

The Property Owners' Association of New South Wales



The Property Owners' Association of NSW:

Statutory Review of the Boarding Houses Act 2012.

Discussion Paper August 2019

**Prepared by the Private Hotels Boarding House Sub Committee
in collaboration and consultation with; POA NSW committee, POA NSW members, general
boarding house operators and residents.**

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PRELIMINARY STATEMENT

The Property Owners Association of NSW Inc (POA NSW) is the peak body that has represented property owners in NSW since 1951.

POA NSW makes this submission to the NSW government in relation to the 5 year mandatory Statutory review of the Boarding Houses Act 2012.

This submission has been prepared by the POA NSW Private Hotels Boarding House Sub Committee, which is the peak body that represents the interests of registered general boarding house operators in NSW.

This has been a collaborative submission, prepared in consultation with our members and other boarding house operators at various workshops and seminars, along with interviews and feedback provided from registered general boarding house operators & residents, as well as industry stakeholders. The submission represents the broad views of our boarding house members that operate registered general boarding houses.

This submission relates to general registered boarding houses only, not assisted boarding houses. Any references to boarding houses are to be taken as referring to general boarding houses. Assisted boarding houses are a small and specialist area of the accommodation market, more akin to nursing homes, and require technical knowledge that is beyond the scope of POANSW.

POANSW is self-funded, and fully reliant on the support of its membership base. We do not receive any government funding or assistance, and the Private Hotels Boarding House Sub Committee all serve as unpaid volunteers.

The Main Paper of the submission addresses the major issues relating to the Boarding House Act. Reference is also made to issues raised in other significant papers (as per the reference list).

Appendix 1 provides an overview of recommended changes to various sections of the Boarding House Act, including the occupancy principles.

Appendix 2 addresses the 'prompt questions' from the Discussion paper that have not been specifically addressed in the Main Paper or Appendix 1.

Appendix 3 is a copy of a prepared statement by POA NSW, presented by P. Dormia, (POANSW Secretary), to industry stakeholders attending the Boarding House Roundtable meeting at The Newtown Neighbourhood Centre, on the 3rd September 2019.

Appendix 4 is a copy of email correspondence between POANSW and the Coordinator at Quality Assurance Fair Trading Specialist Services at Better Regulation Division Department of Customer Service in relation to a request for data clarification of the alleged '75 complaints' about boarding houses.

We establish the data is not correct, and in fact its misleading as *“The bulk, some 75%¹ as a ball park figure, are not complaints but general information enquires”*.

EXECUTIVE SUMMARY

This submission is a review of the general boarding house landscape 7 years after the introduction of the boarding house reforms.

It reviews the law, literature, and most importantly the data, that has emerged since 2012 and adds the operator's perspective to counter-balance the many misconceptions, and unrealistic expectations that prevail.

It establishes that:

Boarding houses are and have always been an alternative form of housing, and this is clearly distinguished in the eyes of the law.

That compliant registered general boarding houses are an important alternative source of housing, that counter-balances the failures of mainstream supply by providing:

- Flexibility
- Diversity
- Easy access
- Management
- Non-exclusive use
- Affordability
- Health and Safety compliance

We drill down into the data and we show that registered general boarding houses are 'fit for purpose'. They deliver above average levels of satisfaction from residents, have low levels of complaints, high levels of dispute resolution, and efficiently supply low-cost housing with very little government assistance.

¹ This is a qualitative assessment. At the time of writing, The Coordinator at Quality Assurance Fair Trading Specialist Services indicated that they would provide a accurate quantitative assessment of the actual number.

We provide insights that reveal that occupants in the vast majority of registered general boarding houses (70%+) are incorrectly portrayed as ‘vulnerable’ and/or ‘require special care’. This may surprise many people whose image of registered general boarding house residents is corrupted by media reports or literature which is not based on reliable data.

We show that registered general boarding houses are a crucial supply of low-cost affordable housing.

We show that the supply of low-cost general registered boarding houses has contracted by 12.6% since 2013. We correlate this with research data by Associate Professor Drake that shows that *“limited affordable housing options and increased occupancy fees” ...do cause “a significant fall in residents satisfaction measured by the seven indicators of their personal well-being”*.

We review the regulatory landscape and illustrate how misguided understanding and unrealistic expectations produce complex and conflicted objectives, which delivers ineffective and inconsistent regulatory compliance. We explore the impact this has on market failures, such as fuelling illegal non-compliant supply, and exposing occupants to unacceptable risks.

We also examine some of the many other causes of illegal non-compliant supply.

We make a number of recommendations, including:

- Preserving and encouraging the diverse flexible easy access housing supply provided by compliant registered general boarding houses.
- Broadening of legislation so that all unrelated occupants, that are provided with non-exclusive use of their principal place of residence in return for a fee or reward from a unrelated party² that manages the household, are covered by reasonably based occupancy principles.
- The occupancy principles to be augmented with reasonably based occupant obligations.
- An easy access over the phone/webchat mediation system (with recommendations) is proposed as the first required step for dispute resolution, then, any unresolved disputes escalate to NCAT.
- Assisted boarding houses should be renamed and regulated separately. ‘Vulnerable residents with special needs’, should be afforded appropriate protections and the operator of those premises should be appropriately qualified. This should prevail regardless of the type of housing they reside in.
- A new name for the Act is required to reflect its broader application.

² Excluding those covered by exceptions, such as the list in s5(3) of the Boarding House Act 2012.

-A list of measures to support the viability, and thereby the supply of affordable registered general boarding houses accommodation.

In the appendixes, we apply some of these recommended changes directly to sections of the Boarding House Act NSW 2012, and then provide additional responses to the general boarding house questions, as listed in the Statutory Review of the Boarding Houses Act 2012: Discussion Paper August 2019.

Further, in appendix 4 we drill down into data sources and demonstrate one example of misleading data that misrepresents the truth about boarding houses in NSW.

MAIN PAPER: REVIEW OF THE BH ACT:

WHAT IS A BOARDING HOUSE?

BOARDING HOUSES ARE AN ALTERNATIVE SOURCE OF HOUSING.

There is a general perception, that boarding houses are an inferior form of housing, for people who are sadly trapped in a “lesser home”. The following definition from Dr Chris Martin captures the both nature of boarding houses and the way they are perceived.

Boarding houses are a form of residential accommodation where residents do not get the premises to themselves. There is more sharing of space between residents, and more control exercised by the proprietor, than in mainstream rental housing. Boarding house accommodation also tends to be more transitory, and is commonly regarded as being less than a ‘home’ ³

But the reality is that they are not “lesser”, they are a “different” form of housing, that trade-off different attributes, to serve “different purposes” in the housing market.

*Generally if you stay in a boarding house, there’s a bad stigma attached to it and people are really like –you generally don’t really tell people, yeah, I live in a boarding house. (BRN4, general boarding house resident)*⁴

“some of them are really nice, and you pay for it, while others are pretty ordinary, but they’re cheap.... You get what you pay for” (Boarding House Resident)

Share accommodation, and in particular boarding houses, are misrepresented and poorly understood, and this lies at the heart of why many societies are not able to address housing difficulties that prevail in many 1st world major cities.⁵

This is a failure to comprehend that the diverse characteristics that make up share accommodation is desired by many sectors of the housing market.

³³ Pg 2 Boarding houses in New South Wales: growth, change and implications for equitable density

⁴ BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

⁵ <https://www.dailymail.co.uk/news/article-7406533/amp/Rogue-landlords-caught-keeping-tenants-appalling-conditions-including-living-SHEDS.html>

Because some people just don't want to live on their own, they want someone like that because you've always got someone to talk to so there's your social interaction and if something happens to you, like you might fall over and if you lived on your own no-one would know about it but if you live in a boarding house and something happens to you there's someone there that can help you (BRA39, general boarding house resident).⁶

It should not be surprising that non-exclusive use accommodation is sought after in the market. Non-exclusive use housing lies at the root of how humans have always lived. It is even deeply ingrained in popular culture. Think of all households that 'share', whether it be between related people in a typical family home, with friends or even unrelated people living together, having a flatmate, or living in a boarding house. In fact, it's most likely that 'share accommodation' is the dominant form of housing that most people choose to live in.

"I CAN'T GET STUCK WITH THE HASSLES OF A LEASE"

Many boarding house characteristics are actually 'superior housing' to the other forms of accommodation. They add rich diversity to the flavour of the supply of housing, aligning a plethora of micro suppliers, each supplying different niches, to satisfy the endless variety of demand from a diversity of people, varying by; tenure, price, range of amenities, and even personality types, religion, age, socio economic position, educational levels, employment, students, multicultural background etc etc etc.

It's this unique and diverse supply which is critical, and this must prevail so as to avoid market failure. Markets fail when demand is not satisfied. People seeking accommodation are all different. Sure, boarding houses are not for everyone, but everyone is different, and not everyone wants to live in the 'mainstream market'.

One could easily "rationalise" that Residential Tenancies are a 'lesser' housing:

- There are high barriers to entry into a lease, applicants are heavily scrutinised by agents who don't want to get stuck with potentially "bad" tenants. Also, those without proper references or strong financials will tend to be 'looked over'.

- Leases aren't flexible, what if the resident only requires a 16.5 week stay to align with a work or study commitment and then want a flexible end date? Many don't want to get stuck in a 6 month lease. They may be casual's, don't have a permanent or full time job⁷, or piecemeal workers, who move around with the location of their work.

⁶ Pg 27| EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

⁷ More than two million Australians are employed casually. Women account for just over half of all casuals and 40% of casuals are aged 15-24 years, compared with 14% of other employees. https://www.australianunions.org.au/casual_workers_factsheet

-Connection of utilities, WIFI, even adapting or obtaining furniture requires resources and time, which is inconvenient for many.

I'm a nurse, so I'm a shift worker. They get us on contracts, 3 months here, 6 months there. Flick a coin, I could be at Westmead or POW next month. I can't get stuck with the hassles of a lease. I don't want to. Plus, I can't deal with flatmates dramas, I'm in Theatre most days. It just doesn't work for me. It's got to be affordable, clean & quiet and all set up and ready to go. (boarding house resident)

Both the 'exclusive use' and 'non-exclusive use' housing markets are important sectors in housing supply. But they are different. And here in lies a big part of the solution to the housing crisis, a rich diverse thriving supply of accommodation that satisfies the endless diverse demands people have, not more of the same standardized supply that amplifies the failures.

RICH DIVERSITY OF SUPPLY AND TENURE

Boarding houses provide a rich diversity supply because of the ability of micro suppliers to provide flexible terms to cater for niche markets that can adapt to meet everchanging demand needs.

Dalton et al (2015) in their research on boarding and rooming houses in NSW and Victoria identify a number of different types of boarding houses, as follows: 'traditional' boarding houses which cater for people who are the most disadvantaged and vulnerable; 'upgraded traditional' boarding houses which are more expensive and have a more mixed demographic of residents; 'student' boarding houses which are targeted to local and international students; 'new generation' boarding houses in inner city areas which include some professionals and international students and, 'small suburban' boarding houses which accommodate a variety of people and are spread throughout the suburbs.

They're all different. Some places are like The Brady Bunch and others like The Addams Family. (Boarding House resident)

This is a wonderful feature of the industry, and underlies its strength, being its flexibility and adaptability. Hopefully this will continue into the future, because demand will continuously change, and the market needs easy access supply that can respond to this, otherwise housing supply will continually fail to meet the market.

FLEXIBILITY ACTS A SAFETY NET.

Diversity and flexibility of supply is critical in our 1st world society where permanence is vanishing, whether it be in work relations, community set ups or educational development.

More than two million Australians are employed casually. Women account for just over half of all casuals and 40% of casuals are aged 15-24 years, compared with 14% of other employees⁹.

Diverse and flexible supply afforded by the general boarding houses enables the industry to act as safety net to address failures in other sectors of the accommodation market, such as those squeezed out by ongoing tightening of provisions in the RTA, by a lack of flexible tenure supply in the mainstream market, and also the lack of affordable accommodation.

.... “We find that access to some properties through certain real estate agents is becoming increasingly hard...they’ll straight up admit that they won’t take anyone who’s on Centrelink ... They want people that are working.” (Housing advocate) ¹⁰

The majority of residents interviewed, considered that, in the absence of alternative affordable and public housing options, there was a need for a boarding house market.¹¹

Well we’re going to need them. I mean unless we want a society living on the street (BHR12).¹²

BOARDING HOUSES IN THE EYES OF THE LAW

Boarding houses are a very important component of the accommodation market, and central to this are the key characteristics of non-exclusive use and a Master of the House.

Historically, the law has sharply distinguished lodging from tenancy. At common law, a tenancy is a proprietary interest that affords a right to possession of the premises, such that the tenant may exclude all others, including the landlord; by contrast, lodging is merely contractual, not proprietary, and not exclusive.¹³ (Martin 2019)

Further from The NSW Government.

⁹ https://www.australianunions.org.au/casual_workers_factsheet

¹⁰ From reference list, the exact reference location has been misplaced.

¹¹ From reference list, the exact reference location has been misplaced.

¹² Pg 33 BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

¹³ Pg 8 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

“The nature of boarding house accommodation is different to that of private rental dwellings regulated under the Residential Tenancies Act 2010. Boarders do not have a right to occupy the entire premises, and their rights in relation to the enjoyment of the premises generally are more limited.

Proprietors retain a high level of day to day control over the use of the premises (compared to landlords under the residential tenancy agreement), and agreements between proprietors and residents are developed on an informal basis. These features are inextricably linked to the low cost nature of the accommodation, and the capacity or desire of residents to enter into formal agreements for their accommodation.

Given the nature of boarding arrangements, it is not appropriate for boarders to have the same rights as tenants under a residential tenancy agreement.”¹⁴

(NSW Government Interdepartmental Committee. Exposure Draft Boarding House Bill 2012- Position Paper 29 June 2012 Pg 7 & 8)

WE KNOW WHAT A BOARDING HOUSE IS

So, it's really quite simple to determine what is a boarding house. Boarding houses provide an alternative form of accommodation, characterized by non-exclusive use and managed by a master of the house. They may or may not be self-contained. They may be upmarket, they may be very cheap. It doesn't matter, the key is its managed shared housing.

It's even simpler to determine a registered boarding house, as operators of 'legal' boarding houses are required to have council development approval and a council issued license to operate. Further they are registered. There can be no confusion as to the legal status of a registered boarding house.

WHAT'S CAUSING THE CONFUSION?

It is not surprising that people often mistakenly misuse the term tenant, occupant, general and assisted boarding house. Even Magistrate M. Jerram, State Coroner of NSW,¹⁵ in the '300 Hostel' investigation incorrectly mixes up tenant, occupant and assisted (LRC) and general boarding house. If a person of that standing can get confused about these definitions, it's hardly surprising others not studied in such matters also make such errors.

¹⁴ NSW Government Interdepartmental Committee. Exposure Draft Boarding House Bill 2012- Position Paper 29/6/2012 pg 7&8

¹⁵ 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 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 noLLicenced Residential Care Facilities.

The confusion comes because of cross-over from other pieces of legislation ‘moving’ into legislated void that exists in the non-exclusive market.

.... the law has sharply distinguished lodging from tenancy..... This distinction has become less clear in the era of modern residential tenancies legislation. The Residential Tenancies Act provides that an agreement may be a residential tenancy agreement ‘even though... it does not grant a right to exclusive occupation’ (section 13(3)(a) – but not if it is an agreement ‘under which a person boards or lodges with another person’ (section 8(1)(c)).¹⁶

POANSW expects that this ‘cross-over’ confusion will continue into the future, unless legislation is enacted to provide appropriate coverage for the whole share accommodation market (and not just for registered boarding house residents). Later in the paper we will revisit our proposal in 2012 for a broader ‘non-exclusive use’ Act¹⁷

ARE REGISTERED GENERAL BOARDING HOUSES ‘FIT FOR PURPOSE’?

We know that the purpose of a boarding house is to provide an alternative form of housing characterized by “easy access managed share accommodation”. But “[b]oarding houses [also] play an important role in the provision of low-cost affordable housing”¹⁸.

So, the question now is, are general registered boarding houses “fit for that purpose”?

Let’s examine the data and assess the performance of registered boarding houses as per the 5 year Registered Boarding House Evaluation Study¹⁹ by Ass. Prof. Drake. The data shows registered general boarding houses deliver satisfied residents, have low levels of complaints, high levels of dispute resolution, and provide diverse easy access affordable accommodation with very little government assistance.

LOW LEVELS OF COMPLAINTS ABOUT BOARDING HOUSES.

The following data is provided on the number of Boarding Houses complaints and enquiries made to NSW Fair Trading, who states that ...

¹⁶ Pg 6 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

¹⁷ Buildings that have more specific functions, such as housing “vulnerable” residents (ie assisted boarding houses) should be regulated and registered under separate legislation that specifically regulates operations that provide care services.

¹⁸ Pg 6 Statutory Review of the Boarding Houses Act 2012 Discussion Paper August 2019. NSW Government.

¹⁹ EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

*NSW Fair Trading, as part of the Department of Finance, Services and Innovation, collects data on complaints and enquiries received by their state-wide call centre. NSW Fair Trading has provided data from 2014-2017. The number of enquiries to NSW Fair Trading has remained steady with approximately 300 enquiries made each year (295 enquiries in 2014; 600 between 2015-2016 and 279 in 2016-17) and few complaints -a total of 31 complaints made during the study period. These complaints were mostly related to resident concerns about eviction and lack of an occupancy agreement.”*²⁰

Further, in the Statutory Review of the *Boarding Houses Act 2012* Discussion Paper August 2019 NSW Fair trading updates this data on page 17, stating that

*A total of 75 complaints about boarding houses were made to NSW Fair Trading during the period January 2014 to April 2019. These were mostly related to resident concerns about eviction, return of bonds, and lack of an occupancy agreement.*²¹

LET’S DRILL DOWN INTO THIS DATA

We want to establish whether this data is reliable and how it reflects on registered general boarding houses. We have sought additional information and a break-up of the data that was provided by NSW Fair Trading who administers the Boarding Houses Act. In Appendix 4 a copy of that request plus the email response from Quality Assurance Fair Trading Specialist Services can be seen in full. Further clarification was provided in two phone calls on 11th and 17th September 2019.

The findings below show that not only are the number of calls very low, the statement “75 complaints” is not correct, and when one drills down into the data, [t]he bulk, some 75%²² as a ballpark figure, are not complaints but general information enquires.

The number of complaints is extremely low, averaging 7 per year in the period 2014 to 2017, and accounting for 2.6% of all the 1174 calls made to Fair trading in that period. This is verified by the Quality Assurance Fair Trading Specialist Services Coordinator:

*”we have received limited complaints since the legislation commenced in 2012”*²³.

Also we note..

²⁰ Pg 16 Evaluation of the Boarding Houses Act 2012 Final Report Associate Professor Gabrielle Drake Associate Professor Gabrielle Drake February 2018 ACU

²¹ Pg 17 Statutory Review of the *Boarding Houses Act 2012* Discussion Paper August 2019 NSW Government.

²² This is a qualitative assessment. At the time of writing, The Coordinator at Quality Assurance Fair Trading Specialist Services indicated that they would provide a accurate quantitative assessment of the actual number.

²³ Appendix 3: Email correspondence with the Coordinator at Quality Assurance Fair Trading Specialist Services

‘When Fair Trading records complaints or enquiries about boarding houses, it does not record the accommodation type i.e. does not distinguish it as a general boarding house or an assisted boarding house; the data is recorded as boarding house only’²⁴.

This also means Fair Trading does not distinguish between illegal boarding houses, unregistered boarding houses, or even share houses, or whether the call is made by an operator, resident, or even a unrelated party who has a passing interest.

Further it is noted that

“The majority of contact we receive are enquiries relating to requests for general information”²⁵.

As was explained by a Coordinator at Quality Assurance Fair Trading Specialist Services in the two phone calls,

“Our internal process uses the terms complaint and enquires interchangeably, but for an external party the language is incorrect”.

“The bulk, some 75%²⁶ as a ballpark figure, are not complaints but general information enquires”

“I’m not seeing it (the 75 complaints) and I don’t know where they are getting this from”

“calls about actual evictions are very nominal”²⁷

So given that only a minority (ballpark 25%)²⁸ of calls were complaints, and using the law of averages, only a minority of these could have related to registered general boarding houses (as this sector is only a small part of the whole boarding house market), we estimate this leaves a minuscule number in the order of 10 of the 75 calls in that 65 month period, that were actually genuine complaints about registered general boarding houses in NSW.

We remain concerned that unreliable and misleading data is being presented to misrepresent the registered general boarding house sector. This is not a sound basis for evaluating the industry.

While no industry is perfect, clearly when you drill down into this data it shows registered general boarding houses generate extremely low levels of complaints. This demonstrates the industry’s capacity to deliver alternative easy access affordable housing efficiently.

²⁴ Appendix 3: Email correspondence with the Coordinator at Quality Assurance Fair Trading Specialist Services

²⁵ Appendix 4: Email correspondence with the Coordinator at Quality Assurance Fair Trading Specialist Services

²⁶ This is a qualitative assessment. At the time of writing, The Coordinator at Quality Assurance Fair Trading Specialist Services indicated that they would provide a accurate quantitative assessment of the actual number.

²⁷ Clarification was provided in two phone calls on 11th and 17th September 2019. As is revealed by the Coordinator at Quality Assurance Fair Trading Specialist Services

²⁸ At the time of writing, The Coordinator at Quality Assurance Fair Trading Specialist Services indicated that they would provide a accurate quantitative assessment of this number.

PERSONAL WELL-BEING: RESIDENTS EXPERIENCE ABOVE AVERAGE LEVELS OF SATISFACTION

Boarding house residents were asked to rank, from 0 (no satisfaction at all) to 10 (completely satisfied), their satisfaction with their well-being for seven indicators. These indicators were drawn from the Personal Well-being Index -Adult (PWI-A) which is a reliable tool for measuring well-being.²⁹

Table11 Pg 22: General BH Residents: Personal well-being index, comparison of mean results 2014-2017³⁰

<i>PERSONALWELL-BEING</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>AVERAGE</i>
<i>PART OF THE COMMUNITY</i>	7.36	7.30	5.75	6.11	6.63
<i>HEALTH</i>	6.96	7.05	5.83	6.29	6.53
<i>LIFE AS A WHOLE</i>	6.78	7.02	5.82	5.64	6.32
<i>FUTURE PLANS AND PROSPECTS</i>	7.37	7.58	6.19	6.05	6.80
<i>ACHIEVING IN LIFE</i>	6.57	6.84	5.45	5.42	6.07
<i>PERSONAL RELATIONSHIPS</i>	7.08	7.49	6.28	5.91	6.69
<i>STANDARD OF LIVING</i>	6.62	7.07	5.74	5.59	6.26
<i>AVERAGE</i>	6.96	7.19	5.87	5.86	6.40

We can see from the results, all scores sit above average, with the lowest score of 5.42/10 and rising to 7.58/10. These ‘real data’ results demonstrate that residents in registered general boarding houses, experience above average to good levels of satisfaction on all 7 indicators of well being.

