The Property Owners' Association of New South Wales

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Submission by The Property Owners' Association of NSW on

# Exposure Draft Boarding Houses Bill 2012

**Prepared by the Private Hotels Boarding House Sub Committee in consultation with members and boarding house operators.**

**10 August 2012**

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## I. PRELIMINARY STATEMENT

The Property Owners' Association of NSW Inc. (POA NSW) was established in 1950, to represent property owners in NSW. In particular the Private Hotels Boarding House Sub Committee of the POA NSW is the peak body that represents the interests of legitimate ("Tier One") boarding house operators in the State of New South Wales (NSW).

POA NSW makes this submission in relation to the Exposure Draft Boarding House Bill 2012 due to serious concerns it has with several provisions of the draft bill, and recommends the creation of two separate acts.

The POA NSW is also concerned about the confusion that prevails between tier one Boarding houses and tier two Licenced Residential Care facilities.

This was highlighted, when a delegation of The Property Owners Association of New South Wales met with some senior staff members involved with the exposure draft Boarding House Bill 2012 on Tuesday 31 July 2012.

The meeting included Anne-Marie Elias (Senior Policy Advisor), James Farrar (Advisor), Louise Blazejowska (Senior Legal Officer- Boarding House Reform Team). The Disability Minister Andrew Constance and Christopher Muir (Chief of Staff) also attended a short part of this meeting.

> -Of concern was the suggestion made by senior policy advisors that any legislation, (particularly in relation to S34, S35, S82 and S85), that have unintended consequences should not be of concern to stakeholders as the legislation will only be exercised as "intended". The good intentions of the legislators are appreciated, but this is an unacceptable rationale.
>
> -Another concern was the proposal that genuine tier one operators that do not provide care services should not be concerned with being caught by the tier two LRC requirements, as support services would be provided to assist. This is also invalid as it does not reflect the onerous obligations on operators contained in the Youth and Community Services Act 1973 and the Youth and Community Services Amendment (Obligations of Licensees) Regulations 2010.

The effect of the proposed Boarding House Bill 2012 will be largely the unintended consequences of:-

> -Combining two completely different services – LRC care facilities and tier one Boarding Houses accommodation provision.
> -Imposing hardship on legitimate tier one operators.
> -Discrimination of inadvertently classified vulnerable people.

Instead of addressing the principle core issues:

-Compliance of illegal operators and
-The viability of legitimate operators.

## II. REFERENCES

This submission assumes that the reader is familiar with the provisions of:

-The Youth and Community services Act 1973
-The Youth and Community Services Amendment (Obligations of Licensees) Regulations. 2010.
-The Coroners report by Magistrate M. Jerram, State Coroner of NSW, 11th May 2012 in relation to the 300 Hostel which operated at 300 Livingstone Road, Marrickville ... as ...a Licenced Residential Centre (LRC)".
-Exposure Draft Boarding House Bill 2012
-Exposure Draft Boarding House Bill 2012 Position Paper
-The Building Code of Australia(BCA)

## III. EXECUTIVE SUMMARY

This submission in relation to the Draft Boarding House Bill 2012 supports the creation of two separate Acts:

A. 'Licensed Residential Care Facilities Act' for operators that provide housing and specialist care services for the 'vulnerable/disabled, as contained in Chapter 4, with the following amendments:

1. Definition of the term 'vulnerable' in Section 34 is too broad, and needs to be more specific.

2. Registration of Tier 2 Licenced Residential Care (LRC) facilities through a central registry to ensure appropriate compliance to LRC standards for care.

3. S35 (2) to include an exemption for Tier One Boarding Houses.

4. S85 removal costs/obligations not born by accommodation providers.

5. Regardless of their form of housing, 'vulnerable' people should be provided appropriate housing and support services, with the operators not obligated to provide care services or to become a LRC.

6. Licenced Residential Care operators must be consulted on any and all provisions of a "Licenced Residential Care Act"

B. 'Residential Occupancy Act' as contained in Chapter 3 principles based occupancy rights, with the following amendments:

1. S5 (1) (b) All and any provisions relating to LRC to be housed in the abovementioned Licenced Residential Care Act.

2. S5(2) to capture <u>all</u> premises that provide any number of beds for a fee or reward to residents who are not related, so as to ensure occupancy principles apply to all occupants in NSW.

3. S29 (5) & (6) Further clarification is required to establish the implications of these sub-sections before recommendations can be made.

4. S30 (2) Add: An occupant is also obliged to maintain the premises in a clean and tidy state.

5. S30(4) to apply at 13 weeks (3 months) not 6 weeks, to achieve regulatory consistency for a principle place of residence.

6. S30 (5) Add: An occupant does not disturb the quiet enjoyment of the premises or other occupants.

7. S30 (7) A resident is entitled to reasonable (delete 8 weeks) notice before the proprietor increases the amount to be paid for the right to occupy the premises.

