

HEADING HOME

Tenants' Union of NSW submission to the Review of the Boarding Houses Act 2012

October 2019



**TENANTS'
UNION**
OF NEW SOUTH WALES

Introduction

The New South Wales *Boarding Houses Act 2012* (the Act) has now been in operation for six years. Section 105 of the Act required the Ministers to review the Act and report to Parliament before November 2018, to determine whether its policy objectives remain valid and its terms remain appropriate. Despite the delay, we are pleased that this review is now underway.

The Tenants Union of NSW (TUNSW) is the peak body representing the interests of renters in NSW, including residents and occupants of boarding houses in their various forms. We are an accredited Community Legal Centre specialising in New South Wales' renting laws and the main resourcing body for the twenty Tenants' Advice and Advocacy Services (TAASs) across the state. TUNSW and the TAASs have provided information, advice and advocacy to more than 2,000 identified boarders and lodgers, in regions across New South Wales, since the Act commenced.

We have been involved in efforts for reform for residents since 1976. A brief timeline of reform is outlined on the next page. We consider the introduction of the Boarding Houses Act to have been a significant step, but very much a first step. Our recommendations here give government opportunity to take the next steps to ensure all who live in New South Wales have their right to safe, affordable homes realised.

Through our Boarding Houses Education Project, we:

- distributed material on the Act directly to 487 boarding houses;
- printed 3,000 copies of a special Tenant News focusing on Boarding Houses. All 3,000 were distributed; and
- printed 25,000 business-card sized pamphlets detailing the rights granted by Occupancy Principles and available advice services. All 25,000 were distributed and demand so great that a further 5,000 were printed.



Our business card sized resources have been highly popular amongst residents and support services.

Our submission is based on the experiences reported to us directly by residents of boarding houses, the experiences of the Tenants' Advice and Advocacy Services (some of whom have made their own submissions) and our ongoing consultation with others working in the sector. It should also be read alongside our report *5 years of the Boarding Houses Act 2012*.¹

We participate in Newtown Neighbourhood Centre's Boarding Houses Roundtable and highly value their experiences.

We have had the opportunity to discuss this review, or see drafts of submissions, from City Future Research Centre and Shelter NSW.

We also draw attention to People With Disabilities Australia's submission. We endorse their submission and thoughts on assisted boarding houses.

For more information on this submission, contact Leo Patterson Ross, Senior Policy Officer by email: leo.patterson.ross@tenantsunion.org.au or by phone: (02) 8117 3700.

¹Tenants' Union of NSW (2018) *"Five years of the Boarding Houses Act 2012 in New South Wales"*, TUNSW

Milestones in the campaign for boarding house rights include:

1987: The Residential Tenancies Act excluded boarders and lodgers from the Act: the Minister for Consumer Affairs advised that a committee would be established to deliberate on particular problems of boarders and lodgers and consideration would be given to an extension of the Act based on the context of the review committee's recommendations.

October 1990: the Tenancy Commission submitted a report on the status of boarders and lodgers to the Minister for Housing

March 1991: an announcement was made that the Minister would introduce new legislation into Parliament

May 1991: the debate on the second reading of the Bill was adjourned on motion

August 1991: the Bill was re-introduced to the Legislative Assembly. The Government took no further action and the matter lapsed

1997: The Boarders and Lodgers Action Group drafted a new Boarding Houses Bill. No Bill was introduced

September 1998: an announcement of a further inquiry into the desirability of boarding house legislation. Action lapsed.

1998: The Department of Fair Trading established a working party to investigate the need for regulation to protect the needs of boarders and lodgers

2003: the working party was still considering submissions.

2005: A proposal put forward by the TUNSW which would be: "a model of law reform based on occupancy agreements. In summary, this model would be broad and non-prescriptive..... It would use terms like 'reasonable', which would give the Tribunal flexibility to decide matters on a case-by-case basis. For example, what may be appropriate for a boarding house may not be appropriate for student lodging accommodation".

2008: An Interdepartmental Committee met to look at reform to the boarding house sector

2010: Residential Tenancy Act passed which again did not include provision for boarders and lodgers

2012: Coroner's report into the death of six residents of a boarding house

2012: Boarding Houses Act passed giving residents of boarding houses occupancy rights for the first time

excerpted from the TUNSW Boarding Houses Education Project evaluation report.¹

¹ Tenants' Union of NSW (2016) Evaluation of the Boarding Houses Education Campaign, <https://files.tenants.org.au/policy/BHR-161026-Final-report-BH-Project.pdf>, accessed 8/10/19

Key recommendations

The language of 'boarding houses' is no longer appropriate for the section of the rental market that are regulated by, or intended to be regulated by, the current *Boarding Houses Act 2012*. We should instead move towards consumer protections for all persons renting their home. This approach will address some structural issues in the current Act and make regulation more efficient and effective.

