

CONFIDENTIAL
NOT GOVERNMENT POLICY



Review of the Residential Services (Accommodation) Act 2002

Policy Review Paper



Contents

1.	Ministerial statement	5
2.	How to make a submission	6
3.	Executive summary	6
4.	Introduction	8
5.	Sector overview	8
5.1	Size and structure of the residential services sector	8
5.2	Overview of legislative coverage of rooming accommodation around Australia and New Zealand	10
5.3	Comparison of provisions for rooming arrangements in tenancies legislation, September 2005	12
6.	Background of reform	14
6.1	Residential services reform	14
6.2	The Accommodation Act	14
7.	The Current review	15
7.1	Review process	15
7.2	Main issues	17
8.	The next step	18

Appendix

Overview of proposed amendments

19

This Policy Review Paper represents the Queensland Government's preferred position on the issues under review and has been developed following extensive consultation with the residential services sector.

The proposals do not necessarily represent the final position of the Queensland Government.

Glossary

Accommodation Act	<i>Residential Services (Accommodation) Act 2002</i>
Accreditation Act	<i>Residential Services (Accreditation) Act 2002</i>
Minister	Minister for Public Works and Housing, Honourable Robert Schwarten MP
RTA	Residential Tenancies Authority
DSQ	Disability Services Queensland
QH	Queensland Health
OFT	Office of Fair Trading
Tenancies Act	<i>Residential Tenancies Act 1994</i>
Tribunal	Small Claims Tribunal

1. Ministerial statement

Housing is a basic human right. With more than one third of Queenslanders living in rental accommodation, it is vital to ensure that they are living in safe, secure and appropriate accommodation.

As Minister for Housing, I am dedicated to ensuring that, where possible, Queenslanders in rental accommodation have protection under a legal tenancy framework suited to their type of tenure.

The *Residential Services (Accommodation) Act 2002* was introduced specifically to protect some of the more vulnerable renters in our community who were previously unprotected by legislation.

It is clear from the first couple of years of operation that this Act is working in a challenging sector with complicated issues. But there is always room for improvement.

This paper outlines the work the Residential Tenancies Authority has undertaken to review this innovative legislation to determine if it is achieving what it set out to achieve and, most importantly, how to make it better.

The results of the extensive one year consultation process with the sector have culminated in this Policy Review Paper. The Appendix outlines the issues, the proposed amendments and the rationale behind the Queensland Government's position to change parts of the legislation to make it more effective.

I encourage you to consider these proposed amendments and let us know what you think to make sure we're on the right track.

I look forward to receiving your replies through the Residential Tenancies Authority.

A handwritten signature in blue ink, appearing to read 'Robert Swarten', is positioned above the typed name and title.

Robert Swarten MP
Minister for Public Works and Housing
October 2006

2. How to make a submission

All comments must be received by **15 December 2006**.

Any comments in relation to the proposals contained in the Appendix (pages 19 – 48) of this Policy Review Paper must be made in writing and should be forwarded to:

Mail: Accommodation Act Review
Residential Tenancies Authority
GPO Box 390
BRISBANE QLD 4001

Email: review@rta.qld.gov.au

Fax: (07) 3361 3552

For further copies of this paper, please ring the Residential Tenancies Authority (RTA) on 1300 366 311 or download a copy from the RTA website at www.rta.qld.gov.au

For a copy of the *Residential Services (Accommodation) Act 2002*, visit the Queensland Government Legislation online website at www.legislation.qld.gov.au to download a free copy. To purchase a copy, contact GoPrint on telephone (07) 3246 3500.

3. Executive summary

The sector regulated by the *Residential Services (Accommodation) Act 2002* houses a diverse range of residents including some of society's most vulnerable people. It includes low income residents of boarding houses and supported accommodation services, many of whom have a disability, may have literacy problems and, in some cases, have impaired decision-making capacity. Aged rental accommodation also houses many low-income older people. In contrast, residents in the student accommodation segment of the sector generally come from other countries, are relatively affluent, tertiary educated and computer literate.

The diversity of residents gives rise to very different and at times complicated issues in different segments of the sector. Specific challenges faced by the sector include:

- resident/service provider dynamics;
- communal living arrangements, with tensions between the rights of the majority and the rights of an individual;
- imbalances between residents' and service providers' rights;
- diversity of elements of the sector; and
- establishing tenancy rights in a practical, workable manner.

