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# Residential Services (Accommodation) Bill 2002 (Qld): Rights and Obligations

*The Residential Services (Accommodation) Bill 2002 (Qld) (the Accommodation Bill), introduced into the Queensland Parliament on 6 March 2002, is part of a twin legislative package that will regulate the residential services industry. The other part of the package is the Residential Services (Accreditation) Bill 2002 (Qld) (the Accreditation Bill) which will establish mandatory registration and accreditation standards for the industry.*

*The new legislation will cover boarding houses (offering accommodation only), hostels, supported accommodation (with additional services such as meals and personal care), and aged care accommodation units (with a range of extra services and meals provided). It will therefore apply to traditional boarding house style premises providing 'rooms only', and also to those facilities providing meals and/or personal care services.*

*Many residents in residential services facilities are disadvantaged by physical or mental disabilities, age and infirmity, and/or low incomes and are vulnerable to exploitation and abuse by unscrupulous service providers.*

*The Accommodation Bill aims to balance the rights and responsibilities of residents and service providers relating to the provision of accommodation in the residential services industry. That object is to be achieved mainly through –*

- *regulating the making, content, operation and ending of residential service agreements;*
- *providing for the resolution of disputes about such agreements; and*
- *establishing administration and compliance processes.*

*The Accommodation Bill establishes standard contractual arrangements and standard house rules for the provision of accommodation. It will regulate matters such as entry to rooms and notice periods for terminating agreements. Dispute resolution procedures, embracing conciliation by the Residential Tenancies Authority and review by the Small Claims Tribunal, are also included.*

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**Queensland Parliamentary Library**  
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## 1 INTRODUCTION

The Residential Services (Accommodation) Bill 2002 (Qld) (the Accommodation Bill), introduced into the Queensland Parliament on 6 March 2002, is part of a twin legislative package that will regulate the residential services industry. The other part of the package is the Residential Services (Accreditation) Bill 2002 (Qld) (the Accreditation Bill) which will establish mandatory registration and accreditation standards for the industry. The latter is considered in the related Research Brief *Residential Services (Accreditation) Bill 2002 (Qld): Standards and Accreditation* No 9/02.

The Accommodation Bill seeks to improve the lives of residents in residential services premises and to strike a fair balance between the interests of residents and operators. It encompasses boarding houses (premises which usually offer accommodation only), hostels, supported accommodation (with additional services such as meals and personal care to assist disabled persons), and aged care accommodation units (with a range of extra services and meals provided). It will therefore apply to traditional boarding house style premises providing ‘rooms only’, and also to those facilities providing meals and/or personal care services.

Many residents in residential services facilities are disadvantaged by physical or mental disabilities, age and infirmity, and/or low incomes and are vulnerable to exploitation and abuse by unscrupulous service providers.

The Accommodation Bill aims to balance the rights and responsibilities of residents and service providers relating to the provision of accommodation in the residential services industry. That object is to be achieved mainly through –

- regulating the making, content, operation and ending of residential service agreements;
- providing for the resolution of disputes about such agreements; and
- establishing administration and compliance processes.<sup>1</sup>

The Accommodation Bill establishes standard contractual arrangements and standard house rules for the provision of accommodation. It will regulate matters such as entry to rooms and notice periods for terminating agreements. Dispute resolution procedures, embracing conciliation by the Residential Tenancies Authority and review by the Small Claims Tribunal, are also included.<sup>2</sup>

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<sup>1</sup> Residential Services (Accommodation) Bill 2002 (Qld), **cl 7**; see also *Explanatory Notes*, p 1.

<sup>2</sup> Residential Services (Accommodation) Bill 2002 (Qld), *Explanatory Notes*, p 2.

The Accommodation Bill is understood to have undergone extensive consultation over a three-year period with representatives of key industry bodies and residents.<sup>3</sup> It is anticipated that the legislation will be in place by July 2002 with a review of its operation to occur after two years.

## 2 CURRENT LEGAL STATUS OF BOARDERS AND LODGERS

The difficulties for residents in residential services are exacerbated by the fact that the law classifies them as licensees rather than tenants which means that they are not protected by the *Residential Tenancies Act 1994* (Qld) (the *RT Act*), except in relation to bond money.<sup>4</sup> It appears that while a resident might have a tenancy over their room, they only have a licence over other essential facilities (eg the toilet and bathroom).<sup>5</sup>

Residential services accommodation is not covered by industry standards or legislation that apply to other residency situations (such as the *Retirement Villages Act 1999* (Qld), the *Aged Care Act 1997* (Cth)) and it is not embraced by the Supported Accommodation Assistance Program.<sup>6</sup> Any rights that exist for residents are those provided by common law.

There has been an increase in private aged accommodation rental complexes over the past decade. Those are a type of boarding house premises marketed as an affordable housing alternative to a retirement village or to difficult to get public housing for older persons wishing to maintain a level of independence, have more social contact, and access to services that they may need from time-to-time. Residents normally pay around 80% of their pension and other allowances in rent but usually do not pay bonds and other similar charges.<sup>7</sup> Services offered may

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<sup>3</sup> Hon RE Schwarten MP, Minister for Public Works and Minister for Housing, Residential Services (Accommodation) Bill 2002 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 6 March 2002, pp 371-374, p 372.

<sup>4</sup> Persons living in a community boarding house funded by Housing Queensland are regarded as tenants as they sign a tenancy agreement.

<sup>5</sup> *Fenton (Applicant) and Dean (Respondent) at Small Claims Tribunal*, Claim No 1104/95, KO Taylor (Referee), Brisbane.

<sup>6</sup> The SAAP is a program administered by states and territories with financial assistance from the Commonwealth under intergovernmental agreements made in accordance with the *Supported Accommodation Assistance Act 1994* (Cth). It is aimed at providing transitional supported accommodation and services to the homeless.

<sup>7</sup> Cynthia Tupico, 'New Standards for Boarding House Accommodation for Older People', *Proctor*, June 2001, pp 22-23, p 22.

include three meals a day served in the dining area, a weekly linen service, access to emergency nursing care, and other personal services. These complexes tend to operate outside the type of residential aged care services accredited and regulated by the Commonwealth *Aged Care Act 1997*. As state government funding is not provided, there are no government regulations or industry standards of the kind that apply to retirement villages (eg the Queensland *Retirement Villages Act 1999*).

Victoria and South Australia are among the few states with legislation covering parts of the residential services sector. The *Residential Tenancies Act 1997* (Vic) (the Victorian *RT Act*) and the *Residential Tenancies (Rooming Houses) Regulations 1999* (SA) (the SA Regulations) both cover ‘rooming house’ accommodation – where a number of persons have a right to occupy a room and to share other areas such as the kitchen, dining area, lounge room, toilet, bathroom, and laundry with other residents. A number of sources refer to this type of accommodation as ‘boarding house accommodation’. Many such facilities have owners, managers or caretakers on-site who have the right to issue house rules and set other conditions. They sometimes, but not always, provide additional services such as meals, cleaning or personal/health services. The residential services facilities covered by the Queensland Bills may offer a number of additional services on top of accommodation.