8. S30 (9) Add: An occupant is obliged to provide reasonable notice of their departure.

9. S30 (12) Add. An occupant is obliged to take all their personal property with them on departure.

10. S30 (13) Add: On departure a occupant is obliged to leave their occupancy in a condition equivalent to how they found it or make good any damage or uncleanliness.

11. S31 Mediation with powers to make recommendations for dispute resolution (as a required first step before the Tribunal).

12. A new Tribunal trained in the special 'non-exclusive' nature of tier one boarding houses, and has regard for operators obligations to "other occupants rights" in a dispute.

13. A freely available plain English booklet & webpage to be produced, outlining rights and obligations of occupants and proprietors

14. Tier one boarding house operators to register with their local council using existing registration and compliance mechanisms.

15. Non commercial (Class 1a BCA) private and domestic operators that supply less than 3 beds to non related parties should not be classified as a registrable boarding house and exempted from registration.

C. Illegal accommodation providers to be addressed, by:

1. Amendments in relation to the Environmental Planning and Assessment Act 1979 in relation to unregistered tier one boarding houses and unregistered tier two LRC.

2. Amendments in relation to the Local Government (General) Regulation 2005, so that accommodation standards set out in Part 1, Schedule 2 applies to all registrable boarding houses.

3. Penalties to be moderated and to apply to illegal operators only if they fail to comply with orders in a reasonable time.

4. All NSW Councils to implement effective boarding house registration and compliance schemes, based on existing best practices.

D. Information:

1 Councils and the Office of State Revenue to collate and provide generic statistical Boarding House registration information to Department of Fair trading, annually.

2 Allow industry representative bodies, like the POA NSW, that represent operators of boarding houses and shared accommodation facilities to contact operators indirectly through the Department of Fair Trading so as to alert operators of their services and any major issues in the industry.

E. Viability Provisions:

1. Refer to submission for tier one operations.

2. Consult with tier two operators.

F. Other Issues:

1. Stakeholders have not been consulted adequately in the development of the positions paper.

2. An exposure draft of the regulations, with stakeholder consultation, be circulated before any legislation is enacted.

3. Regulatory Impact statement to be provided on any proposed legislation.

4. Vulnerable people to declare their status in housing applications.

5. Penalties to apply to individuals (in the order of $500) or organisations (in the order of $1000) that place "vulnerable" people in inappropriate housing facilities.

## IV. CHAPTER 4: LICENSED RESIDENTIAL CARE FACILITIES

### A. People with genuine special needs require appropriate housing

Vulnerable" people with "genuine special housing needs" should be housed in appropriate accommodation facilities.

Tier One" boarding houses, which provide alternate residential accommodation for the community generally, are not suitable for people with "genuine special needs". "Tier One" boarding houses do not have the facilities, or management skills to be responsible for the provision of specialist care services.

### B. Separate acts for LRC specialist care facilities & tier one boarding houses.

Boarding houses are not Licensed Residential Care facilities. The term LRC seems to have emerged in the Youth and Community Services Act, and LRC's relate to specialist care and housing facilities for people with genuine special needs.

It is inaccurate and misleading to refer to LRC's as residential boarding houses. The positions paper is unclear on the differences, with references to boarding houses (page 5 points 6 & 9) and then to Licensed Residential care facilities in other areas of the document (re page 11).

This confusion seems to tie into in the report by Magistrate M. Jerram, State Coroner of NSW, 11th May 2012 in relation to the "300 Hostel [which] operated at 300 Livingstone Road, Marrickville and was a Licenced Residential Centre (LRC)" [pg 11, point 45 State Coroners Court of NSW, Magistrate M. Jerram, State Coroner of NSW, 11th May 2012.

The coroner acknowledges in the report that the hostel was a LRC, but on a number of occasions confuses the status of that facility. At many and various junctions, the 300 hostel is referred to as a boarding house (see points 11, 16, 22, 29, 114, 11, 122) and at other occasions the occupants are even referred to as tenants(point 51).

Then Coroner appears to make a somewhat confusing conclusive point:

> "In 2002, there were approximately 455 such residences in New south Wales, with about 5,000 residents. Only 31 of those hostels, with approximately 600 residents were licenses." [Point 52, page 13]

Here the coroner is referring to 31 Licenced residential care facilities, licenced under the Youth and Community Services act 1973. The other 455 are not Licenced Residential Care Facilities.

There are a number of cases in the positions paper where the misunderstanding prevails.

-For example on page 9 when further fire safety requirements are justified in relation to boarding houses because of a fire in a nursing home. Nursing homes are a specialist aged care and high dependency disability care facility offering a different service to market accommodation providers such as Tier One boarding houses, residential tenancies and hotels.

-This lack of understanding of the boarding house industry is conceded in the positions paper. For example "a lack of consistent information about the boarding house sector" and "because of the absence of detailed data on the size of boarding house operations" pg 6 Exposure Draft Boarding House Bill 2012 Positions Paper.