SATISFACTION WITH BOARDING HOUSE: RESIDENTS EXPERIENCE ABOVE AVERAGE LEVELS OF SATISFACTION

In addition to the personal well-being index, residents were asked to rank, from 0 (no satisfaction at all) to 10 (completely satisfied) their satisfaction with living in their boarding house.³¹

Table 13: Registered Boarding House Residents satisfaction indicators, comparison of results 2014-2017³²

²⁹ Table11 pg 22: Personal well-being index, comparison of mean results 2014-2017, General BH EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

³⁰ EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

³¹ Table 13: Boarding House satisfaction indicators, comparison of results 2014-2017 EVALUATION OF THE BOARDING HOUSES ACT 2012 – FINAL REPORT

³² EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

RESIDENT SATISFACTION	2014	2015.	2016.	2017	AVERAGE
<i>OVERALL EXPERIENCE</i>	7.35	7.74	6.50	6.12	6.93
<i>HOW THE BH IS RUN</i>	7.60	7.68	6.41	6.17	6.97
<i>OVERALL SECURITY</i>	6.93	7.64	6.30	5.85	6.68
<i>REPAIRS AND MAINTENANCE</i>	6.66	7.35	6.07	5.83	6.48
AVERAGE	7.14	7.60	6.32	5.99	6.76

Overall we can see that registered boarding house resident satisfaction sit at above average levels in all categories, reaching as high as 7.74 for overall experience, while the lowest score was also above average at 5.83. This is a good result for registered boarding house operators, and it's based on 'real data'.

This 5 year Evaluation study substantiates the view held by POANSW that compliant registered boarding houses are not being represented accurately in the media reports and most importantly in studies/papers that "are not based on real data". They contain a prejudice which runs contrary to the evidence provided in the evaluation study.

BOARDING HOUSES AT THE TRIBUNAL.

The Evaluation study³³ also reviewed Boarding house NCAT Tribunal cases:

*The Tribunal received 15 applications under the Boarding Houses Act 2012 during the period 1 July 2013 to 31 January 2014*³⁴:

3 applications lodged in August 2013

3 applications lodged in October 2013

9 applications lodged in January 2014

The applications related to boarding houses in:

Newcastle – 5 applications

Sydney – 3 applications

Penrith – 2 applications

Coonamble – 1 application

Gunnedah – 1 application

Hurstville – 1 application

Mudgee – 1 application

Taree – 1 application

The applications were lodged by:

³³ EVALUATION OF THE BOARDING HOUSES ACT 2012 – Report 1 2014

³⁴ EVALUATION OF THE BOARDING HOUSES ACT 2012 –Report 1 2014 9.9 Appendix: NSW Civil and Administrative Tribunal data

Residents – 5 applications
Former residents – 3 applications
Proprietors – 7 applications

The applications related to:
The occupancy agreement – 1 application
Payment of money – 3 applications
Compensation – 2 applications
Access to Goods – 2 applications
Termination of agreement – 5 applications
Rehearing application – 1 application
Other unspecified issue – 1 application.

The Tribunal does not collect data on the outcomes of specific matters, however in the 5 finalised applications, primary orders were made as follows:

1 application was withdrawn
1 application was dismissed
2 applications resulted in general orders
1 application resulted in a money order.

We also understand [note the reference for this has been misplaced, but we understand this to be correct, but it would need to be confirmed by NCAT] that in the first 4 years of the act, from July 2013 to July 2017, there were 70 boarding house classified applications brought before NCAT, which is a very low number, about 1.5 per month. Further we understand that the vast majority of cases were either withdrawn or resolved by mediation.³⁵

This is a very good outcome for the registered general boarding house industry.

HOW MUCH DO REGISTERED BOARDING HOUSES COST NSW TAXPAYERS?

As can be seen in the NSW land tax data provided by NSW revenue in 2013 it was \$7m. Given that the average sized boarding house is 10 rooms³⁶, this subsidy amounts to just \$2.67 per room per day in 2013. Even if you include the BHFSAs, fire safety grants, (which are specifically provided to registered boarding houses forced to upgrade their fire safety performance), registered boarding houses operate with very little government assistance.

Table: Appendix 9.10: Office of State Revenue data³⁷

³⁵ Reference has been misplaced. Reference is pending. Refer to NCAT for confirmation of details.

³⁶ As estimated in: Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

³⁷ BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

Item 1 How many tax exemptions were granted in the 2013 calendar year? **720³⁸**.

Item 2 What was the total value of these exemptions? **7million**

AN INDUSTRY OF MICRO SUPPLIERS

Dr Chris Martin in his paper on Boarding Houses in NSW³⁹ provides an insight into general Boarding House Sector numbers on pages 8 to 16, as garnished from various data sources such as NSW Boarding House register, Census counts and importantly NSW Revenue selected data on boarding house land tax applications.

It reveals there is a rich diversity of micro suppliers, on multiple levels;

- sizes, from small class 1b to large class 3 general Boarding houses. Provided by a broad range in sizes of suppliers (averaging at 10 rooms)
- geographic distribution throughout NSW
- resident's gender distribution and age distribution, while still leaning to older males, supply is adapting to the growing demand by females and students.

DIVERSITY OF OWNERSHIP ENABLES DIVERSITY OF SUPPLY

Research indicates that there are now six distinct subsets of boarding house – older style 'traditional' boarding houses, upgraded traditional boarding houses, student boarding houses, assisted boarding houses, New Generation boarding houses and small, internally subdivided private suburban dwellings⁴⁰.

Dalton et al (2015) in their research on boarding and rooming houses in NSW and Victoria identify a number of different types of boarding houses, as follows: 'traditional' boarding houses which cater for people who are the most disadvantaged and vulnerable; 'upgraded traditional' boarding houses which are more expensive and have a more mixed demographic of residents; 'student' boarding houses which are targeted to local and international students; 'new generation' boarding houses in inner city areas which include some

³⁸ We note the in Table NSW REVENUE: Low cost (land tax exempt) boarding houses, New South Wales, 2013-17, the table indicates 716 boarding houses in 2013. We can not account for this minor difference.

³⁹ Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

⁴⁰ Pawson, H., Dalton, T., & Hulse, K., 'Rooming House Futures: Governing for Growth, Transparency and Fairness' NSW Discussion Paper, Australian Housing and Urban Research Institute, Feb 2015, pp.8-10.

professionals and international students and, 'small suburban' boarding houses which accommodate a variety of people and are spread throughout the suburbs⁴¹.

The data shows that supply is not dominated by a single supplier. Ownership is so incredibly diverse, with some 75% of registered boarding houses individually owned⁴². Typically, this will be by families invested in their local community. Only a very few have 3 or more operations.

This diversity of ownership enables diversity of supply.

A dominant supply ownership would inevitably lead to a loss of diversity and less flexibility. This would not be in the interest of those seeking accommodation if they did not fit into the dominant suppliers system. This ownership diversity is a very important as it reinforces the diversity of supply.

NGO SUPPLY

One development in the market in recent years has been the move by NGO's, like the Uniting Church, actively investing in the supply of affordable accommodation. Such moves will add to the rich diversity of compliant affordable supply, and such supply will appeal to niche demand that is attracted to the values of such organisations.

But we don't believe that NGO's will be a 'fix all silver bullet'.

The history of charities running them is dismal other than providing high incomes for the administrators. (Residential Property Investor)

Gee it never changes, it's the same old boring non-market responsive stance. It amazingly ignores the available stock & just concentrates on denigrating it:

- 1. It is clear the Government has not been able to address the demand for cheap accommodation options.*
- 2. The NGO's can only provide this sort of service if heavily funded.*
- 3. More invasive regulation does NOT provide any relief.*
- 4. The demand for accommodation that is cheap up to say \$200 per week is fundamentally impossible to provide due to the complexities of the financial inputs & regulations.*
- 5. There are vested interests in attacking most forms of private accommodation provision by those spruiking they can provide the answer. (Residential Property Investor)*

⁴¹ Pg 8 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

⁴² Figure \$ Pg 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

NGO's have high cost structures and are unlikely to be efficient housing suppliers. This will be a difficult financial model in such a marginal sector. And beware of the inevitable 'silent killer' depreciation and amortisation. These will require large and never ending injections of capital to maintain standards.

If organisations like the Uniting Church are able to reprioritise their charitable works programs towards affordable housing, then it will be a good result for that niche of affordable housing supply (but not such a good result for the other charitable support services they could provide).

We suspect NGO's will inevitably turn to taxpayers for support. Governments will find it difficult to resist funding demands from such organisations that carry significant 'soft power', and they will be constrained to redistribute taxpayer funds to support these high cost suppliers. This may not be a pareto optimal model, as more could be achieved with efficient and diverse suppliers.

POANSW "GUESTIMATE" OF REGISTERED BOARDING HOUSE BY SUB SECTORS.

POANSW has created the following guestimate to provide a guide into the numbers of NSW boarding Houses that fall into each range of subsets.

Note this 'guestimate' relies on information provided during the NNC Boarding House Round Table meeting on 3rd September 2019, where a DJC officer estimated that about 300 boarding houses sit in a "grey area" in terms of potentially housing residents that be caught by S37 of the Boarding House Act (ie may have 2 or more 'vulnerable persons with additional needs').

Table: POANSW "guestimate" of Registered Boarding House by sub sectors in 2018.

-Low Cost 'Grey area' v Low Cost 'Non-Grey area'

*Affordable*⁴³ General Registered BH "Grey Area"⁴⁴ **300** (28.7% of 1043 TRBH)

*Affordable*⁴⁶ General Registered BH "Non-Grey Area. **316** (30.3% of 1043 TRBH)

-Low Cost v Other

⁴³ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in *Questions & Answers Paper No. 183*. Answer received on 21 June 2018 and printed in *Questions & Answers Paper No. 192* <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

⁴⁴ DJC officer estimate *that may meet S37 BH Act* ie may have 2 or more 'vulnerable persons with additional needs

⁴⁵ It is assumed that the "grey area" boarding houses meet "affordable status"

⁴⁶ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in *Questions & Answers Paper No. 183*. Answer received on 21 June 2018 and printed in *Questions & Answers Paper No. 192* <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

<i>Affordable⁴⁷ General Registered BH (as at 2017)</i>	616⁴⁸	(59.0% of 1043 TRBH)
<i>Other General Registered BH</i>	410	(39.3% of 1043 TRBH)
-General v Assisted		
<i>Total General Registered BH</i>	1026	(98.6% of 1043 TRBH)
<i>Total Assisted Registered BH</i>	17⁴⁹	(1.6% of 1043 TRBH)
<i>Total Registered BH (TRBH)</i>	1043⁵⁰,	(100% of 1043 TRBH)

Given there are approximately 1043 registered boarding houses with around 16196 residents^{51 52} in NSW in 2018, 59.0% met the NSW Revenue criteria for low cost supply. As can be seen in the data, the vast majority of registered boarding houses provide affordable accommodation.

Further note only 1.6% of registered boarding houses are assisted boarding houses that contain 2 or more s37 ‘vulnerable persons with additional needs’. Let’s explore this further by incorporating the ‘guestimate’ provided by the DJC officer that there are ‘300 grey area’ boarding houses that may or may not contain at least 1 or more ‘vulnerable persons with additional needs’. Given this 300 number, 28.7% possibly have around 2 residents that are ‘vulnerable persons with additional needs’. If we make further assumptions, that 10%-30%⁵³ of the ‘300 grey area’ boarding houses house residents are ‘close’ to the S37 “vulnerable persons with additional needs” definition, then gives us a population closer to about 4.4%-10.2% of registered boarding house residents.

Note these are guestimates and very simple calculations, but they are is consistent with POA NSW operator member feedback, that the vast majority of compliant registered general boarding houses do not house ‘vulnerable persons with additional needs’.

We surveyed our members and 100% believe that term ‘assisted boarding house’ is misleading. POA NSW recommends a new descriptive term is found to clearly distinguish the share housing that provides specialist care services for vulnerable persons with special needs.

⁴⁷ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in *Questions & Answers Paper No. 183*. Answer received on 21 June 2018 and printed in *Questions & Answers Paper No. 192* <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>.

⁴⁸ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in *Questions & Answers Paper No. 183*. Answer received on 21 June 2018 and printed in *Questions & Answers Paper No. 192* <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>.

⁴⁹ Pg 8 Table 2 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

⁵⁰ Pg 8 Table 2 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

⁵¹ Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

⁵² Pg 8 Table 2 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

⁵³ These are guestimates only and are not based on evidence or data. They are merely meant to provide insights. We assume that ‘grey area’ means that around 2 residents are close to being classified as s37 ‘vulnerable persons with additional needs’. We accept that the average boarding house size as per Martins 2019 analysis is 10 bedrooms, so then we guesstimate that 10% to 30% of the ‘300 Grey Area’ registered general boarding houses residents are in a grey area in relation to the S37 definition.

CONCLUSION

Sure the boarding house sector is not perfect.

“some of them are really nice, and you pay for it, while others are pretty ordinary, but they’re cheap.... You get what you pay for” (Boarding House Resident)

But as the data shows, registered general boarding houses are efficient suppliers of housing and are fit for purpose. They provide a diverse alternative range of affordable flexible easy access managed share accommodation, and deliver satisfied customers, have low levels of complaints, high levels of dispute resolution, and with very little government assistance.

BREAK THROUGH ON BOARDING HOUSE SECTOR DATA

UNRELIABLE BOARDING HOUSE SECTOR DATA.

Both the Census numbers and Boarding House registration results provide some indication that there are around 1026 registered general boarding houses in NSW housing around 16196 residents⁵⁴.

About 0.214% of NSW’s population of 7.544 million people live in registered general boarding houses.

We have been aware for a long time that much of the data produced on boarding house numbers is not highly reliable. In the past reliance was placed on Census numbers. Since the Act, an attempt has been made with the registration system. Neither of these are ever likely to be very reliable, as the source and collection methods of the data is not reliable.

NEW RELIABLE BOARDING HOUSE SECTOR DATA

⁵⁴ Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

The major break through on reliable data came on the 17th May 2018, when we finally obtained access, from NSW parliamentary question #8378, details of the number of registered boarding houses that “received land tax exemptions on the basis that they provided low cost accommodation” in NSW.⁵⁵

We consider this data very reliable, as applicants must comply with the conditions of the exemption and have a financial incentive to provide accurate information.

12.6% LOSS OF AFFORDABLE REGISTERED BOARDING SUPPLY SINCE 2013

The numbers show there was a dramatic loss of 113 affordable registered boarding houses from 706 in 2013 to 593 in 2014, which was the year in which the Boarding House reforms were implemented. Since then numbers have stabilized to around 600 registered boarding houses.

Table NSW REVENUE: Low cost (land tax exempt) boarding houses, NSW, 2013-17.⁵⁶

	2013	2014	2015	2016	2017
Low Cost Registered Boarding Houses.	706	593	624	574	616

Overall there has been a 12.6% loss of affordable registered boarding houses in the first 4 years of the Boarding House reforms (706 to 616). This is about 100 boarding Houses, and we estimate this amounts to about 1000 affordable bedrooms.⁵⁷

37 years we had the boarding house. I worked and my wife ran the place, she did all the cleaning and the cooking, Maria was good at cooking. On the weekends and in the holidays we did the big jobs. The kids helped. We never had any troubles. Even when the council come around, every now and then they made me do something or another; put in solid doors, put in smoke detectors, an extinguisher, this and that. Then he turns up and tells me they've changed the rules and I've got to put in sprinklers, and the stairs are no good. It's a terrace house, the stairs are the same as all the other terrace houses. They've all got bedrooms in the roof and closed the veranda. The fire engineer took \$8000 and told me I had to close 3 bedrooms. That's almost half the house. My son said it wasn't worth it. (Ex-boarding house operator)

⁵⁵ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in Questions & Answers Paper No. 183. Answer received on 21 June 2018 and printed in Questions & Answers Paper No. 192 <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

⁵⁶ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in Questions & Answers Paper No. 183. Answer received on 21 June 2018 and printed in Questions & Answers Paper No. 192 <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

⁵⁷ Assumes average 10 rooms per boarding house, as estimated by Martin (2019)

“If I’m not here, boarding house not there, government have to look after full time, you know how much money they have to spend? They should think about this.” (BHOP13). One said they were “taking 14 to 16 people off the streets” (i.e. they would otherwise be homeless (BHOP20)).⁵⁸

Census numbers show that homelessness⁵⁹ grew by 15,000 people in Australia since 2011. This is occurring despite one of the largest residential construction booms in NSW’s history, producing a mammoth increase in the supply of mainstream residential accommodation.

Clearly mainstream housing is not able to address these dual housing failures; easy access affordable accommodation and the ‘broad definition⁶⁰’ of homelessness. Alternative sources of supply are a critical safety net, that can adapt and cater for diverse demand needs.

Measures are needed to encourage the supply of easy access accommodation. Later in this paper we will provide a list of measures to support affordable registered general boarding house supply.

PAGE 28 “SIGNIFICANT DECREASE IN RESIDENT WELL-BEING (2015 – 2016)”⁶¹

Another important piece of ‘data’ to emerge the last few years on the connection between affordable registered boarding house supply and the well-being of residents in registered boarding houses is provided by Associate Professor Drake in the 5 year Boarding house Evaluation study⁶². Her findings on the ‘significant fall in residents satisfaction’ measured by the seven indicators of their personal well-being⁶³ in 2015-2016 are of great substance and is summarized in the following extract.

Over the four data collection periods, there was an overall significant difference between residents reported satisfaction with their standard of living ($p < 0.001$). Of note, was a significant decline in satisfaction between 2015 and 2016. This decline was explored with residents through the semi-structured interviews in the 2017 data collection period. Residents attributed this decline in satisfaction to limited affordable housing options and increased

⁵⁸ Pg 39 BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

⁵⁹ ABS census 2016: Homelessness in 2016 was 116,000 people, which jumped by 14% or 15000 people since 2011.

⁶⁰ <https://www.homelessnessaustralia.org.au/about/what-homelessness>. The ABS definition of homelessness is informed by an understanding of homelessness as ‘home’lessness, not ‘roof’lessness. It emphasises the core elements of ‘home’ in Anglo American and European interpretations of the meaning of home as identified in research evidence (Mallett, 2004). These elements may include: a sense of security, stability, privacy, safety, and the ability to control living space. Homelessness is therefore a lack of one or more of the elements that represent ‘home’

⁶¹ Pg 22 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

⁶² EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

⁶³ Pg 22 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

occupancy fees - this was felt mostly in Sydney, and by those participants in receipt of Newstart allowance..⁶⁴

These findings are far reaching. This study shows that limited affordable housing supply options and increasing fees have a significant impact on resident well-being.

LET'S CORRELATE THESE TWO NEW SOURCES OF INFORMATION

Now if we combine these two new pieces of data; the 12.6% loss of affordable supply and Drakes page 28 findings that *[r]esidents attributed this decline in satisfaction to limited affordable housing options and increased occupancy fees*, we can roughly correlate the impact of the implementation of the Boarding House Act on affordable registered boarding house supply and their residents well-being...

Let's investigate the timing of impact on supply...

We know the Boarding House act was fully implemented in July 2013.

The first wave of the supply impact of the Boarding House reforms led to an almost immediate drop (706 to 593) in 2014 of affordable general boarding supply ^{65 66}. Our feedback is many operators pulled out of the market as they did not want to be caught by the new "enhanced accommodation standards for smaller boarding houses⁶⁷"

The second wave impact relates to councils undertaking their initial compliance inspection of registered boarding house which led to many shutting down. We can deduce its timing. The register commenced in July 2013, and we know that there was (and there continues to be) a lag in registration and council compliance (they technically have up to 12 months). Allowing for this, and the time it takes to undertake a council inspection, issue notice of orders, and then the actual orders etc, that the second wave hit in the 2015-2016 period. (note the drop of 50 from 624 to 574 in 2015-2016). We also have feedback from operators which is consistent with many of them either closing down, or shutting down substantially while upgrade works were performed.

⁶⁴ Pg 28 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT. Refer to interval reports for further assessment of this significant decrease.

⁶⁵ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in *Questions & Answers Paper No. 183*. Answer received on 21 June 2018 and printed in *Questions & Answers Paper No. 192* <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

⁶⁶ see later in this paper for further details

⁶⁷ POSITIONS PAPER. Amendments to the Local Government (General) regulation 2005

Our feed back is that these compliance impacts on registered general boarding house operators were a major cause of the tightening affordable housing supply options and increasing occupancy fees due to significant compliance costs.

This is very important data that can not be ignored. It demonstrates the unintended impact of legislation and regulations has on the well-being of residents is significant. They support POANSW view that a lack of supply of easy access affordable housing is a cause of great stress to people seeking accommodation, especially those on limited incomes.

Regulatory reforms are required to enhance the markets capacity to provide easily accessible affordable accommodation, and given the lack of viability in low cost accommodation, support will be required to achieve the promotion and the sustainability of, and continuous improvements in, the provision of services at registrable boarding houses S3(d).⁶⁸ Further details on this will be provided later in the submission.

ILLEGAL BOARDING HOUSE SUPPLY

ILLEGAL & NON-COMPLIANT SUPPLY DATA

Unfortunately, we have not been able to obtain any reliable data on the illegal sector, clearly this will always be difficult as they seek to remain hidden. But based on indications from presentations made by fire brigade officers, insurance assessors, media/academic reports⁶⁹, and industry stakeholders, we can deduce that this illegal sector is huge, very much larger than the registered general boarding house industry.

The great concern is the conditions in illegal boarding houses, are often shocking and extremely dangerous.

Illegal housing can expose residents to serious health and safety risks. In Sydney, this was highlighted by the recent fire in an illegally subdivided Bankstown apartment which resulted in the death of an international student (Dillon 2015)⁷⁰.

⁶⁸ Objects of the NSW Boarding House Act 2013.

⁶⁹ C Martin. (2015) The informal lodging sector in NSW. A regulatory blindspot. City Blog. 14/9/15.