In South Australia, the *Supported Residential Facilities Act 1992* applies to premises at which accommodation is provided together with personal care services (eg nursing care, assistance with medication, mobility or financial matters) and regulates the provision and standard of personal care given. It is aimed at protecting older people and persons with disabilities in those facilities.

Except in relation to some provisions, the *Supported Residential Facilities Act* does not operate in ‘rooming house’ situations where no additional services to accommodation are provided. The Act has some similarities to the Queensland Accreditation Bill, and is discussed in more detail in the related Research Brief *Residential Services (Accreditation) Bill 2002 (Qld): Standards and Accreditation No 9/02*, but the Queensland Bill applies to all residential services facilities even where only accommodation is offered. This Brief will refer to the *Supported Residential Facilities Act* where relevant but it appears that the facilities covered may also be impacted upon by other legislation and administrative arrangements. That creates difficulties when attempting to compare the tenancy rights and obligations of residents and service providers under that Act with those that will exist under the Queensland Bill. For example, if an entry fee is charged, the facility may be covered by the *Retirement Villages Act 1987* (SA).

## 2.1 CONCERNS AND ISSUES

The main concerns stem from the fact that, apart from rental bond issues, any rights residents have derive from the common law. Many residents would not, due to their disabilities and other reasons discussed earlier, be aware of those rights let alone have the capacity or means to enforce them. Community groups have been concerned about interference with residents' privacy, harsh rent increases, and summary eviction by operators.<sup>8</sup> There is also a perception that if residents complain too much the service provider will retaliate, sometimes by summary eviction.

While many premises are of good quality and operated fairly, there are a number that are not. Thus, many industry bodies support reforms that will improve standards and impose obligations on service providers.

For many years, the Tenants' Union of Queensland (QTU), Queensland Advocacy Inc, and other representative bodies have advocated for boarders and lodgers to have the same rights as general tenants, unless there is a reason for there needing to be a distinction.<sup>9</sup>

The new Bills both seek to address these issues in a way that attempts to balance the rights and obligations of both residents and service providers.

## 3 BACKGROUND TO LEGISLATIVE REFORM

An early response to the problem was a 1992 Queensland Residential Tenancies Law Review Committee Report to the Minister for Consumer Affairs.<sup>10</sup> That Report recommended that the Government should regulate the rights of parties in the residential services sector through agreements. There have been other papers and reports over the last decade, including a 1996 QTU Report to assist the Brisbane City Council with boarding house supply issues and the application of tenancy law to boarding houses.<sup>11</sup>

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<sup>8</sup> 'Boarding House Legislation On the Way', *United Times*, Spring 2001, p 7.

<sup>9</sup> 'Boarding House Legislation On the Way', *United Times*, Spring 2001, p 7.

<sup>10</sup> Queensland Government, Queensland Residential Tenancies Law Review Committee, *Residential Tenancies Law Reform in Queensland – Boarding Houses & Caravan Parks: Second Report to the Hon Glen Milliner, MLA, Minister for Consumer Affairs and Minister for Corrective Services*, November 1992.<sup>10</sup>

<sup>11</sup> Tim Seelig & Lex Weddell, *All Above Board? Tenancy Law and Boarding Houses*, Tenants' Union of Queensland Inc, March 1996.



### **3.1 THE RULES FOR RENTING IN QUEENSLAND REPORT (1997)**

The March 1997 *Rules for Renting in Queensland Report* is an evaluation of the first year of the operation of the *Residential Tenancies Act (RT Act)* undertaken by the Board of Directors of the Residential Tenancies Authority (RTA).<sup>12</sup>

Chapter 12 of the *Rules for Renting Report* recommended that boarders and lodgers be covered by tenancy legislation, but in separate legislation. That legislation would mirror many parts of the *RT Act* but be adapted to the different nature of the more informal residency arrangements. The Report (pp 188-189) stated that separate legislation had the benefit of being a useful educative tool if it is easy to read, accessible and stands alone.

It was recommended that the new legislation should prescribe standard house rules to be used for periodic agreements (ie those for an indefinite term) common to this type of residency arrangement, instead of written agreements. Prohibition of contracting out of the house rules; restrictions on entry to residents' rooms; prevention of summary eviction by operators; and access to the same dispute resolution processes as provided by the *RT Act* were also among the recommendations. It was also proposed that the new legislation should limit the costs that service providers may charge.

The *Rules for Renting Report* noted (p 186) that there was concern expressed by some industry bodies that the legislation might not be tailored to the characteristics of boarding house situations and might place too many rules on a sector that was previously flexible in its arrangements. It was recommended that funding be provided for education and information dissemination as part of the implementation process in order to alleviate any concerns and overcome some negative attitudes that may develop.

The *Rules for Renting Report* is mentioned throughout the Brief as it contains useful discussion of the relevant issues which are raised by provisions of the Accommodation Bill and its recommendations appear to underlie some of the Bill's reforms.

### **3.2 LEGISLATIVE REFORM**

In 2000, a Hostel Industry Taskforce was formed to carry on previous reform work that had been initiated by the Government in response to concerns of the

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<sup>12</sup> Queensland Government, *Rules for Renting in Queensland: An Evaluation of the First Twelve Months of Operation of the Residential Tenancies Act 1994*, Residential Tenancies Authority, March 1997, (the *Rules for Renting Report*).

community and representative bodies. As a result of Taskforce recommendations, legislative reform of the supported accommodation sector, including aged rental accommodation, commenced resulting in the twin legislative package.

When introducing the Accommodation Bill into Parliament, the Minister for Housing, the Hon Robert Swarten MP, said that the policy model underpinning the Bill was developed from lessons learnt from a pilot project conducted during 2000 in seven residential services premises with 250-300 residents. That project involved the pilot of a written agreement, standard house rules, and a dispute resolution process.<sup>13</sup>

## 4 RESIDENTIAL SERVICES (ACCOMMODATION) BILL

The *Explanatory Notes* state that the Accommodation Bill is modelled on the principles of general tenancy legislation but modified to fit the special circumstances of the residential services sector. Any rights or remedies provided under the Bill will be in addition to rights or remedies that exist apart from the Bill.

### 4.1 COVERAGE

To determine what is a ‘**residential service**’ that is governed by the Accommodation Bill, it is necessary to consult the Accreditation Bill (cl 4).

A service is a **residential service** if its main purpose is to provide accommodation for at least four residents, in return for rental payments, with each resident having a right to occupy one or more rooms but no right to occupy the whole of the premises.

If the above criteria are satisfied, a service is a ‘residential service’ in the following situations –

- where the resident does not occupy a self-contained unit, and shares other rooms or facilities (eg bathroom, kitchen, dining room) with other residents; or
- where the resident does occupy a self-contained unit but is provided with a food service or personal care service; or
- where the service is prescribed under a regulation to be a residential service.