-Combining two completely different forms of accommodation, specialist LRC and Tier One boarding houses into one Act so that "operators are able to identify their regulatory obligations from one source" { pg 4 Exposure Draft Boarding House Bill 2012 Positions Paper} is inadequate justification for such a rationale.

Given this lack of understanding, it's not surprising that the actual effect of the legislation will be largely the unintended consequences of :

-Imposing unnecessary hardship on legitimate tier one operators
-Discrimination of inadvertently classified vulnerable people

When the core problems that should be addressed are:

-Compliance of illegal operators and
-The viability of legitimate tier one Boarding Houses and Licenced Residential Care Facilities.

## Problem

Legitimate tier one Boarding House operators provide a valuable supply of affordable accommodation, in a marginal commercial environment. They do not have the skills, setting or resources to operate as Licensed Residential Care facilities. Provisions in the act (i.e. S35) would automatically capture and change tier one operators into Licensed Residential Care facilities, and/or impose excessive reporting, care and compliance requirements, along with fines and penalties which are unstainable.

## Recommendation

Licenced Residential Care facilities should not be housed in the same act as boarding houses, any more than boarding houses should be combined with nursing homes.

Separate acts should apply to LRC, with care provisions and standards, while a 'Residential Occupants Act' should apply to occupants and their providers.

### C. Vulnerable definition too broad

The definition of "vulnerable" in s34 of the Boarding Houses Bill 2012 (which replaces handicapped/disabled definition in the Youth and Community Services Act 1973) dramatically broadens the gambit of people that would be seen to require specialist Licensed Residential Care (LRC) Accommodation Facilities.

It inadvertently captures, by default, self-sufficient and independent vulnerable persons who do not require specialist licenced residential care housing.

### Recommendation

A definition of vulnerable people that does not impose 'legislated discrimination'.

### Further Recommendations

In addition to two separate acts, amendments are required to provide adequate housing for the vulnerable and to quarantine and protect genuine operators from being forced to comply with LRC care provisions if just 2 or more broadly defined vulnerable people enter a tier one boarding house (S35).

The draft Boarding House Act 2012 creates significant operational difficulties for genuine tier one operators, adds to costs, and will destroy the main benefit the boarding house industry provides, i.e. an affordable and flexible extended stay residential housing alternative to residential tenancies.

In order that tier one Boarding Houses continue as market accommodation providers, and that 'vulnerable' people who are dependant and need special assistance are accommodated in appropriate housing, there needs to be clear and fair provisions with full disclosure from all parties:-

a. Tier one Boarding Houses are not permitted to accommodate more than 2 "vulnerable residents" (YCS Act), as per their house rules (terms and conditions) and in any occupancy agreement.

b. Tier one Boarding House operators are required to advise applicants for accommodation that they are not LRC and are unable to provide care services.

c. Any vulnerable person should be required to fully disclose their status when applying for accommodation, or if and when their status changes.

d. Organisations or agents are not permitted to attempt to "place" a vulnerable person in non LRC housing facility through non disclosure. Social workers and organisations involved with providing social housing should be educated on this matter and penalties apply for misconduct.

e. It might be necessary for the government to provide a robust certification system for non-vulnerable and/or vulnerable people so that operators can easily establish their status for housing purposes.

f. Where a "vulnerable" resident gains entry to a tier one Boarding House, through non disclosure by the occupant or agents, operators must be able to terminate their occupancy with reasonable notice so they are appropriately housed.

g. Further S85 to be amended so that any genuine tier one operator that inadvertently acquires a vulnerable person is not required to pay for any rehousing expenses.

## V. CHAPTER 2: DUPLICATE REGISTRATION

Issue- The positions paper proposes that there is an absence of detailed information on the size of boarding house operations (pg 6).

An effective mechanism already exists for regulation, compliance and licensing of registered tier one boarding houses. Legitimate tier one Boarding houses already comply to rigorous health, safety, and BCA essential service compliance standards.

Currently many local councils, like Waverley Council, register and regulate tier one boarding Houses in their local government areas.

Compliance required includes (refer to appendix for evidence):

1. Annual Registration and inspection, under the Local Government Act 1993. (Appendix A)

2. Annual Maintenance of Essential Fire Safety Measures under the Environmental Planning and Assessment Regulation 2000. (Appendix B). Fee $103, plus an estimated $10000pa for suitably qualified building and fire safety consultants to perform some 75 physical on site test each year on a typical BCA Class 3 building that includes:
    i. Weekly, Monthly and Annual testing of Sprinkler system
    ii. Monthly and comprehensive 6 monthly testing of back to base smoke detectors and dedicated transmitters.
    iii. 6 monthly testing of emergency and exit lights
    iv. 6 monthly testing of smoke detectors
    v. Comprehensive annual Assessment report of Essential Fire safety measures.