Registration Scheme

- 0- Implement a Rental Accommodation Registration Act (RAR Act) - a registration and accreditation scheme which covers all providers of rental accommodation, bringing together existing (or planned) registration schemes for residential villages, boarding houses as currently defined by the *Boarding Houses Act 2012*, residential land lease communities and short-term rental agreements. Consideration should be given to registration of all providers of rental accommodation, including landlords under the Residential Tenancies Act 2010. Requirements of registration and accreditation will differ according to levels of service provided, and may be set by the RAR Act or by the legislation requiring the registration (as with the *Residential (Land Lease) Communities Act 2013* and the *Retirement Villages Act 1999*).
- 1- The RAR Act also creates a Rental Accommodation Registrar (Registrar) as a statutory authority within Fair Trading NSW, with associated staffing, to take up responsibility for managing the registers, enforcement actions regarding registration and accreditation.
- 2- Provide adequate resources and powers to either the Registrar or local governments :
 - investigate whether a property is a registrable boarding house;
 - register unregistered registrable boarding houses;
 - require a boarding house to pay the registration fee within a reasonable time frame following registration;
 - update listings in the Register which are inaccurate or out-of-date;
 - remove details of a property from the public Register under prescribed circumstances, if it has ceased to be used as a boarding house and,
 - receive the amount payable under applicable penalties (whether directly or indirectly).
 - investigate breaches of the Act and occupancy agreements and pursue enforcement actions.

Occupancy Principles and Dispute Resolution

4. Expand the coverage of occupancy principles to all rental accommodation not already covered by the Residential Tenancies, Residential (Land Lease) Communities or Retirement Villages Acts. These principles can be hosted in an existing piece of legislation or a new one with specific purpose.
5. Create standard form agreements for use in a range of key rental accommodation types, and mandate their use. If mandatory standard form agreements are not to be created via regulation, specific requirements for notice periods around evictions should be legislated.
6. Amend Occupancy Principle 6 to restrict occupancy rent increases to no more than once per year, and require a reasonable amount of increase.

7. Security Deposits to be lodged with the Rental Bond Board or equivalent, with interest generated contributing to registration and accreditation scheme, advocacy and support, and dispute resolution functions. Alternatively, rental accommodation operators may be required to contribute to these costs directly.
8. The framework around occupancy agreements should require proprietors of residential services to provide the reason for any eviction occurring after 28 days from the agreement beginning, or during a fixed agreement.
9. The framework around occupancy agreements should prevent proprietors from evicting an occupant or otherwise recovering possession of an occupied room in a residential accommodation except with an order of the NCAT granting vacant possession of the room.
10. The framework around occupancy agreements should require NCAT to consider all relevant circumstances when determining whether to make orders allowing eviction or other recovery of an occupied room from rental accommodation, and on what date possession should be granted.
11. Ensure residents are able to apply to a dispute resolution service, and require operators use the service before eviction in instances where there is no immediate risk of harm to the operator or other residents. Dispute resolution service should especially be required before eviction in instances of personal disputes between residents.

Advocacy, education and Support

12. The NSW Government should provide ongoing resources for community education projects on the regulatory framework and the Occupancy Principles.
13. The NSW Government should provide ongoing advocacy resources for community education projects on the regulatory framework and the Occupancy Principles.
14. Require information to be provided to residents and displayed in rental accommodation to ensure residents and proprietors are aware of their respective rights and obligations under the regulatory framework, as well as options for support.
15. Expand the Boarding Houses Outreach Project model to ensure viability in current service provision, and explore expansion to other locations in NSW.

Sector in context

'Once upon a time you had a building that was being occupied by persons who were living there three or more months and it would be advertised as a boarding house and that was simple. Now you have places that people say are 'apartments' or 'student houses' or 'private dwellings.'¹

The term 'boarding house' is one which currently causes significant confusion. There are a comprehensive regulatory approach with greater clarity of purpose The regulation of 'boarding houses' is currently split over four government clusters, from Stronger Communities (for disability sector), Customer Service (for the register and occupancy principles), Treasury (for the land tax exemption) and Planning, Industry and Environment (both for local government role and development consents). Requiring a whole-of-government approach without a clear central role for coordination of responsibility leads to reforms, such as the creation of 'new-generation boarding houses', without due consideration of the likely results.

The language of board and lodgings is no longer appropriate for the actual usage of the sector. A lodging describes a room 'in another's home'. The distinction between lodger and tenant has been blurred in significant ways over the last few decades, but we assert that the continuing distinguishing feature is that a lodger is not granted the right to call the place in which they reside their home - their home is elsewhere.

