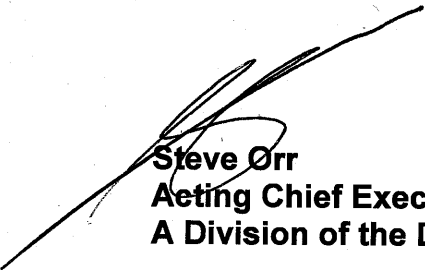


Whether councils choose to exercise this power is a matter for each council to determine. Consequently, the Division does not collect this information. Therefore, I am unable to comment on the part of the term of reference regarding the adequacy of current legislation in ensuring standards are achieved. Local councils with student accommodation in their areas are best placed to provide advice on this aspect.

Local councils have responsibilities in relation to boarding houses under legislation administered by other agencies, particularly the *Environmental Planning and Assessment Act 1979* and associated Regulation in relation to development approval and fire safety requirements. This legislation, which is relevant to term of reference 6, is administered by the Department of Planning and Infrastructure.

I trust this information is of assistance.

Yours sincerely



Steve Orr
Acting Chief Executive, Local Government
A Division of the Department of Premier and Cabinet

Boarding House Provisions in the *Local Government Act 1993*

- Act, s124, Order 5 – enables councils to issue an order to the owner, occupier or manager to take such action as is necessary to bring a place of shared accommodation into compliance with the relevant standards under the Act. A place of shared accommodation is defined as including a boarding house, common lodging house, a house let in lodgings and a backpackers hostel
- Regulation, Schedule 2 – sets out standards for places of shared accommodation which cover maximum number of boarders and lodgers; notices; long term residences; and broad requirements regarding light and ventilation, kitchen facilities, general cleanliness, and furniture and fittings
- Regulation, clause 83 – limits the enforcement of the standards in Schedule 2 of the Regulation to places of shared accommodation that are Class 3 buildings under the Building Code of Australia. A Class 3 building is a residential building, other than a Class 1 or 2 building, which is a common place of long term or transient living for a number of unrelated persons, including a boarding house. Boarding houses may also be Class 1b which includes boarding houses with a total area not exceeding 300 square metres and in which not more than 12 persons would ordinarily be resident.

It is not known why the standards cannot be enforced in relation to other classes of boarding houses. This limit was carried over from the 1919 Local Government Act. Ordinance 42 limited the application of standards to boarding houses "in which three or more persons exclusive of the proprietor and his family are boarded". The reason was likely to be so as not to be too onerous or costly and ensure small boarding houses continued

- Act, s131A – requires a council to consider, if an order will or is likely to have the effect of making a resident homeless, whether the resident is able to arrange satisfactory alternative accommodation in the locality. If not, the council must provide the person with information about the availability of satisfactory alternative accommodation in the locality, and any other assistance that the council considers appropriate
- Act, s628 – provides for non-compliance with Order 5 to be an offence with a maximum penalty of 50 penalty units in the case of an individual or 100 penalty units in the case of a corporation
- Act, s674 – provides for any person to bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act. This could include non-compliance with an order issued under s124 of the Act. Non-compliance with an order issued by the Court would be deemed contempt of Court attracting a custodial sentence. This provision could be used as an alternative to issuing a penalty notice under 3628

- Act, s678 – allows a council to do all such things as are necessary or convenient to give effect to the terms of an order, including the carrying out of any work required by the order. It also allows a council to recover any expenses incurred by the council under this section from the person concerned in any court of competent jurisdiction