3. Some local councils, like Waverley Council, provide rate rebates to operators that meet their affordable housing objectives, and applicants provide generic information which assists the council in regulating the industry. This should be encouraged. (Refer Appendix C)

4. The Office of State Revenue, via land tax relief applications from tier one boarding houses, acquires comprehensive information on tariff levels, number of occupants, room configurations, period of stay, and services provided by boarding houses that apply for land tax relief. (Refer Appendix D)

As can be seen, in combination, tier one operators should currently satisfy all the provisions as per Chapter 2 of the draft boarding house act.

It is inappropriate to require tier one boarding houses to undergo a further duplication of compliance in a central register, because of some failures at state and/or local government levels.

It is noted that a key platform of the current NSW governments electoral commitment is to reduce red tape.

Of further concern, the positions paper proposes that the proposed registration system will provide "a new source information on boarding house residents, which will assist in an examination of residents needs" (pg 3).

This is a confusing statement. The provisions of Chapter 2 are already met as is noted above.

-What additional information is the positions paper referring to?
-Is the positions paper referring to tier one boarding houses, tier two, or both?

It may be appropriate if additional information is required in a Licensed Residential Care facility caring for vulnerable people, but it is totally inappropriate in a tier one boarding house. Adequate and sufficient information is already provided. It could be a breach of occupants privacy to seek further details, and it imposes absurd reporting requirements for operators.

There should be only one registration and inspection authority, so as to avoid duplication and avoid a moral hazard with two authorities registering the one operator.

Since Local Councils are responsible for compliance, it falls naturally on them to be single registering body.

## Recommendations

All NSW Councils to implement effective boarding house registration and compliance schemes, based on best practices currently operating.

Further the NSW government should oblige local governments and government departments such as the Office of State Revenue to **allow for access and collation of generic statistical information on tier one boarding houses** that could be used to assess the industry without revealing any information that would breach the Privacy and Personal Information Act 1998.

The State Government should consider imposing penalties on local councils if they fail to perform their obligations in relation to unregistered tier one boarding houses and tier 2 Licenced Residential Care facilities.

Further a system should exist whereby industry representative bodies, like POA NSW, that represent the interests of operators of boarding houses and shared accommodation facilities, can contact operators indirectly through the Department of Fair Trading so as to alert operators of their services available and/or any major issues in the industry.

## VI. CHAPTER 3: OCCUPANCY PRINCIPLES

As proposed in this submission, it is inappropriate to house specialist Licenced Residential Care facilities with standard accommodation providers.

A separate act, utilising the provisions in Chapter 3 with some amendments could be utilized to form the basis of an act which covers occupants and operators rights and obligations. This could be called a Residential Occupancy Act.

This Residential Occupancy Act could also include registration provisions for operators, obliging them to register with their local council and comply within the currently operating provisions (not the proposed central registration system) like Local Government (General) Regulations and Environmental Planning and Assessment act 1979.

This Residential Occupancy Act would also specify that operators that provide care services would be regulated in the other act recommended, The Licenced Residential Care Facility Act.

This would be simple and would still enable tier one operators and occupants to ”identify their regulatory obligations from the one source” (pg 4 Exposure Draft Boarding House Bill 2012).

<u>But a number of amendments would be required first and they are noted as follows</u>:

The draft boarding house bill only provides coverage to a small percentage of Occupants and operators in NSW:

1. As per the operation of S5 (1), Chapter 3 occupancy principles are only provided for occupants of a registered boarding house. This means that only 450 odd tier one and 30 odd LRC facilities will be covered and all other occupants left unprotected.

2. As per the operation of S5(2) only those occupants in registered tier one boarding houses which provide at least 5 beds in return for fee or reward to residents that are unrelated to the managers and/or proprietor would be granted recourse to the protections afforded in the act.

Thereby it's quite possible that of the 6093 boarders in NSW (2006 ABS census) boarding houses in NSW, only a few thousand stakeholders will obtain occupancy rights that are legislated.

The grave concern is that the draft act misses the largest arena that houses occupants, the whole **Share Accommodation market**. This is probably the single largest provider of alternative residential accommodation, and often is characterised by a lessor or home owner who lets out a spare bedroom and grants access to the household amenities.

### Recommendation

The solution lies in applying occupancy principles to all occupants and proprietors alike so as to eliminate confusion. Thereby S(5) should have the following effect:

> **Any person who is provided with non exclusive use of their principal place of residence in return for a fee or reward from a non related party should be covered by principles based occupancy rights and obligations.**

Note non commercial operators, who may typically take the form of a Class 1a Building Code of Australia (BCA) home or a unit, where a occupant or two is taken in a private and domestic situation, should not be required to satisfy the registration, reporting and or additional compliance provisions. These non commercial operators should be exempted from being a registrable boarding house. But their occupants should still be covered by principle-based provisions and be obliged to respect the terms and conditions of the household.

Thereby the provisions of Chapter 3 Occupancy principles as they relate to all occupants and operators would need to be amended in the following ways so that they can operate effectively:

## VII. OCCUPANT'S OBLIGATIONS

As identified in the positions paper on page 7 "The nature of boarding house accommodation is different to that of private residential dwellings regulated under the Residential Tenancies Act 2010." Tier One boarding houses are characterised by non exclusive use of the premises, and communal use of amenities, like kitchens, bathrooms and lounge areas.

