1. BOARDING HOUSES BILL 2012

Background

1. The Eastern Area Tenants' Service is of the opinion that legislation in this area is well overdue. We welcome the NSW Government's efforts to develop legislation to regulate what we currently see as a "backyard industry" typified by exploitation of people with no protective support mechanisms.

2. Whilst we appreciate Govt's attempts to regulate the Boarding House sector, we have a number of concerns about the Bill in its current format. In order to appreciate EATS' concerns, it is important to look at the political motivators driving the development of the Bill in the first instance.

3. The government's *Inquiry into International Student Accommodation in NSW 2011* noted competing concerns about the quality and location of international student accommodation, particularly in Sydney. These could be summarised as concerns related to the exploitation of international students and concerns from some in the community, that boarding houses or `overcrowded' shared accommodation used by international students,

> *May cause the problems described in evidence and submissions, such as loss of amenity to neighbours, excessive garbage, parking problems, fire and health risks.*

4. The recommendations of that inquiry sought to balance a number of identified concerns. The Committee addressed the question of the exploitation of international students by recommending that the government implement occupancy agreements for **all** international students in accommodation not covered by the *Residential Tenancies Act 2010*. The Committee moreover recommended that landlords and student residents have access to the Consumer, Trader and Tenancy Tribunal to resolve disputes.

5. The committee addressed the concerns of the community by proposing a regime of registration and regulation, in which neighbours could make complaints and local councils would be empowered to inspect and make directions relating to "substandard" accommodation.

6. A matter that was not overtly addressed in the Committee's recommendations lay in how a government would be able to bestow rights on "international students" and not on domestic students or other residents in ostensibly low cost accommodation not currently afforded any protection under residential tenancy legislation ("marginal renters"). In reality the only way a government could act would be by extending occupancy rights to anyone not covered by the *Residential Tenancies Act 2010*, benefitting both international students and other residents of marginal accommodation.

7. The Committee noted:

> *That the adoption of occupancy principles so that all residents have some statutory protection of their rights would preclude possible attempts by unscrupulous operators and landlords to create housing arrangements which would evade occupancy agreements.*

8. The Boarding House Bill 2012 seeks to balance further competing interests,

particularly those of landlords, and of residents in supported accommodation and boarding houses currently licenced under the *Youth and Community Services Act 1973*.

9. In so doing, we submit that the government has completely withdrawn from the concept of extending basic legal tenancy rights to all who access marginal rental accommodation, including those central to the Inquiry's brief; international students. The only residents who will benefit will be those who live in registered "boarding houses" with more than five residents or vulnerable residents in premises where there are at least two vulnerable residents residing. The mechanisms that the Bill seeks to utilise are registration and subsequent regulation of boarding houses, a process that is envisioned to protect long-term residents of boarding houses and empower communities to act against what they perceive to be the degradation of their neighbourhood amenity.

10. We submit that by linking limited protections for resident's rights to a process of boarding houses registration, the draft Bill seriously undermines the very protections it aims to introduce and will enable operators to take advantage of the exclusions and limited coverage to avoid the registration process.

11. The draft Bill defends its limited coverage by asserting that it wishes to avoid, "imposing regulatory burden on family type operations or very small operators". However, the draft Bill could allow such operators to be exempted from the registration process but still afford its residents occupancy principle protections.

12. A separate regime of boarding house registration, which sets minimum standards for different types of premises and implements compliance protocols, can be maintained concurrently to standardised occupancy principles. Residents of unregistrable boarding houses, or as we submit, all residents not covered under the *Residential Tenancies Act 2010*, may therefore still be afforded the protection of occupancy principles but without unnecessarily burdening smaller operators with registration.

13. As things stand with the draft Bill, renters not covered under the *Residential Tenancies Act 2010* will continue to be denied the most basic of rights afforded to all other renters in the state.

14. Outcomes, should the exposure draft become law, could be quite perverse with the potential to increase homelessness and exacerbate further the exploitation of vulnerable renters in the marginalised rental sector. Our experience indicates that exploitation of marginal renters is definitely **not** restricted to boarding houses or residences with 5 or more occupants. To legislate as though this were the case would be highly imprudent, particularly in light of evidence to the contrary.

15. The draft Bill emulates a principle-based set of occupancy rights for residents of boarding houses based on the ACT regime as enacted in Part 5A of the *Residential Tenancies Act 1997*. The weakness of the NSW, in contrast to the ACT legislation is that the NSW Bill does not apply to everyone not otherwise covered by mainstream tenancy laws.

16. Unscrupulous marginal rental accommodation providers will always try to protect their economic interests. The NSW draft Bill as it stands gives them the avenues to do so. As noted by the Committee for the *Inquiry into International Student*

Accommodation in NSW, if it does not provide basic rights to all residents who are not currently covered by the *Residential Tenancies Act 2010*, it will undermine whatever other good it aims to achieve.

2. ANALYSIS OF BOARDING HOUSES BILL 2012

17. We submit that fundamental changes need to be made to the following provisions of the draft Bill:

Five main weaknesses:

Coverage

18. The draft Bill's occupancy agreements provisions only apply to unlicensed boarding houses for five or more residents ('Tier 1' boarding houses) and licensed residential centres ('Tier 2' boarding houses for 'vulnerable persons'), thereby leaving many marginal renters excluded.

19. In its position paper, the NSW Government states that the intention of the Exposure Draft Boarding Houses Bill 2012 is "*to introduce a new legislative framework which will provide better protections for ALL boarding house residents*". As previously stated, our view is that the Bill's scope should be extended to all renters not covered under the Residential Tenancies Act 2010, notwithstanding this, we submit that the present form of the Bill will fail to meet even it's own goals in that it limits the legislation's coverage to boarding houses with five or more residents, automatically excluding residents in boarding houses with less than five residents.