⁷⁰ Pg 8 Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

The Tenants Union and Newtown Neighbourhood Centre have stated that they have some data on many illegal/unregistered boarding houses. The Tenants Union has a map that pinpoints a large number of probable illegal Boarding Houses. While the Newtown Neighbourhood Centre has identified a number of buildings and their guestimate is:

On our guestimation, in the areas of Inner west, City of Sydney and Burwood the following figures apply:

2016-Total no. on database 682; Total registered 431. 63.2%

2017-Total no. on database 660; Total registered 421. 61.7%.

(Newtown Neighbourhood Centre)⁷¹

It's likely that these numbers are significantly underestimated as many illegal boarding houses would be heavily concealed

HOW ARE ILLEGAL & NON-COMPLIANT OPERATORS HIDING?

POANSW believes that harboring illegal premises undermines the objectives of S3 of the Boarding House Act, and in the long run undermines the supply of compliant registered boarding houses. Further it's highly likely it exposes residents to high levels of health and safety risk.

We appreciate the difficulties there are in finding alternative easy access affordable accommodation for those displaced. In this light we understand the resistance of some organizations to disclose illegal operators to council. But a progressive “nudge and nurture” approach is required to bring those non-compliant operators into line. Further, those flagrantly abusing failures in market supply need to be stopped.

Interviewees advised that it is difficult to know the full extent of illegal dwelling production in Sydney. Building inspectors primarily become aware of illegal dwellings through complaints from neighbouring residents. Across the local government areas involved in the study, interviewees advised that complaints about illegal dwellings ranged from 10 per month (120 per year) to 80 (960 in a year). The majority of these complaints are found to be valid. ⁷²

Councils will struggle to find illegal operators unless complaints are made about illegal operators.

“Councils are clearly in the dark, and they're just looking under the light posts” (Boarding House Operator)

⁷¹ NNC Minutes of BH roundtable meeting on 20/2/2018. Presented by Deb Tipper.

⁷² Pg 29 Gurrán, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

We believe governments should review their funding arrangements for organizations that harbor illegal suppliers. Otherwise we will come to a point where the Boarding House Act frankly won't be worth the paper it's written on. We will just end up with a non-compliant illegal market that operates with substantial commercial advantages and it will crush those seeking to invest in compliant operations. This is the worst-case scenario for the housing market and for all stakeholders (excluding illegal operators).

Further, penalties should apply to individuals (in the order of \$500) or organizations (in the order of \$5000) that place people in illegal or inappropriate housing facilities.

DANGERS OF ILLEGAL SUPPLY

NSW's illegal housing problems are chronic and frankly unacceptable for a first world nation with one of the highest living standards in the world.

"They fail on health, safety and amenity. There's no amenity, there's no safety, there's no healthy situation.... [and] it's not affordable." (Building inspector).⁷³⁷⁴

And it's not just the occupant that is at risk...

From a broader community perspective, the widespread and uncontrolled provision of illegal dwellings and the associated 'hidden' increase in population, generates a number of problems for provision of social services and facilities. At the local level, a proliferation of illegal dwellings undermine analysis and planning for public open space and community facilities to meet the needs of the increased population. At State level, a significant, under-enumerated informal sector undermines analysis and planning for new/additional capacity in schools, hospitals, public transport and social support services⁷⁵.

CAUSES OF ILLEGAL SUPPLY

There are many causes of illegal supply, some of the causes that will be address include:

⁷³ Pg 34 Gurrán, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

⁷⁴ Pg 13 Gurrán, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

⁷⁵ Pg 39 Gurrán, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

- Regulatory failure causing market failure.
 - lack of understanding fuelled by misconceptions
 - assisted “boarding houses” regulatory cross-over onto compliant general Boarding houses
 - legal ‘blind spots’ causing regulatory voids that ‘fester’ easily.
- Lack of viability of compliant supply,
 - high barriers for compliance
 - low operating margins
- Illegal supply operates with significant commercial advantage.
 - low barriers to entry.
 - low set up costs
 - subsidised operating costs.
 - ineffective policing and compliance
 - ‘protected’ and ‘supported’ by some industry stakeholders.

REGULATORY FAILURE CAUSING MARKET FAILURE

While a lack of easy access affordable supply is considered to be one of the main drivers fuelling demand for illegal operators, easy access is merely a symptom of a more serious cause, regulatory imposts on supply.

One example of this is the impact of the Residential Tenancy Act has on the accessibility to leases...

Interviewees reported that single people receiving unemployment benefits, disability support payments, or the old age pension, were particularly affected by housing affordability pressures, and unable to find affordable accommodation in the formal sector of the market. Despite being able to pay up to \$200 in rent (with the Commonwealth Rental Assistance (CRA) subsidy), these low income earners are unable to access self-contained accommodation in the private rental sector but rather need to seek share accommodation, lodging, or a boarding house room. “We find that access to some properties through certain real estate agents is becoming increasingly hard...they’ll straight up admit that they won’t take anyone who’s on Centrelink .. They want people that are working.” (Housing advocate)

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Barriers to residential tenancy leases are not just limited to the lower income and vulnerable groups. The inflexibility of that mainstream housing market makes it very difficult for the 2 million

⁷⁶ Pg 191 Gurrán, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

Australian workers in casual employment⁷⁷ or workers whose place of work changes regularly, so they can't get "stuck in a lease".

I'm a nurse, so I'm a shift worker. They get us on contracts, 3 months here, 6 months there. Flick a coin, I could be at Westmead or POW next month. I can't get stuck with the hassles of a lease. I don't want to. Plus, I can't deal with flatmates dramas, I'm in Theatre most days. It just doesn't work for me. It's got to be affordable, clean & quiet and all set up and ready to go. (boarding house resident)

The reality is that residential tenancies and home ownership are housing options that just do not work for a large number of people seeking accommodation. While these sectors have an important role to play, they are not for everyone.

A functioning housing market is one that can cater for all types of demand. Both a healthy exclusive use and non-exclusive use market is needed to satisfy the vast array of demand. Both these markets are different and have different strengths, and each will have living arrangements that present trade-offs between cost, tenure security, privacy, and household formations.

It is a good to have diversity, it provides options for those who don't fit in the mainstream. (Boarding house resident)

Regulators need to be mindful that altering the intrinsic characteristics Boarding Houses, especially changes to Master of the House and non-exclusive use, will inevitably alter the capacity of operators to provide a diverse and flexible source of easily accessible accommodation.

The following conclusion drawn by Martin(2015)⁷⁸ is also used in the conclusion of *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan* Gurran et al,(2019). It captures the direction in which regulators should move so as to address the illegal market and encourage compliant alternatives to fill the voids left by failures in mainstream housing supply.

The resulting problem is not just one of 'non-compliance' by operators. The regulatory requirements also construct an image of their object – an image of the traditional boarding house – in the minds of regulators, and consequently in the routines of their work; meanwhile the informal lodging sector remains, except for the most egregious cases, in a blind spot...

*..... **We need to reform the regulation of marginal rental accommodation, to more definitely draw a line between arrangements that are exploitative, unsafe and unacceptable, and those that are tolerable for their specific purpose of relatively short-term, accessible accommodation. Such a reform would probably mean relaxing the requirements regarding***

⁷⁷ More than two million Australians are employed casually. Women account for just over half of all casuals and 40% of casuals are aged 15-24 years, compared with 14% of other employees. https://www.australianunions.org.au/casual_workers_factsheet

⁷⁸ C Martin. (2015) The informal lodging sector in NSW. A regulatory blindspot. Concluding remark. City Blog. 14/9/15

development consent and related prescriptions that currently notionally apply – but in so doing could put the informal lodging sector more clearly on the radar of regulators.^{79,80}

Regulatory measure that impact operator's capacity to manage will inevitably lead to barriers and costs being passed onto residents. There is clear macro data⁸¹ from NSW Revenue that shows that since the introduction of the boarding house reforms, there has been a 12.6% loss of affordable registered boarding house supply. This amounts to about 1000 bedrooms. That's 1000 people that have had to find alternative accommodation. A large number of these are most likely to have ended up in the illegal market, or worse, on the streets.

THE TENANTS UNION⁸² PROPOSALS:

The Tenants Union proposals,⁸³ include:

- The Act should prevent proprietors from evicting an occupant or otherwise recovering possession of an occupied room in a boarding house, except with an express order of the NCAT.*
- The Act should require the NCAT to consider relevant circumstances when determining whether to make orders allowing eviction or other recovery of an occupied room in a boarding house.*
- The Act should restrict occupancy fee increases to no more than once per year.*
- The Act should allow residents to apply to NCAT to challenge a proposed unreasonable increase to an occupancy fee.*
- The Act and Regulations should create standard form boarding house agreements for use in a range of key boarding house types, and mandate their use.⁸⁴*

While some of these proposals may be appropriate in exclusive use tenancy leases, they are not appropriate in boarding houses. Boarding houses are an alternative source of accommodation which caters to a different market with flexible tenure. Both these markets are different and have different strengths, and each will have living arrangements that present trade-offs between cost, tenure security, privacy, and household formation.

^{79,80} C Martin. (2015) The informal lodging sector in NSW. A regulatory blindspot. Concluding remark. City Blog. 14/9/15. <http://blogs.unsw.edu.au/cityfutures/blog/2015/09/the-informal-lodging-sector-in-nsw-a-regulatory-blind-spot/>

⁸⁰ Pg 52 Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab

⁸¹ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in *Questions & Answers Paper No. 183*. Answer received on 21 June 2018 and printed in *Questions & Answers Paper No. 192* <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

⁸² Five years of the Boarding House Act 2012 in NSW. Tenants Union. Contact Leo Patterson Ross. March 2018.

⁸³ Five years of the Boarding House Act 2012 in NSW. Tenants Union. Contact Leo Patterson Ross. March 2018.

⁸⁴ Five years of the Boarding House Act 2012 in NSW. Tenants Union. Contact Leo Patterson Ross. March 2018.

[T]he TU have misunderstood the difference between BH and RTA tenancies. Boarding Houses provide a quickly accessible 'ready to go' accommodation that can provide excellent short and medium term accommodation solutions. Unlike leases under the RTA, occupants can quickly enter a fully furnished premises with all utilities and services connected. It is a different product to RTA tenancies, which are focused on long term housing, and applying protections that are (and should be) available to tenants under an RTA lease, would be as inappropriate in a BH as it would be in a hotel room. ... If that is eroded, many BH operators will just stop offering occupancy under this arrangement, and it would be a loss to the housing market. (Property Valuer)

As usual the TU have missed the point, and are so focused on their social agenda, they are proposing changes that are damaging to both tenants and owners in the market. (Residential Property Investor)

"The nature of boarding house accommodation is different to that of private rental dwellings regulated under the Residential Tenancies Act 2010. Boarders do not have a right to occupy the entire premises, and their rights in relation to the enjoyment of the premises generally are more limited.

Proprietors retain a high level of day to day control over the use of the premises (compared to landlords under the residential tenancy agreement), and agreements between proprietors and residents are developed on an informal basis. These features are inextricably linked to the low cost nature of the accommodation, and the capacity or desire of residents to enter into formal agreements for their accommodation.

*Given the nature of boarding arrangements, it is not appropriate for boarders to have the same rights as tenants under a residential tenancy agreement."*⁸⁵

(NSW Government Interdepartmental Committee. Exposure Draft Boarding House Bill 2012)

To impose exclusive use tenancy provisions on the non-exclusive use boarding houses, will force boarding house supply to replicate the attributes of mainstream supply, which will amplify the existing failures in the mainstream market and deprive the market of diversity and flexibility of supply.

The great strength of boarding houses is their structure, (with a master of the house and non-exclusive use) is that they supply an alternative in the housing market. The market needs this alternative. If this is eroded by legislation, we will end up with more barriers to supply, and those that can't meet those barriers will end up fuelling illegal supply or the ever growing numbers of homeless people.

PROSCRIBED MANDATORY STANDARDISED OCCUPANCY AGREEMENTS

⁸⁵ NSW Government Interdepartmental Committee. Exposure Draft Boarding House Bill 2012- Position Paper 29/6/2012 pg 7&8

Proscribed mandatory standardized occupancy agreements would remove operators capacity to offer a point of difference from other Boarding house suppliers and the mainstream market. A standard platform will force suppliers to provide a standard product. This would diminish the diversity and flexibility of supply, and this is critical to enabling supply to fit into needs of demand. Further, no one can predict where the demand will move in the future, by imposing mandatory standardized agreements operators will not be able to adapt to everchanging micro needs.

We had two young doctors living in regional NSW and regional Victoria and studying plastic surgery up the road. They were on a 3 year part time course, but only had to be in for a few days each week. We were able to work out a single room to share as each stayed on different nights of the week. It was easy and much cheaper for them. Now farmers can get treated for their injuries by regional doctors in regional hospitals. Everyone's a winner! (Boarding House operator)

Limiting occupancy fees to once a year, will limit operators capacity to manage risks and force operators to anticipate future cost risks, this increases operational risk and would invariably lead to larger increases in fees, which is an inferior outcome for residents.

How about they also control prices on insurance premiums, tradesmen, and fire compliance costs. Actually, what about all my costs of living. You can't have it both ways, if to regulate one sector, you just stifle investment in its supply, and its worse in the long run for everyone. (Property Investor)

Also, operators in areas that experience seasonal demand changes, like those near educational facilities or in regional centres will not be able to provide discounted rates in the off season. This will only add to market inflexibility and create another failure in supply. They will be forced to either charge even higher rates in the peak seasons, or filter out applicants that they suspect won't stay for the whole period. This all adds cost, leads to an inferior result and a worse outcome for all occupants, with higher barriers to entry.

We don't have a magic wand. We price for 50 weeks occupancy per room, every year. If the vacancy rate exceeds this, we must recover the loss in higher rates. 5 weeks vacancy leads to a 10%+ increase over the next year just to be square. The harder and the longer it takes to fill vacancies, the higher the rate, or the lower the supply. That means the occupant ends up wearing it. Water always finds its level. (Boarding House Operator)

TERMINATION

Boarding houses are characterized by non-exclusive use and a Master of the House. This is fundamental to easy access supply. Easy access is only possible if the manager can address breaches

of house rules easily. It enables operators to “reserve judgement or take a ‘wait and see’ approach”⁸⁶.

No owner of a boarding house would give a three month residency any more (most tenancies are a minimum of six months); rents would increase to accommodate the cost of NCAT applications; owners would be much more careful which people they allow to become residents because of the difficulty of getting rid of them if they breach the house rules (Boarding House Operator).

“I never discriminate on the person because I’ve had people that look rough as guts and they’re the nicest people, I’ve had people that are very well dressed and look really nice and the biggest scumbags” (BHOP01).⁸⁷

It’s industry ending if third parties control the movement of persons entering or leaving BH premises [and] there is no funding to implement any of the unworkable suggestions. (Property Investor)

The bottom line is that boarding houses cater for people who have a low credit rating and/or a low level of attractiveness as a tenant for the following reasons:

They are overseas visitors with no local history.

They are local students with either no job or only low hours of work per week.

They are people without the financial resources to pay a one month bond.

They are people without the references that real estate agents generally require for a normal tenancy.

They are people who require to be located near to health, educational or other resources.

If these people are to be accommodated, particularly in low-cost accommodation, there has to be some flexibility to make these places attractive to owners. Without that flexibility, owners would not be prepared to accommodate these people. (Boarding House Operator)

Each operator is a micro supplier, they will have unique attributes that will appeal to different segments of demand. Their house rules will reflect this, so they can satisfy the varying niches that exist in the market. It’s an incredibly effective and efficient supply of housing that adapts and evolves to fill the gaps in the market. It is able to do this because of its fundamental basis, the Master of the House. Altering the capacity for management to reasonably address difficult issues inside a house, with unrelated parties sharing the premises, will alter the capacity of Boarding houses to provide easy and flexible access.

That’s the trade-off. It is “easy in” for occupants because it’s “easy out” for operators. Altering the balance will alter the outcome. (Boarding House Operator)

⁸⁶ Pg 37 BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

⁸⁷ Pg 37 BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

It would in effect deprive those people who are currently suited by these loose arrangements currently existing in boarding houses of this option. (Boarding House Operator)

Prospective occupants of registered general boarding houses inspect the premise⁸⁸, and complete written occupancy agreements based on occupancy principles which set out the terms and conditions of the house. They get a clear understanding of the premises, their occupancy rights and obligations. They can see the nature of the building.

“No. I don’t discriminate. I sit them down, go through every rule and regulation under the sun...I mean drugs is the biggest issue, and if I find it or smell it, you’re out” (BHOP12).⁸⁹

“some of them are really nice, and you pay for it, while others are pretty ordinary, but they’re cheap.... You get what you pay for” (Boarding House resident)

Occupants can also compare operator’s, not just by word of mouth but also via the explosion of website reviews attached to every operator in all segments of the economy.

We have a 4.4 star Google rating! Look (pointing to his smart phone) at this review from Charlotte – 5 stars! (Boarding House Operator)

Operators have a commercial incentive to perform. They are heavily invested, not just financially, but personally, they take on large long-term risks with marginal yields. Compliant operators know this, and market pressures move them to deliver to their niche of the market. If they fail, they personally lose.

To suggest that occupants are being misled or tricked into living in a boarding house, and then, after they move in, are being cheated by operators, may be a reflection of what is occurring in the illegal or non-compliant market. But the data clearly shows that registered boarding house residents experience above average to high levels of satisfaction from living in boarding houses⁹⁰. There are also very low levels of complaints.⁹¹ Further disputes brought before the tribunal are rare, and are nearly always resolved by mediation or withdrawn.⁹²

THE THIRD PARTY IN A DISPUTE

⁸⁸ This can be done by a physical site inspection, but also remotely as the web enables current photos, even live videos to be sent or posted.

⁸⁹ Pg 37 BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

⁹⁰ Pg 37 BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

⁹¹ Pg 37 BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney

⁹² Exposure Draft Boarding House Bill 2012 POSITION PAPER: Exposure Draft Boarding House Bill 2012 Position Paper. NSW Government Interdepartmental Committee. 29 June 2012

Another characteristic that is sought out by boarding house occupants, is they want to live in a managed premises knowing that if there are problems in the household they will be resolved as per House Rules, so that it doesn't become their problem.

I'm a nurse, so I'm a shift worker. They get us on contracts, 3 months here, 6 months there. Flick a coin, I could be at Westmead or POW next month. I can't get stuck in a lease. I don't want to. Plus, I can't deal with flatmates dramas, I'm in Theatre most days. It just doesn't work for me. It's got to be affordable, clean & quiet and all set up and ready to go. (Boarding House resident)

A boarding house contains other occupants that also have rights that would be affected by the behaviour of one occupant. They are a third party in the dispute which are unrepresented, except by the fact that the operator is motivated to find a pareto optimal solution that balances the interests of the whole household.

AMUSING CASE: PETER DUTTON AND THE SOMALIAN REFUGEE.

During the NNC Boarding House roundtable meeting on 3rd September 2019, attended by industry stakeholders, an excellent illustration of the complexities of managing a share house with unrelated parties was discussed.

It was put to the meeting, “*what happens if your flatmate turns out to be Peter Dutton?*” While amusing, this is the reality of share accommodation with unrelated parties. You do not live in an exclusive use environment. You share the premises and you can't completely ‘shut other residents’ out.

“The existence of outstanding issues is, of course, not a surprising finding. Rooming houses are used by diverse groups of people”⁹³

Now what if it's a boarding house of Somali refugees and one of the residents *turns out to be Peter Dutton*? Management can intervene and try to mediate and somehow try to provide a structure so all the residents can peacefully co-exist. This would be made a lot easier if the occupancy principles included reasonable occupant obligations. But at the end of the day, easy and effective management intervention in the interests of the common rights of the whole household is essential.

“There was recognition among the NGO welfare and tenancy advice organisations that the regulation of rooming houses cannot address all issues. These organisations noted that in some rooming houses, even though they complied with the regulations and had operators who interacted conscientiously with the residents, they could still be unsatisfactory places to

⁹³ pg 16 T Dalton et al. Rooming house futures: governing for growth, transparency and fairness. Victorian Discussion Paper. AHURI. February 2015

live.... They became unsatisfactory places to live when residents exhibit chaotic or criminal behaviours and lack the capacity to look after themselves⁹⁴

A NEW ‘BROADER’ ACT

The NSW Boarding House Act 2012 only covers a miniscule percentage of Occupants and Operators in NSW, approximately 1043 registered boarding houses with around 16196 residents⁹⁵. This amounts to about 0.214% of NSW’s population of 7.544 million.

One of our concerns is that legislation misses the largest arena that houses occupants, the whole Share Accommodation market⁹⁶. This is probably the single largest provider of alternative residential accommodation, and often is characterized by a lessor or home owner (ie the master of the house) who lets out a spare bedroom to unrelated parties and provides non-exclusive use to the household amenities. This is exactly the same as a boarding house, except it’s of a more private and domestic nature.

Why aren’t the occupants in this situation afforded reasonable protection? Aren’t they entitled to; written agreements, written receipts, quiet enjoyment of the premises, a reasonably clean, a reasonably well maintained, and a reasonably secure premises, plus to know the rules of the household and reasonable notice of termination? In fact, aren’t they entitled to all of Section 30(1) occupancy principles? They are no different to registered boarding house residents except for the fact that section 30(2) specifically excludes them⁹⁷. .

Clearly this is a serious legal blind spot.

As noted elsewhere in this submission, this blind spot creates many other problems. For example, we see other pieces of legislation trying to move in and provide coverage into this void, such as the Residential Tenancy Act 2010

The Residential Tenancies Act provides that an agreement may be a residential tenancy agreement ‘even though... it does not grant a right to exclusive occupation’ (section 13(3)(a)

⁹⁴ pg 16 T Dalton et al. Rooming house futures: governing for growth, transparency and fairness. Victorian Discussion Paper. AHURI. February 2015

⁹⁵ Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

⁹⁶ Room-sharing is on the rise in Australia’s cities — and thousands are already doing it. <https://www.abc.net.au/news/2017-10-05/room-sharing-on-the-rise-in-australia/9015912>

⁹⁷ because the premises that provides them with a principle place of residence doesn’t comply with section 5, ie the premises does not “provide beds for a fee or reward for use by 5 or more unrelated residents” (or is specifically excluded under the other sub sections of S5)

– but not if it is an agreement ‘under which a person boards or lodges with another person’ (section 8(1)(c)).⁹⁸

Further we see many examples of this legal void causing confusion, even from learned members of society such as Magistrate M. Jerram, State Coroner of NSW⁹⁹ whose ‘incorrect’ terminology misrepresents many sub sectors of the housing market. Complaint lines (like NSW Fair Trading Complaints line) pick this up and it leads to misclassification and misrepresentation.