Management ensures the operation of the boarding house for the well being of the whole premises and household community. Individuals who enter a boarding house Tier one, agree to place community rights above individual rights, and common property rights above exclusivity of an area of the boarding house. It is management's responsibility to provide the premise with clean facilities and an environment where

everyone enjoys the quiet enjoyment of the premises. Management needs to ensure this for the sake of all the occupants in the building.

For example, a tier one operator has an occupant that randomly leaves a mess in the bathrooms that are utilised by other occupant. Even if management provided clean facilities every day, that one event would spoil their work and the bathrooms would no longer be clean. Would the next occupant using the bathrooms be entitled to take the operator to the tribunal because the bathrooms are not clean? Further how does management deal with identifying the party repeatedly making a mess? Clearly circumstantial evidence may have to be relied upon. Let's say after due process, management is required to evict the occupant with reasonable notice. Could the occupant then challenge the decision in the tribunal? How would the tribunal deal with the use of circumstantial evidence in such a situation?

It's impossible for management to provide services so as to attend to any mess that could occur at any time, and to ensure the premises is clean at any one time, unless all occupants respect their obligations to the household as well.

**Users of 'non exclusive' facilities have an obligation to respect other users.**

These special circumstances that distinguish tier one boarding houses need to be addressed in the Chapter 3 provisions before they could form the basis of a Residential Occupants Act.

<u>Recommendation:</u>
Incorporate some reasonable obligations on individual occupants so as to protect the rights of other occupants in a household.

Amendments should include:

1. Individual occupants should be obliged to respect the house rules (terms and conditions of the operator). Each household will have unique characteristics (say a student house as opposed to lodgings for workers) and these need to be respected for the common good and for the whole household to function.

2. S30 (2) Add: An occupant is also obliged to maintain the premises in a clean and tidy state.

3. S30 (5) Add: An occupant is does not disturb the quiet enjoyment of the premises or other occupants.

4. S30 (9) Add: An occupant is obliged to provide for reasonable notice of their departure.

5. S30 (12) Add. An occupant is obliged to take all their personal property with them on departure.

6. S30 (13) Add: On departure a occupant is obliged to leave their occupancy in a condition equivalent to how they found it or make good any damage or uncleanliness.

This will help address many difficulties operators of tier one boarding houses will face when managing the different expectations of different people living in the one household.

Further it will draw to the attention of arbitrators important issues that required to be accounted for when make determinations in dispute situations. For example the Tribunal...

## S(31)The Tribunal

The issue of the special nature of boarding houses also creates problems with the proposal in Section 31 of the draft act for the Consumer Trader and Tenancy Tribunal ("The Tribunal") to resolve occupancy disputes.

The Tribunal is not currently equipped to deal with occupancy disputes. These disputes would relate to non-exclusive use of premises, and communal rights of all occupants in a building. Even the positions paper acknowledges clearly this when on page 7 it states

"The nature of boarding house accommodation is different to that of private residential dwellings regulated under the Residential Tenancies Act 2010."

Each operator will be different to the next. Some operators will appeal to long term stays, others shorter. Some will provide accommodation to students, others to workers. Each operation will have individual characteristics that will appeal to a specific segment of the market. So what is reasonable in one place may not be reasonable in another. For example operators catering for students will have different expectations of what "quiet enjoyment" means as opposed to a operator with shift workers.

The Tribunal is characterised by making determinations guided by a fixed set of rules, set out in detailed legislation like The Residential Tenancy Act (RTA). The RTA is characterised by exclusive use and sets clear boundaries as to what individual rights each party have. The tribunal then makes a decision based on the cases provided by the two individual parties in the dispute.

But a boarding house contains other occupants that also have communal rights that would be affected by the dispute between the two parties. They are a third party in the dispute which are unrepresented, except by the fact that the operator has an obligation to them.

So how does the Tribunal in its current format efficiently and equitably cope with:

-The rights of other household occupants in a dispute between the operator and an individual occupant?

-The obligations an operator has to all household occupants in a dispute with an individual occupant?

## Solution

A process of mediation, with powers to make recommendations, to parties in dispute would address the problems. The process needs to be free, simple and quick. Informal process could include parties providing their issues by phone or email to a qualified mediator, who would make recommendations to parties.

For example the Commissioner of Small Business currently is empowered to provide informal then more formal mediation with recommendations as the first step in a retail lease disputes:

> "Mediation is remarkably successful—in fact, about 80% of all matters referred to us for mediation are resolved. Before a court or tribunal can make a decision on a retail lease matter, by law you may be required to attempt mediation with us. The mediation process is essential in minimising the costs of business and commercial disputes". (http://www.smallbusiness.nsw.gov.au/dispute-resolution/what-is-mediation-and-how-can-it-help-you)

A system similar to this mediation process could be used as a required first step in resolution of occupancy disputes. It could be adapted to recognise the communal rights of the "other household" parties. Staff at the Commissioner of Small Business has indicated that similar models prevail and could be created.