This is no longer accurate for the sector this legislation attempts to regulate. Some residents in traditional boarding houses may

¹Interview with advocate, Hunter region, July 2017
Unless otherwise noted, excerpts from interviews and case studies in this submission are sourced from the Tenants' Union NSW's March 2018 report, Five years of the *Boarding Houses Act 2012* in NSW, <https://files.tenants.org.au/policy/2018-BHAct-5YearReport-FINAL-LPR.pdf>, accessed 08/10/2019

still enter the sector with some expectation that it is a temporary solution, but for many it becomes their home. We acknowledge the City Futures Research Centre submission approach for describing agreements where facilities are shared with other people with whom the resident is not in a contractual relationship (as with co-tenants in a share-house). This feature of being shared with other people is a useful one. However it does not flow that legislation rooted in the principles of 'lodgings' with the radically imbalanced relationship between landlord and lodger is not actually suitable for the sector as it currently operates.

Boarding houses are considered a form of tertiary homelessness as a result of the lack of tenure security. This is not an inherent feature required of the tenure - it is a description of the lack of regulation and the inevitable result of a historically unregulated housing form. There is no sound policy reason to further boarding houses, or lodgings, as forms of tertiary homelessness. We do not accept principles espoused by industry such as 'easy in, easy out', to refer to a trade-off where easier access to accommodation is granted in exchange for arbitrary evictions, as useful from a 21st century regulatory perspective.

Famously, Sherlock Holmes was a boarder, as he received meals as well as his rooms. Though never said outright, he was clearly not considered to be experiencing homeless - his occupancy was never threatened, despite outrageous behaviour and his making alterations to the home. However, he paid rent a year in advance, and Watson had "no doubt that the house might have been purchased at the price which Holmes paid for his rooms during the years that I was with him." Lodgings are not all created equal, and their regulation needs to be flexible enough to provide participants with sensible options for dispute resolution.

Typology

Within the 'boarding houses' sector there is considerable variance. As advocacy efforts have continued there is a relatively nascent research focus attempting to catalogue the variety of forms. A sensible regulation regime will need to ensure residents of similar housing forms are also considered. We recommend two papers which attempt to map the variance. Gurran et al (2019)² focus on all forms of informal accommodation, including more formal boarding houses such as those that might register, and informal boarding houses which will generally attempt to avoid regulation. Their typology on page 38 usefully illustrates the complexity in attempting to categorise the housing that people make use of in the absence of sufficient public and community housing or accessible private rental housing. Martin (2019)³ provides an overview of the more formal sector and while some dwellings may attract multiple identities, usefully identifies that 'boarding houses' may refer to:

- registrable general boarding houses;
- registrable assisted boarding houses;
- traditional boarding houses;
- new-generation boarding houses;
- student accommodation;
- co-living;
- refuges and crisis accommodation;
- and informal boarding houses and lodgings

This is an ongoing conversation and in the absence of more fundamental changes in government approach it is likely new forms of housing will continue to emerge. A regulatory scheme must be flexible enough to sensibly provide coverage to a wide range of housing types. A too narrow focus will inevitably fail to regulate the sector.

We do not think the descriptor of boarding house is an apt one for the 'new-generation' boarding houses. They do not offer lodgings,

² Gurran, Pill, Maalsen, Alizadeh & Shrestha, (2019) *Informal accommodation and vulnerable households*, Sydney Policy Lab

³ Martin (2019) *Boarding houses in New South Wales: growth, change and implications for equitable density*, City Futures Research Centre

let alone board. They do not provide affordable homes. They are in effect micro-apartments with currently unlawful, minimal room sizes. It would make no sense however to force residents of these micro-

apartments on to lesser forms of tenure. A better option is to adjust the terms of the Affordable Housing SEPP to no longer require the homes to be let in lodging, and to consider what should be an appropriate room size. This should also come along with a mechanism to ensure affordability considerations are taken into account.

Equally, other similar housing types such as student housing, both formal and informal, do not tend to consider or refer to themselves as boarding houses despite the business model looking very similar. The formal sector has attempted to exclude itself from regulation, with an ever-increasing expansion from initially residence in colleges on university grounds, to now premises merely affiliated with a university. We recommend consideration of the work done by UNSW's Human Rights Clinic exploring these experiences⁴.

We are therefore left with a sector with elements that refer to themselves as something they are not, and other elements that are something (at least under some legislative schemes) they would never use to refer to themselves.

These discrepancies need to be addressed by the utilisation of more accurate language, and language specifically utilised to allow for various ways of understanding and experiencing the sector.

⁴UNSW Human Rights Clinic, *No Place Like Home: Addressing Exploitation of International Students in Sydney's Housing Market* (Report, July 2019). <https://www.law.unsw.edu.au/sites/default/files/imce/files/No-Place-Like-Home-UNSW-Human-Rights-Clinic-report.pdf> Accessed 01/10/2019

Case Study:

This case study has been provided to us by the advocates at the Inner Sydney Tenants' Advice and Advocacy Service, part of Redfern Legal Centre. It demonstrates that even a provider of rental accommodation with trained staff; already subject to a regulatory scheme; and with motivations that are not driven by profit, struggles with understanding the proper use of the various legislative schemes relating to rental accommodation, even following Tribunal determination.