‘When Fair Trading records complaints or enquiries about boarding houses, it does not record the accommodation type i.e. does not distinguish it as a general boarding house or an assisted boarding house; the data is recorded as boarding house only’¹⁰⁰

“The bulk, some 75% as a ball park figure, are not complaints but general information enquires”¹⁰¹

This all has serious implications for the registered general boarding house operators and their residents, if regulators get caught up in the confusion and miss this important point.

The resulting problem is not just one of ‘non-compliance’ by operators. The regulatory requirements also construct an image of their object – an image of the traditional boarding house – in the minds of regulators, and consequently in the routines of their work; meanwhile the informal lodging sector remains, except for the most egregious cases, in a blind spot.¹⁰²

RECOMMENDATION

The solution lies in broadening the Boarding House Act so occupancy principles (and obligations) apply to all occupants and proprietors alike. Thereby S(5) should have the following effect:

All persons who are provided with non-exclusive use of their principal place of residence in return for a fee or reward from a unrelated party should be covered by principles based occupancy rights and obligations (except those covered by the list of exclusions).

⁹⁸ Pg 6 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

⁹⁹ Magistrate M. Jerram, State Coroner of NSW, in the ‘300 Hostel’ investigation mixes up tenant, occupant and assisted (LRC) and general boarding house. 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)

¹⁰⁰ Appendix 3: Email correspondence with the Coordinator at Quality Assurance Fair Trading Specialist Services

¹⁰¹ At the time of writing, The Coordinator at Quality Assurance Fair Trading Specialist Services indicated that they would provide a accurate quantitative assessment of this number .Clarification was provided in two phone calls on 11th and 17th September 2019. As is revealed by the Coordinator at Quality Assurance Fair Trading Specialist Services

¹⁰²¹⁰² C Martin. (2015) The informal lodging sector in NSW. A regulatory blindspot. Concluding remark. City Blog. 14/9/15. <http://blogs.unsw.edu.au/cityfutures/blog/2015/09/the-informal-lodging-sector-in-nsw-a-regulatory-blind-spot/>

Note non-commercial operators, who may typically take the form of a Class (1a) Building Code of Australia (BCA) home, where an 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 premise, (eg class 1b and class 3 buildings to be registered). But all occupants and the master of the house, should be covered by principle-based provisions and be obliged to respect the terms and conditions of the household.

OCCUPANT OBLIGATIONS

Another change that would be required, is the addition of reasonable of occupant 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.” General boarding houses are occupied by unrelated parties, they are characterised by non-exclusive use of the premises, and communal use of amenities, like kitchens, bathrooms and lounge areas etc.

Currently the Boarding House Act provides individual residents with reasonable occupancy rights, but there are no obligations to the operator or to the other ‘unrelated’ residents that share the house. This puts the operators in difficult position. What if one resident is disturbing the quiet enjoyment of other residents. The operator has as duty to all residents, eg he has a duty to provide for quiet enjoyment of each and all individual residents, ie the whole household.

Management ensures the operation of the boarding house for the well-being of the whole premises and household community. Individuals who enter a general boarding house make trade-offs. They agree to respect community rights and common property use 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 general operator has an occupant that randomly leaves a mess in the bathrooms that are shared by the other occupants. Despite management attending cleaning diligently, 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 were not clean?

You do the right thing when you use the bathroom. (Boarding House Resident)

It’s impossible for management to meet occupants rights, unless all occupants fulfil their obligations in a reasonable way.

POA NSW supports the inclusion of reasonable principles based occupant obligations in the occupancy principles.

Amendments should include:

1. Individual occupants should be obliged to respect the house rules (terms and conditions of the operator which must be consistent with the BH Act). 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. Add: An occupant is also obliged to maintain the premises in a clean and tidy state.
3. Add: An occupant is does not disturb the quiet enjoyment of the premises or other occupants.
4. Add: An occupant is obliged to provide for reasonable notice of their departure.
5. Add. An occupant is obliged to take all their personal property with them on departure.
6. 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.
7. Further examples of reasonably based occupant obligations that should be incorporated in the occupancy principles can be found in Chapter 4 Part 1 of the Queensland Residential Tenancies and Rooming Accommodation Act 2008.¹⁰³

This will help address many complexities operators of general boarding houses face when managing the different expectations of different people living in the one household, and difficulties that can arise from time to time when unrelated people don't get on.

Further it will draw to the attention of mediators and arbitrators of disputes, the 'realities' of non-exclusive use of boarding houses, and the importance of 'other residents' (the 3rd parties) in a dispute between two parties in a boarding house.

RENAME THE ACT

Another change that would be required, is a new name for the act, for example the Rooming Act.¹⁰⁴

WHAT ABOUT ASSISTED BOARDING HOUSES?

¹⁰³ <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2008-073>

¹⁰⁴ Other options include Share Accommodation Act and Co-living Act

The provisions for assisted boarding houses, we believe should be housed in a separate legislative framework, as they are a specialized form of accommodation not consistent with the general share housing.

Clearly s 37 ‘vulnerable persons with additional needs’ do not just live in boarding houses. They live in all the different forms of housing, whether it be in their own homes, in a residential lease, or as a lodger in a Class 1a home. Regardless of where they live, they should be afforded appropriate care and protections. Given this, the legislative framework should apply to the premises where the ‘vulnerable person with additional needs’ lives, and not just specifically to assisted boarding houses that house them. If not, doesn’t this create another legal blind spot for a ‘vulnerable persons with additional needs’. Are they only afforded rights and protections if they reside one of the 17 assisted boarding houses in all of NSW!

We believe that provisions for housing of all “s37 vulnerable persons with additional needs’ should be in a separate act, and should apply to all the premises, that house them (ie non assisted boarding houses as well). Further provisions should be included in other acts, like the Residential Tenancies Act, Boarding House Act, Holiday Parks (Long Term Casual Occupation) Act, etc etc, alerting housing providers that special provisions in a separate act apply to housing of any s37 ‘vulnerable person with additional needs’.

An information/education campaign would also be required so that all housing providers are appropriately informed of these changes, including FACS contact details, so as to assist housing providers if it becomes apparent that a person they house may need support, or, if the provider is not qualified to house the support, FACS assistance with the appropriate rehousing of the s37 “vulnerable persons with additional needs”.

VIABILITY OF AFFORDABLE SUPPLY

We know that “*limited affordable housing options and increased occupancy fees*” ...do cause... “*a significant fall in residents satisfaction measured by the seven indicators of their personal well - being*’¹⁰⁵. Given this, there is clearly a need to also support the viability of alternate affordable and flexible housing options.

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*”¹⁰⁶, then the “*need for additional assistance and incentives*”¹⁰⁷ is paramount.

¹⁰⁵ Pg 22 & Pg 28 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

¹⁰⁶ Pg 2 Exposure Draft Boarding House Bill 2012, Positions Paper

¹⁰⁷ pg 2 Exposure Draft Boarding House Bill 2012, Positions Paper

Do the maths. A \$200pw room including bills is almost impossible to supply. That's \$28.57 a day or \$1.19 per hour..... One kilowatt of electricity costs up to 53 cents per hour. A 2kw heater alone costs most of what we charge. Then they hit us with commercial rates on everything, water, council rates. Fire compliance is a massive increase since the Act, then there are competent people testing stuff every year, month even week. Do you know a average Class 3 building requires 75 compliance inspection tests every year, plus AFS. No wonder we are running out of water, running 100mm diameter flow tests on sprinklers is a massive waste. Then there is insurance; stamp duty and FSL almost doubles the premium, plus we end up paying for the sins of illegal operators thru higher risk premiums. Let's not forget the Silent Killer. Depreciation. A boarding house build costs are \$4000-\$5000 per square metre. Each building has at least \$1m in capital tied up, depreciating at 3 - 5%pa. That's close to \$50k per year. Plus add the land there is another \$50kpa in capital costs. Did I mention running cost? Repairs, maintenance, gardens, etc etc? What about completing all that useless compliance documentation. I bet no one even looks at them. What a waste of our time. Who is paying for that! They just have no idea how hard it is to jump all those hoops and comply..... We do all the heavy lifting, and what do they give you, a couple of dollars a day¹⁰⁸ in land tax relief and then they put you down.... (Boarding house operator)

We don't have a magic wand. We price for 50 weeks occupancy per room, every year. If the vacancy rate exceeds this, we must recover the loss in higher rates. 5 weeks vacancy leads to a 10%+ increase over the next year just to be square. The harder and the longer it takes to fill vacancies, the higher the rate, or the lower the supply. That means the occupant ends up wearing it. Water always finds its level. (Boarding House Operator)

There is a critical need to support the supply of affordable easy access housing supply, and the viability of this supply is central to this outcome. The following is a list of ideas that are all essential in achieving this aim:

SUPPORT THE SUPPLY OF COMPLIANT GENERAL BOARDING HOUSES

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

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

¹⁰⁸ POANSW estimate in 2017 was \$2.67 per day per bedroom in 2013 based on \$7m and 720 approved applications

ILLEGAL OPERATORS.

Illegal facilities operate with a significant commercial advantage. Illegal operators are not caught by higher ‘commercial’ pricing provisions (eg for utilities and council rates), as they would be ‘hiding’ as residential buildings. They are highly likely to be non-compliant buildings, avoiding fire safety and health compliance costs. They are unlikely to be adequately insured. The combination of these advantages alone exceeds any land tax benefit complaint affordable operators may receive.

This creates a financial incentive for them to remain hidden and operate illegally. Effectively they are being subsidised to remain illegal! But they do so at great risk to their occupants. Plus, they operate in competition with legitimate suppliers, and this undermines legitimate supply and viability.

Further these illegal operators give the whole industry a bad reputation, that sets off a vicious cycle, where governments attempt to ‘fix one symptom’, but in fact worsen it with additional regulation, that suffocates legitimate operators and prevents the conversion of illegal operators into legitimate operators.

This misdirected impact of regulations and pricing policies needs to be reversed, so that compliant operators are encouraged and illegal operators face onerous trading conditions.

NUDGE AND NURTURE APPROACH

A ‘nudge and nurture’ approach is needed to address illegal supply:

1. ”Nudge”. Quasi compliant operators need to be helped along to comply, while flagrant illegal operators, need to be stopped, prosecuted and stamped out.
2. ”Nurture”. Governments must provide a sound regulatory framework, *realistic in scope and functional in implementation*, so as to remove unnecessary barriers and hurdles to achieve compliance. Further Government support is required to improve the viability of compliant affordable housing.

Both these measures will facilitate the conversion or closure of illegal operators and clean out the illegal market. Reversing the incentives for non-compliance will bring the market back in line over time.

The following is a list of suggested support packages. They should be restricted to operators that have a proven record and commit to say 3 years of ongoing affordable supply.

We believe The NSW Revenue land tax exemption for boarding houses would be the best framework for qualification and verification for these support packages. So for example, operators who have

proven record of meeting the boarding house land tax exemption say for the last 3 years, and commit to a further 3 years, (in which support is paid by instalments), would qualify for affordable housing support packages. Some areas that require support include:

- Programs to assist with subsidising financing for investment in registered boarding houses.

- Council rate rebates for compliant affordable general boarding houses. (certified copies of council rates paid could be submitted with land tax applications, and rebates forwarded to operators).

- The Current Boarding House Financial Assistance Program – Fire Safety (BHFAP – Fire Safety)¹⁰⁹ is an excellent support scheme, and it should be expanded, and with a new amenity upgrade grants (eg new share kitchens or bathrooms, garden landscaping, etc) to directly support *continuous improvements in, the provision of services at registrable boarding houses*¹¹⁰. They could be processed in a similar way to the Fire Safety grants, and paid by instalment.

- The NSW Revenue Low Cost Land Tax exemption is currently limited to 5km from the Sydney CBD. This radius should be extended to encourage the development of low-cost accommodation in a wider segment of established areas of Sydney.

INSURANCE

Insurance should be encouraged, as it acts as an important safety net that provides a source of financial support for both operators and their residents in the event of a significant event.

The cost of insuring a general 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 compliant boarding houses, tighter compliance standards, and greater management involvement. It also acts as a major barrier for illegal operators to legitimize.

PROBLEM

- Insurance costs are still artificially elevated by taxes, duties and levy's, which adds to the cost of insuring a boarding house in NSW.

- Operators that aren't insured expose occupants to financial risk, in the event of a tragedy, they nor their residents may be covered.

¹⁰⁹ <https://www.facs.nsw.gov.au/providers/housing/affordable/develop/chapters/fire-safety>

¹¹⁰ Section 3d. Boarding House Act 2012 NSW.

-Insurance assessors inspect properties to assess risk, and they provide important feedback to operators which creates an incentive to mitigate risks.

-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.

-A lack of proper compliance by councils, has left us with a boarding house sector which still contains significant risks for insurers due to illegal and non-compliant buildings. These risks are passed on as higher premiums to compliant operators

RECOMENDATIONS

-NSW government should fund an insurance rebate scheme It could be done in conjunction with NSW Revenue boarding house land tax exemption applicants that qualify for the current affordable accommodation provisions. Operators who meet the tariff conditions, could forward their insurance invoice and certificate of insurance coverage and claim say a 75% rebate of the premium.

-Alternatively, The NSW State government set up a government backed insurance scheme for compliant accommodation providers.

ESSENTIAL FIRE SAFETY COMPLIANCE COSTS.

Legitimate general boarding houses are required to provide to local councils Annual Fire Compliance reports. It is a significant cost impost. Some class 3 buildings require 75 inspections and compliance tests by qualified staff every year.

RECOMENDATION

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

-NSW Fire brigade's false alarm 'call out fees' on 'back to base early warning systems' have increased from \$125 to approximately \$1700 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.

PUNITIVE UTILITY PRICING POLICIES.

Sydney Water pricing policy punishes legitimate boarding housing operators. 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 are residential and generally only have one meter, so the owner becomes the ‘end user’ for billing purposes.

RECOMENDATION

All compliant boarding houses (class 1b and class 3) 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.

UTILITY COSTS.

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

Do the maths. A \$200pw room including bills is almost impossible to supply. That's \$28.57 a day or \$1.19 per hour..... One kilowatt of electricity costs up to 53 cents per hour. A 2kw heater alone costs most of what we charge. Then they hit us with commercial rates on everything, water, council rates.[etc](boarding house operator)

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

NBN CONNECTIONS

Registered Boarding houses are classed a single dwelling unit (SDU), not a multi dwelling unit (MDU) by the NBN. This is despite the fact that they have council approval and operate with a licence to house multiple occupants, and will often have multiple phone lines installed and operating, all billed directly to the various occupants! This is absurd.

A number of our members have requested MDU connections, but NBN refuses, and simply “close the case”.

Conversion to a MDU is extremely difficult and expensive, as only one SDU line is provided. This adds great cost to the occupant, and is likely to prevent them from being able to have a private phone/internet connection. Note, once NBN is completed those occupants with existing copper phone/internet lines will be disconnected.

This needs to be addressed, and NBN should revise their definition of a MDU to include all registered boarding houses, and provide sufficient lines to replace and cater for the multiple licenced occupancies in the building.

EDUCATION.

The NSW Government should provide ongoing resources for community education projects around the Boarding Houses Act 2012 and its Occupancy Principles. Our feedback suggests that most people take very little interest in studying rules and regulations unless they ‘need to know’. Invariably help/information is only sought when there is a problem. Operators find that many unnecessary disputes occur because occupants are led to believe they are tenants. Similarly, operators would benefit from an easy access to a trustworthy information service set up by an organization that represents operators.

RECOMMENDATION

-A help phonenumber/chatline/website should be set up for both residents and operators so that each party can easily access sources of help that advocate for their interests. POANSW runs a helpline, education seminars and information for members by experienced general boarding house operators that genuinely understand the industry and are a trustworthy source for operators. This structure should be expanded, promoted and made available to all general boarding house operators.

-Funding for operator guides should be provided to groups that are either neutral (ie government body) or advocate solely for operators, otherwise there is a conflict of interest that “puts operators off” from using that service.

-A new mandatory mediation system, with powers to make recommendations to parties in dispute, should prevail as a first step before any NCAT application can be sought. This process needs to be free, simple and quick. This mediation process could include parties presenting their issues by phone or email to a qualified mediator, who would make recommendations to parties. If this fails, then NCAT would be the next step.

RELIABLE DATA SOURCES UTILIZED

NSW Parliamentary questions should be utilized by a NSW Minister or parliamentarian to obtain further generic data from NSW Revenue on the number of boarding houses that received land tax exemptions for each year, for as far back as is reasonably accessible. ie Similar to Mr Greenwich question to NSW parliament on 17 May 2018....

ie : How many boarding houses in the Sydney metropolitan area received land tax exemptions in the current tax year and previous years as far back as records permit ?

- 1. Of these, how many provided occupants full board and lodging and how many provided occupants less than full board and lodging?*
- 2. Of these, how many were assisted boarding houses and how many were general boarding houses?¹¹¹*

When published, industry stakeholders should be advised of its availability. This generic data could provide reliable macro information on the supply of affordable housing, and by correlation, evaluate the forces that impact the industry.

INDUSTRY NAME.

The justification used in 2012 to combine specialist Licenced Residential Care facilities (LRC) and “general” boarding houses into one Act was so that “operators are able to identify their regulatory obligations from one source”¹¹². We believe this is justification, and the renaming LRC to “assisted Boarding houses” has led to unnecessary confusion and ‘prejudice view’ against the vast majority of general boarding operators¹¹³. This can be seen in the extraordinary number of objections, (many prejudiced and hateful), made when Development Applications for general boarding houses are made.

We migrated from the UK and found a place that was just perfect for a general boarding house. We didn't have much money, so we moved in and lodged a DA. We could not believe the reaction. There were over 400 objections! someone was stirring them up.... boarding houses are full of paedophiles, psychos, druggies, and the like We were ostracised, our kids were picked on at school. They put posters up in front of our house, on the light posts in our street and on the main roads. We were excluded from the annual street Christmas party

¹¹¹ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in *Questions & Answers Paper No. 183*. Answer received on 21 June 2018 and printed in *Questions & Answers Paper No. 192* <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

¹¹² pg 4 Exposure Draft Boarding House Bill 2012 Positions Paper

¹¹³ In *Table 3919. POANSW “guestimate” of registered Boarding House by sub sector numbers in 2018* we guestimate that at least 70% of registered boarding do not cater for vulnerable persons with additional needs.

which really upset the kids..... The DA was delayed so many times, and had to be resubmitted, all petty stuff. It dragged on forever before it was finally approved..... we built it..... [Now] I manage it,it's mostly locals, young couples, tradies..... [now] we Go to the Christmas party every year..... the residents too There's one local that still resents us, still chucks his rubbish into our place. (New Australians: Boarding House Developer and Operator)

There are multiple media stories similar to this, in which local communities are torn apart and are up in arms just because of a general boarding house DA application. Clearly the name boarding house has become toxic by those that denigrate it. This must be addressed.

RECOMMENDATIONS

'Boarding houses' to be removed from the Assisted boarding houses name. A unique name should be used that captures more accurately the segment of the market they cater for. While we understand Licenced Residential Care centres may not be eligible for reuse, a name along those lines is a more accurate representation of those operations.

Alternatively, general boarding houses to be renamed, examples include Rooming Houses, another possible option is Share Houses.

Further all legislative provisions that relate to assisted boarding houses should be segregated as well, so that specific compliance and registration requirements for assisted boarding houses do not cross over onto general boarding houses. (eg certain provisions in S9 & S10)

Separation of the public registers for general and assisted boarding houses.

Measures brought in to reverse the toxic impact the term boarding house has in the market.

NEW GEN BOARDING HOUSES

The State Environmental Planning Policy (Affordable Rental Housing) (AHSEPP) was introduced on 31 July 2009 to increase the supply and diversity of affordable rental and social housing throughout NSW. The AHSEPP allows for the development of new generation boarding houses in residential, mixed use and some commercial zones¹¹⁴.

¹¹⁴ <https://www.planning.nsw.gov.au/~media/D7796C1818794D238F49F77F2D792365.ashx>

While this policy is starting to deliver an increase in the supply, it has not been very successful in delivering affordable new gen boarding houses. The SEPP should be renamed to the “Alternative” Rental Housing SEPP so as to avoid confusion.

We believe the changes to the AHSEPP in the lead up to the last NSW state election were a political response to public misconceptions about boarding houses. The decision to increase the parking requirements are inconsistent with the actual car ownership data and thereby parking requirements typical of boarding houses residents. This is just another example of the prejudice that spurs on poor policy decisions.

ADDITIONAL MEDIATION DISPUTE RESOLUTION MECHANISM

Our feedback from registered boarding house operators is that many unnecessary disputes with occupants arise because the occupant in a registered boarding house are led to believe they are a tenant. This is despite the fact they have a compliant occupancy agreement. Operators report that these disputes can be time consuming, and often the ‘sticking point’ is quickly resolved once the occupant becomes fully informed by an independent 3rd party authority.

RECOMENDATION

A new mediation system, with powers to make recommendations to parties in dispute, should prevail as a mandatory first step before a NCAT application. This process needs to be free, simple and quick. This mediation process could include parties providing their issues over the phone or by email to a qualified mediator, who would make recommendations to parties.

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

“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 the 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 S32 provision as the first step before a occupant's dispute can progress to the Tribunal. 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 or months 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.

COUNCILS AND REGULATORY COMPLIANCE.

POANSW accepts councils have a difficult role, but we believe many local councils have failed to adequately address hidden illegal operators. Regulating compliance is a core duty of local government, and our feedback is that many councils don't appear to have the appetite or the competency to execute their compliance duties in a sound and effective manner.

“Consistent with each of the interval reports, participants from local councils, as well as agency staff from community organisations, continued to raise concerns about the ability of local governments to monitor and enforce the Act within existing resources.”¹¹⁵(2012)

Some 7 years ago councils were granted “enhanced powers of entry and associated inspection regimes¹¹⁶” and the reforms imposed “enhanced accommodation standards for smaller boarding houses¹¹⁷”. Many smaller boarding houses have been shut down because of this despite being compliant operation for decades.

37 years we had the boarding house. I worked and my wife ran the place, she did all the cleaning and the cooking, Maria was good at cooking. On the weekends and in the holidays we did the big jobs. The kids helped. We never had any troubles. Even when the council come around, every now and then they made me do something or another; put in solid doors, put in smoke detectors, an extinguisher, this and that. Then he turns up and tells me they've changed the rules and I've got to put in sprinklers, and the stairs are no good. It's a terrace house, the stairs are the same as all the other terrace houses. They've all got bedrooms in the roof and closed the front veranda. The fire engineer took \$8000 and told me I had to close 3 bedrooms. That's almost half the house. My son said it wasn't worth it. (Ex-boarding house operator)

¹¹⁵ Pg 31 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

¹¹⁶ Pg 2 Positions Paper. Exposure draft Boarding HOUSES BILL 29 June 2012.NSW Government.