This informal mediation process with recommendations could replace the S31 provision as the first step before a occupants dispute can progress to the Tribunal on appeal. It would be:

-Very cost effective,
-Easy for disputing parties, as communication could be electronic or by phone,
-A quick process, with recommendations made within days, rather than weeks at tribunal.
-Achieve high (80%) resolution rates.

If the process of mediation fails to resolve the dispute, then the next natural course would be the Tribunal. But as noted above the following changes would need to be instituted so that the tribunal would be better placed to understand the

-Non exclusive use of boarding houses
-Communal rights, and
-Common law principle of reasonableness in the circumstances of each individual household and the house rules that prevail.

## Recommendations

1. A cost effective informal process of mediation, with powers to make recommendations, that acknowledges operators duties to other occupants, to be the first course action required for external dispute resolution, followed by a new Tribunal.

2. Set up a separate division in the Tribunal that specialises in Occupancy issues.
3. Educate all tribunal members on 'the unique nature' of boarding houses
    a. Tribunal members educated on the core 'tier one boarding house concepts' i.e.
        i. easy entry & easy exit.
        ii. furnished housing
        iii. non-exclusive rights
        iv. communal rights of the household (third party in a dispute)
        v. operators obligations to the whole household.
        vi. shared residential accommodation facility.
        vii. principle of reasonableness interpreted the context of the individual household characteristics.
4. Legislated parameters placed on the definition of the term "reasonable".
    a. The term 'reasonable' (chapter 3Pt 2) should be taken as that defined in operators occupancy agreement (i.e. house rules) so long as it meets the occupancy principles. The Tribunal should not be permitted to over ride these terms.
    b. Parameters be placed in the regulations to act as 'a catch all fall back' in establishing what is reasonable. For example '1 weeks' notice for termination as a maximum for reasonable notice if the occupancy agreement is unclear on the terms of notice.
5. The inclusion of a circumstantial evidence provision in the act that explicitly provides for a Tribunal to consider reasonable circumstantial evidence in matters relating to breaches of occupancy agreements.
6. Check and balances instituted so that the tribunal does remains true to any legislation, and is not permitted to establish their own interpretations and set their own precedents.
7. Tribunal name to be changed from Consumer Trader and Tenancy Tribunal to incorporate its new role in occupancy matters.

## VIII. SECTION 30(7) REASONABLE NOTICE FOR INCREASES IN TARIFF LEVELS

### Problem

Section 30(7) specifies 8 weeks as a mandatory period of notice for increases in tariff levels. This is inconsistent with every other principles-based provision which refers only to a "reasonable" period of notice.

The inclusion of 8 weeks would alter any interpretation of reasonableness as per the other provisions in Chapter 3. For example if the act provides for 8 weeks notice for a tariff change, then would that not imply that a reasonable notice for termination is in the order of at least 8 weeks. This is completely inconsistent with long standing industry practice, common law principles and even guidelines provided by various authorities and legal services.

### Solution

The provision should be amended to resemble the following:

30(7) - a resident is entitled to **reasonable** notice before the proprietor changes the amount to be paid for the right to occupy the premises.

## IX. REGULATIONS

### Problem

The act provides for considerable power to be installed in the regulations, for example it provides for:

> S 34(3)(c) A further broadening of the term "vulnerable"
>
> S35(2)(r). The meaning of a residential centre for vulnerable persons.
>
> S5(3)(r) The category of properties to be classified as registrable boarding houses.

These are all critical and fundamental issues which will have significant implications in themselves.

### Recommendation

The regulations should be available for consultation at the same time as the act. Given this has not occurred, then the regulations should be drafted and reviewed before any act is passed by parliament.

## X. ILLEGAL BOARDING HOUSES

**The main problem that exists in the industry is the illegal boarding house industry and illegal Licenced Residential Care facilities.**

Illegal facilities operate with a significant commercial advantage, are highly likely to be non compliant buildings and will thereby risk the safety of their occupants. Further these illegal operators give the whole industry a bad reputation, and also NSW when international students return home and share their housing experiences in illegal housing facilities.

Curtailing illegal operators is the key challenge to be addressed and resolved.

The following measures are proposed in this submission to address this issue:

1. Viability
    a. Support legitimate operators.
    b. Mitigate and simplify regulation and compliance
    c. Encourage illegal operators to legitimise

2. Council Powers
    a. Compel illegal operators to comply or close down.
    b. Facilitate the councils capacity to deal with illegal operators.

## XI. VIABILITY

If the government genuinely proposes to "*strike a balance between maintaining the viability of the boarding house sector and the need to provide appropriate protections*" [pg 2 Exposure Draft Boarding House Bill 2012, Positions Paper], then the "*need for additional assistance and incentives*" [pg 2 Exposure Draft Boarding House Bill 2012, Positions Paper] is paramount and must to be specifically addressed by the government as a part of changes proposed, and not merely as further rhetoric and to be cast aside for 'future consideration'.