Beryl was an older homeless woman who had been staying on and off in various women's shelters.

A charity that operated one of the women's shelters invited her to participate in a transitional housing initiative they had started with a Community Housing Provider.

Beryl was offered a property and was asked to sign a standard boarding house occupancy agreement with the Community Housing Provider.

Even though the agreement Beryl signed was in the form of a boarding agreement, there was nothing to distinguish the arrangement from a normal tenancy. She lived in the property with only one other woman. There was no proprietor, manager or caretaker for the property. There were also expressed limits on the Community Housing Provider's right to access and use the property.

A few months after moving in, Beryl had a verbal disagreement with the other resident. Soon after this, she was given a written 3-day eviction notice, but then the next day a locksmith came and changed the locks to exclude her from the property.

Beryl spent the weekend living on the street and had to pay for the storage of her personal belongings.

With the assistance of Inner Sydney TAAS at Redfern Legal Centre, Beryl made an application to NCAT for compensation for the cost of storing her goods and for her loss of quiet enjoyment of the premises. The basis for the claim was that she was a tenant, in spite of the form of the agreement she signed.

During negotiations leading up to the hearing, the Community Housing Provider confirmed that it had used boarding agreements for this program because it made it easier to manage the properties.

Eventually, they agreed to settle the matter for the full amount of the claim and provide Beryl a written apology.

Frustratingly, the Community Housing Provider failed to grasp they had unlawfully contracted out of the Residential Tenancies Act 2010 and then participated in an illegal lockout. They maintained that this issue could have been avoided if they had properly explained the terms of the agreement.

Throughout, they demonstrated a concerning lack of understanding about the basics of either tenancy law or the Boarding Houses Act in NSW.

Registration scheme

The single biggest criticism we have of the current registration scheme is that it was implemented with almost no resources, and little ownership. Engagement with the enforcement action under the *Boarding Houses Act 2012* from Fair Trading has appeared minimal - we understand as a result of resource constraints. Local councils were expected to do much of the heavy lifting - but were also given no resources to do so¹. It must be understood by government that there will be no adequate regulation without adequate resources. NSW is an exceedingly wealthy state with the freedom to make sensible choices to ensure the safety and health of the community². However we also believe that the regulatory framework has suffered from confusion over responsibilities. To address this inconsistent ownership of regulatory responsibility, we propose a stand-alone piece of legislation, which we suggest could be called the Rental Accommodation Registration Act, comprising the following elements:

1. A broad definition of 'rental accommodation', within which different levels of tenure may be included. We suggest that a rental accommodation agreement exists where a Rental Accommodation Operator grants to a person, for value, a right to occupy premises (as currently defined in the *Boarding Houses Act 2012*), or part of premises, for use as a residence.

Below this definition which captures all the premises we can further divide into different kinds of rental accommodation, including Residential Tenancies, Retirement Villages, Short-Term Rental Agreements and other occupancies, including residential services (a name to which we are not tied and about which we encourage consultation. We note

¹ Dalton, T., Pawson, H. and Hulse, K. (2015) Rooming house futures: governing for growth, fairness and transparency, AHURI Final Report No. 245, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/245>.

² <https://www.budget.nsw.gov.au/nsw-budget-2019-20-budget-papers>

the City Futures Research Centre refers to 'shared accommodation' to refer to broadly the same group of accommodation types). We define residential services here as agreements where:

- the person is to share a bedroom with two or more persons (any one of whom occupies by separate grant of the operator); or
- the person is to share the premises, or share kitchen, dining, bathroom or living facilities, with four or more other persons (any one of whom occupies by separate grant of the operator); or
- the premises are one of several adjoining or collocated premises (such as in a strata scheme), to which the operator provides food or personal care services.

This definition means that the registration and accreditation scheme would include not only boarding houses, but also students' halls of residence, crisis accommodation and refuges, and serviced rental housing arrangements along the lines of 'SunnyCove' villages.

There should be specific exclusions genuine share housing arrangements (that is, where the premises are already registered as a residential tenancy, and the right to occupy is granted by one or more tenants who reside at the premises. These sub-tenants may hold residential tenancy agreements, or occupancy agreements).

2. A requirement that all premises used for rental accommodation be registered on a register maintained by the Rental Accommodation Registrar (we discuss this office below). It would be an offence to provide unregistered rental accommodation, and registration could be refused where the operator is not a fit and proper person (including because of previous breaches of the Act) for the type of rental accommodation they are offering. (Note that land use consent decisions about rental accommodation would remain with local councils or other relevant development

consent authorities.)

