SUBMISSION:

In response to the exposure draft Boarding Houses Bill 2012

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1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in Redfern and surrounding areas.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in housing and tenancy law

Redfern Legal Centre (RLC), established in 1975, has a long history of providing advice to tenants, students, people living in share housing and residents of boarding houses. Since 1995 Redfern Legal Centre has been funded by NSW Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service. RLC also runs a state-wide advice service for international students.

Redfern Legal Centre has been campaigning for legislative protection for boarders and lodgers and other marginal renters for more than 20 years. In 2010 we published the Boarders and Lodgers Legal Information Kit, an essential guide to help navigate through the maze of the legal complexities which currently governs the boarding house sector and its residents, as well as other tenants not covered by the Residential Tenancies Act 2010. As such we welcome this government's initiative to enact long overdue reform of the sector and appreciate the opportunity to comment on the draft Boarding Houses Bill 2012.

3. RLC's view in summary

Our submission is informed by our long history of assisting people who are not covered by the provision of the previous Residential Tenancies Act 1987 and the current Residential Tenancies Act 2010. As such we find that the proposed reforms, although welcome, are limited, and that a number of the most common problems we encounter daily in our service are not addressed.

In summary, we recommend:

- Broaden of the definition of Tier 1 boarding houses to premises that are occupied by three or more residents
- That provisions relating to occupancy principles apply to agreements rather than premises
- That residents are entitled to agreements upon commencement of occupancy

- That a resident not be evicted without grounds without a minimum of seven days' notice
- The addition of provisions relating to security deposits and uncollected goods

4. Responses to specific issues

4.1 Definitions and coverage

> **Clause 5(2)**: Boarding premises are a ***Tier 1 boarding house*** if the premises provide beds, for a fee or reward, for use by 5 or more residents (not counting any residents who are proprietors or managers of the premises or relatives of the proprietor or managers).

Comment

A large number of terrace houses in Redfern, Surry Hills and Darlinghurst are run as unlicensed boarding houses and would fall below the threshold this definition provides.

We refer to and support the submission by Marrickville Legal Centre, which points out that other Australian jurisdictions have narrower exclusions, defining 'rooming houses' from anywhere from two (Queensland) to no fewer than 4 people (Victoria).

While the ACT model used in the draft Boarding Houses Bill does not give the same level of rights for occupants as the Queensland and Victoria jurisdictions, its advantage is its broad coverage, as it covers all occupants that fall outside the Residential Tenancies Act. To water down the broad coverage while not at the same time not extending the rights of occupants, would be hugely disappointing for occupants and advice services.

Case Study - definition of Tier 1 boarding houses

Mei Ling is an international student. She is renting in a furnished 2-bedroom unit, where she shares the double bed in the master bedroom with another Chinese student, whom she had not known previously. The second bedroom houses two single beds, which are occupied by two other students. The owner attends the premises once a week to clean the bathroom, kitchen and shared areas. Although each of the residents has a separate 'lodging agreement' with the owner, who does not live at the premises, the premises would not be considered a Tier 1 boarding house.

Recommendation 1
Broaden the definition that cl5(2) provide that boarding premises are a Tier 1 boarding house where the premises are occupied by three or more residents (any one of whom occupies by a separate agreement with the proprietor)

Clause 5(3): A Tier 1 boarding house does not include any of the following:
(b) premises that are subject of a residential tenancy agreement within the meaning of the *Residential Tenancies Act 2010* or to which the *Landord and Tenant (Amendment) Act 1948* applies

Comment:

The effect of this exclusion will impact on a large number of residents in boarding houses. Redfern Legal Centre, which covers suburbs surrounding a number of universities, has regular contact with people living in premises which are rented by a head-tenant, who in turn sub-lets the premises to a number of people, most commonly international students, including the provision of a service. Under the proposed Bill, these residents would not be given the benefit of an occupancy agreement, as the premise itself is subject to a residential tenancy agreement.

We note that the NSW Parliament Social Justice Committee in their report on the inquiry into international student accommodation in NSW[1] recommended that the NSW Government introduce legislation to implement occupancy agreements to cover international students, and that the Government in its response generally supported this recommendation[2].

An overwhelming number of international (and Australian) students in our area live in premises that are subject to a residential tenancy agreement. We have encountered a number of operators in the inner city, who make a living from renting units and houses, which they then in turn rent out to students, often without the knowledge or consent of the proprietor. Usually they provide a small service, such as cleaning the bathroom, in order

[1] Social Justice Committee, Parliament of NSW, *Final Report: Inquiry into international student accommodation in New South Wales* (2011) p.54
[2] Social Justice Committee, Parliament of NSW, *NSW Government response to the Legislative Assembly Social Policy Committee inquiry into international student accommodation in NSW* 2012 p.5

to ensure that the residents are not covered by the *Residential Tenancies Act 2010.* These residents are most vulnerable and commonly exploited.