20. Moreover, the exclusion of "*proprietors or managers of the premises or relatives of the proprietors or managers*" from the total number of residents, opens up the risk of unscrupulous landlords claiming that bona fide occupants are managers or caretakers to circumvent the five or more rule. Similarly, the provision may also result in landlords evicting residents, permanently or at the time of inspection, so as to remain below the five or more rule threshold.

CASE STUDY: Less than 5 residents, retaliatory eviction

Marko had a six month fixed term boarding agreement with his landlord, who lived in the house. There were fewer than five residents. He did not have mastery of his room. He actually didn't even have a room. Marko lived in a section of the living room that had been fenced off with old sheets. The landlord told Marko that he had to leave before the end of the fixed term because he (the landlord) was bringing some of his family over from overseas who would move into the curtained off lounge room area. Marko did not want to break the fixed term because he was near the end of his studies and was in the middle of heavy assignment work. Marko was worried that he would be physically assaulted by the landlord. The landlord called the police to try to have Marko removed. Marko would not have been able to get any help from the Tenancy Division of the CTTT, because he was not a tenant. If he could prove that the landlord was operating a business there may have been some chance in the CTTT General Division. But Marko did not have the time or resources to pursue that option, even with support from a Tenants' Advice Service. He felt his best option was to try to drag out the termination process as long as he could, and then couch surf for the rest of his time in Sydney.

Bonds

21. The draft Bill makes no provision in relation to residents' bonds. As many boarding house residents experience problems with bonds - in particular, getting them back at the end of their occupancy - this is a very serious omission. The draft Bill should provide that any sum of money which is, for all intents and purposes, a 'bond' (including security deposits), be paid to a boarding house operator must be lodged with Renting Services.

22. As noted in Marrickville Legal Centre's submission, proprietors in both Queensland and Victoria are currently required to lodge bonds taken from residents with an independent statutory authority. If there is a dispute about the return of the bond, either the resident or the proprietor may apply to a low-cost tribunal to resolve the dispute. Without similar entitlements in NSW, proprietors will be able to continue to exploit boarding house residents by making significant profits "bond-harvesting", i.e keeping all or part of resident's bonds for unsubstantiated, dishonest and unjust reasons.

CASE STUDY

A group of international students living in a boarding house each had signed agreements requiring them to find new residents before they left. The agreement stated that if they did not find a satisfactory replacement resident as determined by the landlord, they would forfeit their bond of four weeks rent. The students woke up to find the dining room in the house in a state of demolition. They were told it was being converted into an extra bedroom so that the landlord could "earn" more rent. The students were upset as this was the only area outside of their bedrooms where they could eat and socialise. Almost all of the students (there were about a dozen or so) decided they would rather move than put up with the construction work and lose the amenity of their dining room. EATS advised the students that they may possibly be able to initiate action in the CTTT General Division, but that they would be unlikely to have any remedy in the Tenancy Division as they were likely to be categorised as boarders and lodgers. The students were concerned that they would be leaving the country relatively soon, and most did not want to initiate legal action. They set about finding new people to replace them. It came to light later that the landlord made incoming residents pay the bonds of the outgoing residents, and then collected another bond from the incoming residents, so was essentially guaranteed a full bond for each resident.

Compensation

23. The draft Bill provides that the Consumer, Trader and Tenancy Tribunal may resolve disputes about occupancy principles, and would give the Tribunal power to make orders to remedy a breach. However, the draft Bill would not allow the Tribunal to order the payment of compensation for a breach of the occupancy principles. This is contrary to fundamental principles of contract law, and weakens any purported benefits of the occupancy principles. The Tribunal should be able to order compensation where a party suffers loss because of a breach.

Less than 5 residents – compensation - bonds

Danny moved into a new place, paying two weeks bond and a week's rent in advance. There were less than five residents in the house, but there was a caretaker and the tenants signed what were probably lodging agreements.

Within a week, Danny was attacked by bedbugs. He raised this with the caretaker, who gave him some methylated spirits and a steamer and told him to fix the problem himself. Danny didn't have much money, and could not afford medication to deal with the bites or to take proper action to fix the problem. At this point there was a good chance that the bed bugs had infested his belongings, and his belongings would have required proper treatment, which he could not afford.

Danny was worried that he couldn't afford to move out, or put his stuff into storage. He felt trapped and was also concerned that if he didn't pay his rent the following week, he would be thrown out onto the street. Danny was advised that he may have some options in the CTTT General Division but would be unlikely to succeed in the Tenancy Division, as he would be classified as a boarder.

Rent and other Charges

24. The draft Bill lacks any provisions to deal with excessive rent increases, i.e. a landlord can raise the rent without restrictions, as long as eight weeks notice is given, and residents have no means to dispute the increase even in instances where the rent is increased excessively. Similarly, the Bill does not put a limit on the amount of bond or 'rent in advance' a landlord can request as a part of the agreement. Contrast this to the protections afforded to tenants under the *Residential Tenancies Act 2010*, where they have a legal mechanism to dispute excessive rent increases and they are legislatively assured that their bond will not exceed 4 weeks rent equivalent and rent in advance cannot exceed two weeks rent.

25. The inability of boarding house residents to dispute excessive rent increases means that landlords can circumvent the Occupancy Principle that entitles residents to know, "*how and why the occupancy may be terminated*". As the principle's intended purpose is to stop landlords issuing termination notices for unreasonable reasons, and hence potentially may also work to avert retaliatory terminations, if a landlord is able to increase the rent excessively, to an amount over and above market rent, residents who can't afford to pay the increase will inevitably have to move out.

26. Landlords may therefore increase rents to unreasonable levels simply as a means of evicting residents and can do so in retaliation for residents trying to assert their rights or for any number of other unreasonable grounds. This renders the occupancy principle entitling residents to know why and how their occupancy may be terminated (clause (30) (8)) largely toothless.

