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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY STANDING COMMITTEE
ON EDUCATION, TRAINING AND YOUTH AFFAIRS

Dear Ms Bresnan and Committee Members,

The Tenants' Union ACT welcomes the opportunity to make a submission on the Committee's *Inquiry into the accommodation needs of tertiary education students in the ACT*.

Our submission consists of responses to the Terms of Reference as well as points noting additional issues of concern.

Issues with student accommodation in all of its forms do represent a significant proportion of the work we do through our Tenants' Advice Service. The Tenants' Union ACT is very concerned about these emerging housing issues. It is crucial that responses are appropriate and do not result in the diminution of existing rights and protections for disadvantaged people in the ACT.

Yours sincerely

Deborah Pippen

Executive Officer

8 July 2011

For free advice on residential tenancy problems call the
Tenants' Advice Service Ph: 6247 2011
Mon– Fri 9.30am–1pm & 4.30pm–8pm Tues



1. Introduction

- 1.1.** The Tenants' Union ACT (TU) is one of the primary providers of information, advice and education to tenants and occupants in the ACT.
- 1.2.** The Tenants' Union membership consists of private, public and community housing tenants, occupants of other forms of accommodation as well as individuals interested in tenancy issues. The TU represents people renting in the ACT (private, public, community), works to promote the rights and interests of tenants and occupants, and undertakes housing and tenancy and occupancy-related projects.
- 1.3.** The TU is a community legal centre providing tenancy advice, information and referral as well as limited case work and representation at ACAT through the Tenants' Advice Service (TAS). Our service is funded through the Department of Justice and Community Safety by a proportion of the interest earned from bonds lodged with the Office of Rental Bonds.
- 1.4.** In the last year (2009/10) our service assisted 2,808 clients, undertook 4,187 advice activities (over 47,000 over our 16 year history) and our new legal practice ran twenty cases. The TU also undertakes community legal education - producing information (website, fact sheets and newsletters), conducting workshops and presentations and promoting tenant participation. The TU uses the above work and networks as a basis for undertaking law reform activities aimed at improving tenants' and occupants' rights and their renting experiences.
- 1.5.** In addition to this we have direct contact with a significant number of people renting through a variety of other forums including community legal education activities such as presentations, workshops, information stalls, and community meetings. Furthermore we extend our contact by participating in a range of networks and forums with community service workers and providers who have contact with people renting.
- 1.6.** The consequence of this experience and range of services, and close links with related organisations, is extensive knowledge of tenancy and housing issues in the ACT. Accordingly the TU is providing a submission responding to issues identified as being of particular relevance to tenants in the ACT, and therefore the organisation. In our submission we have addressed the Terms of Reference and raised some additional issues.
- 1.7.** As noted in our cover letter the TU, has direct contact with a significant number of students regarding their accommodation issues through our advice service, TAS. While our client statistics do not specifically identify students anecdotal reports from advice workers as well as a quick search of advice records show a considerable number of people identified as students within the records themselves, allowing us to access some case studies. The information and case studies referred to here are from the last 12 months. When considering housing our prime concern is the protection of rights within options that are affordable, accessible, safe, secure and appropriate.
- 1.8.** We also refer the Committee to two Attachments directly related to the issues of concern to this Committee:
 - 1.1.1.1.** Attachment 1 - our December 2010 submission to the Chief Minister's Review of Regulation of Boarding Style Accommodation in the ACT. The submission covers

issues with types of accommodation often accessed by students. It raises issues and makes several recommendations. We are not aware of the steps that have been taken in relation to these issues to date.

- 1.1.1.2. Attachment 2 – and an excerpt from the Report on the Welfare of International Students by the Senate Standing Committee on Education, Employment & Workplace Relations.

2. Terms of Reference

2.1. Current accommodation options for students enrolled in ACT tertiary education institutions providing higher education and VET programs;

There is a very wide range of accommodation options being accessed by students, sometimes by choice and also significantly because there are no other options available to them. These options vary considerably in terms of regulation and protections, security, amenity and affordability. The TAS advises students in the following situations:

Tenancies –

Students have the most protection and security in their accommodation when covered as tenants by the Residential Tenancies Act 1997 (RTA). Each of the types identified below present different forms of protection and responsibilities for the individuals.

Shared tenancies

- General (what many people would see as most common) shared tenancy accommodation in houses and units with people having own room and sharing common areas – variety of situations:
 - 2 or more co-tenants all sharing responsibility for the tenancy
 - 2 or more co-tenants liable for the tenancy who then sub-let to another or others
 - One head tenant with other people subletting with permission of landlord
- Shared tenancies where the landlord lives in the property
- Other forms of shared tenancy accommodation:
 - Where a landlord has separate tenancy agreements with tenants in a residential property where the number of bedrooms equals the number of tenants
 - A landlord has converted another property to shared accommodation, an example is a building that was previously a veterinary clinic with 10 bedrooms and 10 tenants
 - A company has a building that offers student accommodation where there are secure rooms and common areas
 - A landlord has separate tenancy agreements and has made more bedrooms in a residential building by splitting bedrooms by inserting extra walls or just requiring tenants to share rooms
 - Where an individual takes on several tenancy agreements and then sub-lets to people sharing the property

Individual tenancies

Bedsits or flats either with private landlords, managed by real estate agents, or companies providing accommodation to students and not directly linked to a tertiary

institution – eg Academie House owned by Student Accommodation Australia. Also granny flats in backyards with either other tenants or the landlord living in the house.

Occupancies

This is rental accommodation where the occupants are covered by the RTA although not recognised as tenants. They have very few rights and are protected only by nine very broad occupancy principles. This type of tenure can provide flexibility however it does also provide very poor outcomes for many people (see Attachment 2 for the TU submission relating to some of these issues). Examples of all these can be seen on accommodation websites, both university and general (eg Allhomes). Types of occupancies include:

- Shared accommodation with head tenants and owners of the property, this is where the grantor maintains significant control over the occupants with house rules. Individual rooms or shared rooms.
- Boarders, lodgers and students in homestays
- Owner's splitting buildings into smaller units or houses by adding extra walls to house seven or more people in three bedroom houses
- On campus student accommodation either with or without services, and independent or shared living arrangements
- Caravans in backyards
- Where an individual leases several separate properties and finds others to live in them, charging rent that doesn't relate to the actual rent on the properties

2.2. Models used in other jurisdictions to meet the accommodation needs of tertiary education students;

Unilodge and similar student accommodation companies operate in other jurisdictions. To our knowledge all of the other types of accommodations also exist in other jurisdictions. Student accommodation issues identified in a national context are provided in Attachment 2.

