

Submission

No 30

INTERNATIONAL STUDENT ACCOMMODATION IN NEW SOUTH WALES

Organisation: NSW Fair Trading
Name: The Hon Anthony Roberts MP
Position: Minister for Fair Trading
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The Hon Anthony Roberts MP
Minister for Fair Trading

RML: M11/3965

Mr B Notley-Smith MP
Chair
Legislative Assembly Social Policy Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

07 OCT 2011

Dear Mr ^{Bruce}Notley-Smith

Thank you for your correspondence of 21 September 2011 inviting submissions to the Legislative Assembly Social Policy Committee's Inquiry into International Student Accommodation in New South Wales.

Please find enclosed a submission from NSW Fair Trading, addressing those Terms of Reference which are relevant to the Fair Trading portfolio.

I thank you for the opportunity to provide input into the Committee's Inquiry into this important issue.

Yours sincerely

Anthony Roberts MP
Minister for Fair Trading

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**LEGISLATIVE ASSEMBLY SOCIAL POLICY COMMITTEE
INQUIRY INTO INTERNATIONAL STUDENT ACCOMMODATION IN NEW
SOUTH WALES**

NSW FAIR TRADING SUBMISSION

Role of NSW Fair Trading

NSW Fair Trading safeguards the rights of consumers and advises business and traders on fair and ethical practice.

Fair Trading provides services directly to individuals and businesses to create a fair, safe and equitable marketplace, and the laws Fair Trading administers set the rules for fairness in transactions between consumers and traders. Fair Trading investigates unfair practices, ensures that the products sold in NSW are safe and meet safety standards, registers businesses, co-operatives and associations, and issues licences for a number of occupations.

NSW Fair Trading administers the *Residential Tenancies Act 2010*. It provides advice to landlords and tenants on the operation of the Act, and provides assistance in resolving tenancy disputes. NSW Fair Trading also holds rental bonds, and administers rental bond refunds.

Comment on 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 and Assessment Amendment (Boarding Houses) Bill NSW 2010).

The objectives of the *Environmental Planning and Assessment Amendment (Boarding Houses) Bill NSW 2010* were:

- to enable authorised council officers to enter and inspect residential premises and to make film and other recordings in circumstances where the officer has reasonable grounds to believe that the premises are being unlawfully used for the purposes of a boarding house;
- to empower the Ombudsman to monitor the use of these entry and inspection powers;
- to enable the Land and Environment Court to rely on circumstantial evidence that premises are being used as a boarding house, and provide that evidence of the alteration of premises in a manner consistent with use as a boarding house is evidence that the premises are being, or are proposed to be, used for those purposes;
- to provide that the maximum penalty for unlawful development for the purposes of a boarding house is \$1.1 million and \$110,000 for each day the offence continues, and provide that a person convicted of this offence is also liable to 6 months imprisonment if the offence caused or contributed to appreciable danger or harm to any person; and
- to require proprietors of boarding houses to notify the Director-General of the then Department of Services, Technology and Administration of relevant

particulars and to require the Director-General to keep a Register of Boarding Houses.

The *Environmental Planning and Assessment Amendment (Boarding Houses) Bill* was aimed primarily at assisting councils to shut down illegal boarding houses. The proposed powers in the Bill would generally be exercised by local councils, and do not impact on NSW Fair Trading.

In relation to the issue of boarding house registration, a number of other jurisdictions already require boarding houses to be registered. In enabling the Government to keep track of boarding houses, a Register would assist in ensuring compliance with applicable standards.

The Bill proposed that the then Department of Services, Technology and Administration (now the Department of Finance and Services) would be responsible for the Register of Boarding Houses. Given that local councils are responsible for administering the legislation governing planning controls and building and accommodation standards for boarding houses, NSW Fair Trading considers that the Register of Boarding Houses would be more appropriately located within the Department of Local Government.

(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.

NSW Fair Trading does not have any specific comments to make on factors affecting supply of and demand for student accommodation. However, in view of the continuing decline in the stock of affordable accommodation, it is essential that consideration of any new regulatory proposals take into account the possible effect of those proposals on accommodation supply.

(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.

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 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.

The Residential Tenancies Act specifically does not apply to:

- boarding or lodging accommodation;
- prescribed refuge or crisis accommodation;
- hotels or motels;
- backpackers' hostels; or
- occupants who are not named on a residential tenancy agreement unless a named tenant transfers the tenancy to the occupant, or the occupant is recognised as a tenant, or the occupant is a sub-tenant of the named tenant under a written residential tenancy agreement.

Boarding or lodging accommodation can be distinguished from a residential tenancy in that a tenant is usually granted exclusive occupation of and control over the whole of the rented premises, even if this is shared with other tenants. A boarder, on the other hand, is granted occupancy of a single room and shares access to common facilities such as bathrooms, kitchens, laundries and living areas.

