



## **Occupancy rights for residents of Licensed Residential Centres**

**A briefing paper by the Tenants' Union of NSW**

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The Allen Consulting Group's 2003 report 'Shared Accommodation for People with a Disability: a National Competition Policy Review of the Regulation of Boarding Houses' ('the Allen Report') makes numerous recommendations for reform of licensed boarding houses, or Licensed Residential Centres ('LRCs'), in New South Wales. One of its recommendations is that LRCs should be obliged to enter into a residential tenancy agreement with each resident (Recommendation 6, at p 78). The Allen Report also acknowledges that the issue of tenancy rights for residents is linked with the issue of rights for boarders and lodgers more generally, who are currently excluded from the Residential Tenancies Act 1987 ('the RT Act').

This briefing paper sets out a model of law reform that addresses the specific issue of rights for residents of LRCs, and the wider issue of rights for boarders and lodgers and other renters excluded from the RT Act.

This model is based on the approach taken by the Australian Capital Territory in recent amendments to its Residential Tenancies Act, which makes provision for 'occupancy agreements.' The TU believes that this approach represents current best practice in legislation relating to boarders and lodgers and other renters otherwise excluded from residential tenancies legislation.

### **The rights of residents of LRCs under the current law**

Most residents of LRCs are boarders. At law a boarder is a person who has contracted for a right to occupy premises, and to receive other services (such as meals) under their contract, but the other party (the landlord) retains mastery of the premises: that is, the landlord or a caretaker remains on the premises and sets rules for the residents. (A lodger is like a boarder, but does not receive any services other than the right to occupy premises). Boarders and lodgers, and numerous other specific groups of renters, are expressly excluded from the Act and are not covered by any other tenancy legislation. As a result, they are without effective legal rights in relation to their housing. In particular, boarders and lodgers face the following problems:

- Eviction with little or no notice
- Rent increases with little or no notice
- No means of getting repairs done
- No means of resolution of disputes

As the Allen Report acknowledges, this is a problem not only for residents of LRCs. Residents of unlicensed boarding houses, hotels and private lodgings also have no effective legal rights – and many of these residents face the same issues of disability and disadvantage as residents of LRCs.

### **The law in other States and Territories**

Of the Australian States and Territories, only New South Wales and Western Australia have no legislation covering boarders and lodgers. The other States and Territories each make very different provision in relation to boarders and lodgers, with different definitions and exemptions applying in each. For example, Queensland's Residential Services (Accommodation) Act 2002 applies narrowly to residential services under the Residential Services (Accreditation) Act 2002, which applies only to services that accommodate 4 or more residents. In Victoria, the Residential Tenancies Act makes specific provision for residents of 'rooming houses', but that Act excludes 'residential care services', including service agencies funded under the Victorian Disability Services Act 1991.

To generalise, across Australia the predominant model of legislation relating to boarders and lodgers provides a *prescribed regime* of rights and responsibilities, which applies to a *prescribed class* of residents, premises or agreements.

While legislation of this sort is better than none, there are a number of problems with the model. First, many landlords seek exemption from the legislation, either by lobbying for the coverage of the legislation to be narrow (for example, prescribing that it applies to LRCs only, and not unlicensed boarding houses), or by changing the way they do business so as to fall outside of coverage (for example, avoiding licensing or accreditation). Second, if the legislation applies to a variety of different forms of accommodation, the regime of rights it prescribes may not be appropriate to all forms – or, more likely, the regime will be reduced to the lowest common denominator and offer few protections to any residents.

The Australian Capital Territory has recently taken a different legislative approach, and is the basis for the new model of legislation discussed below.

### **Occupancy legislation – a new model of legislation for boarders, lodgers and other renters excluded from the RT Act**

The TU's preferred model of legislation creates a statutory scheme of enforceable agreements for all renters not covered by current residential tenancies legislation, including residents of LRCs, and a statutory process for the creation of a range of different standard terms, each made according to the specific conditions of the sort of accommodation to which it applies. Following the ACT legislation, we will refer to this the *occupancy model of legislation*.

The primary elements of this model of legislation are:

- *broad application*. In the New South Wales context, occupancy legislation would apply generally where a person contracts, for value, for a right to occupy premises and where the current RT Act (and similar legislation, such as the Residential Parks Act, and the Retirement Villages Act) does not apply. This avoids the inequity of

some classes of persons being covered while other similar persons are not, and discourages landlords from manipulating definitional loopholes to escape coverage.

- *some basic, non-prescriptive, legislated rights.* Referred to as 'occupancy principles' in the ACT legislation, these basic provisions are deemed to be part of all occupancy agreements. In contrast to the 'prescribed regime' approach of other legislation, by which specific notice periods and other details are fixed for all parties, these principles are less prescriptive: for example, they provide for 'reasonable notice' of the termination of an agreement, and what is reasonable may depend on the circumstances of the particular form of accommodation in question. Other examples include that a resident is entitled to know the rules of the premises before moving in; that the landlord is entitled to enter the premises at a reasonable time and on reasonable grounds; and that the premises should be reasonably clean and in a reasonable state of repair.
- *provision for the creation of standard terms,* which may apply specifically to different forms of accommodation. These standard terms would provide the detailed contents of agreements between parties, such as notice periods, grounds for termination and other matters not specified in the occupancy principles. This aspect of the model balances its broad application, by allowing for different standard terms to apply to different sorts of accommodation. For example, one set of standard terms might be created for LRCs, and another set for unlicensed boarding houses, and yet another set for student accommodation. The ACT legislation makes provision for the creation of standard terms by Regulation, but other variations on this model are conceivable: for example, New South Wales occupancy legislation could provide for the creation of standard terms by order of the Consumer, Trader and Tenancy Tribunal on application by stakeholder groups.
- *dispute resolution by the Tribunal.* This provision would afford both parties to an agreement the relatively cheap, quick and accessible dispute resolution processes of the NSW Consumer, Trader and Tenancy Tribunal.

An early indication of the benefits of this model is the development, by representatives of ACT service providers funded under the Supported Accommodation Assistance Program (SAAP), of standard terms for occupancy agreements between SAAP service providers and SAAP clients. Two sets of standard terms have been developed – one for overnight accommodation, the other for longer-term accommodation – which may now be 'road-tested', before possible adoption as Regulations under the ACT legislation.

## **Occupancy legislation and LRCs**

The occupancy model of legislation offers benefits both to LRCs and to residents. Residents would have the protection of legally effective agreements with their housing provider, and recourse to the Consumer, Trader and Tenancy Tribunal in the event of disputes. They would also have the assurance that they would have effective housing rights if they were to leave their LRC. LRCs would have the opportunity to work with resident interest groups to develop standard terms and standard agreements that represent a fair balance of rights and responsibilities between parties and the working requirements of the LRC sector.