2.3. Student experiences of current accommodation options in the ACT, including the experiences of local, interstate and international students;

The TU and TAS have direct contact with students - local, interstate and international. As to be expected the issues related are negative experiences as they seek assistance to resolve them.

On the whole most common problems occur because of lack of experience and knowledge, which is quite often exploited to students' disadvantage. Shared accommodation also presents complex legal problems as well as the potential for difficult interpersonal dynamics. International students have added difficulties because of problems with language and cultural differences and different expectations about the existence/extent of regulatory protections. Occupancies present additional difficulties for many students because of the very limited protections available to them under the RTA.

The case studies presented below provide an overview of some issues from the last 12 months.

Tenancies

While many common tenancy problems are the result of a breach of the RTA, even when tenants are informed of their rights, they are often hesitant to assert them for fear of retaliation. Such fears extend from concerns about making their time in the tenancy difficult, the risk of being unable to find accommodation elsewhere due to bad references or database listing, up to the danger of eviction, lawful or otherwise. All of these are fears are plausible to some extent because of issues with the RTA.

Examples from TAS:

- Fixed term tenancy sharing with the landlord when situation deteriorates into threats and violence:
 - o A is an interstate student with no local family. Electricity and internet were advertised as included in the rent. The landlord (LL) would not let them use the clothes dryer or turn the heaters on in winter. He also repeatedly cut their internet off.
 - o B knew that the LL and his partner (who also lived there) had entered her room when she was out – partner said she thought T had moved out because she had hardly anything in her room.
- Students being unaware of tenancy legislation and protections – paying cash, no records, unlawful increases in rent, penalties and extra bonds, unlawful evictions
 - o C is an international student living in unit in Braddon with a fixed term tenancy agreement. The landlord (LL) had split building into smaller self contained units, no separate metering
 - o C was away for 3 mths and got bill from LL for \$300, he questioned this and LL gave him a notice to vacate requiring him to vacate in 2 weeks, no grounds provided.
 - o C has not taken action to move as he needs more time. LL is not answering calls. T doesn't have address for LL, only phone number and sends sms.
 - o D is an ANU international student, found accommodation through a website before arriving.
 - o Accommodation is a room in a 3 bdrm house in Gungahlin. D shares the room with another girl who was living there when she moved in. There are 6 other people in the house. Her agreement is with a couple who have the tenancy agreement. She knows nothing about the landlord and whether there is an agent.
 - o D moved in June. Bond of \$440 was paid by EFT. No written agreement although there was a verbal agreement that she would stay until 19 December.
 - o D has a key to the house. Rent of \$220 is paid fortnightly. She was told this covered water and other bills. Since she moved in she has been required to pay \$168 towards her share of bills.
 - o The rent was increased by \$10 per week at the last rent payment. No notice was given of the increase. She paid the higher amount (extra \$20).
- Companies providing students off-campus accommodation, issues with fees:
 - o E applied for student accommodation. She paid a \$150 non-refundable deposit to apply and secure a spot, and paid \$400 as well. The written terms that she has a copy of say that she can withdraw her application within 2 weeks of paying the amount. She didn't sign an agreement for a room, just the application.
 - o She withdrew her application within the 2 weeks, verbally and by sending an email to the email address they listed. She didn't receive a response to the email. On the phone, they said she wasn't entitled to have the \$400 refunded because she hadn't withdrawn soon enough.
- Sub-tenancies
 - o F found place in Latham after someone gave her a phone number when she was unsuccessfully trying for a room on student residences.
 - o There were two girls in the house (G and H), they said the rent was \$190 per week and that it covered utilities. They required a bond and did not provide a receipt. They do not provide receipts for rent payments.
 - o F has had no contact with LL or agent, doesn't know if there is agent or just LL.
 - o G produced two documents called Rules and Regulations and told F to sign them or move out
 - o She also said that the electricity bill was higher and F had to pay more rent.
 - o F asked about whether she is on the lease and was told she is on the lease as a guest but not a person who lives in the house. She is unaware of whether she has any rights in the house.

- The following are statements from J, an international student living in a caravan in a backyard:
 - o *"It is very stressful for people that you don't know to come to your premises one morning and tell you that you will have to move at 5pm that day. It is very stressful because it is so hard to get accommodation in Canberra."*
 - o *"In the morning (about 9am) some guys came and we were told we had to leave at 5pm. I think the men were from Gungahlin. At 5pm came again and told us to take luggage and come with them and they take us to Gungahlin and we fill out forms. We were given accommodation for one night at Formula 1 on Federal Highway. We were then advised that we would be given short term accommodation at youth hostel in Tuggeranong. We rejected that as it was too far from college and we don't have cars. We were told that was our only choice."*

Occupancies

As already noted there are a significant range of types of occupancies. Issues related to occupancies are detailed in our submission at Attachment 1. In general the Occupancy Principles do not provide adequate protections for people who are often very vulnerable and not able to assert themselves. The lack of standard terms for occupancies leads to confusion at best and significant hardship at worst. A common problem across all occupancies for students is recovering any bond paid. Unlike with tenancy agreements, bonds collected under an occupancy agreement are not required to be lodged with the Office of Rental Bonds. Problems occur where grantors are aware that students will be leaving the ACT and delay repaying funds. Obviously this issue is of particular concern in regards to international students who may be leaving the country altogether on a strict timeframe and will therefore often be forced to simply surrender money they are legally entitled to have refunded to them.