27. The draft Bill similarly fails address the issue of utility charges and penalty terms, which are commonly encountered within unlicensed boarding houses. It is common for contracts in unlicensed boarding houses to include terms requiring

residents to pay additional charges relating to utilities, particularly electricity. In some cases the charges bear no relation to the actual cost incurred by the proprietor and results in an exploitative profit to the proprietor. In many cases these practices are in contravention of the *Electricity Supply Act 1995*.

28. We follow the Tenants' Union's lead and submit that the draft Bill should provide, as an occupancy principle, that a proprietor may charge for use of a utility, provided that the amount charged is determined according to the cost to the proprietor of providing the utility and a reasonable measure or estimate of the resident's use of the utility, and that the resident is informed of the charging before entering the agreement.

CASE STUDY: Unfair charges and retaliatory eviction
Sally answered an ad on *Gumtree* for a room in a "boarding house". As a condition of moving in she had to pay out the outgoing resident's bond of $310 plus four weeks rent in advance to the landlord. There was no written agreement. The arrangement had some features of a residential tenancy, but the landlord claimed that she was a boarder as the premise was a "boarding house". The landlord then demanded that Sally pay him addition bond money and a further sum of money to compensate him for the "arrears" of the previous resident. Sally was advised by the landlord if she did not pay these sums of money within three hours she would be evicted. Sally was fearful as the landlord had been had been verbally abusive previously. Whilst she may have been able to argue that she was a tenant, Sally was concerned that she could be thrown out on the street.

Retaliatory Eviction

29. The draft Bill does not prevent proprietors from evicting residents in response to their trying to enforce the occupancy agreement. Without protection from retaliatory evictions the objects of the draft bill will be undermined. Residents will not be able to give effect to their entitlements without risking termination. Coupled with the inability of residents to seek compensation for breaches, this omission is critical.

30. In particular, the affects of s 18 (d), which empowers authorised inspectors to compel residents to give evidence against their landlords, could increase residents' exposure to many forms of retaliation including retaliatory eviction.

CASE STUDY: Lack of compensation – withdrawal of facilities – retaliatory eviction
Archie had lived in one room in a boarding house for 6 years, and always maintained good relations with the landlord. The landlord began renovating the kitchen without giving residents any notice. Archie was not happy that he would not be able to use the kitchen for two weeks and complained to the caretaker. The caretaker told Archie to be "careful what he said" and gave him a "first and final warning". Three days later, Archie received a notice of termination, giving him eight days to get out or the police would be called to evict him.

3. Content of the Exposure Bill

Chapter 1: Preliminary

Meaning of "registrable boarding house"

Clause (3) (b) excludes from the *Tier 1 boarding house* definition:

> *"Premises that are the subject of a residential tenancy agreement within the meaning of the Residential Tenancies Act 2010 or to which the Landlord and Tenant (Amendment) Act 1948 applies"*

31. This clause is problematic because there are many premises subject to a residential tenancy agreement between the owner and a head-tenant, who sublets all or part of the premises (sometimes without the owner knowing).

32. We support the concerns of the Tenants' Union of NSW submission that this boarding house proprietors could avail themselves of this exclusion, and step out of coverage of the draft Bill, by simply granting a residential tenancy agreement for the premises to an associated company or other person (or they could do it in reverse, transferring ownership of the premises to a company and then granting a residential tenancy agreement to themselves). They could then let the premises in lodgings and run it as they always have, but the tenancy agreement would shield them from the application of the provisions of the draft Bill.

33. **Recommendation:** Clause 5 (3)(b) should be deleted and a provision inserted in Chapter 3 to the effect that Chapter 3 does not apply to agreements under the Residential Tenancies Act 2010 or the Landlord and Tenant (Amendment) Act 1948.

Chapter 2 Registration of boarding houses

Part 3 Register

34. In its present terms, cl 14(1) does not require the publication of the name of the proprietor; we submit that it should. It should also require the publication of any disciplinary actions or successful prosecutions taken against the proprietor. This is for accountability reasons and because it is not possible to commence proceedings at the Consumer, Trader and Tenancy Tribunal without the proprietor's name.

35. ***Recommendation:*** *Allow public access to the name of the boarding house proprietor and public accountability through public recording of disciplinary actions.*

Part 4 Initial compliance investigations for registered boarding houses

36. Clauses (17) Powers of entry, (18) Inspections and investigations, (19) Notice of entry, (20) Use of force, (23) Recovery of cost of entry and inspection, (24) Compensation

37. This entire section fails to take into consideration the residents' peace, comfort and privacy and is inconsistent with the occupancy principles.

38. No reference is made to residents being given any notice of council compliance investigations despite the Bill proposing that an authorised person may:

> *"inspect the premises and any food, vehicle, article, matter or thing on the premises, and (b)*

for the purpose of an inspection: (i) open any ground and remove any flooring ….. opening, cutting into or pulling down of any work …….dig trenches, break up the soil and set up any posts, stakes or marks …. take samples or photographs in connection with any inspection."

39. Clause (19) requires council to *"give the proprietor or manager of the premises written notice of the intention to enter the premises"*, but does not require the proprietor or manager to then formally notify residents of the intended inspection.

40. Moreover, a proprietor or manager can consent to the entry of authorised persons without notice and without notifying residents. In some cases "reasonable force" may be used to gain entry to a premises". Once again no reference is made to the rights of residents.

41. Whilst we generally support the powers and obligations given by the draft Bill to local councils to inspect boarding houses, we believe that this power needs to be modified somewhat to ensure that the peace, comfort and privacy of the residents is not unnecessarily disrupted. It should not be assumed that a proprietor or manager will notify residents of a pending inspection by the local council and hence a separate notice to residents will help avoid alarm and possible conflict if inspectors enter residents' rooms.