It would not be appropriate for the Residential Tenancies Act to be extended to boarding premises as these represent a fundamentally different kind of accommodation, subject to different community expectations, and for which quite different regulatory arrangements are appropriate. There is a community expectation that tenants will have a level of security of tenure and a certain minimum standard of accommodation. On the other hand, people who choose boarding style accommodation do so for a variety of reasons, including the lower cost and greater flexibility of this form of accommodation.

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 Environmental 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.

The fact that Schedule 2 of the Local Government (General) Regulation does not apply to small boarding houses is a significant gap in regulatory protection for students and other persons in such accommodation.

Further, while the above provisions do provide some mandated standards for boarding style accommodation, these standards cannot be enforced directly by an occupant. Unlike tenants, occupants of boarding style accommodation in New South Wales do not possess any statutory occupancy rights, nor do they have access to the Consumer, Trader and Tenancy Tribunal.

There have been suggestions that boarders and lodgers should be granted occupancy rights addressing not only standards of accommodation, security and cleanliness, but also issues such as notice periods and processes for rent increases and terminations, bonds, and rights to privacy and quiet enjoyment.

A number of other Australian jurisdictions have provided for occupancy rights for boarding house residents, and access to low-cost dispute resolution tribunals. Occupancy rights provisions in other jurisdictions can be divided into two categories: principles-based or prescriptive.

The Australian Capital Territory model is often referred to as a "principles-based" model of occupancy rights. This means that the rights are expressed as general principles rather than prescriptive and detailed requirements. The aim of a principles-based model is to provide a flexible rights framework that can be adapted to suit different accommodation arrangements. For example, the notice periods that are appropriate for short-term crisis accommodation may be different from those appropriate for long term accommodation. The ACT legislation allows for the making of regulations to prescribe standard terms for occupancy agreements applying to particular types of accommodation.

The ACT legislation provides for the following occupancy principles:

- (a) an occupant is entitled to live in premises that are reasonably clean, in a reasonable state of repair and reasonably secure;
- (b) an occupant is entitled to know the rules of the premises before moving in;
- (c) an occupant is entitled to have the occupancy agreement in writing if the occupancy continues for longer than 6 weeks;
- (d) an occupant is entitled to quiet enjoyment of the premises;
- (e) a grantor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes;
- (f) an occupant is entitled to 8 weeks notice before the grantor increases the amount to be paid for the right to occupy the premises;
- (g) an occupant is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction;
- (h) an occupant must not be evicted without reasonable notice;
- (i) a grantor and occupant should try to resolve disputes using reasonable dispute resolution processes.

The ACT is currently reviewing its occupancy rights legislation. Some submissions to the review have criticised the lack of specific standards in the provisions, arguing that they do not provide boarders with concrete, enforceable rights, nor protect them from retaliatory eviction, onerous rent increases or onerous house rules.

The occupancy rights legislation in other States is considerably more prescriptive than the ACT legislation. For example, the boarding house provisions in Victoria, Queensland, South Australia, and the Northern Territory all set out lists of occupancy rights in relation to matters such as:

- the amount of rent that can be required in advance,
- maximum bond amounts;
- condition reports at the beginning of an occupancy;
- notice periods for rent increases;
- protection against excessive rent increases;
- separate metering in rooms if the resident is charged for electricity or gas;
- rights to reasonable security, access and quiet enjoyment;
- the state of repair of the premises;
- house rules, what house rules can cover and notice periods for changes to house rules;
- urgent repairs and maintenance;
- the owner's right of entry and notice periods for entry; and
- the grounds on which an agreement can be terminated and the applicable processes for an owner to gain possession.

Any consideration of whether occupancy rights for boarders and lodgers should be introduced in NSW will need to consider:

- the experience of other jurisdictions and the possible impact of any such rights on supply of boarding style accommodation;
- the merits of principles-based versus prescriptive approaches to occupancy rights; and
- whether occupancy rights should be limited to boarding houses, or applied more broadly to shared tenancies not covered by the Residential Tenancies Act, refuge or crisis accommodation or official student accommodation such as university residential halls and colleges.

(5) The current extent of unauthorised student accommodation operations in NSW;

In its role as the agency responsible for administration of the *Strata Schemes Management Act 1996*, NSW Fair Trading is aware of reports that international students have been involved in overcrowding in strata schemes. This has raised concerns over negative impacts on strata schemes' amenities and services.

Fair Trading, however, is unable to substantiate or quantify these claims.

(6) The appropriate framework for the ongoing 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.

NSW Fair Trading has no specific comment to make on this Term of Reference, except to reiterate that consideration of any new regulatory proposals must take into account possible effects on the supply of affordable accommodation.