¹¹⁷ Pg 2 Positions Paper. Exposure draft Boarding HOUSES BILL 29 June 2012.NSW Government.

RECOMMENDATIONS.

- Implement sound regulations, and address directly failures with regulatory implementation.
- Councils must attend to their core duties in an effective and sound way, appropriate funding should be redistributed from non-core duties to their core duties
- Councils duties should not be compromised by conflicted purposes. For example, we understand the difficulties councils are faced with when they are required to deal with compliance as well as rehousing any occupants that are misplaced. This rehousing obligation should be shared by all levels of government. This obligation will assist governments in finding the right balance with regulatory initiatives.
- Compliance resources should be focused on serious breaches by illegal operators that repeatedly abuse the system.

“Councils are clearly in the dark, and they’re just looking under the light posts”
(Boarding House Operator)

- Revenue from penalties should only be received by Council in limited circumstances that relate to extremely serious breaches that are not addressed in a reasonable time frame. For example:
 - Non-compliance issues that present a significant and immediate risk that are not addressed in a reasonable time frame. This includes fire hazards, and building safety issues.
 - Overcrowding of rooms, which present health and safety risks.
 - Illegal use as ‘Boarding House’, without appropriate approvals, that are not made complaint within a reasonable time frame.
 - A “nudge and nurture” approach to be used in cases where the operator is clearly genuine and open to being complaint.
- NSW government should set up and promote a “dob in an illegal boarding house” telephone line and website. The caller should have the option to call anonymously. That managing department would pass this information on to the relevant council, who would need to address the premises in a reasonable time frame, and report back to the managing department (and the caller if they disclose their contact details).

Building inspectors primarily become aware of illegal dwellings through complaints from neighbouring residents. Across the local government areas involved in the study, interviewees advised that complaints about illegal dwellings ranged from 10 per month (120 per year) to 80 (960 in a year). The majority of these complaints are found to be valid¹¹⁸.

¹¹⁸ Pg 29 Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab

-Publication, on the Boarding House Register of enforcement action, should be strictly limited to matters of grave risks to health and safety which prevail because the operator fails, despite reasonable warning, to address dangers within the building. It should fall upon council to review risks and request they be published on the register. Councils should also advise occupants if the building poses genuine serious risks.

-Governments should withdraw funding from any government organisation that harbor or supports illegal operators. Penalties should apply to individuals (in the order of \$500) or organisations (in the order of \$5000) that place people in illegal/inappropriate housing facilities.

CONCLUSION

In 2012 the NSW government introduced the Boarding house reforms. It recognised that “[b]oarding houses play an integral role in the provision of low-cost, affordable housing, particularly for people who may otherwise struggle to afford private accommodation”¹¹⁹. Further the NSW government proposed to “strike a balance between maintaining the viability of the boarding house sector and the need to provide appropriate protections”¹²⁰,

There has been some progress in the last 7 years, but two toxic failures still prevail;

- effectively addressing the illegal and non-compliant suppliers, and
- the loss of affordable registered general boarding house supply.

These dual failures are set in a vicious regulatory cycle, that stifles complaint supply and fuels illegal supply. This needs to be reversed. Governments must provide a sound regulatory framework, *realistic in scope and functional in implementation*, that fuels the supply of compliant registered affordable general boarding houses, and stifles illegal operators.

But we must also be realistic. This level of regulatory reform is unlikely to prevail in any meaningful way in the foreseeable future. In the meantime, Governments must act to support the efficient supply of easy access affordable housing.

This was clearly understood by the NSW government 7 years ago...

*Further work is being led by the NSW Government on monitoring the supply of boarding houses and on developing initiatives to deliver affordable housing (of which the boarding houses sector is one part). As a part of this process the NSW Government will examine whether there is a need for additional assistance and incentives*¹²¹.

The paper provides reliable data from NSW Revenue that clearly shows that the supply of low cost general registered boarding houses has fallen by 12.6% since 2013, and research data by Drake shows that “limited affordable housing options and increased occupancy fees” ...do cause “a significant fall in residents satisfaction measured by the seven indicators of their personal well-being”¹²²

Reliable data also shows compliant general registered boarding houses efficiently deliver above average levels of satisfaction from residents, have low levels of complaints, high levels of dispute resolution.

¹¹⁹ pg 2 Exposure Draft Boarding House Bill 2012, Positions Paper. NSW Government. 29 June 2012

¹²⁰ pg 2 Exposure Draft Boarding House Bill 2012, Positions Paper. NSW Government. 29 June 2012

¹²¹ pg 2 Exposure Draft Boarding House Bill 2012, Positions Paper. NSW Government. 29 June 2012

¹²² Pg 22 & Pg 28 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

Since the introduction of the Boarding house reforms there has been a further loss of 1000 affordable bedrooms, while homelessness has risen by 5,971¹²³ (in NSW 2011-2016).

Given all this, the one simple question remains:

Why aren't governments implementing policies to directly support the viability of efficiently supplied, affordable easy access, and compliant housing providers in NSW?

This paper and the appendixes have been prepared by the POA NSW Private Hotels Boarding House Sub Committee, and is submitted on behalf of registered general boarding house operators in NSW, with the approval of the Property Owners Association of NSW (POA NSW).

Yours Faithfully

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¹²³ <https://www.homelessnessnsw.org.au/resources/facts-about-homelessness> ABS census 2016: Homelessness in Australia in 2016 was 116,000 people, which jumped by 14% or 15000 people since 2011.

The Property Owners' Association of New South Wales



APPENDIX 1: RECOMMENDED CHANGES TO KEY SECTIONS OF THE BOARDING HOUSES ACT.

A number of recommendations that are noted in the submission, are applied in this appendix to sections of the Boarding House Act.

NAME OF THE ACT

1 Name of Act

This Act is the Boarding Houses Act 2012. Rooming Houses Act

POANSW supports a broadening of the occupancy principles so that all unrelated occupants in non-exclusive use housing are afforded reasonable occupancy rights and obligations, and not just the 16,000(approx.) residents in registered boarding houses.

There should be a broad-based coverage for all providers and occupants in non-exclusive use housing arrangements that are not covered by other specific legislation. Based on reasonable rights and obligations for all in share accommodation.

This broader Boarding House Act should be renamed. One suggestion is The Rooming House Act, others include Share Accommodation Act, Co-living Act and Group Homes Act.

Further assisted boarding houses should be renamed, and we believe this specialised and small segment of the market should be regulated separately

OBJECT OF THIS ACT

3 Object of this Act

The object of this Act is to establish an appropriate regulatory framework for the delivery of quality services to residents of registrable boarding houses, and for the promotion and protection of the wellbeing of such residents, by:

- (a) providing for a registration system for registrable boarding houses, and*
- (b) providing for certain occupancy principles to be observed with respect to the provision of accommodation to residents of registrable boarding houses **share accommodation houses** and for appropriate mechanisms for the enforcement of those principles, and*
- (c) providing for the licensing and regulation of assisted boarding houses and their staff (including providing for service and accommodation standards at such boarding houses), and*
- (d) promoting the, sustainability of, and continuous improvements in, the provision of services at registrable boarding houses.*
- (e) promote and support the viability of easy access affordable accommodation providers.***

POANSW supports a broadening of the occupancy principles so that all unrelated occupants in non-exclusive use housing are afforded reasonable occupancy rights and obligations, and not just the 16,000(approx.) residents in registered boarding houses.

The provision of low cost accommodation is not viable in established areas of Sydney. Measures are required to support affordable registered boarding house supply.

DEFINITIONS

4 Definitions

(1) In this Act:

boarding premises means premises (or a complex of premises) that:

- (a) are wholly or partly a boarding house, rooming or common lodgings house, hostel or let in lodgings, and*
- (b) provide boarders or lodgers with a principal place of residence, and*
- (c) may have shared facilities (such as a communal living room, bathroom, kitchen or laundry) or services that are provided to boarders or lodgers by or on behalf of the proprietor, or both, and*
- (d) have rooms (some or all of which may have private kitchen and bathroom facilities) that accommodate one or more boarders or lodgers.*
- (e) Have council approval and are licenced boarding houses/share accommodation facilities***

An additional provision in S4 should include any premises that operates with approval of a council development application to operate as a boarding house, or has a licence to operate as a boarding house/share accommodation facility from the local government authority. This will address New Generation boarding houses, etc, that have been approved and constructed as boarding houses but have failed to register. (Further reviews of council registers and DA application files should pick up boarding houses that have been previously missed.)

MEANING OF “REGISTRABLE BOARDING HOUSE”

5 Meaning of “registrable boarding house”

(1) For the purposes of this Act, a registrable boarding house means any of the following:

- (a) a general boarding house,*
- (b) an assisted boarding house that is required to be authorised under Part 4 for it to be lawfully used as such under that Part (a regulated assisted boarding house).*

(2) Boarding premises are a general boarding house if the premises provide beds, for a fee or reward, for use by 5 or more residents (not counting any residents who are proprietors or managers of the premises or relatives of the proprietors or managers).

(3) However, a general boarding house does not include any of the following:

- (a) a regulated assisted boarding house,*
- (b) premises that are used as a hotel, motel or bed and breakfast accommodation,*
- (c) premises that are used as a backpackers hostel,*
- (d) a serviced apartment (being a building or part of a building that is used to provide self-contained tourist or visitor accommodation that is regularly cleaned by or on behalf of the proprietor or manager),*
- (e) premises that are used to provide accommodation for workers or employees in connection with their work or employment,*
- (f) a government school or registered non-government school within the meaning of the Education Act 1990 or any other premises that are used by an educational body to provide accommodation for its students,*
- (g) a private health facility licensed under the Private Health Facilities Act 2007,*
- (h) a nursing home within the meaning of the Public Health Act 2010,*
- (i) a mental health facility within the meaning of the Mental Health Act 2007,*
- (j) a public hospital within the meaning of the Health Services Act 1997,*
- (k) a residential care facility under the Aged Care Act 1997 of the Commonwealth operated by an approved provider under that Act,*
- (l) a retirement village under the Retirement Villages Act 1999,*
- (m) premises that are the subject of a site agreement to which the Residential (Land Lease) Communities Act 2013 applies,*
- (n) premises that are the subject of an occupation agreement to which the Holiday Parks (Long-term Casual Occupation) Act 2002 applies,*
- (o) social housing premises within the meaning of Part 7 of the Residential Tenancies Act 2010,*
- (p) premises used for refuge or crisis accommodation, or accommodation for persons with additional needs, that is provided by a public authority, council or any other body or organisation and that is wholly or partly funded by the Commonwealth or the State (or an agency of the Commonwealth or the State),*
- (p1) without limiting paragraph (p), premises used for accommodation that is provided by a registered provider of specialist disability accommodation for the purposes of the National Disability Insurance Scheme Act 2013 of the Commonwealth,*

(q) premises (or premises of a kind) prescribed by the regulations.

It has been drawn to our attention that this section may intentionally or inadvertently capture dwellings used by religious orders for share accommodation. For example, many typical friary's would have more than 5 unrelated parties in non-exclusive use dwellings, that for fee or reward reside in that premises. If so, then these dwellings technically should also be required to register as a boarding house and would be required to satisfy the requirements of the act and be inspected by council, etc. This section should be reviewed in this light to ensure that the definition does not have unintended consequences in relation to this or other sector of the Share accommodation market that are not boarding houses.

NOTIFICATION OF PARTICULARS ABOUT REGISTRABLE BOARDING HOUSE

9 Notification of particulars about registrable boarding house

(1) A proprietor of boarding premises that are used as a registrable boarding house must notify the Commissioner, in accordance with this section, of the following particulars so as to enable the Commissioner to include information about the boarding house in the Register:

- (a) the name, and the residential or business address, of each proprietor of the boarding house,*
- (b) the name (if any) and the address of the registrable boarding house,*
- (c) whether the boarding house is a general or regulated assisted boarding house,*
- (d) whether development consent or approval is required under the Environmental Planning and Assessment Act 1979 to use the boarding house as boarding premises and, if so, whether such consent or approval has been granted,*
- (e) the number of residents of the registrable boarding house,*
- (f) the number of residents who are under 18 years of age,*
- (g) the name of the manager (if any) of the registrable boarding house,*
- (h) the total number of bedrooms provided as sleeping accommodation for the residents,*
- (i) such other particulars as may be approved by the Commissioner or prescribed by the regulations.*

Regulations: Part 2 Registration of boarding houses

4 Additional particulars to be notified about registrable boarding houses

(1) The following additional particulars are prescribed for the purposes of section 9 (1) (i) of the Act:

- (a) the telephone number and email address, if any, of the manager (if any) of the registrable boarding house,*
- (b) the telephone number, email address and website address, if any, of the registrable boarding house,*
- (c) the local government area in which the registrable boarding house is located,*
- (d) the telephone number and email address, if any, of each proprietor of the registrable boarding house,*
- (e) the maximum number of fee-paying residents who can be accommodated in the registrable boarding house,*

- (f) the method or methods for calculating charges for fee-paying residents and the fee amounts payable,*
- (g) the methods of payment used by fee-paying residents (including cash payments, credit cards, cheques, direct bank debits, money orders, BPay and Australia Post),*
- (h) the kinds of services provided to any residents (including accommodation, meals and personal care services),*
- (i) whether the registrable boarding house has special provisions for physical access and, if so, the kind of provisions provided,*
- (j) the numbers of residents who fit into each of the following categories (to the extent that it is reasonably practicable to ascertain this information):*
 - (i) males,*
 - (ii) females,*
 - (iii) elderly persons (that is, persons 60 years of age or more),*
 - (iv) students of tertiary institutions,*
 - (v) persons who are mentally ill persons within the meaning of the Mental Health Act 2007,*
 - (vi) persons who have a disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments,*
 - (vii) persons with significant health problems,*
 - (viii) persons needing assistance with daily tasks and personal care.*

10 Annual returns for registrable boarding house

(1) A proprietor of a registrable boarding house must, within 28 days after the end of the annual return period for the boarding house, notify the Commissioner of the changes (if any) as at the end date for the period in the particulars referred to in section 9 (1).

Maximum penalty:

- (a) in the case of a corporation—20 penalty units, and*
 - (b) in any other case—10 penalty units.*
- (2) The annual return period for a registrable boarding house is the period of 12 months commencing on the date that particulars were last provided to the Commissioner for the purposes of a notification under section 9 or the last anniversary of that date (whichever is the later).*
- (3) Nothing in this section prevents any condition from being imposed on a boarding house authorisation (within the meaning of Part 4) that requires the furnishing of particulars to the Commissioner for the purposes of this Part on a more frequent basis than annually.*

Section 10 and 9(1) outline the information reporting provisions to be met by registrable boarding house operators. It is noted that in Section 10(1) general boarding houses must report annually if there are **any changes**. This reporting obligation is overtly onerous for general boarding houses (not assisted boarding houses), especially in light that councils require annual reporting of information like AFFS and licence renewal.

While reporting of major changes, such as new management or a major redevelopment of a site, is reasonable, on an ongoing trading basis the boarding house would continuously have minor changes in the composition of residents and their vacancy levels, rates that are charged etc..

General boarding house operators should only be required to register major changes to their operations, (and as previously proposed, this should be collected by council as a part of their annual renewal of licence to avoid duplication).

These day to day minor changes captured in the following subsections should not be required annually

A further point that is highlighted in these sections is the importance of sound regulations. POANSW would not be surprised if these petty reporting obligations are not being adhered to. Poorly constructed obligations cause inefficient allocation of resources, not just for operators but for regulators as well, thereby preventing effective regulation.

S(32)APPLICATION TO CIVIL AND ADMINISTRATIVE TRIBUNAL FOR DISPUTE RESOLUTION.

A new step in dispute resolution to be included before an NCAT application can be made. This process needs to be free, simple and quick. This mediation system, with powers to make recommendations to parties in dispute, should prevail as a mandatory step before a NCAT application. This mediation process could include parties providing their issues by phone or email to a qualified mediator, who would make recommendations to parties.

If the process of mediation fails to resolve the dispute, then the next natural course would be the Tribunal.

SCHEDULE 1 OCCUPANCY PRINCIPLES

OCCUPANT OBLIGATIONS

As noted in the main paper, POA NSW supports the inclusion of reasonable principle based occupant obligations in the occupancy principles.

NOTICE OF INCREASE OF OCCUPANCY FEE

6 Notice of increase of occupancy fee

A resident is entitled to 4 weeks reasonable written notice before the proprietor increases the occupancy fee.

PAYMENT OF SECURITY DEPOSITS

8 Payment of security deposits

(1) The proprietor may require and receive a security deposit from the resident or the resident's authorised representative only if:

(a) the amount of the deposit does not exceed 2 4 weeks of occupancy fee under the occupancy agreement, and

We have surveyed a number of operators. We have found that the majority charge 2 weeks or less security deposit. But we also found a few operators charged more than 2 weeks before the introduction of the act. This is consistent with the findings in Table 10: Amount of security deposit paid of Ass Prof Drakes paper¹²⁴ where broadly before the act 2/3 of security deposits were for 2 weeks tariff, while a 1/6 were for less than 2 weeks (often just \$20 key deposit) or 1/6th for 4weeks.

These operators argued that a larger security deposit gave them greater confidence that the resident was less likely to pose a commercial risk, so they were more likely to offer them accommodation. They were also prepared to accept a slightly lower on going tariff in the long run as their business model had less financial risks.

While another operator argued that the larger security deposit helped reinforce the niche market they operated in, which was predominantly pensioners who wanted cheap tariffs but also a household of with “respectable” residents.

“We charge the maximum deposit. Keeps out the riffraff. Sure, it takes us longer to fill, but the place is a lot more stable and we hardly ever have turnover” (Boarding House operator).

While other operators run different models that satisfy other micro sections of the market.

All we ask is for a \$20 key deposit and one week upfront, it's very easy to fill the rooms, so turnover doesn't affect our occupancy rate. (Boarding House operator).

A more flexible system with security deposits opens up more options to residents, as some residents would prefer a lower tariff in a more stable home as opposed to or greater application scrutiny or the higher risks of getting a bad housemate.

¹²⁴ pg 21 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

While on its own it's not a major issue, this is one simple example of how regulations ultimately lead to inferior outcomes for residents. Those operators who had to adjust their security deposits down to 2 weeks, would have to adjust other business parameters. This also diminishes the rich diversity of options available to residents in the market.

“People are different, they aren't all square blocks. If the regulations force us to become square blocks, what happens to people who don't fit? Where do they go? They'll be unhappy and then they complain about us when it's the governments fault.” (Boarding House Operator)

PROVISION OF WRITTEN RECEIPTS

12 Provision of written receipts

A resident must be given a written receipt for any money paid to the proprietor or a person on behalf of the proprietor.

This provision is out of step with modern practice and technology, and not reflective of regulations in other sectors of the economy.

One real estate agent who also manages Boarding houses noted...

Property stock and Business Agents Act (agent law) does not require rent receipts to be issued if the tenants rent is paid electronically. However, on demand by the tenant the agent must issue receipts or history of record of payments. If cheque or cash is paid to agent/landlord receipt must be given to tenant immediately.

While another operator suggested principle 12 should align with

Receipt given for cash, but only on demand if paid electronically.

We appreciate that a literal interpretation of this provision is not the intention, (ie a receipt must be physically hand written for every payment) nonetheless, principle 12 should be updated to reflect “modern record keeping” methods



APPENDIX 2: “PROMPT QUESTIONS” IN THE DISCUSSION PAPER.

PRELIMINARY STATEMENT

Many of the ‘prompt questions’ from the Statutory Review of the Boarding Houses Act 2012: Discussion Paper that follow, have been addressed in the main body of the submission. Kindly refer to the main paper for details. Areas that have not been addressed in the main paper, plus some emphasis or clarification, are provided in the following responses.

POANSW has been in close consultation with our members and other general registered boarding house operators at various workshops and seminars, along with interviews and from feedback provided. This is a collaborative submission, so as to present the broad view of registered general boarding house operators.

Note this submission relates to general boarding houses only, not assisted boarding houses. Assisted boarding houses are a small and specialist area of the accommodation market, more akin to nursing homes, and characterised by complex issues, beyond technical expertise of POANSW, and we are unable to address these questions.

1. ARE THE OBJECTS OF THE BOARDING HOUSES ACT 2012, OUTLINED ABOVE, STILL VALID? WHY OR WHY NOT?

The 4 objects of the Act are partially valid. See below.

3 *Object of this Act*

The object of this Act is to establish an appropriate regulatory framework for the delivery of quality services to residents of registrable boarding houses, and for the promotion and protection of the wellbeing of such residents, by:

(a) *providing for a registration system for registrable boarding houses, and*

This objective is still valid, but from feedback provided, the system of registration has not been successful. It appears to be unreliable, and we expect there are a large number of general boarding houses that have not registered. This is evident from DA approvals for New Gen Boarding Houses that are not listed on the register.

We believe this system is unlikely to ever become reliable as the structure of data collection is flawed. It relies on voluntary registration of operators and, except that it's a requirement for the NSW Revenue land tax exemption, the ongoing motivation to maintain registration is not strong. Further it appears that Fair Trading either lack the expertise, resources or appetite to manage the register effectively.

We believe this can be improved with a sound structure. A better system that is more appropriate and less onerous on general boarding houses is required. The Victorian model appears to have a better structure, tied into the existing system of ongoing compliance and licencing by council. But this system will only work effectively if all NSW local councils undertake their licencing and compliance duties, especially in relation to illegal boarding houses that operate in stealth.

Registration of assisted boarding houses should be segregated from general boarding houses. Assisted boarding houses that cater for 'vulnerable persons with additional needs', should continue to face rigorous reporting requirements, not general boarding houses. It's appropriate that assisted boarding houses face rigorous reporting requirements, not general boarding houses. See below for further details.

All council approved boarding houses (ie New Gen boarding houses) should be required to register as a part of the D.A. process. DA approval records (note the ARHSEEP has only been in existence since 2009) at each council should be reviewed and identify New Gen boarding houses. Furthermore council boarding house/share accommodation licencing should also be reviewed for unregistered boarding houses. Those that are unregistered should be advised that they are required to register, if they fail with reasonable notice, then further action should be considered.