42. ***Recommendation:*** *The requirement that the inspector give notice to the proprietor or manager should be extended to require that the inspector also notify the residents of the boarding house. This notice should be provided in writing unless the inspection is to be conducted at very short notice.*

Chapter 3 Occupancy principles for registrable boarding houses

43. We share the Tenants' Union of NSW's concerns at the relation, as provided by the draft Bill, between occupancy principles and occupancy agreements. The draft Bill provides that residents are 'entitled to be provided with accommodation in compliance with the occupancy principles' (cl 29(1)); this raises the question of the legal nature of the entitlement. In particular, we support the Tenants' Union's position that:

> *"there should be no question that their agreements will give effect to the principles, and that they can be held to their agreements, and that they may be liable to compensate for losses suffered as a result of breach'*

44. Clause (30) outlines the occupancy principles that must underpin all occupancy agreements. Our overriding concern is that occupancy principles should be universal and enforceable. In that context we make the following comments about the principles outlined in the draft Bill:

> *(2) A resident is entitled to live in premises that are:*
>
> *(a) reasonably clean, and*
>
> *(b) in a reasonable state of repair, and*
>
> *(c) reasonably secure.*

45. We support this principle.

> *(3) A resident is entitled to know the rules of the premises before moving in to the premises.*

46. We support this principle but believe that it could potentially allow for unreasonable and overly oppressive house rules.

Recommendation: The principle should be qualified and state that 'rules of the

premises must be reasonable'.

(4) A resident is entitled to the certainty of a written occupancy agreement if his or her residency continues for longer than 6 weeks.

47. The draft Bill does not set out a 'standard occupancy agreement' as a default when agreements are not put in writing resulting in unclear occupancy rights and obligations (e.g required notice periods and reasons for eviction), which are an inherent feature of many verbal agreements.

48. A standard agreement with minimum terms would not only allow for some clarity for occupants in the absence of a written agreement, but would also encourage proprietors to formalise agreements in writing right from the start of occupation.

49. **Recommendation:** Residents should be entitled to a written agreement at the time they enter into the agreement, regardless of the intended length of their residency.

(5) A resident is entitled to quiet enjoyment of the premises.

50. The term 'quiet enjoyment of the premises' refers to the ability of a resident to maintain tenure, i.e that no action compromising a resident's ability to live at the premises, and that may lead to residents moving out under duress or being evicted involuntarily, is allowed.

51. Breaches of this principle would include a proprietor/manager or agent threatening eviction, changing the locks or cutting off the water or electricity supply, i.e taking any action that interferes with the resident's ability to remain comfortably in the property.

52. The *Residential Tenancies Act 2010* has a similar clause but extends this right to include a right to 'reasonable peace, comfort and privacy' in using the premises (s.50) which refers to 'enjoyment' of the property throughout the period of occupation.

53. Breaches of reasonable peace, comfort and privacy can result from a proprietor/manager or agent disappointing, inconveniencing, disrupting, embarrassing etc the resident during the tenure. It therefore has more teeth than simply an entitlement of 'quiet enjoyment of the premises', which is likely only to arise when tenure is threatened or once tenure has been terminated.

Recommendation: The principle should also entitle a resident to peace, comfort and privacy.

(6) A proprietor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes.

54. We support this principle but we are concerned by the lack of any mention of notice periods for inspections or repairs.

55. Also, as mentioned above, there is also no requirement for a proprietor to inform residents of council inspections which allows the potential to seriously undermine residents' peace, comfort and privacy.

Recommendation: *The principle should set out notice periods for inspections and repairs and should be provided in writing unless urgent.*

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

56. We support the notice period but we are wary of the absence on any limits on the amount of the increase and the lack of any capacity to dispute excessive rent increases. We believe that this omission renders the principle potentially pointless and seriously weakens any rights inferred by occupancy principles as it could allow for "eviction by rent excessive increase".

57. **Recommendation:** The principle should include a limit on the amount by which the rent can be increased and that allow the resident to dispute the increase if it is excessive.

(8) A resident is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction.

58. We support this principle but contend that the greater of a minimal notice period is required – 2 weeks - or else the period of advance rent paid. A 'standard occupancy agreement' that can be used as a default when agreements are not put in writing should include minimum terms for eviction notices.

59. **Recommendation:** The principle should be modified to include a minimal notice period for eviction notices and that notices be in writing.

(9) A resident must not be evicted without reasonable notice.

Recommendation: The principle should be modified to include a minimal notice period for eviction notices and that notices be in writing.

(10) A proprietor and resident should try to resolve disputes using reasonable dispute resolution processes.

We support this principle.

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

60. We support this principle.

61. Clause (31) entitles proprietors and residents to apply to the Consumer, Trader and Tenancy Tribunal for dispute resolution of any occupancy principle dispute. Whilst we support this principle we are critical of the fact that the clause does not extend the right to allow for a claim of compensation if either party is found to have breached the agreement:

"Nothing in this section authorises the Tribunal to order the payment of damages or other compensation as a remedy for contravention of the occupancy principles". (Clause (31)(5)).

62. As noted earlier in our submission, this is contrary to fundamental principles of contract law, and weakens any purported benefits of the occupancy principles. The Tribunal should be able to order compensation where a party suffers loss because of a breach. In particular, residents who are summarily evicted and lose

personal possessions, and who are faced with serious hardship, should have a mechanism for getting compensation.

63. ***Recommendation:*** *The clause should be changed to allow for the Tribunal to be authorised to pay damages or other compensation to residents as a remedy for contraventions of occupancy agreements.*

Chapter 4 Residential centres for vulnerable persons

64. Clause (32) sets out the objects of the chapter and states that the provisions are designed to be consistent with Articles 5, 9, 12, 14, 15, 16, 19, 21, 22, 25, 26 and 28 of the *United Nations Convention on the Rights of Persons with Disabilities*.

65. However, it goes on to say that *"nothing in this section is intended to create or confer any legally enforceable obligations, rights or entitlements",* rendering it legally ineffectual.