Examples from TAS

- In residential properties:
 - o K signed an occupancy agreement in December 2009, with a fixed term lasting till March 2011.
 - o K's occupancy agreement required that four weeks' notice be given of intention to vacate, and that after termination the occupant has to pay 20% of the rent over the period remaining on the agreement. Such requirements could not apply to a tenancy agreement.
 - o K was assaulted by one of the other occupants at the property, and filed a police report about it—the police told her it was up to her whether she wanted to pursue the matter further. K asked the LL to get the occupant who assaulted her to leave, LL replied that he 'wasn't a babysitter' and that K would have to take the matter further with the police before LL would take any action, and that if K moved out before the end of her agreement she would have to pay the 20% of rent until March .
 - o K didn't want to press charges while living at the property because she was concerned about retaliation as her seven year old sister is also living with her.
 - o K paid \$950 in bond, but doesn't know if it was lodged.
 - o K asked the LL what the situation would be if she found someone to move into her room—the LL response was that in that case C would have to pay 15% of the rent over the remaining period of her agreement.
- On campus accommodation. Issues with penalties, fees and changing rules and agreements
 - o K received an email from an ANU Hall of residence offering her place. On the website it advertised agreements of differing length.
 - o She then received an email saying that agreements will now only be offered to 20 Dec, also that the rules have changed because of new funding and new eligibility requirements.

- She wrote to them about the problem that she will be going home before 20 Dec and they responded that she can ask for academic approval for “breaking her agreement” and will pay a penalty.
 - She has not signed anything or paid any money and is desperate for accommodation but concerned about them changing the rules in this way.
- Homestays are occupancies and not regulated any further. Many students in homestay arrangements have no knowledge that they are covered by any tenancy legislation or able to access independent assistance and dispute resolution.

2.4. Strategies adopted by ACT tertiary education institutions to meet student accommodation and welfare needs;

Regardless of what strategies are being adopted currently there is insufficient access to information about rights and protections – all providers of accommodation should have clear information about application processes, agreements, relevant legislation and where to go for help. Institutions are in the position to require these basic protections for their students. In addition institutions should be setting standards for safe, affordable, accessible secure accommodation. This should include working with the ACT Government to develop fair standard accommodation agreements across the sector to ensure consistency.

2.5. Anticipated demand for student accommodation in the ACT in light of Commonwealth and Territory Governments' priorities for the tertiary education sector;

N/A

2.6. Coordination and planning measures adopted by the ACT Government to meet anticipated needs in student accommodation;

N/A

2.7. General factors influencing availability and access to appropriate accommodation for the core demographic group (18-25 year olds);

Discrimination, lack of knowledge and experience with regard rights and responsibilities under contractual arrangements, and being taken advantage of, lack of references and support.

2.8. Any other relevant matter.

While we have addressed issues relating to rights and protections throughout our submission it is of concern to the TU that this was not an issue specified in the Terms of Reference.

Attachment 1: TUACTION Submission to the ACT Chief Minister's Department discussion paper: *Issues and options for regulating boarding style accommodation in the Australian Capital Territory.*

Introduction

The TUACTION, along with other community legal centres, was involved with the July 2010 [mass eviction] issue from the time that the tenants and occupants were evicted. Our service had initial contact with many of the individuals and along with Welfare Rights and Legal Centre, has assisted some of them to resolve some of the issues. We have participated in meetings with different government agencies in relation to these issues and the way the matter was managed.

2. Current ACT legislative framework

While we have addressed the questions later in the paper relating to definitions we believe the issue of, and confusion regarding, renting and housing terms is fundamental to the adequacy of the legislative framework. Without a clear and universal understanding it is not possible to accurately identify issues and develop appropriate responses. We have therefore provided some earlier discussion of these issues before considering other elements raised in the paper.

- 2.1. It is the ACT Tenants' Union view that the current legislative and regulatory arrangements for "boarding style" accommodation in the ACT are inadequate
- 2.2. The serious overcrowding and the substandard conditions (including life threatening conditions in some of the premises) which existed in the five suburban houses (hereinafter referred to as 'the houses') where some of the residents had been living since December 2008 demonstrates that there is not adequate protection.
- 2.3. 'Boarding style accommodation' as used in the paper is a very broad term with 'boarding house' having different meanings under the different legislative instruments identified at page 4 of the paper. The terms: 'boarding style accommodation', 'boarding house' and 'boarders' are not defined in the Residential Tenancies Act.
- 2.4. Whilst those living at the houses were considered boarders under the Public Health Act, they may not be considered boarders for the purposes of the Residential Tenancy Act which does not define the term. At common law a boarder is a person who lives in the house of another and receives food and lodging in return for payment of a fixed regular sum of money: *Noblett & Mansfield v Manley* [1952] SASR 155. It is uncertain whether the residents of the houses would be considered to be tenants or occupants under the Residential Tenancies Act because of the inadequacy of the definitions of tenancy agreement and occupancy agreement.
- 2.5. Factors that might suggest that a person is a boarder or lodger (and hence occupant) are where the owner or an employee or representative of the owner lives in the premises, where the owner provides services such as cooking, laundry, cleaning, supervision or security, and where the owner maintains control or mastery over the premises. These factors could be incorporated into legislative definitions of occupancy. Another way to approach a definition of occupancy would be to consider the circumstances where standard tenancy terms are inappropriate because more flexibility is needed for both parties.
- 2.6. There appears to be confusion in the paper regarding tenants/tenancy agreements and occupants/occupancy agreements. The paper states at page 4 that "under the Residential Tenancies Act 1997, lessors and tenants can enter into either a tenancy or occupancy agreement." Parties who enter into a tenancy agreement are known as lessors and tenants and parties who enter into an occupancy agreement are known as grantors and occupants.
- 2.7. The paper goes on to state that "a tenancy agreement confers a right to the use of the whole property, whereas an occupancy agreement may only confer the right of use to a part of the

property such as a room, and right of access to shared facilities.” In fact under the Residential Tenancies Act the right to occupy in both a tenancy and occupancy agreement may be exclusive or not exclusive; and given with a right to use facilities (s 6a(3) and s 71C(3)).

