

Redfern Legal Centre



Boarding Houses Act - Standard Form Occupancy Agreement
Fair Trading Policy
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15 April 2013

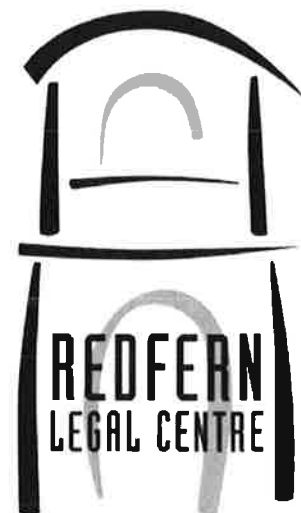
**Submission on the draft Boarding Houses Regulation 2013 and
Standard Occupancy Agreement for General Boarding Houses**

Please find attached the Redfern Legal Centre submission on the draft *Boarding Houses Regulation 2013* and the standard occupancy agreement for general boarding houses.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'JS', is located below the 'Yours faithfully,' text. The signature is stylized and cursive.

Jo Shulman
Chief Executive Officer
REDFERN LEGAL CENTRE



Submission on the draft Boarding Houses Regulation 2013 and Standard Occupancy Agreement for General Boarding Houses

Submission to NSW Fair Trading

Redfern Legal Centre

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Introduction

Redfern Legal Centre (RLC), established in 1977, has a history of providing advice to tenants, students, people living in share housing and residents of boarding houses. Since 1995 RLC 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.

RLC's work with Boarders and Lodgers

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 the legal complexities of the boarding house sector, providing information to boarding house residents, as well as other tenants not covered by the *Residential Tenancies Act 2010*.

Our submission is informed by our long history of assisting people who are not covered by the provisions of the previous *Residential Tenancies Act 1987* or the current *Residential Tenancies Act 2010*.

Our position, based on this experience, is that the current law does not protect boarders and lodgers sufficiently. Without the protection of the *Residential Tenancies Act 2010*, boarders and lodgers often experience issues with reclaiming bonds and security deposits and with collecting their goods, and often struggle to obtain sufficient reasons for and reasonable notice of the termination of their occupancy.

As such we welcome the government's initiative to enact long overdue reforms of the sector and appreciate the opportunity to comment on the draft *Boarding Houses Regulation 2013*.

Boarding Houses Regulation 2013

The draft *Boarding Houses Regulation 2013*, in conjunction with the *Boarding Houses Act 2012*, does address a number of issues that currently exist in the boarding house sector. The inclusion of occupancy principles in the Act is a significant and welcome step for boarding house residents that will afford them much needed clarity around their rights and responsibilities.

Our submission is that the Regulation could go further to clarify and quantify minimum standards as set out in the Occupancy Principles in Schedule 1 of the Act. We are particularly disappointed that the Boarding Houses Regulation, in its current

form, does not include mandatory minimum notice periods that a proprietor is to give to an occupant for access to the premises or termination of the agreement.

In RLC's experience terminations are the most common and distressing issue for boarders and lodgers. We submit that for a boarder or lodger to have to apply to the Tribunal to determine whether a notice period is 'reasonable' is both impractical and onerous, and does not afford the necessary protection for people who are often vulnerable and disadvantaged.

Without further regulations to address the issue of minimum notice periods that will offer clear protections for vulnerable residents, the legislative regime will not adequately "address longstanding problems identified in the boarding house sector"¹. The substantial imbalance in bargaining power for residents means that unless the regulation requires specific minimum standards, it fails to address concerns of exploitation and unfairness for boarding house residents, in particular, people with additional needs.

CASE STUDY: Termination

Sam lived in a room in a Boarding House in Surry Hills for almost two and a half years. He got along well with the other long-term residents and paid his rent in advance each Monday to the proprietor. Sam had a disability that caused him mobility problems and worked shift work, which varied each week. One Wednesday the proprietor told Sam that he received a complaint from another resident about Sam accidentally breaking that resident's door. Sam denied this, but the proprietor handed him a piece of paper that said he had two days to leave.

