



8 October 2019

via email

Dear Madam/Sir,

Statutory Review of the Boarding House Act 2012

Kingsford Legal Centre welcomes the opportunity to provide feedback on the operation of the Boarding House Act (the Act).

About Kingsford Legal Centre

KLC is a community legal centre which has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government areas since 1981. KLC provides general advice on a wide range of legal issues, including tenancy matters. KLC has a specialist discrimination law service (NSW wide), and a specialist employment law service. In addition to this work, KLC also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

KLC is located at UNSW and provides extensive legal advice and assistance to people in a range of housing issues. Our clients include people who are experiencing various levels of homelessness, people on low incomes who struggle to find affordable housing, people in social housing and people who are exiting hospitals or Long Bay Gaol. We also have particular expertise in assisting students in accommodation and the myriad of legal issues that arise from this. Our experience with the Act derives from this.

General Observations about the Act

KLC's main experience is with general boarding houses so our comments are confined to these.

KLC strongly supports the strong legal regulation of boarding houses. We believe that legal regulation is required to ensure the safety and quality of boarding house accommodation. Boarding houses have always played an important role in providing flexible, affordable housing especially to people at the margins of the housing sector. These people can be extremely vulnerable to unsafe and exploitative housing practices and so the need for clear legal regulation is even stronger.



KLC approaches this submission on the basis that access to safe, stable and affordable housing is a human right. We also believe that the affordability crisis in Sydney's housing has hugely detrimental impacts on the lives of people who face constant instability in their housing. We see this daily in our legal service, where housing unaffordability limits the ability of people to enforce their rights or reject unscrupulous practices.

Our Key Areas of Concern Are:

Over the past 5 years KLC has had extensive experience with people in boarding houses or who have signed occupancy agreements. Our major concerns with the operation of the Act are:

- the routine misidentification/ misuse of Occupancy Agreements for tenants, including tenancies being listed on the Boarding House Register;
- the proliferation of unauthorised and excessive fees and charges imposed routinely on occupants often in breach of the Australian Consumer Law;
- the widespread refusal of landlords to return bond and rent in advance and non-compliance with Tribunal orders by landlords;
- the ongoing fear of arbitrary eviction for residents who enforce their rights;
- the targeting of particular groups of people who lack knowledge and access to legal advice through the use of "occupancy agreements" in tenancy situations; with persistent commercial offenders;
- commercial landlord's 'phoenixing' businesses to evade debts and to continue to operate.

KLC still sees the boarding house sector as largely unregulated despite the Act being in operation for 5 years. This has been because the Act has failed to ensure minimum standards around the state of the premises, the payment of money and bond and has failed to ensure there is legal oversight of evictions. As a result, residents of boarding houses feel scared to enforce their rights. It is KLC's observation that the lack of strong regulation in this area has attracted dodgy commercial operators who target vulnerable groups prone to exploitation. The lack of strong enforcement mechanisms in the Act has allowed this to proliferate under the Act and has undermined the intention and efficacy of the Act. We strongly recommend significant reform of the Act to bring these arrangements into the regulatory light.

Main Comments on the Operation of the Act:

- **The Act must provide legally enforceable minimum standards:**

KLC believes that Act must prescribe minimum standards that landlords of boarding house accommodation must adhere to. We do not believe that the current use of occupancy agreement principles is legally rigorous enough to

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ensure that exploitative practices do not proliferate. Without enforceable minimum standards around issues such as rent increases and evictions the Act does not adequately regulate this accommodation. In our view it simply allows unfair practices to continue under the terms of the occupancy agreement. It is our experience that these agreements are written to wildly favour the interests of the landlord over the resident and have not gone anyway to ensuring minimum standards.

- **Termination must be sought through NCAT application:**

KLC is strongly of the view that in order for possession to be obtained a landlord must apply to NCAT for an order for possession. This is in keeping with the human right to housing but as well as ensuring that there is adequate regulation of boarding houses. Under the Act, NCAT is unable to adjudicate terminations directly. Without any recourse to the Tribunal, occupants are very vulnerable to unscrupulous operators. This directly impacts on the 'appropriateness' and 'effectiveness' of the current dispute resolution processes, as per Discussion Point 20.

It is our experience that evictions do occur for unjust and legally unenforceable reasons and can plunge a resident into homelessness. Oversight of evictions (where the resident has not agreed to surrender possession) should be minimum requirement of the Act. KLC recommends that 'suggested' periods for termination become mandatory, and that the 'suggested' period for 'no grounds' termination is extended to 6 weeks.