(b) providing for certain occupancy principles to be observed with respect to the provision of accommodation to residents of registrable boarding houses and for appropriate mechanisms for the enforcement of those principles, and

This objective is still valid, has been successfully implemented. It is the right framework for the managed share accommodation market. It will continue to improve over time, as it 'settles in' and becomes more broadly understood. The addition of reasonable occupant obligations is required to provide reasonable protection of the rights of "other residents" in a managed non-exclusive use environment with unrelated parties.

These rights and obligations should be broadened to all occupants in share accommodation housing, not limited to registered boarding houses with more than 5 unrelated occupants.

(c) providing for the licensing and regulation of assisted boarding houses and their staff (including providing for service and accommodation standards at such boarding houses), and

We are unable to comment as it is outside our scope of expertise.

But we note with concern on page 6 of the Statutory Review of the Boarding Houses Act 2012 Discussion Paper August 2019, references are made to the 2011 ombudsman report and the Coronial findings in relation to “300 Hostel”. Note this was a not general boarding house. It was in relation to Licenced Residential Care facilities (now renamed assisted boarding houses).

In our 2012 submission¹²⁵ on the boarding house reforms we argued that combining assisted and general boarding houses in the one act, will cause ongoing confusion as to what the objectives of the legislation is for the general boarding house sector. We see evidence of this in the various industry stakeholder meetings like Newtown Neighbourhood BH roundtable.

We are concerned that this will lead to misdirected legislation which will have an adverse affect on general boarding houses. We believe assisted boarding houses are a small and specialist sector that should be regulated separately. The name assisted boarding house is misleading and confusing various stakeholders.

(d) promoting the sustainability of, and continuous improvements in, the provision of services at registrable boarding houses.

In terms of sustainability, the paper shows that there has been a 12.6% reduction in affordable registered boarding house supply, which we estimate is approximately 1000 beds since the introduction of the act.

As is covered in the main paper, this has caused a significant fall in residents satisfaction measured by the seven indicators of their personal well-being¹²⁶ in 2015. *Residents attributed this decline in satisfaction to limited affordable housing options and increased occupancy fees - this was felt mostly in Sydney, and by those participants in receipt of Newstart allowance.*¹²⁷

This is not a good outcome for occupants.

In terms of continuous improvements, improved safety of general boarding houses that have passed their initial compliance inspection, meet that criteria. However, the loss of some 1000 beds, will have fuelled an increase in the supply of illegal boarding houses. Illegal boarding houses provide non-compliant and unsafe housing.

¹²⁵ POANSW Submission on: Exposure Draft Boarding Houses Bill 2012. POANSW PHBH. 10 August 2018.

¹²⁶ Pg 22 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

¹²⁷ Pg 28 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT. Refer to interval reports for further assessment of this significant decrease.

The top priority of councils must be to address Illegal operators. The conversion to compliant supply of quasi compliant operators or the closure of operators flagrantly exploiting market failure must be executed as a matter of urgency. Illegal supply undermines and suffocates compliant boarding house supply.

The objectives fail to address viability of general boarding houses. The NSW Government acknowledges that “Boarding houses play an important role in the provision of low cost, affordable housing.¹²⁸” The viability of boarding house is critical to their capacity to provide this supply. These objectives should include:

(e) promote and support the supply of compliant easy access affordable accommodation providers.

2. ARE THERE ANY TYPES OF PREMISES WHICH SHOULD BE INCLUDED IN OR EXCLUDED FROM THE ACT?

The scope of the act is inadequate. It leaves a large segment of the share accommodation market uncovered by any legislation. Only about 16196¹²⁹ NSW residents are afforded reasonable occupancy rights (or about 0.214% of NSW’s population of 7.544 million.), when we can reasonable expect a significant percentage of the NSW population lives in share accommodation arrangements.

All persons who are provided with non-exclusive use of their principal place of residence in return for a fee or reward from a unrelated party should be covered by principles based occupancy rights and obligations (except those covered by the list of exclusions).

The scope of the act should be broadened to include all unrelated people living in non-exclusive use premises, where a master of the house manages the premises. This master of the house could be a property owner or even a lease holder. Reasonable Occupancy obligations should also be included, and the name of the act should be changed (eg to The Rooming Act).

It’s come to our attention that a Friary or similar housing facility for members of a religious orders could be caught by Section 5. This should be investigated and clarified in the act.

2.1 SHOULD THE EXCLUSION THAT CURRENTLY APPLIES TO SPECIALIST DISABILITY ACCOMMODATION FOR THE PURPOSES OF THE NDIS BE EXTENDED TO OTHER NDIS SERVICE TYPES, SUCH AS WHERE RESIDENTS ARE IN RECEIPT OF SIL PACKAGES?

¹²⁸ Pg 7 Statutory Review of the Boarding Houses Act 2012 Discussion Paper August 2019. NSW Government.

¹²⁹ Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

These matters lie outside the expertise of POANSW.

3. WHAT ARE THE BENEFITS OF THE TWO TIER SYSTEM IN NSW? HOW DOES IT COMPARE WITH SYSTEMS IN OTHER JURISDICTIONS? PLEASE PROVIDE COMMENTS.

We surveyed 19 operator's (both current and retired) views on this question, with the following results:

All were in favour of

- Separate assisted and general boarding houses legislation and registration.
- removing the confusion caused by using boarding house in the name of both general and assisted premises. Assisted boarding houses name should reflect the specialised care services they provide.
- All but 2 operators were in favour of the 2012 POANSW policy position which supports a 'broadening' of the Boarding House act to include all non-related people living in non-exclusive use premises, where a master of the house manages the premises (except those covered by the list of exclusions), with reasonable occupancy obligations included and a new name for the act (eg The Rooming Act).
- One of the operators leaned towards a 'continuation' of the Boarding House Act, but for general boarding houses only (assisted boarding houses to be legislated in a separate act).
- While the other leaned towards the Queensland model.
- There was broad support for the Victorian model of registration, but grave concerns were raised to the futility of such a move, as it would only be effective if all councils (and Fair Trading) could be relied upon to undertake effective compliance and policing of illegal operators.

4. SHOULD ANYTHING BE CHANGED IN, OR ADDED TO, THE LIST OF INFORMATION PROVIDED TO THE COMMISSIONER?

The following is the list of items in the Act (s9) and regulations(s4) that registered boarding house operators are expected to provide.

9 Notification of particulars about registrable boarding house

(1) A proprietor of boarding premises that are used as a registrable boarding house must notify the Commissioner, in accordance with this section, of the following particulars so as to enable the Commissioner to include information about the boarding house in the Register:

- (a) the name, and the residential or business address, of each proprietor of the boarding house,*
- (b) the name (if any) and the address of the registrable boarding house,*
- (c) whether the boarding house is a general or regulated assisted boarding house,*
- (d) whether development consent or approval is required under the Environmental Planning and Assessment Act 1979 to use the boarding house as boarding premises and, if so, whether such consent or approval has been granted,*
- (e) the number of residents of the registrable boarding house,*
- (f) the number of residents who are under 18 years of age,*
- (g) the name of the manager (if any) of the registrable boarding house,*
- (h) the total number of bedrooms provided as sleeping accommodation for the residents,*
- (i) such other particulars as may be approved by the Commissioner or prescribed by the regulations.*

Regulations: Part 2 Registration of boarding houses

4 Additional particulars to be notified about registrable boarding houses

(1) The following additional particulars are prescribed for the purposes of section 9 (1) (i) of the Act:

- (a) the telephone number and email address, if any, of the manager (if any) of the registrable boarding house,*
- (b) the telephone number, email address and website address, if any, of the registrable boarding house,*
- (c) the local government area in which the registrable boarding house is located,*
- (d) the telephone number and email address, if any, of each proprietor of the registrable boarding house,*
- (e) the maximum number of fee-paying residents who can be accommodated in the registrable boarding house,*
- (f) the method or methods for calculating charges for fee-paying residents and the fee amounts payable,*
- (g) the methods of payment used by fee-paying residents (including cash payments, credit cards, cheques, direct bank debits, money orders, BPay and Australia Post),*
- (h) the kinds of services provided to any residents (including accommodation, meals and personal care services),*
- (i) whether the registrable boarding house has special provisions for physical access and, if so, the kind of provisions provided,*
- (j) the numbers of residents who fit into each of the following categories (to the extent that it is reasonably practicable to ascertain this information):*
 - (i) males,*
 - (ii) females,*
 - (iii) elderly persons (that is, persons 60 years of age or more),*

- (iv) *students of tertiary institutions,*
- (v) *persons who are mentally ill persons within the meaning of the Mental Health Act 2007,*
- (vi) *persons who have a disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments,*
- (vii) *persons with significant health problems,*
- (viii) *persons needing assistance with daily tasks and personal care.*

Further Section 10 provides

10 Annual returns for registrable boarding house

(1) A proprietor of a registrable boarding house must, within 28 days after the end of the annual return period for the boarding house, notify the Commissioner of the changes (if any) as at the end date for the period in the particulars referred to in section 9 (1).

Maximum penalty:

- (a) *in the case of a corporation—20 penalty units, and*
- (b) *in any other case—10 penalty units.*
- (2) *The annual return period for a registrable boarding house is the period of 12 months commencing on the date that particulars were last provided to the Commissioner for the purposes of a notification under section 9 or the last anniversary of that date (whichever is the later).*
- (3) *Nothing in this section prevents any condition from being imposed on a boarding house authorisation (within the meaning of Part 4) that requires the furnishing of particulars to the Commissioner for the purposes of this Part on a more frequent basis than annually.*

Section 10 and 9(1) outline the information reporting provisions to be met by registrable boarding house operators. It is noted that in Section 10(1) must report annually if there are *any changes*. This reporting obligation is overly onerous for a general boarding house, especially given that councils require annual reporting of information like AFFS and licence renewal.

While reporting of major changes, such as new management or a redevelopment of the site altering size, or a resident that may require daily care services is reasonable, but on an ongoing trading basis, the boarding house would continuously have minor and immaterial changes in the composition of residents and their vacancy levels rates that are charged etc. These day to day minor changes should not require annual reporting.

We believe these excessive reporting obligations for general boarding houses arise because of the inclusion of Licenced Residential Care facilities into the boarding house act.

Further general boarding houses should not have to report on the items crossed out above/below

The act

- (f) *the method or methods for calculating charges for fee-paying residents and the fee amounts payable,*

(g) the methods of payment used by fee-paying residents (including cash payments, credit cards, cheques, direct bank debits, money orders, BPay and Australia Post),

The regulations

(f) the method or methods for calculating charges for fee-paying residents and the fee amounts payable,

(g) the methods of payment used by fee-paying residents (including cash payments, credit cards, cheques, direct bank debits, money orders, BPay and Australia Post),

These should be removed for general boarding houses.

5. IS THE INFORMATION ON THE PUBLIC REGISTER SUFFICIENT? WHY OR WHY NOT? 5.1 WHAT OTHER INFORMATION COULD BE ADDED TO, OR REMOVED FROM, THE PUBLIC REGISTER?

The register should only contain the name of the proprietor, address of the building, and the business contact number. If there is an email, website, or business name of the boarding house this could be optional additional information.

Particulars of enforcement action should be strictly limited to matters of grave health and safety risk which prevail because the operator fails, despite fair warning, to address dangers within the building. It should fall upon council to review risks and request they be published on the register and notify the occupants.

6. SHOULD THE COMMISSIONER HAVE THE POWER TO REMOVE THE DETAILS OF A BOARDING HOUSE FROM THE PUBLIC REGISTER UNDER PRESCRIBED CIRCUMSTANCES, IF IT HAS CEASED TO BE USED AS A BOARDING HOUSE?

Yes.

7. HOW COULD WE IMPROVE THE LOCAL REGULATION OF BOARDING HOUSES?

It is difficult for a party outside government and not exposed to the inner workings of government to make meaningful suggestions. Operators see the symptoms of poor governance, not their underlying causes.

That said, POANSW feedback is supported by clear evidence that there are serious problems at council level with compliance and enforcement of the Boarding House reforms. As per
EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

Consistent with each of the interval reports, participants from local councils, as well as agency staff from community organisations, continued to raise concerns about 'the ability of local governments to monitor and enforce the Act within existing resources'¹³⁰.

There's an Act but is anyone enforcing it? It does appear to me that there is no appetite to go after the unregistered ones [boarding houses]. Councils are, at best, inconsistent. However, council said before this legislation came in they needed resources to be able to enforce it. Those resources were not forthcoming ... They said that it was not going to be possible for them to have capacity to be out inspecting and enforcing and of course that's true. So I don't think there's no will from them. I don't think they're not interested. (Agency Worker)¹³¹.

It is of grave concern that there is a lack of 'appetite' by many councils to perform their core duties. There is a need for councils to step up and reallocate resources so that motivation and competency of compliance departments improves.

But there is also a need for the implementation of a sound regulatory framework for compliance officers to work with, and removal of unsound, pointless petty, conflicted, or useless regulatory requirements. There needs to be a reform of the regulatory landscape.

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

Since Local Councils are responsible for compliance, it falls naturally on them to be central to a single registering body. This should be augmented with a state wide portal, in which council can upload information as required and within certain reporting periods, say quarterly. If there is minor information items missing, these should be collected by council as a part of annual licencing and AFS (Annual Fire Safety Statements).

It would appear one of the main reasons the NSW government has set up duplicate registration is to provide a framework to ensure councils are undertaking their initial 12 month compliance inspection. This may have been useful in some LGA's, but it appears to have failed in many others. It duplicates reporting and is an inefficient allocation of resources. And it's not working reliably.

The problem now is we have been left with two unreliable registrations systems, and this duplication is likely to be a waste of government and operator's resources.

¹³⁰ Page 5 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

¹³¹ EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT, pg 15

Another likely reason for the additional registration system, is a specific need for detailed information from assisted boarding houses. This arises because licenced residential care facilities were called boarding houses. They are a miniscule sector, that provides specialist form of housing for people with significant care needs, more akin to a nursing home. The assisted boarding house sector should be housed in a separate legislative framework, with a separate register, otherwise it confuses the role general boarding houses play and imposes unintended additional compliance requirements, such as those listed in Question 4.

Our feedback from operators is that the following needs to be addressed:-

Councils need to focus on core duties and resource them adequately. All NSW Councils to implement effective boarding house registration and compliance schemes, based on existing best practices

All council approved class 1b and class 3 boarding houses should be automatically registered. This should address the low registration rates for New Gen boarding houses. A comprehensive review of council records should pick up these unregistered boarding houses.

Establish sound and reasonable regulatory frameworks, that aren't contradictory. Policy directions are often in conflict where one level of government is moving in one direction, while another acts against this. For example, how can a council issue an order for non-compliance if it is hamstrung with the rehousing needs of the residents. Rehousing residents should be dealt with by an appropriate government body.

Penalties should be moderated and to apply to illegal operators only if they fail to comply with orders in a reasonable time. Escalation of penalties would then apply to repeat offenders.

Penalties revenue should only be received by Council in limited circumstances that relate to extremely serious breaches that are not addressed in a reasonable time frame. For example:

- Non-compliance issues that present a significant and immediate risk that are not addressed in a reasonable time frame. This includes fire hazards, and building safety issues.
- Overcrowding of rooms, which present health and safety risks.
- Illegal use as 'Boarding House', without appropriate approvals, that are not made complaint within a reasonable time frame.
- A "nudge and nurture" approach to be used in cases where the operator is clearly genuine and open to being complaint.

Greater weight needs to be placed on serious high-risk compliance breaches, especially from repeat offenders who do not address issues in a reasonable time frame.

"Councils are clearly in the dark, and they're just looking under the light posts"
(Boarding House Operator)

There are 10 illegal boarding houses in this town, I've seen them, and everyone knows. I've even called the council but they're not doing anything about it" (Regional Boarding House Operator)

Governments should withdraw funding from organizations that harbor or support illegal operators. Further they should be pressed to divulge the location of illegal operators. Penalties to apply to individuals (in the order of \$500) or organizations (in the order of \$5000) that place anyone, (whether they be vulnerable or not), in inappropriate or unsafe non-compliant housing facilities.

An anonymous "dob in line & website" should be set up and promoted by the NSW government. Callers would leave details of potential illegal operations, then the State government would pass this onto the relevant local council. This should be tracked by the State government to ensure council perform appropriate compliance checks in a reasonable timeframe.

Building inspectors primarily become aware of illegal dwellings through complaints from neighbouring residents. Across the local government areas involved in the study, interviewees advised that complaints about illegal dwellings ranged from 10 per month (120 per year) to 80 (960 in a year). The majority of these complaints are found to be valid¹³².

Any publication on the Boarding House Register of enforcement action, should be strictly limited to matters of grave risks to health and safety which prevail because the operator fails, despite reasonable warning, to address dangers within the building. It should fall upon council to review risks and request they be published on the register. Councils should advise occupants if the risks warrant such a course.

A helpline for operators, from a trustworthy source (NSW Government or an organization that is experienced and represents operators interests), that can help guide them through issues with compliance orders.

It is accepted this is a complex issue, but the only way to improve regulation is to address these structural failures. More unnecessary regulation only leads to more unintended consequences, and sadly this is ultimately born by the consumer in higher barriers, higher prices, and more market failure. Nudge and nurture strategy for existing registered boarding houses and quasi compliant boarding houses need to be executed in reasonable time frames. Give the act was implemented 7 years ago, these time frames need to be brought forward.

The key to the solution here is effective policing of sound regulations. The following is just one story that highlights the misallocation of resources because of the flawed regulatory system that prevails.

¹³² Pg 29 Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab

We have owned a retail property on the Northern Beaches for almost 20 years. Approximately 5 years ago, we decided to replace the rear timber paling boundary fence that was 40 years old and falling down due to age. We referred to the LEP, DCP and the Complying Development SEPP and concluded that approval was not required to replace boundary fencing. The DCP specifically stated that boundary fencing should be 1.8m high and made of colorbond or timber paling. We followed the DCP requirements and decided to go with the colorbond option. We replaced the fence and didn't think anything further of it. To our surprise, about 2 years later, we received a council order to remove the 'illegal structure' that had been built on the property. We spoke to a compliance officer at council, who advised that part of the building façade at the front of the property was heritage listed, and therefore a full DA and full community consultation was required to replace the boundary fence. The council officer recommended that we apply for a retrospective building approval, which we did, and the same council officer rejected it. The council officers began issuing fines for non-compliance, and we were placed in a position that we had no choice but to commence proceedings in the Land and Environment Court. After engaging a solicitor, instructing a barrister, retaining heritage experts, engineering experts, town planning experts, and surveying experts, we proceeded to a hearing. During the course of the proceedings, we managed to demonstrate that this (fully compliant fence) should have been approved, but before the proceedings concluded council offered to settle the matter with us if we agreed to reduce the height of the fence from 1.8m to a non-compliant height of 1.2m. We agreed. The fence cost approximately \$6000. The approval took 2 years, and cost over \$60,000 for us, and likely the same for council too. We now have a fence that is not compliant with the DCP, but has been granted council approval. Overall, this is a waste of time and money for everyone, and does not lead to good town planning outcomes for the local area. (Ex-Boarding House operator)

These wasted resources should have been applied to addressing illegal boarding houses, not petty provisions about a backyard fence. Councils need to step up, and sort their resource allocation, and higher-level governments need to be mindful that providing additional funding for ineffective organisations will only entrench and amplify their failures.

8. SHOULD COUNCILS BE REQUIRED TO NOTIFY NSW FAIR TRADING OF ENFORCEMENT ACTION AGAINST BOARDING HOUSES, SO THAT IT CAN BE RECORDED IN THE REGISTER?

Publication on the register of enforcement action, should be strictly limited to matters of grave health and safety risk which prevail because the operator, despite fair warning, fails to address dangers within the building, especially repeat offenders. It should fall upon council and the registrar to review risks before publication on the register.

9. ARE THERE ANY PROVISIONS OF THE STANDARD OCCUPANCY AGREEMENT WHICH COULD BE CHANGED, OR ARE ANY ADDITIONAL PROVISIONS REQUIRED? (SEE APPENDIX A), AND
10. DO YOU HAVE ANY COMMENTS ON THE USE OF EITHER THE STANDARD OCCUPANCY AGREEMENT, OR OTHER OCCUPANCY AGREEMENTS?

Written agreements are recommended by POANSW. The suggested standard form occupancy agreement is helpful as guide to operators in developing their own individual letting agreement, that will appeal to their niche of the market. It is well set out, and captures the key features required.

11. HOW AWARE ARE YOU OF THE OCCUPANCY PRINCIPLES? 11.1 SHOULD THE OCCUPANCY PRINCIPLES BE HANDED SEPARATELY TO EACH RESIDENT UPON ENTERING A BOARDING HOUSE OR IS THEIR INCLUSION IN THE OCCUPANCY AGREEMENT SUFFICIENT? 11.2 SHOULD THE OCCUPANCY PRINCIPLES BE CONSPICUOUSLY DISPLAYED ON A NOTICE BOARD IN A COMMON AREA IN THE BOARDING HOUSE?

We surveyed 19 operator's (both current and retired) views on this, and all operators had high levels of awareness of the Boarding House act and the occupancy principles. POA NSW runs education seminars and provides a helpline for members. This operator based scheme should be expanded and promoted for all general boarding house operators.

We also believe complaint registered general boarding house operators are very aware of the key features of the boarding House act, and the occupancy principles. This is supported by data in the Boarding House Evaluation report.....

Proprietors report an increase in providing occupancy agreements to their residents (87% in 2015 and 97% in 2016 and 2017)¹³³.

We are not surprised with the findings in the Evaluation of the boarding house Act, that

Notwithstanding residents reporting an overall increase in knowledge and awareness of the new boarding house legislation, half of the residents surveyed stated that they were unaware of the Boarding Houses Act, and more than a third did not have an occupancy agreement¹³⁴.

Boarding house operators report that most people are just not interested in terms and conditions generally, and its often difficult to get residents to pay attention, and even though operators are compliant, it's not unusual for humans to 'tune out' to 'boring compliance stuff'.

¹³³ Page 6 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

¹³⁴ Page 5 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

‘with boring compliance stuff, you’re lucky if you have their attention for 30 seconds, so you’ve got to hit the key points otherwise it goes straight out the other ear’. (Boarding house proprietor expressing frustration with trying to explain emergency evacuation procedures to new occupants).

People just don’t bother reading terms and conditions, and the longer they are, the less they take in.... Do you ever read T&C’s? Who does? (Boarding House Operator).

More documentation and longer T&C’s is not going to work, and it’s a waste of resources. A better approach is an easy access boarding house resident help line/website, so that if an issue arises, residents can call a trustworthy independent 3rd party that understands the boarding house act for assistance. An equivalent general boarding house operator help line/web provided by a trustworthy operator source should be funded and made generally available as well.