Eligibility for government incentives where applicable, such as the land tax exemption, residential rating and the Boarding House Financial Assistance Program, should be conditional on proper registration. The registration process would collect information about the rental accommodation for the purpose of identifying, where appropriate, a 'Service Description' and an appropriate class or classes of 'Accreditation' (we discuss these terms below). Operators would be required to periodically re-register, in order that information is kept up to date and any changes in the way they operate may be identified.

The register should be publicly available (including on the internet), and the entry for each rental accommodation would include:

- the address of the premises,
- the name of its operator and relevant staff (i.e. manager)
- ABN/ACN where applicable
- its Service Description
- Accreditations
- Any enforcement or compliance action taken in respect to accommodation, operator and/or staff
- Any relevant information relating to incentives applied to accommodation service, for example land tax exemptions, or whether the premises were given consent under the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)
- any other details required by relevant acts.

However we would recommend that some forms of accommodation, such as refuges, should not appear on the public register for safety reasons.

3. Provision for various Service Descriptions, including general residential, Student Accommodation, Boarding (or Rooming) House, Crisis Accommodation, Refuge, and such other descriptions as may be prescribed by regulation. The purpose of

these descriptions would be to better inform persons perusing the register – whether they are prospective users of residential services, or government and non-government agencies planning their work with residential services.

4. A requirement that some rental accommodation be accredited. Premises being used exclusively for residential tenancies, and other regulated rental accommodation types such as may not require accreditation at all. For the purpose of this submission we limit the remaining remarks to residential services. These providers should be accredited within a specified period (we suggest six months, as under Queensland's *Residential Services (Accreditation) Act 2002*) of either becoming registered or commencing the provision of the relevant service. We submit that when the registration scheme commences, already existing residential services should have to register immediately, but then have some time (say, one year) to become accredited (except for currently authorised assisted boarding houses, which should be deemed accredited, and have to apply for re-accreditation, immediately - though we note the recommendations by People With Disabilities Australia to this review). It would be an offence to operate a service without the appropriate accreditation after the period for accreditation: penalties would include loss of accreditation and/or registration; prohibitions on operating a residential service; and criminal penalties.

5. Provision for different classes of Accreditation, being Accommodation Service, Food Service and Personal Care Service. Every registered residential service would be required to be accredited as an Accommodation Service; depending on the services it provides, a residential service may have to be accredited as neither, one or both of the other classes.

Accommodation Services. To be accredited as an Accommodation Service, a residential

service would have to show compliance with certain Accommodation Standards. These may include the standards currently at Part 1, Schedule 2 of the *Local Government (General) Regulation 2005 (NSW)*, a standard that requires use of either residential tenancy agreements or occupancy agreements in the appropriate form (see the next part of this submission for more on occupancy agreements) and such other standards as may be prescribed by regulation. It would be an offence to breach the Accommodation Standards.

Food Services. A residential service that provides one or more meals each day would be required to be accredited as a Food Service, and as such would have to show compliance with additional Food Service Standards, as may be prescribed by regulation.

Personal Care Services. A residential service that provides 'personal care services' – being services that are addressed to the support needs of vulnerable persons, including management of finances or medication – would be required to be accredited as a Personal Care Service. As such the residential service would have to show compliance with additional Personal Care Service Standards. These would reflect the obligations currently at Part 4 of the Boarding Houses Act, (subject to recommendations coming out of this review), and such other standards as may be prescribed by regulation.

5. The Residential Services Registrar. The Act would establish the Rental Accommodation Registrar as an independent statutory authority, with responsibility for maintaining the register, assessing applications for registration and accreditation, monitoring compliance with standards, cancelling accreditations and registrations, and referring more serious breaches for prosecution.

The Registrar would also produce resources to help operators with registration and accreditation, promote best practice, liaise

with operators and inform government policy-making. We suggest the Registrar's office might also become a 'one-stop shop' for operators' dealings with government: for example, applications for land tax exemptions and Boarding House Financial Assistance Program grants.

It is useful to consider a couple of examples of how the Registrar's registration and accreditation processes would work in practice. First, say a traditional boarding house is registered and accredited as an Accommodation Service only, and the operator decides to start offering meals as part of the service. The operator would have six months to get the meals service going in a way that complies with the Food Service Standards. If the boarding house receives Food Service accreditation, the meals can continue; if not, the meals must stop and the boarding house can continue to operate as an Accommodation Service.

Secondly, say a boarding house is registered and accredited as an Accommodation Service only, but when the operator fills out the forms to renew the registration, the information they give indicates (and this is confirmed by a phone call from the Registrar's office) that for one resident the operator holds money and helps manage their spending. This is an activity of a Personal Care Service. The Registrar could treat this as a breach of the Act, but instead decides to advise the operator that the activity is one that requires accreditation and supplies the operator with materials to assist in the development of the operator's practices and application for accreditation.