- 2.8. It is noted that the definitions of tenancy and occupancy agreement under the Residential Tenancies Act are identical other than the definition of an occupancy agreement in s 71C stating that an agreement is an occupancy agreement if the agreement is not a residential tenancy agreement and that the person given the right to occupy the premises may be a boarder or lodger. The definitions of tenancy agreements and occupancy agreements contained in the Residential Tenancies Act are inadequate.
- 2.9. When occupancy agreements were introduced to the Residential Tenancies Act, the expectation was to extend coverage of the Act to previously excluded arrangements. However, the provisions have been misused to evade the minimum standards provided in tenancies, in circumstances where the standard tenancy terms are perfectly adequate. This introduces an element of market failure, because providers of occupancy agreements who misuse the legislation in this way by purporting to grant occupancy agreements gain a competitive advantage over landlords with the same kind of accommodation who provide tenancy agreements. This misuse occurs because of the inadequacy of the definitions of occupants, and also because the Act does not prevent the creation of completely one-sided exploitative occupancy agreements. A primary consideration in defining occupancy must be to prevent the misuse of occupancy agreements to undermine tenancy rights. The definition should not provide a checklist of steps for grantors to take to evade the tenancy terms, yet it should be clear enough that it enables tenants and occupants to work out what their status is, and consequently, what their rights and obligations are.
- 2.10. The paper states that the occupancy principles “encompass most situations: premises are to be reasonably clean, in a reasonable state of repair and reasonably secure” but then goes on to state that “while the Act does prescribe minimum standards of rental accommodation, it does not attempt to prescribe specific standards for specific forms of occupancy...” This appears to be contradictory and it is submitted that the occupancy principles do not encompass most situations. For example, there is no express requirement for premises to be habitable and no restriction on overcrowding. Moreover, for the current protections to have any real value, arbitrary or retaliatory evictions and excessive rent increases need to be prohibited.

3. Questions:

3.1. Does this regime adequately protect tenants of **boarding style** accommodations?

No. As noted above RTA protection for occupants not adequate. We are answering this on the basis that this question relates to “occupants” of this accommodation, not “tenants”. Some areas that need to be addressed:

Residential Tenancies Act 1997 -

- Lack of clarity in definition of occupants especially relating to boarders and lodgers, and “boarding style accommodation”
- Lack of penalties for breaches
- Bond lodgement is not mandatory and consequently many people have problems having their bonds returned when they leave
- Insufficient protection from retaliatory action should an occupant seek to enforce their existing rights. Retaliatory action could include eviction, punitive increases to fees or rent for particular individuals, or onerous changes to house rules.

Public Health Act 1997 -

- Issue of definition. The houses in question were not boarding houses
- No public register
- Power for inspections and penalties

ACT Planning legislation -

- Again limited to boarding houses and back to issue of definitions
- There are offences and penalties

Building Act (Division 7.1) –

- Definition of boarding house – max 12 unrelated
- Power of entry and require buildings to be vacated

Overall there is obviously regulation of boarding houses, this could be clarified and steps must be taken to ensure the regulations are consistent and also strengthened. However the issue is that the regulation is not relating to the “boarding-style” properties this discussion paper is responding to. There are very few boarding houses in the ACT and while introducing some accommodation of this type may address some needs for shorter term accommodation it does not address the types of accommodation in question.

It is also crucial to be clear that there are instances where there is share housing and the people in the housing are tenants and are covered by the Standard Residential Tenancy Terms. These people have the same protection as other tenants, and while there are issues with these protections they are most appropriately dealt with by a review of the RTA. It is of great importance that any changes do not undermine those protections and that tenants in share housing are not penalised for being in shared accommodation.

This share accommodation ranges from more traditional share houses in their different forms: co-tenancies, head-tenancies and sub-tenancies to each person having separate tenancy agreements. In many cases it is clearer and protections greater if there are individual tenancy agreements. As our case study shows, there are examples of shared accommodation providing full tenancy protection in a shared property that could on the face of it fit within the definitions of this “boarding style” accommodation. It was because the landlord used tenancy agreements that the people living in the property were able to exercise tenancy rights that would not have been available if they were occupants.

Case Study –

- TAS clients are in a large furnished property with 10 bedrooms, separate tenancy agreements; some of the rooms were shared. The property has 3 bathrooms, one small kitchen. They pay \$185 per week each and this includes electricity and water. Premises were previously a vet clinic, there is no separate metering and the real estate agent organises cleaning of common areas.
- All tenants are international students. Many signed up sight unseen due to the student accommodation shortage. They were told by the agent that no bond is payable but they have to pay two months rent in advance.
- Initial contact with TAS regarding various issues including the agent refusing to supply advertised fixtures including dishwasher, pool table, heating, cooling and internet
- The caller was advised that the requirement of two months rent in advance is a breach of the standard terms and that the landlord has an obligation to provide fixtures and facilities and compensate the tenants for failure to do so.
- A second tenant sought advice relating to a letter from the agent to all tenants requiring them to agree to change of tenancy agreement to the effect that they each pay an extra \$20 per week for electricity because the landlord decided the electricity costs are too high.
- TAS was able to advise that under the standard residential tenancy terms a landlord cannot require a tenant to pay for electricity unless the property is separately metered. This protection is not available to occupants.

3.2. Does this regulatory system support a positive investment environment in this sector?

Yes it does simply because it does not impose any real limitations on providers of this accommodation, this is why the problem has arisen and is growing. The associated question is what sector should grow - boarding houses or “boarding style”. There has been little to no investment in boarding houses in ACT and it is a sector that is diminishing in other jurisdictions largely because it is seen as not profitable.

“Boarding style” is obviously growing and there is no way to accurately measure it because it is not reported. It is also obvious that it is profitable as noted by the example above where a property owner can be receiving between \$2,000 and \$4,000 a week on one property. The issue for our community is whether this should continue at the expense of the disadvantaged people living in these properties, and the quick answer is that it should not.

3.3. Are measures required to improve ‘navigability’ and understanding of the legislation for both “landlords” and “occupants”?

There definitely needs to be consistency and clarity between the various regulations for occupants and grantors. Although any education regarding the legislation should not result in landlords deciding to try to class their tenants as occupants thereby diminishing their rights.

4. Boarding style accommodation legislation in Australia

4.1. Are there laws or regulations not covered in this summary that could be considered in the ACT?

We would need more time to be able to adequately research this. We would be able to refer back to the national Tenants' Union network for assistance with this question, as well as current research being undertaken by National Shelter on marginal renters across Australia.

4.2. What elements of these laws are missing in the ACT which might be considered for adoption into the ACT regulatory regime?

Definitions, standards, limits regarding overcrowding, penalties and enforcement issues. It is useful to look to the Victorian report because it is responding to same issue. It is noted that the Victorian Government formed a taskforce to look at issue, and the taskforce included community stakeholders.

5. Definition of boarding style accommodation

We have addressed this as a matter of highest priority in dealing with these issues and discussed at length at the start of our responses. Specific questions from the paper are addressed below.