12. ARE THE OCCUPANCY PRINCIPLES USEFUL AND APPROPRIATE? (SEE APPENDIX B) FOR EXAMPLE, ARE THERE ANY CHANGES WHICH SHOULD BE MADE TO THE PRINCIPLES OR ANY OTHER MATTERS WHICH SHOULD BE COVERED?

Refer to the main paper where this question is addressed in greater detail.

POANSW supports the reasonably based occupancy principles as they are suited to the characteristics of managed share accommodation, and enable operators to provide an easy access supply of diverse alternative accommodation.

We have reviewed Schedule 1 Occupancy principles, and the following changes are recommended:

6 NOTICE OF INCREASE OF OCCUPANCY FEE

A resident is entitled to 4 weeks reasonable written notice before the proprietor increases the occupancy fee.

8 PAYMENT OF SECURITY DEPOSITS

(1) The proprietor may require and receive a security deposit from the resident or the resident’s authorised representative only if:

(a) the amount of the deposit does not exceed 2 4 weeks of occupancy fee under the occupancy agreement, and....

We have surveyed 19 operators. We found that half charged 2 weeks, while the rest either charge 1 week or just a key deposit (say \$20 or \$50).

We also found before the act, about 20% of operators used to charge more than 2 weeks security deposit¹³⁵. They argued that a larger security deposit gave them confidence that the resident was less likely to pose a commercial risk, so they were more likely to offer accommodation. They were also able to accept a slightly lower on going tariff in the long run as their business model had lower financial risks. While another operator argued that the larger security deposit helped reinforce the niche market they operated in, which was predominantly pensioners who wanted very cheap tariffs but also a household of with residents of similar ilk.

“We charge the maximum deposit... Sure, it takes us longer to fill, but the place is a lot more stable and we hardly ever have turnover”. (Boarding House Operator)

While other operators run different models that satisfy other micro sections of the market.

“All we ask is for a \$20 key deposit and one week in advance, it’s very easy to fill the rooms, so the turnover doesn’t affect our occupancy rate”. (Boarding House Operator)

A more flexible system with security deposits opens up more options to residents, as some residents would prefer a lower tariff in a more stable home as opposed to greater application scrutiny or the higher risks of getting a ‘bad’ housemate.

While on its own it’s not a major issue, this is one simple examples of how regulations ultimately lead to inferior outcomes for residents. Those operators who had to adjust their security deposits down to 2 weeks, would have to adjust other business parameters. This also diminishes the rich diversity of options available to residents in the market.

“People are different, they aren’t all square blocks. If the regulations force us to become square blocks, what happens to people who don’t fit? Where do they go? They’ll be unhappy and then they complain about us when it’s the regulators fault.” (Boarding House Operator)

12 PROVISION OF WRITTEN RECEIPTS

A resident must be given a written receipt for any money paid to the proprietor or a person on behalf of the proprietor.

¹³⁵ This is consistent with the findings in Table 10: Amount of security deposit paid 2014-2017 pg 21| EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT where broadly before the act 2/3 of security deposits were for 2 weeks tariff, while a 1/6th were for less than 2 weeks (often just \$20 key deposit) or 1/6th for 4weeks

This provision is out of step with modern practice and technology, and not reflective of regulations in other sectors of the economy.

A real estate agent, who also manages Boarding houses noted...

Property stock and Business Agents Act (agent law) does not require rent receipts to be issued if the tenants rent is paid electronically. However, on demand by the tenant the agent must issue receipts or history of record of payments. If cheque or cash is paid to agent/landlord receipt must be given to tenant immediately.

While another operator suggested principle 12 should align with

Receipt given for cash, but only on demand if paid electronically.

While it is accepted that a literal interpretation of this provision is not the intention, (ie a receipt must be physically hand written for every payment), principle 12 should be updated to reflect “modern record keeping” methods

OCCUPANT’S OBLIGATIONS

As identified in the Positions Paper (2012) on page 7 “*The nature of boarding house accommodation is different to that of private residential dwellings regulated under the Residential Tenancies Act 2010.*” General boarding houses are occupied by unrelated parties, they are characterised by non-exclusive use of the premises, and communal use of amenities, like kitchens, bathrooms and lounge areas.

Currently the Boarding House Act provides individual occupants with reasonable occupancy rights, but there are no obligations to the operator or to the other ‘unrelated’ occupants that share the house. This puts the operators (and other occupants) in difficult position. What if one occupant is disturbing the quiet enjoyment of other occupants. The operator has as duty to all occupants, that is, he has a duty to provide for quiet enjoyment of each and every individual occupant, as well as the whole household.

Management ensures the operation of the boarding house for the well-being of the whole premises and household community. Individuals who enter a general boarding house make trade-offs. They agree to respect community rights and common property use 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 general boarding house operator has an occupant that randomly leaves a mess in the bathrooms that are utilised by the other occupants. Despite management attending cleaning

diligently, 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 were not clean?

You do the right thing when you use the bathroom. (Boarding House Resident)

It's impossible for management to meet occupants rights unless all occupants fulfil their obligations in a reasonable way.

POA NSW supports the inclusion of reasonable principles based occupant obligations in the occupancy principles.

Amendments should include:

1. Individual occupants are obliged to respect the house rules (terms and conditions of the operator which must be consistent with the BH Act).
2. Add: An occupant is obliged to maintain the premises in a clean and tidy state
3. Add: An occupant is does not disturb the quiet enjoyment of the premises or other occupants.
4. Add: An occupant is obliged to provide for reasonable notice of their departure.
5. Add. An occupant is obliged to take all their personal property with them on departure, and dispose of rubbish in a appropriate manner.
6. Add: On departure an occupant must leave their occupancy in a condition equivalent to how they found it and make good any damage or uncleanliness.
7. Further examples of reasonably based occupant obligations that should be incorporated in the occupancy principles can be found in Chapter 4 Part 1 of the Queensland Residential Tenancies and Rooming Accommodation Act 2008.¹³⁶

This will help address many complexities operators of general boarding houses face when managing the different expectations of different people living in the one household, and difficulties that can arise from time to time when unrelated people don't get on.

Further it will draw to the attention of mediators and arbitrators of disputes, the 'realities' of non-exclusive use of boarding houses, and the importance of 'other residents' (the 3rd parties) in a dispute between two parties in a boarding house.

¹³⁶ <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2008-073>

13. ARE THE OCCUPANCY PRINCIPLES BEING COMPLIED WITH? IF NOT, WHY NOT?

Yes, our feedback from the 19 operators is that compliant registered general boarding houses not only meet, they often exceed the occupancy principles requirements.

Operators are faced with commercial pressures, and they strive to achieve the best possible outcomes for residents and better star ratings on their review pages. Ass. Professor Drakes analysis in the Evaluation study provides data that shows registered general boarding houses deliver satisfied customers, have low levels of complaints, high levels of dispute resolution, and provide diverse easy access affordable accommodation with very little government assistance.¹³⁷

POANSW does not expect this is the case in the illegal boarding house sector. There would be no or very low levels of awareness or compliance with any of the regulations. Illegal boarding house supply needs to be addressed as a matter of high priority.

POANSW provides seminars, information services, and a helpline to general boarding house operators who are members. This service is by experienced operators who volunteer their time to help improve standards in the industry and minimise unnecessary conflict. Such a service should be supported and expanded to all general boarding house operators.

Further FACS could provide information, education programs, and an easy access helpline/chat line to all housing providers (not just boarding houses) and managing agents to help them identify ‘vulnerable persons with additional needs’ and support them in managing the best approach for the occupant.

Further, as is covered in this submission, a new easy access mediation service which provides recommendations to parties in dispute, should be required as a first step before any NCAT applications, and reasonably based occupancy principles should be broadened to all managed share housing facilities with unrelated parties.

14. SHOULD ANY OTHER INFORMATION BE PROVIDED TO A RESIDENT ON COMMENCING LIVING IN A BOARDING HOUSE? FOR EXAMPLE, A FACT SHEET WITH INFORMATION ABOUT ACCESS TO OUTSIDE SERVICES, SUCH AS DENTAL, HOUSING NSW, CASEWORK PSYCHOLOGISTS?

This should not be a requirement in a general boarding house.

¹³⁷ EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

Our feedback is residents on occasion seek generic information, like; where is the best coffee, what are the best transport options, etc. Otherwise occupants are more than capable of working it out for themselves and often resent being ‘nannied’.

Operators/managers are happy to provide local information, or they can make suggestions as to how to find out, eg Google it.

A better approach is an easy access boarding house resident help line/website, so that if an ‘issue arises’, residents can call a trustworthy independent 3rd party that understands the boarding house act for assistance. An equivalent general boarding house operator help line/website provided by a trustworthy operator source should be made available as well. Promotion of similar service from FACS would be helpful in the event there are issues that arise in relation to an occupant requiring ‘additional assistance’.

Note this question is another example of the impact changing the name of Licenced Residential Care facilities to assisted boarding houses and combining them with general boarding houses, has on the way general boarding houses are incorrectly perceived.

15. SHOULD ANY INFORMATION BE PROVIDED TO OPERATORS OF BOARDING HOUSES, FOR EXAMPLE, A FACT SHEET OUTLINING THEIR RESPONSIBILITIES?

Additional information, such as fact sheets, are always beneficial to operators (and even residents). However appropriate consideration should be made to the cost of such programs and the benefits actually achieved.

If another operator guide/factsheet is produced it should be produced by the government or a body that has experience in general boarding house operations and represents operators. It should not be a body that doesn’t represent operators, as operators would be reluctant to use such a service due to the potential conflict of interest.

If the government wants to expend more resources, POANSW runs a helpline and information seminars for members which could be expanded and promoted to all general boarding house operators.

16. ARE THE OCCUPANCY PRINCIPLE PROVISIONS REGARDING TERMINATION AND NOTICE WORKING OR ARE THERE ANY CHANGES WHICH SHOULD BE MADE?

Please refer to the main body of this submission, as it addresses this question, and related issues in some detail. A very brief summary of some of the key points are:

The general boarding housing market is an alternative supply of accommodation to the mainstream market. Its characterised by non-exclusive use, and it's a managed premises that provides flexible tenure options. It is different to the exclusive use market. Both these markets provide alternatives that cater for different housing needs.

There is a trade-off between

1. easy access of diverse and affordable supply and
2. providing appropriate protections to both individual occupants
3. as well as the 'other' unrelated occupants in the house.

The reasonably based occupancy principles and non-mandatory non-standard occupancy agreements provide the right balance to this equation.

The data shows on page 28 of Professor Drake's 5 year Boarding house Evaluation study that *"limited affordable housing options and increased occupancy fees" ...do cause "a significant fall in residents satisfaction measured by the seven indicators of their personal well being"*¹³⁸. These findings are very significant and are critical in affordable sector of the market.

The addition of reasonably based occupant obligations will help protect the rights of other residents in a non-exclusive use premises, and they should be included.

Further the Act should be broadened so all occupants that live in non exclusive use premises with unrelated parties where a master of the house manages the premises (unless other legislation provides coverage) should be afforded protections in the form of reasonable occupancy rights and obligations.

17. DO THE SUGGESTED NOTICE PERIODS IN THE STANDARD OCCUPANCY AGREEMENT CONSTITUTE "REASONABLE NOTICE" FOR TERMINATING AN AGREEMENT BY EITHER A PROPRIETOR OR A RESIDENT? IF NOT, WHY NOT?

In some premises the suggested periods in the suggested standard occupant agreement are reasonable, in others they are not. It depends on the niche of the market that is being supplied, the challenges of the nature of the occupants in that niche, and the need to protect the other residents in the premises.

They're all different. Some places are like The Brady Bunch and others like The Addams Family. (Boarding House resident)

¹³⁸ Pg 22 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT

“some of them are really nice, and you pay for it, while others are pretty ordinary, but they’re cheap.... You get what you pay for” (Boarding House resident)

The boarding house sector has a history of evolving in response to changes in the housing market. This evolution is continuing and poses a challenge for a regulatory framework that is designed to apply across the sector.¹³⁹

That’s the trade-off. It is easy in for occupants because it’s easy out for operators. Altering the balance will alter the outcome. (Boarding House Operator)

It would be endless to list all the combinations, but some examples include...

Boarding houses that cater for markets with;

- greater social problems or areas with significant drug problems,
- set lower tariffs
- set lower deposit levels, or
- cater to shorter stays

we would expect would require tighter notice periods so as to be able to offer easy access to housing, but also to protect other residents in the building.

Alternatively, different combinations can achieve different outcomes to cater for different segments of the market. For example, one operator reported they used to charge a ‘higher’ 4 week security deposit, with lower more affordable rates. (prior to the Act). He found that this model worked as it was attractive to pensioners who wanted lower rates, and the higher deposit level acted as a natural screening mechanism. He is no longer allowed to do this, so he has had to reconfigure his model to be more in line with other operators, which has reduced *affordable housing options* for occupants.

We don’t have a magic wand. We price for 50 weeks occupancy per room, every year. If the vacancy rate exceeds this, we must recover the loss in higher rates. 5 weeks vacancy leads to a 10%+ increase over the next year just to be square. The harder and the longer it takes to fill vacancies, the higher the rate, or the lower the supply. That means the occupant ends up wearing it. Water always finds its level. (Boarding House Operator)

Standardisation of occupancy principles will lead to standardisation of supply. This will amplify all the failures of that one standard supply to cater for the rich diversity of demand, and as Ass. Prof. Drake provides, “*limited affordable housing options and increased occupancy fees*” ...do cause “*a significant fall in residents satisfaction measured by the seven indicators of their personal well-being*”¹⁴⁰.

¹³⁹ Five years of the Boarding House Act 2012 in NSW. Tenants Union. Contact Leo Patterson Ross. March 2018.

¹⁴⁰ Pg 22 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT.

Flexibility enables micro suppliers to provide a point of difference, not just to residential tenancies, but to other suppliers of non-exclusive use housing. This is a good feature of the alternative housing market.

18. SHOULD A PROPRIETOR BE REQUIRED TO PROVIDE A REASON FOR TERMINATING AN AGREEMENT? WHY OR WHY NOT?

Yes a operator should provide reasons for terminating an agreement, but they also need to be able to make a termination without providing a reason, ie no grounds termination.

There can be special circumstances, where, for example, the manager of a share house with unrelated people will need to intervene in the best interests of all the residents in the household, even though there may not have been an action that could be considered in isolation a breach of house rules.

A good example of this is occurred during the NNC Boarding House roundtable meeting on 3rd September 2019, attended by industry stakeholders. It's an excellent illustration of the complexities of managing a share house with unrelated parties was discussed.

It was put to the meeting, *“what happens if your flatmate turns out to be Peter Dutton?”* While raised in jest, this is the reality of share accommodation with unrelated parties. You do not live in an exclusive use environment. You share the premises and you can't completely 'shut other residents' out.

“The existence of outstanding issues is, of course, not a surprising finding. Rooming houses are used by diverse groups of people”¹⁴¹

Now what if it's a boarding house of Somalian refugees and one of the residents *turns out to be Peter Dutton*? Management can intervene and try to mediate and somehow try to provide a structure so all the residents can peacefully co-exist. This would be made a lot easier if the occupancy principles included reasonable occupant obligations. But at the end of the day, an easy and effective management intervention in the interests of the common rights of the whole household is essential.

“There was recognition among the NGO welfare and tenancy advice organisations that the regulation of rooming houses cannot address all issues. These organisations noted that in some rooming houses, even though they complied with the regulations and had operators who interacted conscientiously with the residents, they could still be unsatisfactory places to live.... They became unsatisfactory places to live when residents exhibit chaotic or criminal behaviours and lack the capacity to look after themselves¹⁴²”

¹⁴¹ pg 16 T Dalton et al. Rooming house futures: governing for growth, transparency and fairness. Victorian Discussion Paper. AHURI. February 2015

¹⁴² pg 16 T Dalton et al. Rooming house futures: governing for growth, transparency and fairness. Victorian Discussion Paper. AHURI. February 2015

19. DO THE CURRENT PROVISIONS PROVIDE SUFFICIENT SECURITY FOR RESIDENTS OF BOARDING HOUSES?

This question is covered in the main paper. In summary....

Yes, the current non proscribed notice periods enable an operator to structure appropriate reasonable notice periods (that suit the market they cater for), and enable them to act to protect the residents of a boarding house, while still offering easy access to this alternative housing sector that provides flexible tenure accommodation.

20. HOW AWARE ARE YOU OF THE DISPUTE RESOLUTION MECHANISMS AVAILABLE FOR HOUSE RESIDENTS AND PROPRIETORS?

We surveyed 19 operator's (both current and retired) views on this, and as expected, all were aware that unresolved occupancy principles disputes are heard in NCAT ('the tribunal'). This is consistent with Ass. Prof Drakes findings in Table 7 on page 16 of the Evaluation of the Boarding Houses act study, where 91% of registered boarding house operators knew NCAT is responsible for resolving disputes in 2017.

It's interesting to also note in Ass. Prof Drakes study that about 25% of residents in general boarding houses 'did not know' or 'were unsure as to' where to go for assistance in the event of a dispute. This is partly reflected in the fact that the act is "young" only 4 years old in 2017, and as mentioned earlier, most people do not take an avid interest in compliance matters, unless there is a pressing need for it.

21. HOW EFFECTIVE AND APPROPRIATE ARE THE CURRENT DISPUTE RESOLUTION PROCESSES?

We surveyed 19 operators (both current and retired), and in total 3 tribunal matters were raised by operators since the Act was introduced. All 3 related to an occupant that refused to pay their occupancy fee, and were subsequently evicted with due notice. In each case, scheduled NCAT hearings were delayed and had to be reconvened (primarily because the occupant frustrated the process, eg had hearings reconvened as they couldn't attend etc), and all three cases dragged on for months, one took 5 months. This caused substantial hardship to the operators. Nonetheless, all three cases were either withdrawn, dismissed or awarded to the operator.

Further, as covered in the main paper of this submission, Prof Drake provides in her interim reports Evaluation study¹⁴³ a review of Boarding house NCAT Tribunal cases:

The Tribunal received 15 applications under the *Boarding Houses Act 2012* during the period 1 July 2013 to 31 January 2014¹⁴⁴:

3 applications lodged in August 2013

3 applications lodged in October 2013

9 applications lodged in January 2014

The applications related to boarding houses in:

Newcastle – 5 applications

Sydney – 3 applications

Penrith – 2 applications

Coonamble – 1 application

Gunnedah – 1 application

Hurstville – 1 application

Mudgee – 1 application

Taree – 1 application

The applications were lodged by:

Residents – 5 applications

Former residents – 3 applications

Proprietors – 7 applications

The applications related to:

The occupancy agreement – 1 application

Payment of money – 3 applications

Compensation – 2 applications

Access to Goods – 2 applications

Termination of agreement – 5 applications

Rehearing application – 1 application

Other unspecified issue – 1 application.

The Tribunal does not collect data on the outcomes of specific matters, however in the 5 finalised applications, primary orders were made as follows:

1 application was withdrawn

1 application was dismissed

2 applications resulted in general orders

1 application resulted in a money order.

¹⁴³ EVALUATION OF THE BOARDING HOUSES ACT 2012 – Report 1 2014

¹⁴⁴ EVALUATION OF THE BOARDING HOUSES ACT 2012 –Report 1 2014 9.9 Appendix: NSW Civil and Administrative Tribunal data

We also understand *[note the reference for this has been misplaced, but we understand this to be correct, but it would need to be confirmed by NCAT]* that in the first 4 years of the act, from July 2013 to July 2017, there were 70 boarding house classified applications brought before NCAT, which is a very low number, about 1.5 per month. Further we understand that the vast majority of cases were either withdrawn or resolved by mediation.¹⁴⁵

This is a very good outcome for the whole registered general boarding house industry.

22. DO YOU HAVE ANY OTHER SUGGESTIONS TO ENCOURAGE THE EARLY RESOLUTION OF BOARDING HOUSE DISPUTES AND TO REDUCE THE NUMBER OF BOARDING HOUSE DISPUTES?

Note as per question 21, the data indicates NCAT disputes are very low, averaging about 17.5 per year (this needs to be verified). Further we understand the vast majority are either withdrawn or resolved by mediation (this also needs to be verified).

Our feedback from operators is a significant number of disputes arise because of a misunderstanding. Residents incorrectly assume the provisions of RTA apply, despite the fact that they have a written letting agreement. This is not surprising as RTA housing is the dominant form of housing, and people often mistakenly misuse the term tenant. Even Magistrate M. Jerram, State Coroner of NSW,¹⁴⁶ in the ‘300 Hostel’ investigation incorrectly mixes up tenant, occupant and assisted (LRC) and general boarding house. If a person of that standing can get confused about these definitions, it’s hardly surprising others not studied in such matters also make such errors.

This confusion leads to a number of unnecessary disputes, which could be mitigated.

SOLUTION

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

¹⁴⁵ Apologies reference has been misplaced. Reference is pending. Refer to NCAT for confirmation of details.

¹⁴⁶ 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.

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.”¹⁴⁷

A system similar to this mediation process could be used as a required first step in resolution of occupancy disputes. It could be adapted for managed share accommodation housing and 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 S32 provision as the first step before a Boarding House dispute can progress to the Tribunal. 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 hours/days, rather than weeks at tribunal.
- Achieve high (80%) resolution rates.

If the process of mediation with recommendations fails to resolve the dispute, then the next natural course would be the Tribunal, that could take into account the recommendations of the mediator in their determinations.

Note POANSW was aware of a similar ‘over the phone mediation service’ provided by NSW Fair Trading. We recently checked the Fair Trading website, and we could not find contact details. Such a service would be very handy and should be promoted, as people often only want to know about these sorts of matters when they are required. It’s a easy cost effective scheme would help filter out many unnecessary and expensive NCAT cases.

24. SHOULD THE PRESENT TWO-TIERED SYSTEM OF “ASSISTED” AND “GENERAL” BOARDING HOUSES REMAIN UNCHANGED, AND ONLY “ASSISTED BOARDING HOUSES”, AS PRESENTLY DEFINED, BE ALLOWED TO ACCOMMODATE A PERSON WITH “ADDITIONAL NEEDS” UNDER THE LEGISLATION? WHY OR WHY NOT?

¹⁴⁷<http://www.smallbusiness.nsw.gov.au/dispute-resolution/what-is-mediation-and-how-can-it-help-you>. Accessed in August 2012

These matters lie outside the expertise of POANSW, but there is a strong view that even one occupant who is a ‘vulnerable person with additional needs’ is likely to require specialist care, which would be beyond the capacity and skill base of a typical general boarding house operator.