A number of types of accommodation services are excluded from the coverage of the Bill and cl 4(5) of the Accreditation Bill should be consulted for the full range.

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<sup>13</sup> Hon RE Swarten MP, Second Reading Speech, p 372.

The accompanying Research Brief, *Residential Services (Accreditation) Bill 2002 (Qld): Standards and Accreditation No 9/02*, explores the exclusions in more detail.

The **Dictionary** to the Accommodation Bill defines a ‘**resident**’ as a person who occupies one or more rooms as their only or main residence. It does not include the service provider or their relatives or employees. A ‘**service provider**’ is either the person registered as such under the Accreditation Bill, or, if not so registered, it is the person conducting the relevant service.

## **4.2 RELEVANCE OF THE RESIDENTIAL TENANCIES ACT 1994**

The Accommodation Bill, in **cl 5(3)**, states that the *RT Act* does not largely cover residential services but it does contain provisions about bond matters, including conciliation; and provisions for the administration and enforcement of the legislation. The Bill will make some amendments to the *RT Act* to enable the RTA to administer the new legislation and to investigate and prosecute offences. The *Small Claims Tribunal Act 1973* will also be altered to ensure that the Small Claims Tribunal (the Tribunal) has relevant powers and functions with respect to matters arising under each Bill.

## **4.3 RESPONSIBILITIES OF RESIDENTS AND SERVICE PROVIDERS**

The *RT Act* sets out rights and obligations applying to the general lessor and tenant arrangement. At present, there is no legislation setting out the responsibilities and rights of either residents or service providers and the common law must be looked to.<sup>14</sup> Again, most residents would not be aware of their limited common law rights as a licensee, such as a right to a reasonable level of quiet enjoyment.

### **4.3.1 Proposed Changes**

The Accommodation Bill will set out the **responsibilities of residents and service providers** which are taken to be part of the residential service agreement. These are reproduced in Appendix C to this Brief. The Victorian *RT Act* and the Code of Conduct for Rooming House Proprietors in the SA Regulations set out similar rights and obligations in relation to rooming houses. The SA *Supported Residential*

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<sup>14</sup> Residential Tenancies Authority, *Residential Services (Accommodation) Bill 2002*, Unpublished Notes, March 2002 (RTA Unpublished Notes), Attachment 1.

*Facilities Act 1992* provides a framework for looking after the rights of residents in those types of facilities.

#### **4.4 NOTICE TO RESIDENTS WITH IMPAIRED CAPACITY**

An important reform made by the Accommodation Bill in recognition of the vulnerable position of many residents in the residential services sector is in circumstances where notice has to be given to a resident with impaired capacity. An ‘impaired capacity’ is where, for a financial matter, the resident cannot understand the nature and effect of decisions about a matter, or freely and voluntarily make relevant decisions, or communicate the decisions: **cl 133**.

Provision will be made, in such circumstances, for the service provider to give the notice to the resident’s administrator or attorney appointed under relevant legal instruments.

It is understood that these matters will be dealt with further by standards to be developed by the accreditation agency in the Office of Fair Trading and in community information resources developed for the implementation of the Accommodation Bill.<sup>15</sup>

#### **4.5 RESIDENTIAL SERVICE AGREEMENTS**

Currently, written agreements in the residential services sector are not mandatory nor a common practice. Service providers and residents tend to see the arrangements as informal. There is no regulation of the terms that the service provider may include in the agreement, increasing the potential for exploitation of residents by unscrupulous service providers. The *Rules for Renting Report* (pp 202-203) described the concept of written agreements as fundamental for providing clarity and awareness about respective rights and obligations of lessors and tenants. Often house rules and receipts for rent are the only written evidence of any arrangement. The Report did, however, recommend that prescribed house rules form the basis of periodic agreements rather than written agreements.

##### **4.5.1 Proposed Changes**

**Part 3 (cls 11-17)** will provide for Residential Service Agreements (RSAs) to operate in the residential services sector and for penalties for non-compliance. The

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<sup>15</sup> RTA, Unpublished Notes.

requirements for the RSAs will be similar to those for general tenancy agreements made under the *RT Act*. Many of the provisions will not apply to an existing RSA for at least six months after the legislation commences.<sup>16</sup> The main points to note about a RSA are –

- it must be in writing, and be clear and precise;
- it must be signed by both parties and comply with any regulation;
- the resident must be provided with a copy;
- contracting out of the provisions of the Bill is prohibited.

The **content** of the RSA will be regulated. It will be **taken** to include the responsibilities of each party (as set out in **cls 9 and 10**); the **house rules**; the terms of any existing conciliation agreement; and other duties or entitlements under the Bill. It must also contain **standard terms** prescribed by regulation, and any **special terms** (eg about food service provision or personal care) included by the parties that are not inconsistent with the standard terms.

In addition, the RSA must contain certain details about matters such as rent, the services provided, apportionment of rent for each service etc. as set out in **cl 16(4)**.

The South Australian Regulations, in Schedule 2, set out the implied terms that go into all rooming house agreements which can be modified for the benefit of the resident. While it does not appear to mandate a written agreement, if such agreement is signed, the resident must be given a signed copy. The Victorian *RT Act* enables owners and residents of rooming houses to enter into agreements specifying the terms and conditions of the resident's use and enjoyment of the premises. No special terms or provisions are set out.

Under the *Supported Residential Facilities Act 1992* (SA) a proprietor of a supported residential facility must enter into a written 'resident contract' (containing prescribed information) with a resident to whom personal care services are to be provided within 28 days after the services are first provided. Prior to entering into the contract, the resident (or their representative) must be given prescribed detailed information about the services and facilities and the proprietor must ensure that the nature and effect of the contract is understood by the resident.

The contract relates to both the services and to the terms and conditions of the residency. Contracting out is prohibited. It must contain a prescribed form setting out full details of the premises, services, payments, routines of the house etc; any rules or policies that will apply; and a draft service plan outlining the details of the personal care service. The *Supported Residential Facilities Regulations 1994* set

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<sup>16</sup> See the transitional arrangements for continuing agreements in **cl 139** of the Residential Services (Accommodation) Bill 2002 (Qld).

out the contents of such service plans. The Act also requires the proprietor to prepare a prospectus for the facility containing information about many matters including rules or policies, rights and responsibilities, payment of any fees and the types of services offered. If the contract with the resident is inconsistent with the prospectus, this must be drawn to the prospective resident's attention and acknowledged by the parties. The resident must be given a copy of the contract.

A resident has the right to rescind the contract within 15 business days.

### ***House Rules***

House rules are rules about the use, enjoyment, control or management of the premises (eg noise levels at night, keeping pets) and are already a feature of many arrangements in the residential services sector. This may be because of the communal nature of the premises, it is in everyone's interest to control the impact one resident's behaviour might have on other residents. At present, it is possible for service providers to set any house rules they like.<sup>17</sup>

**Part 6 (cls 58-64)** of the Accommodation Bill will govern house rules for rental premises. The house rules will comprise both the **prescribed rules** under a regulation that will apply to all premises (**cl 56**); and those **additional rules** made by the service provider, in accordance with **cl 57**, about matters such as the use of shared facilities; parking; alcohol consumption or illegal drug use; noise; keeping pets. The additional rules must not be inconsistent with the prescribed rules.