66. ***Recommendation:*** *We support People With Disability's submission that S.32 (1) (b) should be amended to remove specific mention of specified Articles and read:*

> *(1) The objects of this Chapter are:*
>
> *(b) to enact provisions for this purpose that are consistent (to the extent that is reasonably practicable) with the purposes and principles expressed in the United Nations Convention on the Rights of Persons with Disabilities.*

67. Clause (34) sets out the definition of "vulnerable person" (as per s 3 of the *Youth and Community Services Act 1973*).

> *The person is deemed vulnerable if they have any one or more of the following conditions (Clause (34) (1) (a)):*
>
> *(i) an age related frailty,*
>
> *(ii) a mental illness within the meaning of the Mental Health Act 2007,*
>
> *(iii) 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, and*
>
> *(b) the condition is permanent or likely to be permanent, and*
>
> *(c) the condition results in the need for support, whether or not of an ongoing nature.*

68. We support this principle.

69. Clause (35) provides a definition of a "residential centre for vulnerable persons" as per the *Youth and Community Services Act. We support the definition but do not support the exclusion of* premises that are "the subject of a residential tenancy agreement within the meaning of the *Residential Tenancies Act 2010*".

70. As noted above for *Tier 1 boarding houses*, this clause is problematic because there are many premises let in lodgings that are subject to a residential tenancy agreement between the owner and a head-tenant, who does the lettings (sometimes without the owner knowing).

71. Boarding house proprietors could avail themselves of this exclusion, and step out of coverage of the draft Bill, just by granting a residential tenancy agreement for the premises to an associated company or other person (or they could do it in reverse, transferring ownership of the premises to a company and then granting a

residential tenancy agreement to themselves). They could then let the premises in lodgings and run it as they always have, but the tenancy agreement would shield them from the application of the provisions of the draft Bill.

72. ***Recommendation:*** *Clause 35 should be deleted and a provision inserted in Chapter 3 to the effect that Chapter 3 does not apply to agreements under the Residential Tenancies Act 2010 or the Landlord and Tenant (Amendment) Act 1948.*

73. Clause 38 allows the Director-General to exempt premises and persons

74. We do not believe that there are any valid circumstances that warrant the exemption of premises or persons.

75. ***Recommendation:*** *Clause 38 should be deleted.*

76. Clause 43 deals with investigations and inquiries in relation to licence applications and requires criminal record checks for applicants, managers and proposed staff members and, if requested, checks "of any other close associate of the applicant". The clause similarly allows for financial capacity checks of applicants and their associates.

77. We support this clause but we believe that the requirement should extend to include any volunteer, contractor or resident acting as a staff member (e.g as a caretaker), as proprietors may seek to avoid undertaking probity checks by declaring that the person in question is not technically an applicant, staff member or close associate.

78. ***Recommendation:*** *Amend clause to include a requirement that any volunteer, contractor or resident acting as a staff member be required to undertake a probity check. Moreover, that clause should include a provision that if there are changes to probity that the applicant is aware of, the applicant must notify the Director General immediately.*

79. Clause (44) deals with the Director-General's decisions in relation to licence applications and states that anyone deemed:

> *"not a suitable person to be involved in the management or operation of a residential centre for vulnerable persons, or .. the applicant does not have (or is unlikely to have) the financial capacity to operate the proposed licensed residential centre"*

be excluded from having a licence. The Bill moreover states that any party to a proposed centre cannot have been "*convicted of a serious offence*".

80. We support this clause.

81. Clause (46) allows for the appointment of substitute licensee. We strongly object to this clause and note that the transfer of licenses has to date been against Department of Family and Community Services, Ageing, Disability and Home Care policy. This policy should be reflected in the new legislation.

82. ***Recommendation:*** *Clause 46 should be deleted.*

83. Clause 49 deals with the duration of licences and allows for fixed and non fixed term licences without specifying how long licences will be in force.

84. ***Recommendation:*** *Clause 49 should be amended to allow a licence to be granted for a fixed term ONLY.*

Division 3 Powers of Entry

85. Clause 75 deals with powers of entry and inspection by *enforcement officers* without consent or warrant and allows for the following:

> *(3) "…an enforcement officer exercising functions under this section may be accompanied by one or more medical practitioners and any such medical practitioners may inspect the premises and observe, examine and speak with any person apparently residing at the premises".*

86. We support this clause.

87. Clause 76 deals with the powers of entry by *authorised service providers* without consent or warrant and allows for the following:

> *(4) "An authorised service provider must give the authorised operator or approved manager of the authorised residential centre at least 24 hours notice of the provider's intention to enter the centre".*

And :

> *(5) "When entering an authorised residential centre under this section, an authorised service provider must identify (or make a reasonable attempt to identify) himself or herself to the manager or any other person apparently in charge of the centre".*

88. We support this clause.

Division 5 Operation of residential centres for vulnerable persons

89. Clause 82 Notification of deaths, sexual assaults and absences in or from authorised residential centres

90. This clause requires proprietors to do the following:

> *" .. as soon as is reasonably possible after becoming aware of the following incidents, report the incident to the Director-General:*
>
> *(a) the death of a resident of the centre,*
>
> *(b) the sexual assault (or the making of an allegation of sexual assault) of a resident of the centre,*
>
> *(c) the absence of a resident of the centre for a period of more than 24 hours if the resident has not informed the manager of his or her whereabouts'.*

91. Whilst we support this clause in principle, we assert that the requirement be extended to include other serious incidents.

92. ***Recommendation:*** *Clause 82 should be amended to include a requirement to also report the following: 'self harm', any illness, injury or change in the health status of a resident which requires first aid and/or hospitalization, including admissions in relation to changes in a resident's mental health. The clause should also require the proprietor to refer the resident, if not already referred, to a health profession / advocate / social worker or equivalent.*

93. Clause (85) deals with the assessment of certain removal expenses resulting from unauthorised residential centres and allows for residents of unauthorised premises, who has had to move to another residence to be compensated for the removal expenses and other expenses incurred during the move.