As for international students, many are accommodated in lodgements in private residences, share housing, boarding houses and educational halls of residence. Under the scheme we propose genuine share housing arrangements would not meet the definition of a residential service and would not be registrable. On the other hand, virtually all so-called boarding houses,

purpose-built student accommodation would be required to be registered. All those registered would be required to be accredited as Accommodation Services; we submit that some would also be required to be accredited as Food Services, though none would be required to be accredited as Personal Care Services. Operators who do not register their premises – particularly unlawful boarding houses – would be liable to prosecution.

So, to give a third example: say a property owner is letting rooms in an unlawfully subdivided house, particularly to international students. A total of eight persons are accommodated: three sharing one room, two each in another two rooms, and an agent of the property owner in a fourth room. This fits the definition of a residential service in two ways – the three persons sharing a bedroom, and the total number of persons sharing the premises – and it is not a genuine share house, because each of the persons occupies by separate grant of the property owner. The Registrar receives a complaint about the residential service, notes that it is unregistered and prosecutes the operator for breach of the Act. The local council may also prosecute under its regulation of land uses.

Recommendations

1. Implement a Rental Accommodation Registration Act - a registration and accreditation scheme which covers all providers of rental accommodation, bringing together existing (or planned) registration schemes for residential villages, boarding houses as currently defined by the Boarding Houses Act 2012, residential land lease communities and short-term rental agreements. Consideration should be given to registration of all providers of rental accommodation, including landlords under the Residential Tenancies Act 2010. Requirements of registration and accreditation will differ according to levels of service provided, and may be set by the RAR Act or by the legislation requiring the registration (as with the *Residential (Land*

Lease) Communities Act 2013 and the *Retirement Villages Act 1999*).

2. The RAR Act also creates a Rental Accommodation Registrar (Registrar) as a statutory authority within Fair Trading NSW, with associated staffing, to take up responsibility for managing the registers, enforcement actions regarding registration and accreditation.
3. Provide adequate resources and powers to either the proposed Registrar, or local governments, to:
 - investigate whether a property is a registrable boarding house;
 - register unregistered registrable boarding houses;
 - require a boarding house to pay the registration fee within a reasonable time frame following registration;
 - update listings in the Register which are inaccurate or out-of-date;
 - remove details of a property from the public Register under prescribed circumstances, if it has ceased to be used as a boarding house and,
 - receive the amount payable under applicable penalties (whether directly or indirectly).
 - investigate breaches of the Act and occupancy agreements and pursue enforcement actions.

Occupancy Principles and Dispute Resolution

Consistent with our view that where an arrangement is providing a home for a person, regardless of the intention or the historical use, it is appropriate to ensure that the legal framework mandates an acceptable level of rights within the contract for that home. While some individuals the sector as a whole has demonstrated its inability or unwillingness to act to raise standards, both for the decades prior to the Boarding Houses Act 2012 and the 6 full years after implementation. The regulatory framework must acknowledge the imbalance inherent in the relationship between accommodation provider, and regulate appropriately. Enforcement of the Act cannot rely on the consumer power of residents. This approach falls short under the Residential Tenancy Act, but is actively harmful under the current *Boarding Houses Act 2012*.

We note that for many people currently living in housing forms known as boarding houses, the most appropriate legal framework is a residential tenancy agreement, and we will continue to recommend those people are not inappropriately excluded. We refer here to the application of occupancy principles in residential services, as defined above.

The occupancy agreements could be hosted either under a new piece of legislation, or as a special part under an existing piece of legislation such as the *Residential Tenancies Act 2010*. This is the approach adopted by Queensland, ACT, Victoria and New Zealand.

We also refer the review to our previous report "Five years of the Boarding Houses Act 2012 in NSW" which detailed the experiences of people living in boarding houses across NSW.

There are two minimum legal standards without which other standards become effectively meaningless.

One is an end to arbitrary evictions. There are multiple significant barriers to residents enforcing their rights, but residents'

'Having both parties be reasonable is very difficult. The Tribunal is not an inviting forum for residents and the proprietor can be unreasonable. It's a disadvantage to the residents to use 'reasonable', it's like "how do I determine what reasonable is when people have never been reasonable to me?"'

Interview with boarding house resident, Sydney Inner West region, August 2017

'[The proprietor] didn't like me. He threw all my stuff in the garden, all broken up, at night. Everyone had been through it.' 'Personalities are a big issue. If they don't like you, you have no say. They will kick you out and you just have to move on.'

Interviews with boarding house residents, Sydney Inner West region, August 2017

'There was a fire. Two days later we found out half the fire alarms weren't working. They weren't connected. I asked [the proprietor] 'are you going to get them fixed?' he just gave bullshit excuses. He always complained about the price and he always did backyard fixes. He never got a professional job.'