Recall that house rules are taken to be included in the RSA for a premises. The service provider will be in breach of the legislation if a potential resident is not provided with a copy of the house rules before signing a RSA. It is also a breach not to ensure that a copy is kept on prominent display at all times.

**Part 6, Div 2** will set out the process to be followed in making or changing house rules. An important aspect of this procedure will be the requirement for each resident to be given at least **7 days' notice** of such proposed change or new rule and the ability for any resident to give a written notice of objection to the service provider if the resident considers the proposed change or new rule to be unreasonable.

However, unless objections are made by at least half of the residents before the day the rule is to commence, it takes effect on that day. If the requisite number of objections have been made, the proposed change does not take effect. The service provider may apply to the Tribunal for an order declaring that the proposed rule or change is reasonable.

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<sup>17</sup> RTA, Unpublished Notes, Attachment 1.

The proposed provisions go beyond the suggestion of the *Rules for Renting Report* (p 205) which was to merely ensure that all residents be given a copy of the additional rules at the commencement of the residency and to display them on the premises.

The Victorian *RT Act* allows rooming house owners to make house rules and gives residents the right to apply to a tribunal if it is believed that a rule is unreasonable. The SA Regulations do not appear to be as generous. The *Supported Residential Facilities Act 1992* enables statements of routines for the house and other rules to be set out in the agreement for the facility.

## **4.6 RENT**

For the residential services sector, there is presently no legislation preventing a service provider increasing the amount of the rent without notice nor is there any mandate for rent to be reduced if the amenity of the premises or standard of a service deteriorates. There are no requirements about rental receipts or other evidence of payments.<sup>18</sup>

The South Australian *Supported Residential Facilities Act 1992* and Regulations set out their own regime for entry fees and recurrent fees. The prospectus for the facility should outline all payments, recurring costs, and charges to be made by residents as well as matters such as what services are included in the basic fee and the process for adjustment of fees. The *Supported Residential Facilities Act* fee arrangements will not be discussed in this section.

### **4.6.1 Proposed Changes**

**Part 4 (cls 18-27)** of the Accreditation Bill deals with rent. Reference should be made to those provisions for a full understanding of the proposals as only key features are highlighted below.

Rent will have to be paid in an ‘approved way’ (usually cash, cheque, credit card, pension deduction etc) which can be specified in the RSA. It will be a breach of the provisions for a service provider to require a resident to pay more than **two weeks rent in advance**. In relation to rooming houses, under the SA Regulations, only one week in advance is permitted but the Victorian legislation allows for two weeks rent in advance.

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<sup>18</sup> RTA, Unpublished Notes, Attachment 1.

### ***Rent Receipts***

Under Part 4, a service provider will be fined for not providing a **receipt** for cash payments or on request. The service provider will also be in breach for failure to keep records of receipt or for keeping records that are knowingly false, misleading or incomplete. Those requirements reflect laws applying to general tenancy arrangements in the Queensland *RT Act* and are similar to the Victorian and SA legislative provisions applying to rooming houses.

### ***Rent Increases and Decreases***

It appears common practice in the residential services sector for rent increases to follow increases in pensions or other benefits.

During consultation conducted for the purposes of the *Rules for Renting Report*, the Board found that industry did not oppose giving residents a month's notice in advance for rent increases, while community groups thought that the rights should be the same as those applying to general tenancies under the *RT Act*. Under the *RT Act*, two months' notice is required to increase rents for periodic tenancies and no increases are allowed under a fixed term agreement unless it is provided for in the agreement. The Report (p 207) recommended that the notice period be two months for any rent increases in boarding house situations.

**Clause 21** will provide that notice about the intended **increase** must be given to the resident at least **4 weeks** before it takes effect. However, if the RSA is for a fixed term, no increase is permitted until the end of the term, unless increases are specifically dealt with in the RSA. The exception to those requirements will be where the parties amend the RSA to provide for a further service and more rental payment is needed to cover it.

The Victorian *RT Act* requires at least 90 days notice of an increase to be given to rooming house residents and allows residents the right to complain to the Director of Fair Trading that the increase is excessive with further rights to apply to the Residential Tenancies Tribunal for an order about this. The SA Regulations impose notice requirements about rent increases and will not allow rises within the first six months of the agreement being entered into.

**Clause 22** of the Bill will govern situations in which rental payments **decrease**, for example, where the resident's room or common areas become unfit to live in or a service ceases or its standard substantially decreases. If the resident and service provider cannot agree on the amount of decrease, either party can apply to the Tribunal for an order to decrease the rent. Similar provision is made by the *RT Act* for general tenancies.



The Victorian *RT Act* provides that if a rooming house owner ceases to provide a service, the rent must be reduced by an agreed amount or as determined by the Tribunal. The SA Regulations merely state that the rent can be reduced by mutual agreement and can be on a temporary basis.

### ***Utility Charges***

The *Rules for Renting Report* (pp 209-210) noted that the *RT Act* enables lessors under general tenancy agreements to pass on charges for electricity, gas and excess water to the tenant. In the residential services sector, it appeared that residents were charged indirectly through rental payments.

**Clause 23** will allow service providers to specify in the RSA that a resident will be charged for the use of utility services (eg gas, electricity or water), provided the resident's room is separately metered and the charge is not more than that charged to the service provider. The foregoing is similar to provisions about utility services for rooming house residents in the Victorian *RT Act*. Under the SA Regulations, the proprietor can levy charges for such services provided that the resident has been informed in writing about the charges before those services are provided.

### ***Property Seized for Unpaid Rent***

There has been concern expressed about a growing practice among service providers to **seize residents' property** to the value of any rent that is outstanding. The means of bringing court action to recover goods unreasonably withheld is beyond many residents, particularly the elderly.<sup>19</sup>

Under **cl 27** of the Accommodation Bill, a service provider will not be allowed to seize or dispose of a resident's property as security for payment of rent, reimbursement of some other amount paid for the resident, or to compensate for loss or damage caused by the resident's breach of the RSA. However, seizure may be allowed in certain specified circumstances.<sup>20</sup> The new provisions are similar to those applying to general tenancies under the *RT Act*. The Victorian *RT Act* also prohibits residents' goods being taken for unpaid rent.

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<sup>19</sup> Cynthia Tupico, 'New Standards for Boarding House Accommodation for Older People', p 23.

<sup>20</sup> Where the resident has abandoned property or where there an enforcement warrant exists: see **cls 90 and 91** of the Residential Services (Accommodation) Bill 2002 (Qld).

## 4.7 RENTAL BONDS

Currently, the only situation when the *RT Act* applies in the residential services sector is where a bond is paid to ensure that it is refunded at the end of the residency if no rent is owing and there is no damage to the premises.