94. Whilst we support the clause in principle, we believe that the right should also apply to residents of *Tier 1* boarding houses and that legal action be initiated at the Consumer Trader and Tenancy Tribunal rather than the Local Court, which is

less accessible, incurs a higher fee and is more time consuming than the Tribunal. The Local Court is also a more intimidating forum than the Tribunal, which is specifically designed to be less formal and allows applicants and respondents to act for themselves instead of depending on formal legal representation.

95. ***Recommendation:*** *Compensation should be extended to residents not covered by the Residential Tenancies Act 2010. Clause 85 should be amended to authorise the Tribunal to make determinations under this section.*

96. Clause 89 sets out regulations in relation to residential centres for vulnerable persons but is silent on the question of even the most basic occupational health and safety and duty of care principles.

97. ***Recommendation:*** *Clause 89 should be amended to include staff to resident ratio requirements, maximum capacity for boarding houses based on the ratio of facilities per resident and all residents to be accommodated in single bedrooms only unless they choose otherwise.*

98. Clause 89 also makes reference to 'Exemptions' in s 11:

> *"The regulations may make provision for or with respect to the following matters:*
>
> *(a) exempting (whether conditionally or unconditionally) specified residential centres for vulnerable persons, or residential centres for vulnerable persons of a specified class, from the requirement that they be authorised under this Chapter or from any other requirement imposed by or under this Chapter,*
>
> *(b) regulating the residential centres for vulnerable persons so exempted (including, without limitation, establishing standards to be met by those residential centres for vulnerable persons and inspections of such centres),*
>
> *(c) the making of applications for exemptions under section *38"*

99. We do not believe that there are any valid circumstances that warrant the exemption of any residential centres for vulnerable persons.

100. **Recommendation:** Clause 89 (11) should be deleted.

4. Analysis: Boarding House Bill 2012 road test Waverley, Woollahra and Randwick LGAs

101. As noted earlier in this submission, there are considerable overlaps between the types of rental housing in which non-standard agreements prevail. Different demographic groups, such as domestic students, international students and other lower income residents are found across the whole range.

102. EATS Tenancy Advice Workers categorise housing types by the type of agreement that prevails. Demographic characteristics of callers are collected, but are not required or verified before staff can deal with the problem at hand. EATS has been able to identify a sample of about 100 clients over the past twenty-eight months who have identified as either students or been assessed as living in accommodation with non-standard agreements. Many are international students. Most are low income earners.

103. We have further analysed this group to seek to identify the type of housing that the callers live in (this is not an exact science… the same premises may be identified by different callers as a share house or equally as a boarding house for example) and the type of tenure or agreement that staff assess them as living under – i.e. whether they are a tenant or if they are excluded from the coverage of the *Residential Tenancies Act 2010* by virtue of Section 10 and hence a boarder or lodger, or if their status cannot be determined definitively.

104. It is possible for example, for the same premises to contain tenants and sub-tenants who are excluded through section 10 of that Act, who are co-dependent in their relationships within the household and with the landlord, and who therefore have very different legal rights, responsibilities and access to legal remedies should problems arise.

105. EATS' core work is to advise renters of their legal options should problems arise in relation to their housing. For the purposes of this submission, we have considered the issues raised by callers above and the jurisdiction within which some resolution (not necessarily a favourable one) could possibly.

106. Each jurisdiction – the CTTT Tenancy Division, the CTTT General Division and the whichever future CTTT division dealing with matters under new Boarding Houses legislation currently has or will have its own exclusions, which for the purposes of this discussion can be categorised as follows:

Tenancy	Tenants who are party to a residential tenancy agreement and not: • Subtenants living together with a head tenant in a premises without a written agreement (section 10), OR • Boarders and lodgers OR • Residents of hotels, holiday lettings etc.
General	• Residents who have entered a contract with somebody in the business of supplying accommodation or housing etc.
Boarding Houses	• Residents of boarding houses where there is no Residential Tenancies Agreement AND • There are 5 or more residents in the premises AND • The Boarding House is registerable AND WHERE • The resident is not seeking orders for the payment of money such as for bond refunds, compensation, reimbursement etc.

107. At present, without applying the Boarding Houses Bill, only 10% of all the matters brought to this service by the sample outlined above could have been dealt with in the CTTT, in either the Tenancy or General Divisions. That such a small proportion of the substantial numbers of "marginal renters" has any access to effective legal avenues to resolve disputes associated with their housing represents a clear failure of past public policy.

108. In it's current form it appears that the Boarding Houses Bill will enable another 7% of matters raised by residents to be dealt with, and perhaps resolved (notwithstanding of course the possibility of retaliatory evictions or other retaliatory actions by landlords against residents taking matters before the CTTT).

109. There are a number of reasons that only such a small number of people could be helped under the proposed legislation. These have been dealt with at length in this and other submissions. The fundamental problems are the Exposure Draft's extremely narrow coverage due to its many exclusions, and the limited remedies it offers to residents. EATS' analysis of the sample of real matters reinforces the conclusions drawn from other data presented in this submission. For most boarders and lodgers and others excluded from the *Residential Tenancies Act 2010*, the draft Bill does not cover their particular housing scenarios and therefore keeps access to reasonable dispute resolution processes out of reach.

110. Only 20% of calls from this sample came from residents where the premises in which they resided was identified as having 5 or more residents.

111. The vast majority of residents contacting EATS for advice came from smaller premises (that may have previously housed traditional family units rather than non-related groups of people) where non-standard agreements were common.

112. Sixty-six per cent of callers from the sample were identified as living in private houses or units. Nineteen per cent were identified as living in boarding houses

and a number of those had less than five residents. The problems faced by residents living in smaller premises are just as real and equally as worthy of consideration by the proposed legislation as those premises with 5 or more residents.