Action is urgently required.

Improved viability and flexible management systems is the key to addressing the dual problems of ongoing chronic long term decline in tier one boarding house supply and the rise of illegal operators.

The following are all essential in achieving this aim, and have been submitted on numerous occasions from operators, (most recently to the social policy committee inquiry into international student accommodation in NSW):

### A. Encourage the Supply of Legitimate Tier One Boarding Houses.

The supply of "illegal" accommodation prevails because of the onerous commercial and operational difficulties that are imposed on legitimate tier one operators.

Thereby measures that strengthen the legitimate operator's viability, and lessen operational complications will ultimately keep existing operators and encourage new operators in the long run.

Areas that the NSW government can address to achieve this include:

### B. Insurance costs.

The cost of insuring a legitimate tier one residential boarding house is estimated to be 10 times higher than the cost of insuring an equivalent residential property. This is onerous and prevails despite higher standards of fire and essential service provisions in legitimate boarding houses, tighter compliance standards, and greater management involvement. It also acts as a major barrier for illegal operators to legitimise.

#### *Problem 1*

Insurance costs are artificially elevated by state government duties, such as stamp duties and the Fire Service levy, which add almost 50% to the cost of insuring a boarding house in NSW.

### Recommendations 1

This Fire Service Levy and Stamp duty should be rebated to registered boarding house operators. It could be easily done in conjunction with land tax returns that qualify for the current low cost accommodation provisions. Operators who meet the tariff conditions, could forward their insurance invoice and claim the amount charged as a stamp duty and fire levy as rebate. The state government could fund this from any surplus of fire grants.

### *Problem 2*

A large part of excessive insurance costs relates to inefficiencies in the insurance market. In particular the withdrawal of retail insurers from the boarding house market has meant that boarding house operators require brokers to arrange insurers of last resort. This problem intensifies each year and the difficulty of finding feasible insurance may soon cripple the industry.

### *Recommendation 2*

The NSW State government set up a government backed insurance scheme for legitimate accommodation providers.

### *Problem 3*

Confusion on "what is a boarding house" has been caused by the incorrect classification of Licenced Residential Care facilities as legitimate tier one boarding houses. This leads to higher risk premiums for tier one operators.

### *Recommendation 3*

The NSW State government needs to segregate Boarding Houses and LRC facilities and desist from counterproductive speculation on boarding house occupants.

Further the NSW government should fund a media campaign to promote boarding houses as a flexible alternative form of residential housing for those caught up in the housing shortage in NSW.

## C. **Essential fire safety compliance costs.**

Legitimate tier one boarding houses are required to provide to local councils Annual Fire Compliance reports. It is both financially draining and structurally unachievable for boarding houses to meet the vast and complex array of BCA provisions in an environment that continuously changes. A typical class 3 tier one boarding house will be

required to comply to some 75 inspections and compliance tests by qualified staff every year.

### *Recommendation 1*

There is a need to simplify the process, so as to mitigate the complexity and cost. Streamlining testing is also required, to avoid unnecessary duplication, "excessive" testing and compliance requirements.

### *Recommendation 2*

NSW Fire brigade's false alarm 'call out fees' on 'back to base early warning systems' have increased from $125 to $750 in the last few years. Additional concessions to the existing rebate provisions should be made so as to ensure legitimate and responsible operators are remitted any and all false alarm call out fees.

Further operators should not be made responsible for fines incurred by other parties. Provisions should be made so that the party responsible for triggering a false alarm is liable for the $750 False alarm penalty. If not a moral hazard prevails.

## D. Punitive Water pricing policies.

Sydney Water pricing policy punishes legitimate boarding housing. Currently if a boarding house has more than 10 rooms, either commercial rates or equivalent separate meter rates are charged. This is despite the fact that the boarding houses generally only have one meter, so the owner becomes the 'end user' for billing purposes.

### *Recommendation*

All boarding houses should face a single normal residential rate, as they are residential premises. The NSW State government should require utilities to amend their pricing policies so that all residential users are charged the same normal rate.

## E. Affordable Housing SEPP.

The provisions in the Affordable Housing SEPP are a step in the right direction by encouraging the construction of affordable accommodation.

### *Problem 1*

But the Affordable Housing SEPP falls short on many fronts. For example the Affordable Housing SEPP does not extend to heritage listed buildings. Heritage buildings form the bulk of existing legitimate accommodation facilities in established areas of Sydney.

This exception alone effectively nullifies the benefit of the Affordable Housing SEPP for a significant portion of existing affordable housing in established areas.

### *Recommendation 1*

Remove the heritage constraint in the Affordable Housing SEPP, and mitigate red tape so as to provide greater certainty to operators wishing to expand supply of legitimate accommodation. Existing heritage protection measures would naturally operate to mitigate any unsympathetic expansion of existing heritage buildings.