Research undertaken for the *Rules for Renting Report* found that the majority of boarding house bonds held by the RTA were the equivalent of, or less than, two weeks rent (possibly reflecting the income of residents and short duration of the stay) and that the number of bonds held was low. The Board was unable to determine if the low number was due to it being an uncommon practice in this area to require a bond or whether it was because service providers did not lodge them with the RTA (p 205). The Report suggested that an appropriate compromise between balancing the provision of adequate protection for service providers and ensuring access to accommodation for poorer residents was for maximum initial costs to be equivalent to three weeks rent (taking into account rent in advance payments).

### 4.7.1 Proposed Changes

**Part 5 (cls 28-54)** of the Bill will set out provisions about the payment and refund of bonds and about enforcement. The provisions mirror existing *RT Act* bond provisions that, as mentioned above, currently apply also to the residential services sector. They reflect bond provisions under general tenancy arrangements.

Provisions will cover lodgement of the bond (or instalments thereof which is particularly important for residents of limited means who would tend to find it difficult to pay the full amount up-front) with the RTA; maximum amounts payable; refund of the bond by the RTA to include situations where the bond has been paid by a number of co-residents or where one party requests that the refund be paid to themselves (eg where the service provider may consider that they are owed money for rent or damage); and for resolution by the RTA and, ultimately, by the Tribunal of any disputes.

Transitional provision is made for bonds paid prior to the commencement of the legislation (**cl 139**).

The Victorian *RT Act* does not make it compulsory for a bond to be paid but if the rooming house owner asks for a bond, it must not exceed the equivalent of two weeks rent and a condition report must be made as evidence of the state of repair. The SA Regulations contain a Code of Conduct that makes provision for bonds.

Currently, there is no legislative requirement for the making of a condition report for the room and facilities therein even if a bond is required to be paid. **Part 8** of

the Bill will provide that if a bond is payable under the RSA, the service provider must (otherwise be in breach) prepare a **condition report** in accordance with the Bill's requirements. The resident must indicate on it any parts that the resident does not agree with. The condition report provides evidence of the condition of the room and facilities in any Tribunal proceedings. The *RT Act* requires that for a general tenancy where at least some of the terms are required to be in writing, a condition report be prepared by the lessor at the start of the tenancy. At the end of the tenancy, the tenant prepares a report for the lessor to sign if the lessor agrees with it or to indicate points of disagreement. The Victorian *RT Act* contains a similar requirement for condition reports as proposed by the Queensland Bill.

## **4.8 ENTRY TO ROOMS**

The service provider may need to enter a resident's room for a number of reasons such as to clean the room, collect dirty laundry, carry out maintenance work or repairs to the room or its facilities (eg water pipes), inspect it, or carry out emergency repairs.

Residents are not currently protected against service providers unreasonably intruding on their privacy by entering their rooms without notice and at odd hours. This is to be contrasted with the position of a tenant under a lease where the *RT Act* regulates entry to premises by a lessor. Industry bodies consider that similar provisions for seven days written notice (for inspection of room) or 24 hours written notice (for most other instances, such as routine repairs) to enter are too onerous in the residential services sector where the service provider or agent may be on-site most of the time. It was also argued that notice should not be necessary at all for entering the room to provide services such as cleaning. The *Rules for Renting Report* (p 210-211) noted that a resident's common law right of quiet enjoyment must be balanced against those arguments.

### **4.8.1 Proposed Changes**

**Part 7 (cls 65-71)** of the Accommodation Bill will govern the manner in which service providers and their agents may enter residents' rooms and it will be a breach to enter rooms other than in accordance with the legislation.

The grounds for entry and period of notice will be –

- with the resident's permission or in accordance with the RSA;
- at the times reasonably necessary to provide an agreed service;
- at a reasonable time to inspect the room (but not more than once a month) with at least 48 hours advance notice;

- at a reasonable time to carry out things mentioned in **cl 68** (eg routine repairs) with at least 24 hours notice either given to the resident concerned, or if it concerns more than one room, by posting it on the notice board;
- without notice in an emergency, or if the service provider believes the room has been abandoned, or to carry out urgent repairs.

The proposed provisions are similar to those applying to general tenancies under the *RT Act* with some slight modifications to account for the shorter duration of residency arrangements in many cases. The Victorian *RT Act* contains similar grounds for entry and notice requirements in relation to rooming houses. The situation in South Australia appears to be covered in a broad way under the Code of Conduct in the SA Regulations. The *Supported Residential Facilities Act 1992* (SA) has a different regime but the overall effect appears to be for the proprietors and service providers to respect the right to privacy to which residents are entitled under the Act.

#### **4.9 ENDING A RESIDENTIAL SERVICE AGREEMENT**

There is presently no legislation regulating the circumstances in which a resident in a residential service facility can be asked to leave, or wishes to leave, or the amount of notice required in either situation. Ending the agreement is generally done in an informal way but the common law requires a ‘reasonable’ period of notice taking into account all of the circumstances such as how often rent is paid; the time needed to find another residence; and the behaviour of the resident.<sup>21</sup>

Residents have sometimes been evicted on very short notice and without any grounds or not given any notice at all. The service provider can remove the resident if they refuse to leave and only the criminal law provides legislative sanctions for the means used.

Residents’ organisations have argued for legislation establishing a procedure for termination which gives residents the opportunity to remedy any breach before being asked to leave and requiring that they receive reasonable notice to leave. The *Rules for Renting Report* noted that industry bodies felt that the right to quickly evict tenants in the event of rent arrears and violence needed to be maintained.

The *RT Act* provides two main processes for termination of general tenancies. If the ground for ending the agreement is unremedied breach, sale of premises, or no cause, the procedure is for the terminating party to issue a prescribed notice to the other party about leaving the premises. The second process (covering the grounds:

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<sup>21</sup> Tenants’ Union of Queensland, ‘Boarders’ Rights Information Kit’, Lift-Out. *United Times*, Autumn 2000.

excessive hardship; objectionable behaviour; damage or injury; or abandonment) is for application to be made to the Tribunal for a termination order or, in the event of abandonment, an abandonment termination notice or order.

#### **4.9.1 Proposed Changes**

**Part 9 (cls 75-94)** will regulate the manner in which a RSA can be ended and deal with other related matters. The chief points are briefly outlined below.

The RSA ends only –

- by written agreement; or
- by either party giving notice to the other party that the agreement will end on a stated day (eg because of an unremedied breach of the RSA); or
- if the resident has abandoned the room.

In addition, either party can apply to the Tribunal for an order ending a fixed term RSA because of ‘**excessive hardship**’ to the applicant (**cl 118**).

The service provider will be in breach by attempting to end the RSA in any other way.

Note also that the service provider will not be able to end an agreement because the resident is seeking to enforce their rights or has made a complaint to a government body. The *RT Act* similarly prevents such retaliatory eviction of tenants.