Case Study - premises subject to residential tenancy agreement

Yasmin rented a bed in a two-bedroom unit in a city highrise. Each room was shared by three people and there were also two beds occupied in a curtained-off area in the lounge room. Each resident had a 'lodging agreement' with house rules. The person they paid rent to, would turn up frequently without notice. Once a week he cleaned the bathroom and kitchen.

When returning from university one day, Yasmin found that her electronic key did not work. When she contacted the building manager, she found out, that the person they paid rent to was not the owner, but had rented the unit himself. His tenancy had been terminated due to sub-letting without consent and overcrowding. Subsequently, the building manager had cancelled their electronic keys.

Yasmin contacted our service for help. We negotiated with the real estate agent for Yasmin and the other residents to gain entry to the unit to remove their belongings.

Although the residents had the head-tenant's contact details, they were not able to get their security deposits back, or receive compensation for their expenses incurred by having been made homeless without notice. Because the head-tenant had provided a service and had maintained mastery of the premises, they were excluded from the *Residential Tenancies Act 2010,* and could only start proceedings in the local court to have their security deposits returned. Due to the costs of court proceedings, none of the residents chose to take this action.

Under the proposed provisions of cl 5(3)(b) of the draft Boarding Houses Bill, they also would have to commence legal action in the Local Court as their premises would have been excluded, having been subject to a residential tenancies agreement.

Recommendation 2
Delete subclause 5(3)(b). Insert a provision in Chapter 3 that the provisions relating to occupancy principles do not apply to agreements that are subject to the *Residential Tenancies Act 2010* or the *Landlord and Tenant (Amendment) Act 1948.*

4.2 Occupancy principles for registrable boarding houses

Redfern Legal Centre strongly supports an occupancy agreements model that includes basic minimum standards. Although we understand and support the premise that occupancy agreements ought to be more flexible than standard residential tenancies agreements, in our experience the issues most residents have, are either not addressed at all in the draft Bill (such as security deposits and uncollected goods), or insufficiently addressed (such as minimum termination periods).

> **Clause 30(4):** A resident is entitled to the certainty of a written occupancy agreement if his or her residency continues for longer than 6 weeks.

Comment:

Residents should be entitled to have a written agreement upon commencement of their occupancy. This would help to ensure that residents are clear as to the terms of the agreement and assist in avoiding disputes, which could only be beneficial to both parties. As many of the principles are based on occupants knowing the terms of their contract when they move in, it is not appropriate for the requirements to commence only after the occupants have lived in the premises for six weeks. We submit that having to provide a written agreement after six weeks only may encourage short term lodging, especially in the case of international students.

Recommendation 3:
That clause 30(4) be amended to: A resident is entitled to the certainty of a written occupancy agreement upon commencement of his or her residency.

> **Clause 30(9):** A resident must not be evicted without reasonable notice

Comment:

Redfern Legal Centre submits that minimum standards should be set in some principles, such as this. The use of the term 'reasonable' causes uncertainty and difficulty. Parties can always contract for longer periods, and some groups (such as student accommodation at educational institutions) may have longer periods set in the Regulations. Residents in boarding houses or lodging in private houses are generally the most disadvantaged group

of people in our society. It is imperative that some minimum standards are set in an area where occupants have little or no bargaining power in setting the terms of their agreement.

Currently boarders and lodgers must rely on common law in termination matters. Where an occupant has paid one week's rent they have formed a contract for one week and it is reasonable to expect on week's notice of termination, unless there is a breach of the contract. As such we submit that it is reasonable to set a minimum standard of at least one week's notice period where there is no breach, which must be specified in the occupancy agreement. To set no minimum standard is to leave the most vulnerable in our society with little or no protection from immediate eviction.

Not setting a minimum standard would lead to more matters being taken to the Consumer, Trader and Tenancy Tribunal to determine whether a period set in the occupancy agreement is reasonable in the circumstances. This could potentially inundate the Tribunal with having to decide this question over and over again.

In the long experience of tenancy advice given at Redfern Legal Centre, terminations are the most common and distressing issue for boarders and lodgers. Mostly boarders and lodger only want at least one week's notice to have to vacate the premises, in order to organise alternative accommodation. The last thing these vulnerable and disadvantaged people want to have to do is applying to the Tribunal to decide whether a notice period was reasonable.

There is no real disadvantage to the landlord if there was a minimum standard in relation to termination. The addition of a minimum termination period would not prejudice the landlord or impact on their business in a negative way. Furthermore, it creates certainty for the parties, is fair and is not onerous.