### *Problem 2*

Provisions prevail in the Affordable housing SEPP and at most local councils that prevent or impose severe penalties if an operator chooses to change the use of their boarding house. This barrier discourages illegal operators from legitimising so as to avoid being "trapped" in boarding houses.

### *Recommendation 2*

Provide for simpler change of use of boarding houses, (say with 1 years notice). This liberalising of the market will remove barriers for illegal operators to legitimise and would encourage new entrants.

## F. Proposed Government Legislation.

"Boarding house" is a general term for affordable and flexible long term accommodation. Their strength comes from a flexible form of furnished accommodation that caters for a small, but important segment of the accommodation market.

International students, transient workers, tourists, young people starting up, or people seeking community living also make up a large part of the demand for this form of managed residential accommodation.

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.

This is a worst case scenario, and contrary to the interests of all stake holders.

### *Recommendation*

Do not introduce legislation and regulations that burden tier one boarding houses with more regulatory difficulties or compromise management. It stifles investment in the legitimate boarding house industry and fuels illegal operators.

### G. Positive Marketing of Boarding Houses.

Boarding Houses suffer the stigma of association with

1. Illegal boarding houses, as well as
2. Deceptive use of boarding house as a reference term for Licenced Residential Care facilities that are specialist care facilities.

#### *Recommendation 1*

Local government authorities need to effectively curtail "illegal" unregistered operators.

#### *Recommendation 2*

The NSW State government should market tier one boarding houses as a genuine alternative to residential housing, so it's better perceived by normal people looking for affordable long term housing.

Awards could be provided to excellent operators, possibly a star rating system could be introduced and promoted. This will further encourage the upgrading of supply.

#### *Recommendation 3*

DADHC (Dept Aged Disability& Housing Care) and the current The Inter Departmental Committee (IDC) on housing are incorrectly referring to Residential Care facilities as "Licensed boarding houses". They are Residential Care Facilities, not Boarding Houses. This should be corrected so as to avoid unnecessary confusion and deception. (*as written in the POA NSW submission to international student inquiry 2011*)

### H. Utility Costs.

Electricity, water and gas costs have increased rapidly and are scheduled to continue to increase.

#### *Recommendation*

Rebates are required for legitimate housing facilities that meet energy efficient targets.

## XII. COUNCIL POWERS

Illegal operators that are clearly in breach, that fail to register and comply with operating standards within a reasonable time frame need to be addressed. Councils need to attend to unregistered operators and the additional powers listed below are supported, so long as they do not add further burdens to legitimate registered operators:

-Amendments in relation to the Environmental Planning and Assessment Act 1979 in relation to unregistered tier one boarding houses and unregistered tier two LRC to be adopted.

-Amendments in relation to the Local Government (General) Regulation 2005, so that accommodation standards set out in Part 1, Schedule 2 applies to all registrable boarding houses, to be adopted.

-Only apply penalties to illegal unregistered operators, and only if they fail to comply with orders, in a reasonable time.

-Penalties and fines as proposed in the draft Boarding House Act are excessive and need to be moderated.

## XIII. CONCLUSION

A healthy supply of flexible accommodation is crucially important to the good and efficient functioning of a modern city.

Whether it be for international students, transient workers, tourists, young people starting up, or people seeking community living, this is somewhat irrelevant, as the flavour of accommodation demand continuously evolves and must be satisfied appropriately.

The supply of "illegal" accommodation prevails because of the onerous commercial and operational difficulties that are imposed on legitimate operators in a marginal trading arena.

Measures that strengthen the legitimate operator's viability, and lessen operational complications will ultimately keep existing operators and encourage new operators in the long run, which is in the best interests of all stakeholders.

Given the ongoing decline in the supply of boarding house accommodation which has dropped by 27% in NSW (31% reduction Australia wide) from 2001 census to 2006 census, action, not further rhetoric is required.

In particular the NSW government must note that insurance is, and is likely to cause further havoc for legitimate operators.

This submission supports the creation of two acts.

This submission supports the creation of a principles based approach to occupancy rights and obligations for all occupants and operators, as per Chapter 3 provisions with amendments, to be housed in a separate 'Residential Occupants Act', which also provides for registration and compliance at a council level only. Mediation with recommendations should be required as the first external step for dispute resolution, then if required to the Tribunal which has regard for operators obligations to "other household occupants rights" in a dispute.

The submission supports the creation of another act to cover Licenced Residential Care Facilities, with a functional definition of a vulnerable person and automatic exemption for any operators obligations under LRC provisions. Tier two operators would need to be consulted with this act.

Additional powers for councils to deal with illegal operators, is also supported. But penalties need to be moderated and should only apply if compliance is not achieved within reasonable time frames.

If you require further information the Private Hotel Boarding House Sub Committee can be contacted at the following details:

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Yours faithfully, and on behalf of the Private Hotels Boarding House Sub Committee of the Property Owners Association Of NSW and in consultation with operators.

*P. Dormia*

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