113. Thirty-two per cent of callers from this group were identified by the tenant advocate as more than likely to be found to be a boarder or lodger. Another 25% were excluded from the protection of the *Residential Tenancies Act 2010* by Clause 10 of that Act, while the status of a further 35% was found to be inconclusive given the information provided.

114. Fifty-one % of all people from the cases surveyed were concerned about the refund of their bonds, which the Exposure Draft precludes the Tribunal from dealing with. Thirteen per cent of residents were seeking compensation – such as reimbursement of reservation fees, or the repayment of overpaid rent or other charges.

115. Other matters raised by residents that would similarly not be regulated by the Bill include; interference with residents' "peace, comfort and privacy" (24%), and termination with inadequate notice or lockouts (39%) matters upon which the draft Bill has either little to say or offers little in the way of effective relief.

116. Of all the people in the sample, 12 *may* have been able to have their problem dealt with by the CTTT Tenancy Division (only seven were identified as *probably* being tenants by the advocate), while 3 were advised that a General Division remedy was possible. Eleven may have been able to make applications to the CTTT under the proposed Boarding Houses Bill 2012. Thus a quarter of all people in the sample could possibly obtain some relief should the draft Bill become law, although, as noted above, only 17% of the issues raised could actually have been dealt with by the Tribunal in any jurisdiction if the Bill became law in its current form.

117. It should be noted that the sample includes a number of cases where residents were unable to identify their landlord – i.e where there were no contact details included on their agreements and they were only ever supplied with a first name and mobile telephone number for their landlord. These residents were judged to have no avenue for relief as they had no legally identifiable person against which they could initiate legal action, for any matter and in any jurisdiction.

5. Eastern Area Tenants' Service and Sydney's Eastern Suburbs

1. The area

118. The Australian Bureau of Statistic's (ABS) Sydney Eastern Suburbs statistical area corresponds with the municipalities of Waverley, Woollahra and Randwick, the catchment area of the Eastern Area Tenants' Service .

119. Due to high land prices, and its proximity to the University of NSW and closeness to the city, the Eastern Suburbs has a higher than average population of renters compared with the rest of Sydney. The 2011 census showed 40.8 per cent of households in the Eastern Suburbs rent their homes, a slight increase over 2006, and about the same as in the 2001 census.

120. Calculating from census data, around 93,000 people live in rented accommodation in the area. People living in rented households comprise around 37 per cent of the total population, and about one third of those over 18 years of age.

121. A comparison with greater Sydney in the 2011 census shows the following results:

	Eastern Suburbs	Greater Sydney
Households, % own outright	26.4	30.4
Households, % mortgage	22.0	34.8
Households, % renting	40.8	31.6
Shared housing as a % of the population	7.5	4.8

122. Within the population of renters within the Eastern Suburbs, the following characteristics present:

	Eastern Suburbs
% of rental households, family (including couple) households	51.4
% of rental households, group households	19.0
% of rental households individual households	30.8
Calculated % of total population, family households	24.8
Calculated % of total population, group. households	7.5
Calculated % of total population, individual households	4.9

123. The percentage of group households among renters and numbers of renters in group households is most probably understated, as 18 per cent of group households are shown as not being rented (1709 households). These households would most probably include a majority of members who are renting, albeit from a resident owner or owners, or where the tenure of the household was not known

by the tenants (not stated), which could include boarding house style accommodation.

124. The government's proposed *Boarding Houses Bill 2012* seeks to deal with problems experienced by residents of licenced and unlicenced "boarding houses" and of international students. Unfortunately, these groups are difficult to identify.

125. The Eastern Suburbs retains a residual low-income population which continues to reside in low-income accommodation, either in "micro tenancies" or boarding houses. Residents of boarding houses, or who are classified as boarders and lodgers have few accessible legal rights in relation to their accommodation or their landlord.

126. Many international students in particular may not show up in the census data, even though they are renting premises in the area, (i.e if they are in Australia for less than one year, and ticked "live overseas" for the place of usual residence.

127. It is known that the University of NSW has the second highest number of international students of all Australian universities, with 13,260 students from overseas, or 26.7 per cent of its total enrolments. There are also a large number of English language colleges around Bondi Junction, and the area is accessible by public transport to The University of Sydney, Macquarie University and University of Technology Sydney.

128. Census data shows a spike in 15 – 44 year old residents born in Northern Europe, South East Asia, North Asia and the Americas, corresponding with the most common age groups of international students (50% 20 – 24 years, 30% 25 – 29 years). The most popular source countries of international students are China, India, Brazil, and Malaysia. (ABS 4102.0 Australian Social Trends).

The experience of the Eastern Area Tenants' Service

129. Boarding houses are defined in the Bill as premises housing 5 or more people. The traditional sense of a boarding house is one where there are many people living, each with a separate, non-standard agreement with the landlord.

130. Traditionally, such premises probably did comprise more than 5 residents, and there are a reasonable number of such premises remaining in the Eastern Suburbs area. However the experience of the Eastern Area Tenants' Service is that the phenomenon of landlords maintaining premises where individual non-standard tenancy agreements apply to multiple occupants is widespread, and not restricted to premises with more or less than 5 residents. International students (as well as "backpackers") make up many of the residents in such premises that come to the attention of our service. In these premises, problems of deceptive conduct by landlords, routine retention of residents bonds by landlords, and unfair contract terms abound.

131. Of the renters who have contacted EATS for assistance from 1 January 2010 to 6 June 2012, 119 have been identified as unlikely to be covered either by the now repealed *Residential Tenancies Act 1987*or the *Residential Tenancies Act 2010*.

132. These represent about three per cent of all calls received by EATS over the period. The percentage has not changed since the introduction of the *Residential Tenancies Act 2010*.

133. The specific calls of renters who have been classified as international students, or residents of Multiple Occupancy Non Standard Occupancy Agreement Residences (MONSTARS) are analysed in Section 4 of the submission, together with the remedies that have been or could be available to them.