#### ***Breaches of the RSA***

A **resident** will be able to be issued with a **notice to remedy** a breach of the RSA, in accordance with **cl 77**. The notice period for remedy of the breach depends on the type of breach:

- **non-payment of rent** – the resident has **4 days** to pay the rent due if they have been living at the premises for over 28 days and it is more than two days overdue. The resident has only **2 days** to pay up if they have lived there for less than 28 days. For a general tenancy, the *RT Act* provides that if the rent is unpaid for 7 days, the period of notice to pay is 7 days;
- **general breaches other than non-payment of rent** – the resident has **5 days** to rectify the breach. The *RT Act* allows at least 7 days for tenants to remedy general breaches.

A resident may give the **service provider** a **notice to remedy** a breach of the RSA (eg not doing repairs when asked) within **5 days (cl 83)**. This compares with at least 7 days under the *RT Act*.

### ***Termination Notices for Unremedied Breaches***

The **service provider** will be able to give the resident **notice to leave** (see **cl 78**), stating the grounds for doing so, if the resident has not remedied the breach or the breach has been repeated and not remedied. The notice period will be –

- **4 days for non-payment of rent** where the resident has lived at the premises for 28 or more days. The *RT Act* requires at least 7 days notice to move out under a general tenancy and, if the tenant refuses, the lessor can apply to the Tribunal for a termination order and warrant of possession. The *Rules for Renting Report* believed that a shorter timeframe was justified for boarding houses as rent paid in advance was more limited;
- **2 days for general breaches.** The *Rules for Renting Report* considered that 7 days notice would give the resident time to find alternative accommodation. The *RT Act* provides that a tenant can be required to leave within 14 days (2 days for a moveable dwelling) and if the tenant does not do so, the lessor may apply to the Tribunal for a termination order and warrant of possession.

The resident can give the **service provider** a period of **7 days** notice ending a fixed term agreement (stating grounds for such) for a failure to remedy the notified breach. Similar periods of notice apply to general tenancies under the *RT Act*.

The Victorian *RT Act* also allows rooming house residents the opportunity to remedy the breach. If the resident fails to comply, the owner can apply to the Tribunal for an order to remedy and if that is not complied with, the tenancy terminates at least two days later. If it is the resident giving notice, a two day notice period applies. The SA Regulations allow the proprietor to terminate an agreement for non-payment of rent by giving at least two days notice; for general breaches, seven days notice is required.

### ***Immediate Terminations***

The Accommodation Bill will provide that a **resident** can be asked to leave **immediately** in the following circumstances (see **cls 79-80**) –

- where the breach is **non-payment of rent** and the resident has resided at the premises for **less than 28 days** when the rent fell due (**cl 78(3)**);
- for a **serious breach**. This is where the resident has used the premises for an **illegal purpose**; or the resident or their guest has intentionally or recklessly caused **destruction or serious damage**, or has **endangered another person**, or has **significantly interfered with the reasonable peace, comfort or privacy of another resident** or their use of the premises.

Under the *RT Act*, these grounds form the basis of an urgent application to the Tribunal which may then make a termination order and issue a warrant of possession;

- where the premises have been **destroyed or made unfit to inhabit** other than because of a breach by the service provider; or can **no longer be used lawfully** as a residence; or have been **acquired** under a law. The notice to leave period in the *RT Act* varies for each of these.

Where a resident's room or common areas have been destroyed or made uninhabitable other than by any action of the resident, the resident may, within one month of the happening of the event, give the **service provider** a notice ending the RSA. The agreement can be ended immediately.

The Victorian *RT Act* also sets out the notice periods applying to rooming houses. For damage, danger or disruption, the resident can be asked to leave immediately. The SA Regulations allow the proprietor the same rights of termination.

### ***Notice Period for 'No Grounds' Termination***

A **periodic agreement** (ie one for an indefinite period) will be able to be ended by either party without grounds having to be stated: **cls 81, 86**. If ended by the service provider, **30 days notice** must be given, possibly because service providers have more control over the future plans for the premises whereas residents may have to end the agreement for any number of reasons.<sup>22</sup> If ended by the resident, the notice period is **7 days**.

Under the Victorian *RT Act*, the rooming house owner must provide six months notice to the resident, and the resident two days notice to the owner. Under the SA Regulations, the respective periods are 30 days notice to the resident and at least one day's notice to the proprietor.

A **fixed term agreement** can be ended at the end of the term by the service provider giving at least 14 days notice.

### ***South Australian Supported Residential Facilities Act 1992***

The *Supported Residential Facilities Act 1992* (s 39) enables a proprietor to end a resident contract provided that the resident, or their representative, is given written notice at least 28 days in advance specifying the grounds of the proprietor's decision to terminate the contract and the review rights the resident has to challenge that decision.

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<sup>22</sup> *Rules for Renting Report*, p 217.

### ***Removal of Resident***

Self- eviction of residents by service providers has been a concern in the residential services sector. However, many service providers want the power to remove a resident if they refuse to leave once the date for leaving in a termination notice (eg for unremedied breach) has arrived or the resident or their guest is causing damage, being violent, or engaging in objectionable behaviour towards the service provider or other residents.

The *Rules for Renting Report* noted that under the *RT Act*, urgent applications can be made to the Tribunal in cases such as damage, injury, hardship, objectionable behaviour, or also, where the tenant will not leave once the agreement is lawfully terminated. The Report recommended that many of those grounds were particularly important in the communal context of boarding houses and should be the bases for an urgent Tribunal application for a termination order and warrant of possession. The warrant authorises a police officer to enter premises and exercise powers with necessary and reasonable help and force. It was recommended that the new legislation prohibit any person from evicting a resident without Tribunal intervention before doing so.

**Clause 82** of the Accommodation Bill will apply if the resident refuses to leave at the end of the notice period or when the RSA ends. In such circumstances, the service provider (and anyone helping) may use **necessary and reasonable force** to remove the resident and their property. The safeguards will be that a **police officer** must be present and the force cannot be such as is likely to cause injury or damage to their property. The resident will have **recourse to the Tribunal** if they believe that the eviction is unlawful. If the Tribunal finds that to be so, it can make orders such as providing compensation to the resident. The Boarding House Action Group (representing around 25 community groups) considers that cl 82 still allows for summary eviction without there first being a tribunal process for determining whether the eviction is lawful. It is only after the resident has been evicted that they have recourse to the Tribunal.<sup>23</sup>

### ***Urgent Situations***

The *Rules for Renting Report* noted that urgent serious situations of excessive disturbance, extreme objectionable behaviour, and violence may occur, having potential to cause real danger to other residents or the service provider. Even an urgent application to the Tribunal may not provide a sufficiently expedient response to such a situation. The Report noted that industry representatives wished to ensure

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<sup>23</sup> Margaret Wenham, 'Tenant groups slam housing bills', *Courier-Mail*, 8 March 2002, p 7.



that police intervention in such circumstances would be guaranteed in any new legislation.