5.1. Should the definition of boarding style accommodation in the ACT be amended?

To our knowledge there is no definition of “boarding style accommodation”. There should be a clear definition however it is a complex matter, as we have already noted and extreme care must be taken to ensure that rights of people in existing forms of share housing are not diminished.

5.2. How should the ACT define boarding style accommodation, both from a policy perspective and legislatively?

As noted above it must not diminish protections that exist for tenants in share house situations. Classing all shared housing as “boarding style” diminishes those rights. Tying the definition to numbers of people in the property could result in such diminution. Linking to the length of occupation may be useful and could be used to confer tenancy rights to longer term forms of accommodation. An associated issue is the desire for some occupants for flexibility such as short notice periods.

6. Overcrowding

6.1. Should the ACT, in policy or legislative terms, define circumstances considered to be overcrowding?

Yes, this is a way to provide protection and avoid the “slum” conditions. Overcrowding is a health and safety issue and therefore also a liability issue for providers of accommodation.

6.2. If the ACT regulates overcrowding, how prescriptive should this be?

Should reflect examples provided in the discussion paper – single occupants over 18 should have separate bedroom, couples can share, as well as NT Public Health Regulations - Maximum

number per bedroom, and (s39), s 47 – prohibiting the use of sitting rooms and other common rooms as bedrooms.

There should be the possibility of exemptions allowing for recognition of different cultural groups etc as long as there are no health and safety issues. It would have to be the occupant's initiative, with no incentive or benefit to the operator for overcrowding, and with a body that maintains some universal limits.

A cap on the total amount of rent that can be charged for premises as a whole would remove the incentive for overcrowding. Whilst boarding style accommodation may be a source of low cost accommodation, the owners of the "five suburban houses" were making far more than the market rent of the premises.

7. Regulation

7.1. Which elements of the current regulatory system should be maintained?

With the qualification that we have not had the time to extensively research all elements of the current system, all elements should be maintained. The need is for clarification and strengthening of the existing systems.

7.2. Which elements would benefit from further consideration?

Greater protection could encourage occupants to self-report dangerous accommodation to government bodies, reducing surveillance costs, and could encourage cooperation in government proceedings taken against the operator.

Limits on retaliatory eviction, and limiting how the terms of the agreement can be changed eg house rules, what fees can be charged and how rent can be increased could help. Where multiple occupants share a dwelling, there could be rules preventing a rent increase or a fee being applied to one occupant if it is not applied to other occupants, for example.

Consideration should be given to Victorian recommendations, in particular -

Recommendation 1- State Government to immediately establish additional legislated minimum standards for rooming houses, including:

- locks on
- toilet and bathroom doors
- fire-safe locks on bedroom doors
- provision of a working double power outlets in each bedroom
- window coverings in each bedroom
- fire evacuation plan
- power overload protection

Recommendation 2- In conjunction with other recommended reforms, State Government to phase in the introduction of other additional standards after a new regulatory system is in place, with consideration given to including as minimum standards:

- periodic gas and electrical safety checks
- appliance upgrades to higher levels of water and energy efficiency
- installation of hard wired smoke detectors in each habitable room
- minimum common areas – living area and kitchen/meals area

Recommendation 4 - State Government to include references into the Residential Tenancies Act 1997 to identify other relevant legislation regarding rooming house standards with which compliance is required e.g. Health Act 1958, Building Code of Australia, etc., with a view to providing rooming house operators access to all necessary standards in one identifiable legislation.

Recommendation 9 - State Government consider legislative change to allow for third party action to be taken under the Residential Tenancies Act 1997 in relation to rooming house issues where a representative body can establish standing before Victorian Civil and Administrative Tribunal.

7.3. Is the ACT system of regulations adequate? To protect tenants? To encourage investment?

The issue of protection of tenants is not an issue for consideration in this context in light of the impending review of the RTA. The TU has views in relation what changes are needed to provide adequate protection for tenants. In terms of protection of occupants of "boarding style" accommodation it has already been noted that it is not adequate.

The issue of regulations encouraging or discouraging investment must be thoroughly and rigorously assessed. There has been some research regarding the impact of regulations on decisions of property investors¹ and this must be taken into account. Additionally the role of government in protecting the rights most disadvantaged people in the community in relation to accessing and sustaining safe and affordable housing must be given proper weight in light of the failure of the market to do so. It is obvious that the lack of regulations and protections has resulted in the rise of this style of accommodation that has been deemed unacceptable by the ACT community and Government.

Regulation must be developed within context of who is in this accommodation – generally most disadvantaged and least able to take steps to enforce their existing rights. This **must** be considered when looking to issues of “balance” and “opportunities” for grantors.

7.4. Which is preferred - a highly prescriptive model (such as Victoria) or less regulation?

The level of regulation and enforcement is not sufficient as demonstrated by the July actions.

Regulation needs to be more extensive and to expand to encompass these new arrangements.

7.5. Could minimum standards for boarding style accommodation be defined in the ACT?

Yes. There has been extensive work in other jurisdictions such as Victoria and Queensland in relation to standards. If this work is undertaken in the ACT it must consider equity issues for tenants.

7.6. If the system is seen as inhibiting understanding of rights and obligations, what adjustments might be considered?

Additional references in RTA as per the Victorian recommendations. Information/education campaigns.

8. Registration and licensing

8.1. Would a publicly available register of licenses assist in the regulation of boarding style accommodation?

Yes.

8.2. If a register was developed, how could this best be accessed?

Through the Office of Regulatory Services.

9. Enforcement powers

9.1. Are there options available to improve the connection across regulatory arrangements?

Yes, as noted in discussion paper.

9.2. Which licensing requirements could be linked to improve connections?

As noted in discussion paper.

10. Surveillance

10.1. How can obstacles to the enforcement of minimum standards, if adopted, be overcome?

Since the purpose of regulation is to prevent people from living in unsafe conditions, it is not enough to evict people from unsafe accommodation without also ensuring that they have the support they need to obtain safer accommodation. If occupants were assured of receiving this support, meaning if the government had an adequate, transparent, publicised support process for evicted occupants, this would encourage self-reporting of dangerous accommodation by occupants, improving the safety of the occupants in them, there needs to be a process that ensures that occupants' safety is increased when they are evicted.