If Sam's occupancy agreement did not adopt the "suggested" notice period for negligent damage in the standard occupancy agreement and instead nominated a period of 2 days, Sam would be inadequately protected against the termination. Sam's only recourse would be to argue in the Tribunal that the notice period contravened occupancy principle 10 in Schedule 1 of the Act in that it was unreasonable. Sam would face considerable uncertainty as to how successful this argument would be and this uncertainty may be enough to discourage Sam from challenging the notice altogether. If there was a mandatory minimum notice period, things would be much clearer to Sam and he could put his resources and energy into challenging the allegation and/or finding alternative accommodation.

The inclusion of mandatory minimum notice periods would clarify the positions for both boarders and proprietors. It could also convey cost and time savings to the CTTT, in limiting the number of potential applications on the issue of what is 'reasonable' notice.

¹ Regulatory Impact Statement: Draft Boarding Houses Regulation 2013 (19 February 2013) p 1
Available at:

http://www.adhc.nsw.gov.au/sp/delivering_disability_services/boarding_house_program/boarding_house_reform

The inclusion of minimum notice periods is not onerous on boarding house proprietors and would therefore not diminish the viability of a sector that plays an important role in providing affordable accommodation, especially for people unable to find accommodation in the mainstream private rental market or unable to access public housing.

The Occupancy principles in Schedule 1 of the *Boarding Houses Act 2012* do not include any type of mandatory minimum notice periods for Boarding House proprietors for access or termination. The Regulations could be utilised to address this gap in protections for residents. Our position remains that the legislative regime needs to include minimum standards around these issues.

Recommendation One: That minimum notice periods for termination of an occupancy agreement, as set out in the draft standard occupancy agreement, be prescribed in the Regulation.

Recommendation Two: That minimum notice periods for access to a boarding house resident's room, as set out in the draft standard occupancy agreement, be prescribed in the Regulation.

Standard Occupancy Agreement for General Boarding Houses

Redfern Legal Centre supports the inclusion in the Regulation of a standard occupancy agreement, which is drafted in light of the occupancy principles.

We particularly support clause 11 (written receipts) and clause 8 (security deposit) which will provide assistance for boarders in substantiating amounts they have paid and reclaiming security deposits when they leave a boarding house.

RLC supports the inclusion of clause 6 (Notice of fee increase) which specifies that a proprietor must give four-weeks' written notice for a fee increase. Having this as a clause in the standard occupancy agreement creates certainty for boarders and proprietors about the standards that a fee increase must meet. RLC has seen a number of residents who have been asked to pay on-the-spot rent increases, or rent increases with minimal notice.

Case Study – rent increase with insufficient notice

Xiaomin, an international student, rented a room in a boarding house. The proprietor arrived one Saturday evening and demanded that she pay a rent increase of \$35 per week, effective immediately. Xiaomin offered to pay the increased rent on her next rent due date but the proprietor refused, saying she needed to pay immediately or leave.

Xiaomin borrowed the money from a friend the next day and tried to pay the proprietor. The proprietor refused to accept it and told her that because she had not paid her rent in full she needed to leave. The proprietor did not return the rent that she paid in advance.

While clause 6 (Notice of fee increase) does provide a resident and a proprietor with a clear standard which must be met, we submit that the agreement does not go far enough to codify *other* notice periods and in doing so offer adequate protection to boarding house residents.

Clauses five (Inspection and Access) and nine (Termination) of the Standard Occupancy Agreement suggest notice periods, which are deemed by the agreement to be “examples of reasonable notice periods”. The Occupancy principles in Schedule 1 of the *Boarding Houses Act 2012* refer to “reasonable written notice” and the standard occupancy agreement gives examples of how “reasonable” is to be interpreted. It is our submission that these suggested notice periods should be incorporated into the *Boarding Houses Regulation 2013* as mandatory minimum standards, to give certainty and the needed element of fairness that is currently lacking.

Recommendation Three: That the current standard occupancy agreement be amended to indicate that notice periods are mandatory, not suggested.

Conclusion

Redfern Legal Centre supports the standard occupancy agreement and the certainty and protections it will deliver to boarding house residents. The proposed reforms, although welcome, fail to provide concrete protections to residents facing termination, one of the most common problems we encounter daily in our service. This could be overcome by incorporating the suggested notice periods in the Standard Occupancy Agreement for general boarding houses into the *Boarding Houses Regulation 2013* as mandatory notice periods.