The *RT Act* contains special provisions (in Ch 7) for dealing with serious disturbances and violence in the context of caravan parks allowing the lessor to request the police to attend. The police can enter without a warrant and, initially, direct the tenant not to repeat the problem. If the tenant persists in being a nuisance, the police can order the tenant off the site and to not return for 24 hours to allow the situation to cool off. Apparently, those provisions have been effective.

The *Rules for Renting Report* recommended (p 219) that similar provisions should apply in the residential services context and the service provider may, while the resident is suspended, either make an urgent application to the Tribunal for an order or give a notice to the resident allowing five days to leave. It appears that the Victorian *RT Act* requires Tribunal intervention before any eviction can occur but in cases of violence, a rooming house resident can be suspended for 48 hours, during which time the owner can make an application to the Tribunal for an order of possession and the resident cannot return until the Tribunal makes a determination.

It appears that **cl 82** of the Bill, as described above, may also operate in situations of urgency as described in the foregoing paragraphs.

### ***Abandonment***

The *Rules for Renting Report* noted that, because service providers often live or work on-site, they are likely to quickly become aware that a resident has abandoned the premises. Thus, it might be unreasonable to impose the more rigorous notice requirements on service providers that apply to lessors (7 days notice) in such circumstances under general tenancies.

The service provider may enter the room without notice if it is reasonably believed that it has been abandoned (**cl 69(b)**) and the agreement ends at the end of the period for which rent has been paid: **cl 75(5)**. **Clause 126** sets out indicators for determining abandonment (eg uncollected mail, unpaid rent).

## **4.10 PROPERTY LEFT BEHIND**

The storage and disposal of residents' property can be onerous for lessors if there are no instructions about what is to be done with it. On the other hand, residents may want to recover property at a future time and not discover that the service provider has destroyed or damaged it. This issue is of particular concern in the residential services sector as residents may have little of monetary value but often much of great sentimental or personal value, such as photographs.

The *RT Act* requires lessors to store goods more than a prescribed amount (\$1000) for one month and to then forward any personal documents to the Public Trustee.

#### 4.10.1 Proposed Changes

It will be a breach of the legislation for the service provider to dispose of or deal with property apparently left behind at the premises by the resident other than in accordance with the provisions of the Bill. **Division 5** of Part 9 sets out how different items are to be dealt with. For example, if the property comprises a personal document or money, the service provider has to make reasonable efforts to contact the resident and store the property for at least 28 days. If after that time the property has not been collected, it must be given to the Public Trustee. Where a person is entitled to the property and is dissatisfied about how the service provider has dealt with it, they can bring Tribunal proceedings seeking compensation.

The Victorian *RT Act* makes similar provision about property left behind but requires consideration of the combined value of all property, storage costs etc rather than assessment of the value of each item. The SA Regulations require only 14 days storage of goods.

### 4.11 SERVICE DISPUTES RESOLUTION

There is no conciliation and dispute resolution process currently operating in the residential services sector yet the *RT Act* provides for such in relation to tenancy agreements. Disputes about breaches of agreements must occur through the court system.<sup>24</sup>

#### 4.11.1 Proposed Changes

The Accommodation Bill will establish a three-stage dispute resolution process to deal with residential services disputes. The process is similar to that applying to other residential agreements under the *RT Act*.

The first step is for parties to attempt to resolve an issue relating to the RSA themselves or through some applicable dispute resolution process.

**Part 10** sets out a **conciliation process** as a next step. It will apply to suitable cases and is triggered by either party making a dispute resolution request to the RTA. It is understood that conciliation processes have been effective in other

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<sup>24</sup> RTA, Unpublished Notes, Attachment 1.

sectors of the rental industry in achieving a satisfactory settlement without the need for formal court intervention.<sup>25</sup>

**Part 11** covers the situation where the conciliation process is not suitable for the matter or conciliation has failed to reach resolution of the matter. If the preliminary steps have been followed, then either party can **apply to the Tribunal** (the third step). The usual applications will probably concern disputes about whether there is a breach of a RSA; disputes about periods of notice in notices to remedy a breach or notices to leave; or disputes about entry to a room or the removal of a resident. The Tribunal will have a wide range of powers and orders it can make.

The notice periods for dispute resolution processes for breaches and to terminate agreements were formulated after consultation with stakeholders and taking into account the communal nature of residential services premises and facilities.<sup>26</sup>

Dispute resolution processes are also provided for in the relevant legislation applying to this sector in South Australia and in Victoria. A conciliation and dispute resolution service is also provided by the District Court in relation to matters arising under resident contracts etc made under the *Supported Residential Facilities Act 1992* (SA).

#### **4.12 OTHER MATTERS**

The Accommodation Bill also sets out the way in which proceedings for an offence against the Bill are conducted and deals with related issues such as responsibility for acts or omissions of employees and agents.

### **5 RESPONSES TO THE ACCOMMODATION BILL**

Some community groups, including the QTU and the Queensland Disability Housing Coalition, have attacked both Bills. While they have welcomed the attempt to regulate the sector, and requirements that notices of breach and for termination must be issued to residents, these bodies are concerned that summary eviction is still possible.<sup>27</sup> The Government, however, considers that the proposed eviction provisions attempt to protect the resident but to also acknowledge the rights of the service provider.

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<sup>25</sup> Hon RE Schwarten MP, Second Reading Speech, p 373.

<sup>26</sup> RTA, Unpublished Notes.

<sup>27</sup> Margaret Wenham, 'Tenant groups slam housing bills'.

The legislation must be reviewed after two years of operation to ensure it is achieving its aims. The RTA will also monitor the operation and the impacts of regulation on the viability of the residential services industry.<sup>28</sup> Industry groups are concerned about the cost of upgraded standards but some Government assistance is anticipated in this regard in order to ensure that the industry remains viable and closures do not result from the new arrangements.

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<sup>28</sup> Hon RE Schwarten MP, Second Reading Speech, p 374.

## **APPENDIX A – MINISTERIAL MEDIA STATEMENT**

**Hon Robert Swarten MP, Minister for Public Works & Housing**

**6 March 2002**

### **Improvements For Boarding House And Hostel Sector**

Minister for Public Works and Housing, Robert Swarten, says legislation introduced into State Parliament today outlines, for the first time, the rights and responsibilities of tenants and operators of supported accommodation such as hostels and boarding houses.

Mr Swarten said the Residential Services (Accommodation) Bill would work in tandem with the Residential Services (Accreditation) Bill; introduced by the Minister for Fair Trading, Merri Rose; which established an accreditation system for such premises.

"This combined legislative package is being introduced in response to ongoing concerns about standards in the residential services industry," Mr Swarten said.

"While there are many good operators, there has also been a history of operators who have delivered substandard accommodation and less than satisfactory service. This legislative package aims to improve the lives of the residents of this sector, who are some of the most vulnerable people in our society.

"The residential services industry is one of the few sectors within the rental market, which remains without legislative protection. The new Bill addresses this gap.