¹ Tim Seelig, Alice Thompson, Terry Burke, Simon Pinnegar, Sean McNelis and Alan Morris, "Understanding what motivates households to become and remain investors in the private rental market", Australian Housing and Urban Research Institute, March 2009, AHURI Final Report No. 130

Occupants face a range of short-term expenses when evicted such as moving and storage costs, hotel accommodation and time off work. Providing financial assistance to evicted occupants increases their chances of finding safe alternative accommodation. Occupants' short-term financial needs would be smaller if government can provide alternative accommodation at least for an appropriate period to enable them to find new long term accommodation.

Adequacy and transparency of these processes is the key to removing barriers to self-reporting.

Financial support could be funded by fines to the operator, to be paid by government immediately and then recouped from the operator, or could be provided as an advance on any compensation ordered by ACAT.

A survey of barriers to self-reporting would be invaluable, as well as the factors that lead the tenants evicted this year to take and remain in that accommodation.

Also, if possible, provide an intermediary in enforcing their rights against the operator, to remove the ability for operators to threaten vulnerable residents from taking action, as demonstrated earlier this year. However, the funding of enforcement of these regulations should not be out of the compensation that occupants are entitled to.

In addition, an information campaign about occupants' rights and the government support process for evicted occupants (especially if it could be offered in different languages), and utilising fines as a deterrent.

Any reporting scheme where others are encouraged to 'dob in' occupants would be open to vexatious, discriminatory and retaliatory misuse. The threat of reporting could be used against the occupants in these premises, further undermining their confidence to assert their rights, and sending such arrangements further underground. Self-reporting should be encouraged as far as possible because it avoids these serious risks.

10.2. What measures could be taken to bring unregistered operators into the registration system?

Any agreements that exist in unregistered accommodation (with some regulated exceptions) could automatically be tenancies, not occupancies. This provides an incentive to register, and it provides some protection for people in unregistered accommodation. However, agreements in registered accommodation can still be tenancies, depending on the facts and definitions.

10.3. How might any surveillance activities be targeted to make the best use of resources?

At this stage we are unable to comment on this matter.

11. Fines and penalties

Currently there are few ramifications for grantors who fail to act in accordance with the occupancy principles and thus little incentive for compliance. Compensation can be ordered for loss caused by breach, but enforcement is very rare because occupants are reluctant to apply to ACAT given their lack of power, support, resources, the uncertainty of their legal rights and lack of protection from retaliatory action. Penalties for failure to comply with the occupancy principles are needed in the Residential Tenancies Act. These penalties must be enforced. It is noted that one of the few penalties currently contained in the Residential Tenancies Act is for failure to lodge bond within the prescribed period which to the TU's knowledge has never been imposed.

11.1. Is the current level of fines and penalties adequate?

No, it has obviously not worked as a deterrent. Although to our knowledge no fines or penalties have yet to be applied even to the individual responsible for the housing situations in July.

11.2. If not, what would be considered an appropriate level to act as a deterrent?

Refer to Victorian recommendations.

11.3. Is it possible to link infringements so multiple breaches compound?

Yes

11.4. Should serious breaches of any regulatory regime include criminal options?

Yes

11.5. Should an 'undue enrichment' provision be included?

Yes

12.Options for Reform:

None of the options provided include enough detail to indicate support, several elements should be included in developing strategies for further work:

- First step has to be developing working definition of "boarding style" accommodation and consistent definitions of "boarding houses";
- Involvement of stakeholders in development of definitions and further work is crucial;
- Research into the number of properties and people in this accommodation, also investigating what happened to the people once they were removed from the properties in July;
- Any developments must consider the vulnerability of people accessing this accommodation, and this must have more weight in the "balance" determinations;
- When considering licensing and inspections etc it is important to remember that the extent of this arrangement is not known and so the resources necessary for such steps are not known;
- Investigating the development of a public register would be a positive step;
- Cross referencing legislation;
- Enforcement is obviously an issue and requires additional work although "dob in a landlord" cannot be supported as it targets all people in rental housing.

13.OTHER ISSUES:

- This type of accommodation is not just provided by property owners directly, it also includes people signing on tenancies, and either not moving in at all and signing up others to live there, or renting out space in the property they are living in. This complicates the issue further because on the face of it these situations look like share housing. Regulation must differentiate between boarding accommodation in "boarding style" houses and share houses with multiple tenancies;
- These issues are further complicated in the ACT because other jurisdictions do not have occupancy provision;
- Question of whether there should be building standards for boarding houses but not for shared accommodation under the RTA, or any buildings under RTA. Standards for boarding "style" accommodation can raise equity issues for tenants and other occupants;
- Ongoing working group to focus on issues, not just departmental/agencies, eg *Vic report - Recommendation 30: State Government continue a dedicated interdepartmental committee to implement the response to unregistered rooming houses. This committee should develop a strategy for ongoing engagement with the industry and sector stakeholders who have contributed to the formulation of this report which includes quarterly updates on progress towards implementation of these recommendations.*
- It must be noted that the affordable housing working group only reported on affordable housing supply issues, not on what happened to the housing provider or the 117 people removed from the properties. It would be useful to know what has happened with this one opportunity to make an example of the high profile matter;
- Any directions to vacate premises made by the ACT Government must be accompanied by alternative accommodation arrangements for the occupants of the premises. These arrangements must continue until the problems with the relevant accommodation are fixed and the occupant is able to return to the premises, or where the problems can't be fixed until the occupant is able to find suitable alternative accommodation to move into. Rent abates for the period that the

premises are not available for occupation. The grantor should bear any costs (in excess of rent abatement) resulting from the occupant being unable to occupy the premises and any moving costs.

The lack of affordable housing in the ACT and the vulnerability of occupants is a major obstacle to the effective regulation of boarding style accommodation.

This was evidenced by the fact that the five suburban houses used as boarding style accommodation operated for as long as they did. Despite the unacceptable conditions, the occupants did not complain because they considered that they would not be able to find alternative affordable accommodation; the occupants having accepted the premises in the first place because of their inability to secure alternative accommodation.

Without an adequate, transparent, publicised support process for dealing with evicted occupants an occupant is not going to complain about sub-standard conditions if to do so is going to result in their eviction.

Effective regulation of boarding house accommodation must provide adequate protection against eviction and/or homelessness for occupants.

It must be unlawful for a grantor to evict an occupant who complains about the conditions of the premises.