- **Use of the Act to evade tenancy law:**

KLC has seen in recent years the proliferation of accommodation targeting international students use the Act and occupancy agreements. KLC has seen particular commercial providers using occupancy agreements. In almost all cases these premises were not properly considered boarding houses but tenancies. Very limited inquiries would establish that the accommodation is a tenancy, yet this business model has proliferated attracted to the lack of enforceable minimum standards in the Act.

We are strongly of the view that their needs to be a strong regulatory response to this use of the Act as well as a general strengthening of the Act. Greater minimum standards and oversight by NCAT would play a role in exposing the use of the law in this way.

In these cases the majority (but not all) of the properties are listed on the NSW Boarding House Register. In our view, this may not be sufficient evidence of their status as boarding houses or otherwise as no inspection is undertaken before registration occurs. We note that the setup of the Boarding Houses



Register allows entities to self-list. We do not know whether these properties have been inspected by the respective local councils to determine the accuracy of the listings.

A very limited investigation into many of these arrangements would, in our view establish that the majority of these residents had mastery of the property that they rent. They can lock their doors, have cooking facilities in their rooms and must grant permission for the agent or landlord to access their rooms. We also understand that at least some of the students have separately metered electricity. Despite, this they appear on the Register and we are concerned that the use of the Register misleads international students as to the actual nature of their agreements.

Case study

A student signed an “occupancy agreement” with a landlord which stated it was under the Boarding Houses Act 2012. According to the agreement, the property was a self-contained studio with access to a shared common room. The student could lock his door and had his own bedroom, bathroom and kitchen.

The student was required the student to sign a direct debit after moving in, and the student received tax invoices for a “weekly student service fee” of \$185 per week, even though he did not agree to pay this fee in the original agreement.

When the student sought our advice we came to view that the student was a tenant and it was not a charge that should be paid.

KLC has subsequently seen many students being asked to pay the same amount in tenancy situations. In some cases the money was directly debited from their account.

- **Lodgement of Security Deposits at Rental Bond Board**

KLC frequently sees landlords request extremely large amounts of bond and rent in advance under occupancy agreements. In some cases exceeding two weeks rent, which for residential tenancies is a breach of section 33(2) of the RTA. Likewise we see very large landlords who never lodge any bond with the Rental Bond Board and who then fail to return the bond at the end of the agreement, often failing to comply with NCAT or Local Court orders. KLC sees operators that persistently fail to repay rental bonds within 14 days, as set out in Occupancy Principle 8 (2).

KLC believes there have been many instances where occupants have simply given up on claiming bonds rightfully owed to them by operators due to this



behaviour. When these matters have been taken to NCAT, operators have continually refused to attend, or comply with Tribunal orders. Occupants are then required to obtain garnishee orders, which further protracts the process. The fear of having a bond arbitrarily non-returned also affects occupants' decision-making when choosing whether to enforce their rights, which reflects the concern of Discussion Point 19 as to whether the current provisions provide sufficient security for boarding house residents.

KLC strongly believes that security deposits must be lodged with the Rental Bond Board.

Case study

A student signed up with a landlord to secure accommodation near the University in Kingsford. A few months before moving in, they paid a booking placement fee (\$340.91), two week security deposit (\$1,050) and one month's rent in advance (\$2,281.25).

At the end of the agreement, the student vacated the premises. The room was left clean and undamaged. The student sought return of the security deposit from the landlord. The money was never received.

KLC assisted the student to take the landlord company to NCAT, and got an order made in favour of the student. No-one attended the NCAT hearing on the landlord's behalf.

- **Mandatory Standard Agreements:**

We believe that similar to the operation of the RTA the Act should require mandatory use of a standardised agreement with minimum standards that are enforceable through NCAT. We believe that the use of 'principles' has not regulated the area effectively and has in fact allowed further exploitation.

- **Greater Regulatory Oversight:**

We believe there should be greater resourcing within Fair Trading in order to identify commercial operators misusing the Act and in particular greater oversight of the Boarding House Register. We believe there should be greater regulatory scrutiny of the Register.

We are also concerned about a range of breaches of the Australian Consumer Law in this area and believe there should be more resources to ensuring compliance with the law.



There also need to be greater oversight of phoenixing activity where landlord entities are changed to evade available legal remedies. We believe there is greater scope for investigation, regulation and prosecution in this area.

We are also of the view that greater funding is required to ensure Local Government Authorities are able to enforce safety standards and to ensure the accuracy of the Boarding House Register.

We welcome the opportunity to discuss the future of the Boarding Houses Act.

Yours Sincerely,
KINGSFORD LEGAL CENTRE

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Director

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