Case Study - termination period

Lily, an international student, rented a bed in a unit in the CBD with four people to a room, and more in the lounge room. Her landlord (a head-tenant) turned up one Sunday evening and demanded that all occupants pay a rent increase of $40 per week, effective immediately. Lily had already paid one week's rent a couple of days before and did not have any money on her, so she did not pay. The head-tenant returned later that night and told her to leave. She was evicted at 11PM on a Sunday night. Having no money and nowhere local to go to, she walked all night and arrived at 6AM on Monday morning at a friend's house in an outer suburb. Her bond and rent paid in advance were never returned to her.

Although a Tribunal would be unlikely to find that an immediate notice at 11PM on a Sunday night was giving 'reasonable' notice, it may decide that she may regain occupancy to the day she had paid her rent to. Having a minimum notice period provision in the Act, the cost of a Tribunal hearing would be avoided, not to mention the anguish, distress and fear this incident caused Lily.

Recommendation 4:
That clause 30(9) be amended to: A resident must not be evicted on no grounds without a minimum of seven days' written notice.

Clause 31: Applications to the Consumer, Trader and Tenancy Tribunal for the resolution of occupancy disputes

Redfern Legal Centre refers to, and endorses the submissions on this clause, and the recommendations put forward by the Tenants' Union of NSW, under the title 'Enforcement'. However, we wish to add further submissions in regards to security deposits, as well as compensation payments.

After terminations, the most common issue that people in lodging arrangement contact Redfern Legal Centre about is the non-return of the security deposit they paid. We have identified the non-return of security deposits as a systemic issue for boarders and lodgers, with some landlords and proprietors routinely withholding the deposit, especially for international students or where a security deposit has been provided by Housing NSW. The draft Bill does not allow the Consumer, Trader and Tenancy Tribunal to hear a dispute about security deposits paid by a boarding house resident.

Most occupants in boarding houses and in lodging arrangements are charged a deposit of 1-2 weeks' rent. This appears to be the industry standard, and is reasonable since it is often the inability of people to raise four weeks' bond money, in addition to two weeks' rent in advance, which prevents them from entering the mainstream rental market.

We submit that the Bill provide a maximum amount of security deposit that can be charged, that landlords should lodge this deposit with Renting Services, and that the Consumer, Trader and Tenancy Tribunal will have jurisdiction to hear disputes over security deposits for occupancy agreements. Lodging a security deposit is not onerous for the landlord and is greatly outweighed by the protection it provides to the occupant. The Tribunal is available to tenants, who arguably have a greater capacity to go the the local court but have an affordable and generally accessible forum to have disputes resolved. The same level of accessibility should be provided to occupants. To fail to set these requirements leaves occupants having to resort to more expensive jurisdictions over small money matters.

Failing to set this minimum standard would do nothing to prevent the type of targeting of international students in lodging and sub-letting which, in our experience, is often simply a money making exercise by evicting people and withholding their security deposits. This also applies to lodgers with multiple disadvantages, such as mental illness or other disability, where proprietors know that the deposit was paid by Housing NSW, and that it is unlikely that Housing NSW will pursue them for the return of this money.

In our experience, many occupants have difficulties getting access to goods left behind, after having being evicted, especially in the case of terminations with a short termination period, or none at all. We submit that provisions about access to uncollected goods be included in occupancy principles.

Case study: See the examples given in the case studies on Yasmin and Lily.

Recommendation 5:
That the following will be be added to Clause 30:
That the security deposit will not exceed two weeks' rent
That the proprietor lodge the security deposit with Renting Services within seven days
That residents and proprietors are able to apply to the Consumer, Trader and Tenancy Tribunal to resolve a dispute about the return of a security deposit or uncollected goods

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

Redfern Legal Centre is concerned that the draft Bill prohibits the Tribunal from ordering the payment of any form of compensation for a breach of an occupancy principle, and we submit that this limitation on the powers of the Tribunal may significantly reduce the effectiveness of Chapter 3 of the draft Bill. We have touched on this in the case study of Lily, who might be successful to have the Tribunal determine that evicting her at 11PM on a Sunday night was not 'reasonable notice' and may be able to order that she be allowed to return to the premises. However, she would have no recourse to recover any cost she incurred in having had to quickly find alternative accommodation in the meantime, or, if she had had the money, to take a taxi to her friend's place instead of walking for seven hours.

Currently residents in boarding houses, which are operated as a business, can apply to the general division of the Consumer, Trader and Tenancy Tribunal for compensation or damages. It is of concern that even this avenue would no longer be available under this clause. As somebody said: "It seems that occupants have more rights over a broken toaster than accommodation".

Under the current draft Bill, boarding operators breaching an occupancy principle will incur no penalty. This provides no deterrent to breaching the agreements, and does nothing to encourage compliance.

Recommendation 6:
Amend Clause 31(5) to read: A party may apply to the Consumer, Trader and Tenancy Tribunal for an order of payment of compensation for a contravention of the occupancy principles