Attachment 2: Senate Standing Committee on Education, Employment & Workplace Relations *References Committee* Report on Welfare of International Students

http://www.aph.gov.au/Senate/committee/eet_ctte/international_students/report/c03.htm#anc8

Adequate and affordable accommodation

3.36 Evidence was given to the committee that a lack of adequate and affordable accommodation is a major concern of international students. Issues raised included difficulties with the availability, accessibility, cost and location of suitable accommodation as well as with tenancy disputes.

3.37 NUS in its submission referred to the recent housing shortage and the issues this had raised:

The housing shortage experienced in 2008 and the large increase in property prices and therefore rental accommodation availability and access has led to logistical problems for all institutions in meeting housing needs in the residential areas surrounding many education providers. This is most apparent in the larger inner city campuses in Melbourne and Sydney, although smaller cities, Adelaide, Perth and Brisbane have also been affected and have been active in developing initiatives to try to meet housing needs.^[27]

3.38 Evidence was also given that a lack of detailed information regarding the different prices and accommodation options has led to many students experiencing difficulty in securing affordable and appropriate housing.^[28]

3.39 The committee heard that many students were living away from home for the first time and therefore faced the challenges that come with developing independence. Mr Warwick Freeland, IDP Education Pty Ltd, gave evidence to the committee that in one survey they conducted, 76 per cent of Indian students had never lived away from home.^[29]

3.40 Students who are in Australia with their families also find it hard to find suitable accommodation. This is in part due to their specific requirements which reduces the pool of available rental accommodation.^[30]

3.41 The lack of suitable accommodation affects student safety. International students may find it difficult to secure accommodation close to their education institutions, particularly in cases where they are studying in inner city areas. As a result, they may find themselves travelling long distances at irregular hours.

Accessibility and availability

3.42 International students live in various types of accommodation including:

- accommodation affiliated with education providers;
- homestays;
- private rental housing; and
- 'rooming' houses where individual rooms of a house are rented out to students.

3.43 Witnesses gave evidence to the committee that while availability of suitable accommodation in some major cities such as Melbourne or Sydney is a general problem, there are added complexities for overseas students.^[31]

3.44 International students face extra challenges when trying to secure suitable housing because of language problems as well as lack of awareness or understanding of tenancy rights and obligations. Sydney University Postgraduate Representative Association (SUPRA) claimed that international students are disproportionately represented in their case work on accommodation issues. Of SUPRA's total case files relating to accommodation since July 2007, more than 70 per cent were for international students.^[32]

3.45 Suitable accommodation is essential for the well-being of international students, and dramatically affects their overall study experience. Southern Cross University elaborated upon the difficulties international students faced in relation to accommodation:

The world of real estate agents, lease agreements, house sharing, and securing housing in close proximity to the student's campus create an enormous level of stress to a newly arrived student if not effectively guided.^[33]

3.46 The NUS gave evidence that under the current system there is no requirement for institutions to ensure that adequate accommodation is available for those they enrol.^[34] International students who cannot access the mainstream private rental market are turning to accommodation in overcrowded and unsafe houses.

3.47 The President of the Federation of Indian Students of Australia told the committee of instances where single rooms in poor condition were occupied by seven or eight students.^[35]

3.48 The Tenants' Union of Victoria (TUV) reported receiving a growing number of complaints from international students regarding severe overcrowding in rental properties. In one complaint received by the TUV, 48 Nepalese students were living in a six bedroom property; and in another, 12 international students were living in a single room.^[36]

3.49 The submission from the Curtin University Student Guild and the International Students Committee (ISC) said that 'it is not uncommon of [sic] for students to be living in overpriced and overcrowded conditions provided by unscrupulous landlords. The ISC believes that this occurs because the accommodation promised to students before their arrival in Australia is not monitored closely enough'.^[37]

Tenancy rights and disputes

3.50 Mr Nigel Palmer, President, Council of Australian Postgraduate Associations (CAPA), gave evidence to the committee that international students are not necessarily afforded the same tenancy rights as others in the community. Those students who live in accommodation supplied by the education provider, typically on-campus accommodation, were bound by a set of tenancy rights separate from the usual legislation. These students do not have access to the same complaints authority and procedures which apply in the general rental market.^[38]

3.51 The NUS argued that there should be standard legislation that applies to all landlords, including student accommodation providers.^[39] Mrs Sharon Smith, NUS, gave evidence to the committee that housing providers are protected by out-of-date legislation and that 'students are extremely vulnerable because they do not understand the legislation within the residential tenancy acts in every state'.^[40] According to NUS, in most state government tenancy laws, student accommodation which is affiliated with an education provider is exempt from the Residential Tenancies Act (RTA). NUS argued that as a consequence international students are often exploited by accommodation providers, and are not aware of the finer distinctions that exist in tenancy law.

3.52 According to the Tenants' Union of NSW, 'the current exemption is not well-defined and is open to an interpretation that is too wide'.^[41] In their submission, the Tenants' Union of Victoria (TUV) elaborated on the problems posed by this exemption, and commented on the minimal influence education providers have on student accommodation:

The RTA specifically excludes accommodation affiliated with educational institutions. This is despite many universities having little direct role in the management of affiliated housing and the persistence of conditions which would be considered unlawful under the RTA. Further, universities do not guarantee the appropriateness of accommodation nor do they have adequate dispute resolution processes in place to deal with problems when they arise.^[42]

3.53 Differing rental practices mean that international students do not have sufficient knowledge regarding the correct rental application procedures or their basic tenancy rights.^[43] The TUV

indicated the existence of a number of online rental scams. International students, lured by the promise of cheap inner-city rent, deposit the first month's rent and bond into an international bank account of the owner in order to view the property. A lack of understanding of the rental system, and keenness to secure accommodation has seen some students exploited.^[44]

3.54 Another issue for international students is that they have no relevant rental histories. Landlords may be reluctant to enter into rental agreements with such prospective tenants, even when references can be provided.^[45] It is now common for landlords to require references covering the previous two or three months.^[46] There is also a perception that landlords prefer not to rent properties to overseas students.^[47]

3.55 It was put to the committee that students can be greatly assisted in their endeavours to find accommodation by their education provider. TAFE Directors Australia told the committee that most TAFE institutions either provide accommodation for their students, or they arrange a homestay. Mr Bruce Mackenzie explained that TAFE organisations place an emphasis on accommodation services for their students, as it is an 'essential part of providing a quality learning environment for students'.^[48] Mr Mackenzie also called for resources from the Education Investment Fund to be made available for student housing, for both local and international students.^[49]