134. Of tenants who were recorded as students generally, the following concerns were expressed:

Enquiry	Percentage of callers recorded as students
Non Urgent repairs	21%
Termination: break fixed term early	21%
Rental Bond - dispute	18%
Termination: General advice	18%
Compensation claim by tenant	13%
Consumer Trader and Tenancy Tribunal	12%

135. Residents who are identified as on non-standard agreements are far more likely to contact EATS about threatened or actual evictions (physical removal as opposed to a lawful termination) than callers generally. 43 per cent of all callers who raised concerns about evictions between 1 January 2010 and 30 June 2012 were identified as from people on non-standard agreements.

136. Concerns raised by renters on non standard agreements in the period included:

Enquiry	Concerns among callers recorded as on non standard agreements
Bond	28%
Termination by landlord	20%
Termination general	10%
Compensation claim by tenant	9%
Breach of quiet enjoyment by landlord	8%
Termination – break early	6%
Repairs	6%
Termination by tenant	5%

137. Residents of share housing, particularly those without written residential tenancy agreements, form another group of renters who do not have accessible legal remedies to tenancy problems. The *Residential Tenancies Act 2010* removed share-housing occupants without written tenancy agreements from its coverage.

138. Between 1 January 2010 and 30 June 2012, EATS received 751 calls from share housing residents. This represents 17% of total calls, a number roughly congruent with the percentage of share households among all renters in our catchment. The percentage has not changed since the introduction of the *Residential Tenancies Act 2010*.

139. The major concerns that the occupants of share housing raised with us between 1 January 2010 and 30 June 2012 include:

Enquiry	Percentage of callers identified as group household members 1/1/2010 – 30/6/2012	Percentage of callers identified as group household members after 31/1/2011	All callers for the period 1/1/2010 – 30/6/2010
Repairs	17%	18%	21%
Termination	16%	16%	12%
General rights & responsibilities	14%	14%	14%
Compensation claim by tenant	14%	17%	10%
Termination – break agreement early	13%	14	10%
Rental Bond dispute	12%	13%	7%
Termination notice by landlord	10%	6%	9%
Rental Bond – general advice	9%	8%	7%
Consumer Trader & Tenancy Tribunal	9%	10%	8%
Jurisdiction – boarder/lodger	8%	8%	2%
Dispute with head tenant	6%	7%	2%
Dispute with co tenant	7%	6%	2%
Agreement general advice	7%	6%	9%

140. The all callers group has a noticeably higher number of calls about repairs, but considerably less about rental bond disputes than members of share houses. Renters in group housing also have a significantly higher number of concerns about breaking agreements early or jurisdictional questions than the all callers group. The main problem share housing renters face however, is that many do not have access to the remedies (i.e. through the Renting Services or the Tribunal) that are available to the general population of renters.

141. Many of these problems were canvassed by the government's inquiry into international students. International students are found in share housing, MONSTARS and other arrangements with non-standard agreements. It is impossible to address issues faced by international students separately from those faced by the general population in differing housing or tenure types.

6. Residents' views

142. Absent from many considerations of the Draft Bill are the concerns of renters themselves. This is difficult to obtain, probably because of the inherently personal nature of people's living conditions. Nevertheless, EATS sought to obtain some feedback on the issues that we believed were raised in the Inquiry into International Students and the subsequent Draft Bill.

143. EATS conducted an internet and paper survey of the concerns of renters who are not covered by the *Residential Tenancies Act 2010*. The surveys were presented to previous clients of EATS, on the internet through the EATS blog, and during interviews with residents of licenced and unlicenced boarding houses.

144. Around 50 surveys have been returned to EATS. While more feedback would have been preferred, the concerns raised by respondents overall were roughly in line with the experiences of renters in non-standard arrangements in our catchment. Despite the small number of responses, the higher level of concern among residents of licenced and unlicenced boarding houses for their personal safety and the security of their possessions is a most disturbing feature.

% of other housing type responses (10)	% of Share housing responses (22)	% of unlicenced boarding house responses (7)	% of Licenced boarding house responses (2)	Areas of concern	Percentage of all responses
50%	32%	86%	50%	Evicted with inadequate notice	54%
50%	32%	57%	50%	Getting the bond back	41%
50%	32%	57%	—	Cleanliness or repairs	34%
30%	23%	71%	—	Personal safety or security of belongings	44%
50%	23%	14%	—	Dispute resolution	34%

7. The gag

145. An indication that exploitative practices are becoming the norm in sections of the marginal accommodation industry is evidenced by a recent report we received from The University of Sydney's Students Representative Council (SRC). The SRC ran the following advertisement on "Gumtree", a major conduit for substandard and exploitative marginal rental accommodation:

> ***SYDNEY UNI STUDENTS***
>
> *Looking for somewhere to rent near uni? Take care.*
>
> *Do not give your landlord your passport or a copy. You can use your confirmation of enrolment and student card as proof of ID.*
>
> *Visit the accommodation to make sure it exists and you like it and you know what you are getting for your money (eg. Internet strength, heater, hot water pressure.)*
>
> *Read the contract before signing it. Know what the terms are to break the contract early, or to be kicked out.*
>
> *Keep a copy of the contract and get a receipt for all money paid.*
>
> *Document the condition of the accommodation (in writing and with photos) both at the start and end of your stay. Email it to yourself as proof of the date.*
>
> *Undergraduate students at the University of Sydney can ask for tenancy help at the SRC – 9660 5222 or email help@src.usyd.edu.au.*

Gumtree, presumably under pressure from other advertisers, pulled the ad and gave the following justification for doing so:

> *Your ad was deleted because this section is only for relevant Ads.*
>
> *Gumtree doesn't permit postings that are slanderous in nature or reporting potentially questionable ads, no matter how well intentioned.*
>
> *Please report rubbish ads via the "report ad" option located within each ad or contact us with ad details (ad id, email address of poster) and we'll take a look and take the appropriate action...*