'Where I am, the water comes down the wall, but I don't say anything because it will cost \$300-\$400 to fix it. I pay \$120 a week and I only get \$456 a fortnight on the disability pension. I'm scrounging all the time. It's really important not to have the occupation fee go up. If it went past \$150 a week, I'd have to live in my car.'

Interviews with boarding house residents, Sydney Inner West region, August 2017

vulnerability to being evicted, for no good reason and in very short order, cannot be overstated. We will recommend that evictions must be ordered by the NSW Civil and Administrative Tribunal consistent with the equivalent provisions in New Zealand.

The other is access to a body which can provide meaningful dispute resolution around contract terms. While some residents have access to the NSW Civil and Administrative Tribunal, and the Tribunal has committed to putting on urgent hearings for residents of registrable boarding houses, this is often ineffective because of the extremely short time frames and the limited remedies available.

There should be greater emphasis on occupancy principle 11, requiring the use of dispute resolution. We encourage consideration of implementing a mediation or dispute resolution mechanism prior to the Tribunal. This could be a function under purview of the registration unit, another part of NSW Fair Trading which already provides mediation services prior to Tribunal action, or some other part of government like the Community Justice Centre. This mediation could focus particularly on providing resolution of disputes that are primarily personal rather than contractual, especially disputes between residents of a residential service. Currently in this situation operators often pick one side and evict the other or even evict both residents. Where disputes are unresolvable, we expect that one or other resident will choose to leave on their own.

However, where disputes are resolvable through discussion, this should be preferred. People living in residential services may not have easily accessible alternative accommodation, and they should not be forced into unsafe or unsheltered circumstances where this can be avoided through reasonable dispute resolution.

Recommendations

4. Expand the coverage of occupancy

The gap between residents' experiences and Occupancy Principles:

Dennis' has lived in his current boarding house for three years. His room has an infestation of rats. The rats have eaten Dennis' belongings and food. Dennis has asked the proprietor to help him deal with the rat problem. His proprietor has taken no action and has told Dennis to go to the local council for baits.

[Occupancy Principle 1(a) provides that the resident is entitled to live in premises which are reasonably clean.]

Kevin's boarding house is in a bad state of repair. There is a hole in the ceiling directly above the entrance to the bathroom. Residents joke that they get three showers when it rains – first going into the bathroom, then when they shower, and then once again as they walk out of the bathroom. Kevin has asked the proprietor to fix the hole, but any time that repairs are raised the proprietor complains about the cost. Things get done, but very slowly.

[Occupancy Principle 1(b) provides that the resident is entitled to live in premises which are in a reasonable state of repair.]

Neville's boarding house has a rule requiring payment of the occupation fee by no later than 5pm on the day that it is due. Neville was sick and couldn't get to the bank to withdraw his money. He was woken up the next morning by the proprietor standing over his bed, in his room shouting at him to pay his occupation fee.

[Occupancy Principle 4 provides residents are entitled to quiet enjoyment of the premises; Occupancy Principle 5 provides access by the proprietor at reasonable times for reasonable purposes.]

principles to all rental accommodation not already covered by the Residential Tenancies, Residential (Land Lease) Communities or Retirement Villages Acts. These principles can be hosted in an existing piece of legislation or a new one with specific purpose.

5. Create standard form agreements for use in a range of key rental accommodation types, and mandate their use. The mandated standard form agreements for each accommodation type should provide minimum notice periods around evictions. For example, the suggested notice periods for terminating an agreement in the current Standard Occupancy Agreement would be appropriate for the mandated Standard Occupancy Agreement. If mandatory standard form agreements are not to be created via regulation, specific requirements for notice periods around evictions should be legislated.
6. Amend Occupancy Principle 6 to restrict occupancy rent increases to no more than once per year, and require a reasonable amount of increase.
7. Security Deposits to be lodged with the Rental Bond Board or equivalent, with interest generated contributing to registration and accreditation scheme, advocacy and support, and dispute resolution functions. Alternatively, rental accommodation operators may be required to contribute to these costs directly.
8. The framework around occupancy agreements should require proprietors of residential services to provide the reason for any eviction occurring after 28 days from the agreement beginning, or during a fixed agreement.
9. The framework around occupancy agreements should prevent proprietors from evicting an occupant or otherwise recovering possession of an occupied room in a residential accommodation

Case study: reasonable dispute resolution?

John is over 70 years old. He is waiting on hip replacement surgery and walks with a cane. He was given one month's written notice to move out because the sound of the cane was claimed to be affecting other residents and the proprietor thought John might be an insurance liability. John can apply to NCAT under the Act to seek an order under s. 32(4) (a) restraining the proprietor from terminating him with only a month's notice, if he can demonstrate that this is not a reasonable amount of time. If the proprietor has advised John previously that disrupting neighbours and being an insurance liability are grounds for ending the agreement with one month's notice, John cannot challenge the eviction itself. There had been no other attempt to resolve issues with the sound of the cane other than to tell John to stop using it.