"The aim of the Bill is to strike a fair balance between the interests of residents and service providers. It does this by setting out the rights and responsibilities of both parties in regard to the accommodation provided."

Mr Swarten said key features of the new legislation included:

- the provision for written residential services agreements between providers and residents so that each party was clearly aware of their rights and responsibilities;
- inclusion of standard terms and house rules in residential services agreements, as well as the amount of rent payable and the components of the rent attributable to accommodation, any food service, personal care service or other service;
- provision for rules to be made by a service provider in specific areas such as the use of shared facilities, parking, or noise. Any house rules must be given to residents and displayed prominently;
- processes for residents to dispute rule changes;
- requirements to maintain rent receipts and records;
- procedures for rent increases and decreases;

- prohibition of the seizure of a resident's goods in lieu of rent or another amount due;
- requirements for the handling and lodgement of rental bonds with the Residential Tenancies Authority
- grounds for entry to rooms by service providers and procedures which must be followed;
- procedures to deal with disputes between residents and service providers including a three-stage dispute resolution process involving self-resolution, conciliation, and if necessary, arbitration by the Small Claims Tribunal
- notice periods for the termination of residential services agreements either by providers or residents.

"No doubt there will still be some who argue there is not enough or too much protection for residents," Mr Schwarten said.

"There will be some who argue for more or less protection for service providers. "

"However, there can be no doubt that the rights of tenants and those providers who want to do the right thing will; for the first time; be protected in this state."

Mr Schwarten said the Residential Tenancies Authority would monitor the operation of the new legislation which would be reviewed after two years of operation to ensure it was striking a fair balance between the rights and responsibilities of service providers and residents.

Further Information: 3237 1832

## APPENDIX B - RESIDENTIAL SERVICES (ACCOMMODATION) BILL 2002. ATTACHMENT 1

### Outline of Residential Services (Accommodation) Bill 2002

Source: Residential Tenancies Authority, *Residential Services (Accommodation) Bill 2002*,  
Unpublished Notes, March 2002

SECTION	TITLE	KEY PROVISIONS	CURRENT SITUATION For residents
Part 1	Preliminary	The object of the bill is to balance the rights and responsibilities of residents and service providers. This section outlines how the Bill relates to the Accreditation Act and to the Residential Tenancies Act 1994. Defines residential service agreements as agreements for the provision of accommodation in residential services, which are defined in the Accreditation Act.	N/A
Part 2	Rights and Responsibilities of Residents and Service Providers	Sets out accommodation responsibilities of residents and service providers. Attachment 2 details specific responsibilities of both parties	No specific rights or legislative protection
Part 3	Residential Service Agreements	Requires agreement to incorporate standard terms and be in writing. Allows other terms as long as they are not incompatible with the Bill. Prohibits 'contracting out' of the Bill.	Written agreements at service provider's discretion. Service provider free to prescribe any terms they wish.
Part 4	Rent	Sets out requirements for rent receipts and records procedures for dealing with rent increases and decreases, and limits the amount of rent that can be charged in advance.	No requirements for rent receipts. Rent can be increased without notice. No right to decrease if amenity is reduced.
Part 5	Rental Bonds	Mirrors existing provisions of Residential Tenancies Act 1994 which currently apply to residents in this sector.	Rental bonds are currently regulated by the Residential Tenancies Act 1994.
Part 6	House Rules	Makes provisions for prescribed rules, which form part of all agreements. Provides for making of additional rules in specific areas and processes to dispute rule changes. Requires house rules to be prominently displayed at the premises.	Service providers can set any house rules.
Part 7	Entry to Residents' Rooms	Specifies grounds and notice periods for entry to residents' rooms by service providers.	No restriction on entry to rooms by the service provider.
Part 8	Entry Condition Reports	Requires an entry condition report to be completed if a rental bond is charged.	None required although a bond is taken.

<b>SECTION</b>	<b>TITLE</b>	<b>KEY PROVISIONS</b>	<b>CURRENT SITUATION For residents</b>
Part 9	Ending of Residential Service Agreements	<p>Sets out grounds, processes and notice periods for dealing with breaches of agreements and termination due to un-remedied breaches include immediate termination for serious breaches.</p> <p>Allows a service provider, if necessary, to use necessary and reasonable force short of causing bodily harm to remove the resident, but a police officer must be present. Also provides for ending of agreements without grounds.</p> <p>Also prescribes how goods and documents left behind are dealt with.</p>	Agreements can be terminated at any time, without either grounds or notice. The service provider can remove the resident if they refuse to leave with the criminal law providing the only restrictions on the means used.
Part 10	Conciliation of Service Disputes	Sets out processes for conciliation of accommodation disputes by the RTA for disputes that cannot be resolved by self-negotiation between the parties.	No conciliation process
Part 11	Applications to Tribunals	Outlines the circumstances in which an application can be made to a tribunal and the tribunal's powers. Provides for an application to be made by a resident who believes they have been unlawfully evicted. A tribunal can make a range of orders including an order for compensation.	No right of redress other than a civil suit in a Court about breach of agreement if one has been made.
Part 12	Proceedings	Sets out provisions for prosecution of offences in the Act.	N/A
Part 13	Miscellaneous	Miscellaneous provisions	N/A
Part 14	Amendments	Amends the Residential Tenancies Act 1994 to provide for the Residential Tenancies Authority to administer the Act, and to investigate and prosecute offences. Amends the Small Claims Tribunal Act 1973 to give tribunals powers to deal with disputes under this Act.	N/A
Schedule		Dictionary of definitions	N/A



## **APPENDIX C – RESPONSIBILITIES OF RESIDENTS AND SERVICE PROVIDERS**

A resident has the following responsibilities –

- use of the premises only or mainly for residential purposes;
- not to use the premises for illegal purposes;
- not to do anything, or allow visitors to do anything, that interferes with the reasonable privacy, peace or comfort of other residents or their use of the premises;
- to pay the rent when it is due;
- not to keep pets without permission;
- not to intentionally or recklessly damage the premises or a facility or allow guests to do so and to report any damage to their room or common areas;
- to maintain the resident's room in a condition that avoids fire and health hazards (**cls 9, 11(a)**).

The **service provider** has the following responsibilities –

- to take reasonable steps to ensure the resident has quiet enjoyment of their room and common areas;
- not to interfere with (or allow agents of the service provider to interfere with) the reasonable peace, comfort or privacy of the resident's use of their room or common areas;
- to take reasonable steps to ensure that the resident has 24 hour access to bathroom and toilet facilities and reasonable access to other facilities;
- to take reasonable steps to ensure the security of the resident's room and personal property in it;
- to maintain the premises in a way that it remains fit for the resident to live in;
- to take reasonable steps to ensure that the premises and facilities provided thereon are kept safe, in good repair, and (subject to any agreement about cleaning the room) clean;
- to ensure that the times during which the service provider or an agent is contactable by the resident are reasonable, having regard to all of the relevant circumstances and services agreed to be provided (**cls 10, 11(b)**).



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