POANSW, as raised previously in this submission, believes assisted boarding houses are incorrectly named, and boarding houses should be removed from this description as they are more akin to a nursing home. Further general and assisted boarding houses should not be covered in the one act.

25. IF YOU THINK THAT SOME GENERAL BOARDING HOUSES SHOULD BE ALLOWED BY FACS TO ACCOMMODATE SOME PEOPLE WITH “ADDITIONAL NEEDS” PROVIDED CERTAIN SAFEGUARDS ARE MET, WHAT SHOULD THESE STANDARDS AND SAFEGUARDS ENTAIL? SOME SUGGESTIONS FOLLOW: 25.1 SHOULD THE GENERAL BOARDING HOUSE BE ALLOWED TO ACCOMMODATE A PERSON WITH “ADDITIONAL NEEDS” BUT ONLY IF THE PERSON HAS A PACKAGE” OF SUPPORTS SUCH AS UNDER THE NDIS, OR PROVIDED BY NSW HEALTH? 25.2 IF THE GENERAL BOARDING HOUSE IS ALLOWED TO ACCOMMODATE PEOPLE WITH SUBJECT TO CERTAIN REQUIREMENTS, SUCH AS: 25.2.1 FREE AND UNHINDERED ACCESS TO THE PREMISES FOR SERVICE PROVIDERS AND BOARDING HOUSE ENFORCEMENT OFFICERS; 25.2.2 PROVISION OF SINGLE ROOMS TO PERSONS WITH ADDITIONAL NEEDS; 25.2.3 SAFE AND WELL MAINTAINED PHYSICAL ENVIRONMENT AS ASSESSED BY FACS AND LOCAL GOVERNMENT; 25.2.4 PROVISION OF MEALS; AND 25.2.5 PROPRIETOR AND/OR STAFF OF GENERAL BOARDING HOUSES TO HAVE PROBITY CHECKS? 25.3 WHAT OTHER SAFEGUARDS, IF ANY, WOULD BE NEEDED, AND WHY?

These matters lie outside the expertise of POANSW, but we have a strong view that a ‘vulnerable person with additional needs’ should have an appropriate housing facility, capable of providing adequate care.

26. WHAT IS THE IMPACT OF SPECIFYING THAT ONLY ONE PERSON CAN BE THE APPLICANT TO BE THE LICENSEE? 26.1 SHOULD CORPORATIONS AND COMPANIES BE EXCLUDED, GIVEN THAT A COMPANY CAN BE PURCHASED AND SOLD, IN ORDER TO PREVENT A BUYER OF A COMPANY WHICH HOLDS A LICENCE OF AN ASSISTED BOARDING HOUSE CIRCUMVENT THE REQUIREMENT TO APPLY FOR A LICENCE?

These matters lie outside the expertise of POANSW.

27. IS 28 DAYS ADEQUATE TIME FOR A LICENSEE TO GIVE NOTICE OF CLOSURE AND TO ALLOW FOR ALTERNATIVE ACCOMMODATION FOR THE RESIDENTS TO BE SECURED?

These matters lie outside the expertise of POANSW.

28. WHEN A PERSON IS ASKED TO ANSWER QUESTIONS, SHOULD THE WARNING BE SIMPLIFIED TO STATE THAT THE PERSON MUST BE ADVISED THAT: (A) THEY HAVE THE RIGHT NOT TO ANSWER THE QUESTION OR PRODUCE DOCUMENTS ONLY IF THEY BELIEVE SUCH ANSWERS OR DOCUMENTS WILL BE SELF INCRIMINATING; AND (B) IF THEY DO CHOOSE TO SAY ANYTHING, ANYTHING THEY DO SAY MAY BE NOTED; AND (C) IF THEY SAY ANYTHING WHICH IS SELF-INCRIMINATING, IT MAY BE USED AGAINST THEM IN FUTURE LEGAL OR ADMINISTRATIVE PROCEEDINGS?

No comment

29. IS THE CURRENT REQUIREMENT THAT ONE PERSON BE SPECIFIED AS AN “AUTHORISED SERVICE PROVIDER” ADEQUATE? SHOULD THE DEFINITION OF “AUTHORISED SERVICE PROVIDER” BE BROADENED TO INCLUDE ANY EMPLOYEES OF A NAMED ORGANISATION PROVIDING SERVICES TO AN ASSISTED BOARDING HOUSE?

These matters lie outside the expertise of POANSW.

30. IS THE MAXIMUM NUMBER OF 30 RESIDENTS APPROPRIATE? WHY OR WHY NOT?

These matters lie outside the expertise of POANSW.

31. ARE THE CURRENT ARRANGEMENTS ADEQUATE IN MEETING PRIVACY NEEDS OF RESIDENTS? FOR EXAMPLE: 31.1 WHERE TWO RESIDENTS HAVE DECIDED TO SHARE A BEDROOM, SHOULD IT BE ENFORCED THAT AN ADDITIONAL ROOM NOT LESS THAN 7.5 SQUARE METRES BE SET ASIDE FOR THE EXCLUSIVE USE OF THOSE TWO RESIDENTS ONLY? 32. IS THE CURRENT REQUIREMENT OF 11 SQUARE METRES ADEQUATE FOR A ROOM THAT TWO RESIDENTS CHOOSE TO SHARE? 33. SHOULD THERE BE A MINIMUM SIZE FOR THE PRIVATE OR QUIET ROOM? IF YES, WHAT SHOULD THIS BE?

No comment

34. SHOULD A MINIMUM SIZE FOR A COMMUNAL LIVING SPACE BE SPECIFIED? WHY OR WHY NOT? IF YES, SHOULD THIS BE BASED ON THE NUMBER OF RESIDENTS ACCOMMODATED E.G. A SPECIFIED NUMBER OF SQUARE METRES PER RESIDENT?

No comment

35. ARE THE CURRENT PROVISIONS OF THE ACT IN RELATION TO YOUNG PERSONS ADEQUATE? WHY OR WHY NOT?

These matters lie outside the expertise of POANSW

36. IS THE CURRENT PURPOSE OF THE SCREENING TOOL STILL VALID? 36.1 IF AN ASSISTED BOARDING HOUSE RESIDENT, ACTUAL OR PROPOSED, HAS A PACKAGE OF SUPPORTS WHICH MEETS THEIR NEEDS, SHOULD HE OR SHE BE CONSIDERED ELIGIBLE TO LIVE IN AN ASSISTED BOARDING HOUSE REGARDLESS OF THEIR LEVEL OF NEED? (FOR INSTANCE, IF A PERSON NEEDED DAILY PERSONAL CARE BUT HE OR SHE HAD AN NDIS PACKAGE WHERE HE OR SHE COULD PURCHASE THOSE SUPPORTS, COULD THIS BE DELIVERED IN AN ASSISTED BOARDING HOUSE?)

These matters lie outside the expertise of POANSW

37. ARE THE CURRENT PROVISIONS OF THE ACT ADEQUATE IN RELATION TO ABUSE AND NEGLECT?

These matters lie outside the expertise of POANSW

38. SHOULD THERE BE A CLAUSE IN THE REGULATION WHICH STATES THAT IN A BOARDING HOUSE WHICH IS AUTHORISED TO ACCOMMODATE A PERSON WITH ADDITIONAL NEEDS, A RECEIPT FOR ANY MONEY RECEIVED FROM, OR ON BEHALF OF THAT PERSON, MUST BE ISSUED TO THE PERSON AND A COPY OF ALL SUCH RECEIPTS KEPT? THIS INCLUDES DETAILS OF THE PURPOSE OF THE RECEIPT OF MONEY OR PAYMENT. 38.1 SHOULD THERE BE A CLAUSE IN THE REGULATION WHICH SPECIFICALLY COVERS FINANCIAL EXPLOITATION? IF YES, GIVEN MANY RESIDENTS OF ASSISTED BOARDING HOUSES HAVE DIFFICULTY MANAGING THEIR FINANCES, HOW WOULD “EXPLOITATION” BE DEFINED AND DIFFERENTIATED FROM “ASSISTANCE”? 38.2 IF YES TO 38.1, SHOULD THE CLAUSE ALSO COVER THE MANAGEMENT AND DELIVERY OF THE RESIDENT’S NDIS PLAN?

These matters lie outside the expertise of POANSW

39. ARE THE CURRENT PROVISIONS OF THE ACT IN RELATION TO RECORD KEEPING ADEQUATE? SHOULD THE RECORDS REQUIRED TO BE KEPT BY AN ASSISTED BOARDING HOUSE, AND WHICH ARE THEREFORE AVAILABLE FOR INSPECTION BY A FACS BOARDING HOUSE A) ENFORCEMENT OFFICER, BE EXPANDED TO INCLUDE: B) OCCUPANCY AGREEMENTS? C) NDIS PLANS AND NDIS SERVICE AGREEMENTS? D) PAYMENTS TO A SERVICE PROVIDER UNDER THE NDIS PLAN? E) ANY OTHER RECORD OR DOCUMENT? WHY OR WHY NOT?

These matters lie outside the expertise of POANSW

ANY OTHER COMMENTS?

Clearly the questions #23 to #39 demonstrate that assisted boarding houses are a special use form of housing, and the legislative combination with general boarding houses is causing confusion and contributing to a prejudiced view of the vast majority (which we estimate is well over 70 %) of general boarding houses, which fuels unnecessary trauma in local communities...

We migrated from the UK and found a place that was just perfect for a general boarding house. We didn't have much money, so we moved in and lodged a DA. We could not believe the reaction. There were over 400 objections! someone was stirring them up....boarding houses are full of paedophiles, psychos, druggies, and the like We were ostracised, our kids were picked on at school. They put posters up in front of our house, on the light posts in our street and on the main roads. We were excluded from the annual street Christmas party which really upset the kids..... The DA was delayed so many times, and had to be resubmitted, all petty stuff. It dragged on forever before it was finally approved..... we built it..... [Now] I manage it,it's mostly locals, young couples, tradies..... [now] we go to the Christmas party every year..... the residents too..... There's one local that still resents us, still chucks his rubbish into our place. (New Australians: Boarding House Developer and Operator)

This is contributing to poor housing investment decisions, which has knock on effects on the general supply of affordable housing and well-being of those residents. This needs to be addressed, and name changes and separate legislation is required

The Property Owners' Association of New South Wales



APPENDIX 3:

POA NSW BOARDING HOUSE STATEMENT AT BOARDING HOUSE ROUNDTABLE MEETING 3RD SEPTEMBER 2019

The following is a copy of a prepared statement by POA NSW, presented by P. Dormia, (POANSW Secretary), to industry stakeholders attending the Boarding House Roundtable meeting at The Newtown Neighbourhood Centre, on the 3rd September 2019.

So, what are some of the things we know:

We know mainstream housing, eg residential tenancy is not delivering to everyone.

- It's inflexible.

- It's generally unfurnished and doesn't include bills.

- It's hard to get a lease and it's unaffordable to many people.

- Further many people don't want to live by themselves. (look at the amount of share accommodation within leased households) but also don't want the hassle of dealing with flatmates.

Registered General Boarding houses are a different form of housing. It provides a managed alternative, and an incredibly rich diversity of micro suppliers that provide easily accessed accommodation, with flexible tenure.

The law clearly distinguishes between these alternative forms of accommodation.

We also know that

- Registered general Boarding House residents experience above average to high levels of satisfaction.

- That there are extremely low levels of complaints about the BH industry and very low numbers of tribunal applications. Nearly all the applications made by residents are resolved by mediation or withdrawn.

We also know (based on NSW Revenue BH land tax applications data) that there has been a 12.6% reduction in the supply of registered BH, (ie affordable registered BH housing), since the implementation of the BH act.

That's about 100 BH in the first 4 years of the act, or about 1000 affordable beds.

We also have very strong evidence to suggest that there is a rampant illegal market, that is highly likely to be non-compliant, and exposes occupants to significant safety risks.

Further we are getting reports that many local councils do not have the "appetite" to execute initial inspections of registered BH, and also most importantly, address illegal housing.

We also know that the current register for BH is not reliable, and we believe this is because of its structure. A system like that in Victoria could be a way of improving this, but for this to work, all NSW Councils would need to become highly effective in executing their compliance duties.

Part of the impediment here is the proscribed regulatory framework Councils, (and the BH industry), must work with is too complex, very difficult to comply with and often contradictory.

Illegal non-compliant supply is the number one failure of the boarding house reforms. It's been close to 7 years now and this needs to be addressed as a matter of priority. It's destabilizes and undermines compliant supply, and tarnishes the reputation of the registered general BH industry, which then fuels unsound regulatory proposals and that then stifles compliant supply. This vicious cycle must be stopped.

We need a regulatory framework that fuels healthy compliant supply not illegal supply.

In terms of the act, we support a broadening of the act, not a tightening the act.

We are opposed to measures that will force boarding house operators to standardize their supply or that curtail their capacity to manage the boarding house, and protect unrelated occupants.

We support the (reasonable) occupancy principles as they are central to enabling suppliers to provide diversity and flexibility. There is a trade-off. It's easy in for occupants only because it's easy out.

Most importantly, we propose the inclusion of reasonable occupant obligations in the occupancy principles.

We also know that there are large number of people living in the non-exclusive use sector, ie share accommodation market, that lie outside the act.

We support the broadening of the Act, ie occupancy rights and obligations, without registration, to all non-related people in the share accommodation market. The act would need to be renamed (eg share accommodation act)

Note, I'm always referring to general registered boarding houses, not assisted BH. Assisted BH are a very small sector, a specialist area which is beyond our expertise.

NSW needs a healthy alternative accommodation supply that is flexible, diverse, and adaptable. That can cater for housing demand that doesn't fit in the "one size fits all" that mainstream housing can only produce.

A healthy flexible boarding house sector is crucial to this rich diversity of alternative supply.

The Property Owners' Association of New South Wales



APPENDIX 4

CLARIFICATION OF DATA REGARDING THE NUMBER OF BOARDING HOUSES COMPLAINTS AND ENQUIRIES MADE TO NSW FAIR TRADING.

The following is email correspondence between POANSW and a Coordinator at Quality Assurance Fair Trading Specialist Services at Better Regulation Division Department of Customer Service in relation to a request for data clarification of the '75 complaints' allegedly received by NSW Fair Trading and presented in the Statutory Review of the *Boarding Houses Act 2012* Discussion Paper August 2019 on page 17, stating that:-

A total of 75 complaints about boarding houses were made to NSW Fair Trading during the period January 2014 to April 2019. These were mostly related to resident concerns about eviction, return of bonds, and lack of an occupancy agreement.¹⁴⁸

As can be seen below, this statement is not correct:-

"Most of the complaints and enquiries received at Fair Trading are requests for general information".

As was elaborated by that Coordinator at Quality Assurance Fair Trading Specialist Services in the two phone calls on 11th and 17th September 2019,

"Our internal process uses the terms complaint and enquires interchangeably, but for an external party the language is incorrect".

"The bulk, some 75%¹⁴⁹ as a ball park figure, are not complaints but general information enquires"

"I'm not seeing it (the 75 complaints) and I don't know where they are getting this from"

"calls about actual evictions are very nominal"¹⁵⁰

¹⁴⁸ Pg 17 Statutory Review of the *Boarding Houses Act 2012* Discussion Paper August 2019 NSW Government.

¹⁴⁹ This is a qualitative assessment. At the time of writing, The Coordinator at Quality Assurance Fair Trading Specialist Services indicated that they would provide a accurate quantitative assessment of the actual number.

¹⁵⁰ Clarification was provided in two phone calls on 11th and 17th September 2019. As is revealed by the Coordinator at Quality Assurance Fair Trading Specialist Services

Coordinator at Quality Assurance Fair Trading Specialist Services at Better Regulation Division Department of Customer Service indicated that they would provide additional quantitative information in relation to the number of actual complaints, (which they know is “very nominal”).

At the time of production, this information was not available. POANSW will forward it to boardinghousesreview@finance.nsw.gov.au as an addendum when it becomes available.

REQUEST: POANSW

Sent: Tuesday, 27 August 2019 4:22 PM

To: boardinghousesreview@finance.nsw.gov.au.

Subject: Clarification of data regarding the number of Boarding Houses complaints and enquiries made to NSW Fair Trading.

POANSW is preparing a paper for submission on the review of the boarding house act 2012.

We have come across some data provided by Fair Trading regarding the number of Boarding Houses complaints and enquiries made to NSW Fair Trading, as part of the Department of Finance, Services and Innovation.

For example I draw your attention to page 16 of EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT by Prof Drake 2018, (<https://www.newtowncentre.org/uploads/5/1/5/0/51502997/evaluation-of-the-boarding-houses-act-2012-report-4-and-final-report-2018.pdf>) which states...

“COMPLAINTS AND ENQUIRIES MADE TO NSW FAIR TRADING

NSW Fair Trading, as part of the Department of Finance, Services and Innovation, collects data on complaints and enquiries received by their state-wide call centre. NSW Fair Trading has provided data from 2014-2017. The number of enquiries to NSW Fair Trading has remained steady with approximately 300 enquiries made each year (295 enquiries in 2014; 600 between 2015-2016 and 279 in 2016-17) and few complaints -a total of 31 complaints made during the study period. These complaints were mostly related to resident concerns about eviction and lack of an occupancy agreement.”

Note there is an inconsistency with the number of complaints published on the next page 17 in Table 8: EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT. Here it suggests that only 26 complaints have been received in the same period, being 12 in 2014, 9 in 2015-2016, and 5 in 2016-2017.

But further, Statutory Review of the *Boarding Houses Act 2012* Discussion Paper August 2019 produced by Fair trading NSW on page 17 reports that

“Resolving disputes

A total of 75 complaints about boarding houses were made to NSW Fair Trading during the period January 2014 to April 2019. These were mostly related to resident concerns about eviction, return of bonds, and lack of an occupancy agreement.”

Can your department kindly provide additional quantitative and qualitative information on this data held by Fair trading. In particular can you..

1. Clarify the number of actual complaints made about boarding houses in the period 2014 to 2017, was it 26 or 31. Further were the months in period from 2014 to 2017, was it January 2014 to January 2017. If not what were the relevant months
2. The number of ‘boarding house’ complaints that related to registered general boarding houses in NSW, as opposed to illegal boarding houses, unregistered boarding houses, or share accommodation dwellings *during the period January 2014 to April 2019.*
3. Can you provide a break-up of the number of complaints about boarding houses on a monthly or annual basis. If this number could also be provided for registered general boarding houses *during the period January 2014 to April 2019.*
4. The number of complaints made about registered boarding houses that were verified as “valid complaints that remained unresolved” with the proprietor *during the period January 2014 to April 2019.*
5. The number of calls that were made in relation to “actual” evictions as opposed to “concerns about eviction” in registered general boarding houses. Also, the number of these actual evictions that were verified *during the period January 2014 to April 2019.*
6. A comparative number of enquiries “regarding concerns about eviction and lack of written agreement from boarding houses” with or versus “concerns about eviction and a lack of leasing documentation from Residential Tenancies” *during the period January 2014 to April 2019.*
7. It is noted that boarding houses do not charge a bond, it’s a security deposit. What were the number ‘information request’ calls that related to “return of bonds” *during the period January 2014 to April 2019.*
8. Are complaints and enquiries made to NSW Fair Trading in confidence, and the caller is able to do so anonymously.

We understand that the level of complaints is extremely low (average of 10 per year from 2014-2017, although we note there appears to have been a doubling of that since the publication of the EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT by Prof Drake in Feb 2018).

We remain concerned that with such low numbers a person(s) making a few false calls or complaints each year could easily skew the data results, and also we believe that these complaints are not likely to be in relation to registered general boarding houses.

If your department could kindly provide that data that would assist us in reinforcing the important point that all the data shows that registered general boarding houses receive almost no complaints and their residents experience above average to high levels of satisfaction.

RESPONSE: QUALITY ASSURANCE FAIR TRADING SPECIALIST SERVICES AT
BETTER REGULATION DIVISION DEPARTMENT OF CUSTOMER SERVICE

Date: Wednesday, 18 September 2019 at 10:47

To: POANSW

Subject: FW: Clarification of data regarding the number of Boarding Houses complaints and enquiries made to NSW Fair Trading.

Good morning,

Thank you for your correspondence regarding the Boarding Houses Act 2012 review. It was good to talk to you last week and understand what information you require and discuss the ways in which Fair Trading can assist. I apologise for the delay in responding to you.

As you know Fair Trading administers the Boarding Houses Act 2012, but is not the regulator. It also houses the Boarding House accommodation register, which is the public list providing information about whether or to it is a general or assisted boarding house, along with other particulars. The register is available on our website via this [link](#).

As Fair Trading is not the regulator, we have received limited complaints since the legislation commenced in 2012. The majority of contact we receive are enquiries relating to requests for general information, which often result in the customer being referred to their local Tenants Advice and Advocacy Service (TAAS) or the Local Council when the complaint is about safety or standards of the accommodation. Fair Trading can also check the address of the property against the accommodation register and refer customers who are living in assisted boarding houses to Dept. Family and Community Services (FaCS) for assistance.

Depending on the information provided in the enquiry or complaint, Fair Trading is often unable to determine whether the complainant's status is a tenant with a tenancy agreement under the Residential Tenancies Act 2010, or as a Border/Lodger, who are exempt from the Residential Tenancies Act 2010. Fair Trading would refer these customers to NCAT for a determination on status, although Fair Trading does not receive data on the outcome of those referrals.

When Fair Trading records complaints or enquiries about boarding houses, it does not record the accommodation type i.e. does not distinguish it as a general boarding house or an assisted boarding house; the data is recorded as boarding house only.

Most of the complaints and enquiries received at Fair Trading are requests for general information. This is followed by enquiries and complaints on rights and responsibilities. The other less prominent enquiries or complaints relate to refunds (bonds) followed by contracts and agreements and repairs and maintenance.

If you require further information on the specific numbers/types of complaints and enquiries Fair Trading receives, please feel free to connect with me. As discussed last week, I am more than happy to assist in any way I can, allowing for the limited level of detail contained in our data.

My number is xxx xxx xxx and leave a message if I am unavailable so I can respond to ASAP.....
Regards,

XXXXXX XXXXXXXX

**Coordinator, Quality Assurance
Fair Trading Specialist Services**

Better Regulation Division | Department of Customer Service
Level 9 (West), 10 Valentine Avenue, Parramatta NSW 2124
www.fairtrading.nsw.gov.au



Please consider the environment before printing this email

The Property Owners' Association of New South Wales



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