When we tell boarding house residents of what they can hope to achieve under the Act and challenge they weigh up the cost and time investment and the risk to their accommodation, they often aren't going to go to NCAT. They just leave the boarding house."

'We aren't adversarial, we work collaboratively. We try to help the clients sustain tenancies). It's more about sustainability'.

'Leverage and negotiation are important... we use the Act for that. It's about what's realistic. We don't enforce the Act unless we need to.'

Interview with advocates, Sydney Inner West region, July 2017

except with an order of the NCAT granting vacant possession of the room.

10. The framework around occupancy agreements should require NCAT to consider all relevant circumstances when determining whether to make orders allowing eviction or other recovery of an occupied room from rental accommodation, and on what date

possession should be granted.

11. Ensure residents are able to apply to a dispute resolution service, and require operators use the service before eviction in instances where there is no immediate risk of harm to the operator or other residents, especially where the dispute is between residents.

Advocacy, education and support

There is a clear gap in advocacy resources available to boarding house residents in forms which are accessible and appropriate. The Tenants' Advice and Advocacy Program, which includes the Tenants' Union, is grossly underfunded in relation to need and hasn't received a funding increase in real terms for more than 17 years. Our estimation is that approximately one in three people miss out on the service as a result of restricted funding.

The evaluation of the Boarding Houses Act 2012 conducted by Professor Gabrielle Drake for Newtown Neighbourhood Centre and the Australian Catholic University found that half of residents surveyed in 2017 were not aware of the Act¹. This speaks to the lack of funding for community education as part of an advocacy program. Community education in this area is likely to be resource intensive, requiring workers 'on the ground' and not only on central phone offices or online. The Tenants' Union conducted a successful education campaign in the wake of implementation of the Act, but this was unable to continue due to the lack of funding².

Given that many residents are still unaware of the Act and occupancy principles we support

¹ Gabrielle Drake (2018) Evaluation of the Boarding Houses Act 2012 Final Report, <https://www.newtown-centre.org/uploads/5/1/5/0/51502997/evaluation-of-the-boarding-houses-act-2012-report-4-and-final-report-2018.pdf>, accessed 08/10/19

² Tenants' Union of NSW (2016) Evaluation of the Boarding Houses Education Campaign, <https://files.tenants.org.au/policy/BHR-161026-Final-report-BH-Project.pdf>, accessed 8/10/19

the suggestion raised in the Statutory Review discussion paper that residents be provided a separate copy of the occupancy principles when moving into a residential service. We would further suggest this be accompanied by a basic information or factsheet outlining:

- plain language overview of the rights afforded them in the Occupancy Principles,
- the various dispute resolution options available to them, including how to make a complaint about the service, and
- information regards accessing free legal information and advice about their agreement.

We would also support a requirement that the Occupancy Principles be conspicuously displayed on a notice board in a common area of the residential service.

Similarly we support the provision of information outlining operator responsibilities, or any further requirements on operators to understand fully their responsibilities in relation to registration and operation of a residential service, as well as their obligations and the protections afforded to residents (rights of residents) as set out in the Occupancy Principles and more broadly within the Act.

Department of Communities, Justice and Disability recently funded People With Disabilities Australia to set up a Disability Boarding Houses Advocacy Service. It seems appropriate to us that the general boarding

houses sector also have a dedicated advocacy program, which may complement the existing Tenants' Advice and Advocacy Services. A dedicated advocacy program from Boarding Houses residents should sit alongside an expansion of the Boarding Houses Outreach Program which is operated in areas of the Inner West in Sydney by Newtown Neighbourhood Centre. The Boarding Houses Outreach Program model could be expanded to other areas around Sydney and the state, as well as reviewing whether the current funding may need to be increased.

Recommendations

12. The NSW Government should provide ongoing resources for community education projects on the regulatory framework and the Occupancy Principles.
13. The NSW Government should provide ongoing advocacy resources for community education projects on the regulatory framework and the Occupancy Principles.
14. Require information to be provided to residents and displayed in rental accommodation to ensure residents and proprietors are aware of their respective rights and obligations under the regulatory framework, as well as options for support.
15. Expand the Boarding Houses Outreach Project model to ensure viability in current service provision, and explore expansion to other locations in NSW.

"I'm not up to date with the laws. I know there are laws but they change all the time. If I wanted it [a copy of the Act] I'd have to ask [the proprietor] for it'."

Boarding house resident, Sydney Inner West region, August 2017

'We think most [proprietors] are ignorant rather than malicious.'

Advocate, Sydney Inner West region, July 2017