Accommodation assistance and support

3.56 The committee heard that some education providers provide inadequate support to students to assist them in finding suitable accommodation.^[50]

3.57 Mr Anwar Shah, CAPA, noted that university administrations have no authority to advocate with landlords on behalf of international students. Even in situations where providers can assist, they often fail to provide such support. Mr Shah also gave the example of a university refusing to provide written documentation stating that a particular international student was a scholarship recipient studying at that university, although such documentation may have assisted the student to secure accommodation. Mr Shah pointed out that international students are left to fend for themselves in the accommodation market, despite the extra difficulties that they face:

At the same time the service is like, as soon as an international student arrives here, he is left under free market forces. 'It's your job to find the house, it's your job to do whatever you want, to find a place'.^[51]

3.58 As an example of the demand for assistance with accommodation, the University of New South Wales (UNSW) has received requests for a temporary accommodation service for newly arrived international students. Before 2008, the university ran an airport pick-up and temporary accommodation service for students at a standard fee of \$50.00, but the service was 'phased out due to fewer students utilising it'.^[52] Requests for this service have been driven by the 'current shortage of readily available, reasonably priced accommodation in Sydney'.^[53] Reintroduction of the service is currently being considered by the university.

3.59 SUPRA argued that temporary accommodation should be available for all newly arrived international students and called on state and territory governments to implement practices which assist in securing initial temporary accommodation for international students. SUPRA suggested booking blocks of rooms at hostels for three to four weeks. It also suggested that governments could make funds available to education providers so that they could establish a temporary accommodation scheme:

The Federal Government, through both the requirements that apply to CRICOS providers and COAG, could take a more pro-active role in encouraging all State/Territory Governments to implement policies and practices which assist in managing student access to initial temporary accommodation upon arrival.^[54]

Committee View

3.60 *The committee believes that international students should be provided with more detailed information regarding their accommodation options prior to arriving in Australia. Without adequate knowledge of the rental market and housing options available, international students are likely to continue to experience difficulties.*

3.61 *Although international students face particular difficulties in finding accommodation, the committee notes the issue of housing shortages is a problem that affects domestic students as well.*

3.62 *The committee understands that accommodation information is available on the Study in Australia website, but believes that information relating to tenancy rights and links to state and territory tenancy unions, should be provided as well so that students are aware of where to turn for advice and with complaints.*

3.63 *Regarding providers, the committee understands the varying capacity of providers to offer accommodation for students. Smaller providers may be unable to appoint a housing officer. As a minimum standard, the committee believes that every provider should provide a link on their webpage to information on housing options, tenancy rights and obligations and where to go for assistance from a reputable website such as the Study in Australia website. This could be supplemented by more local information as resources permit. Minimum standards for providers are discussed in chapter three.*

Recommendation 4

3.64 The committee recommends that education and training providers should be required to provide up to date information on their website regarding accommodation in Australia, including information regarding tenancy rights and responsibilities. This may be via a link to the Study in Australia website, however, it may also include more localised information.

Homestays

3.65 The committee heard that homestays are a popular form of accommodation for international students. Many international students have never lived away from home before, making homestays a convenient accommodation option for students which avoids the challenges of navigating the private rental market.

3.66 The committee received evidence from a number of organisations that use or promote homestay networks to their international students. TAFE Directors Australia informed the committee that where TAFE Institutions were unable to house international students, they use a network of local homestays. Ms Virginia Simmons told the committee that TAFE institutions are in regular contact with students and assist them to change homestays if they are not happy.^[55] Ms Christine Bundesen, English Australia told the committee that around 40 or 50 per cent of ELICOS students live in homestay accommodation, as 'part of the learning experience for language is actually using language in a living experience'.^[56]

3.67 However, concerns were expressed regarding a lack of regulation of the homestay industry. Dr Felicity Fallon, ISANA, told the committee that there needs to be more regulation of the industry: We believe there needs to be some sort of regulation of the homestay industry...Those who work on the ground and actually deal with what goes on know that, even with homestays, you spend a lot of time sorting out problems to do with those homestays.^[57]

3.68 The Australian Homestay Network (AHN) is the only national network of homestay supervisors, and is responsible for the largest trained homestay host pool and homestay placements in Australia. The AHN recognised the need for minimum standards to be met by the sector, and suggested a number of measures to guarantee positive outcomes for students. AHN remarked that

many homestay hosts are being recruited and provided with students, with no guidelines, supervision, training or support. In such instances, AHN argued that this creates:

...a higher risk of an incident which damages the reputation of Australian education. Cultural exchange is a high priority for students and hosts and direction and support are essential.^[58]

3.69 AHN identified two homestay websites that fail to ensure satisfactory quality control. This presents opportunities for unscrupulous hosts to participate and take advantage of the vulnerabilities of international students.^[59] AHN argued that successful homestay programs cannot be conducted through an unsupervised program, and that house inspections and minimum standards are essential. As such, AHN recommended that government introduce legislation to ensure that all homestay managers meet minimum standards in their training, support and operating procedures for hosts and international students.^[60] In order to encourage potential homestay hosts, AHN argued for increased promotion of the tax-free status that is attributed to homestay revenue.^[61]

3.70 International Education Services commended the work of the AHN, and argued that increased homestay accommodation would be useful to address the general housing shortages being experienced. Mr Christopher Evason told the committee:

IES maintain that further promotion of quality homestay is the only viable solution. Homestay aids social inclusion and the interaction of international students with mainstream Australian society. The industry itself is making valuable improvements in the management of homestay services. IES use an innovative system offered by the Australian Homestay Network...The Darebin Council have also recognised the substantial quality assurance measures provided by the AHN.^[62]

Committee View

3.71 *The committee accepts the evidence that homestay accommodation is beneficial to international students, the host family as well as the community at large. The committee supports calls for more homestay arrangements for international students as part of the solution to accommodation shortages, although the committee recognises the need to ensure minimum standards are met. The committee commends the Australian Homestay Network for ensuring that it meets the appropriate standards. The introduction of mandated industry standards should involve appropriate industry consultation and a careful assessment of the costs and benefits.*^[63]