In communal living arrangements there are competing interests between the rights of the majority and individual rights, as well as the competing interests of residents and service providers. In some cases, such as serious breaches of the agreement involving violence or serious disruption, greater weight must be given to the rights of the majority to a safe environment.

There has also traditionally been a significant imbalance between residents' rights and those of service providers, particularly when many residents need additional support to understand and enforce their rights. Before the introduction of the Accommodation Act those in room-only style accommodation, including boarders and lodgers, had minimal or no specific tenancy protections under legislation. The Accommodation Act sought to redress the imbalance in rights by establishing principles of tenancy law, tempered by the need for establishing practical processes and timelines to mitigate potential loss of premises in an industry that was shrinking due to redevelopment pressures and issues of financial viability.

Because this sector was previously unregulated in terms of tenancy law, it was important to review the legislation after an appropriate period to ensure that it was operating effectively.

The Residential Tenancies Authority (RTA) commenced a review of the Accommodation Act in October 2004. Key elements of the review included establishing a Stakeholder Working Party and the release of a Discussion Paper which invited submissions and was supported by workshops around Queensland. The Discussion Paper was released in February 2005 and served to direct discussion on identified issues and provide a platform for consultation on various aspects of the legislation.

The Stakeholder Working Party, representing key elements of the sector groups, was established in October 2004 and reviewed all submissions and helped develop options to respond to issues. The Queensland Government has considered these options and the preferred policy positions are identified within this Policy Review Paper.

Submissions identified that no sector group or individual considers the Accommodation Act perfect, and all were able to identify some points where it could be adjusted. The consensus was that the Accommodation Act represented a “good starting point” in terms of legislation and a framework of rights, providing greater protection and certainty for both sides, although there was room for improvement. Encouragingly, the legislation was generally more accepted through the sector than it had been when it was first introduced.

Areas that attracted the greatest attention centred around the service provider’s ability to immediately terminate an agreement and, where the resident refused to leave after a termination process, the service provider’s ability to evict the resident using necessary force (in the presence of a police officer).

It is clear there are significant difficulties in practically balancing the competing interests on these issues. Other areas identified for amendment concern issues of process, clarification and consistency with general tenancy concepts.

The major amendment proposed is to extend coverage beyond the primary target group of residential services. This is in line with moves to regulate tenancies on the basis of types of *premises* (that is, room-only) rather than types of *residents*. This proposed change will bring tenancy law to

currently unregulated parts of the sector, provide greater consistency in applying tenancy rights and responsibilities and uphold a policy position of ensuring as many Queensland residents as possible are protected by a tenancy framework. As some proposed areas of coverage were not subject to the earlier consultation process which focused only on residential services, additional consultation will be undertaken with those groups to canvass the proposals.

The Appendix of this document (pages 19 to 48) outlines the issues identified through the review process, the amendments proposed and the reasons behind the proposed amendments. This is the information stakeholders are asked to consider and feed back their comments to the RTA as part of this review.

This Policy Review Paper is now being released to allow for further targeted consultation on the proposed amendments contained in the Appendix. Submissions must be received by close of business on **15 December 2006**.

Following analysis of further submissions, the Minister will consider the preparation of a Bill to amend the Accommodation Act.

4. Introduction

On 23 August 2002 the Queensland Government's new regulatory regime for the private residential services sector commenced. This sector includes three accommodation types: boarding houses, supported accommodation hostels and aged rental complexes. The sector houses a diversity of residents, often vulnerable people on low incomes, in some cases with complex support needs. The Accommodation Act also covers off-campus, room-only student accommodation which is not a part of the other residential services reforms.

Supported accommodation generally means provision of accommodation and personal care services for people with a disability where there is some degree of communal living and residents do not have exclusive possession of self-contained accommodation. Services offered may include meals, cleaning, linen, medication management and some level of personal care.

Boarding houses are premises where a person rents a room and there is some degree of communal living. While services such as meals and cleaning may be provided, there are generally fewer services offered and an expectation of a higher level of independence among residents than in supported accommodation. Boarding house residents are diverse and may include students, transient workers, people with transitional housing needs, people on low incomes in need of affordable housing, people with a disability and people with substance abuse issues.

Aged rental complexes are an emerging form of accommodation targeted to older people. Generally, they offer self-contained units with services provided such as meals, cleaning and linen, where the operator requires access to the premises. Communal dining areas may also be a feature of these premises.

Student accommodation is a developing sector which includes purpose built accommodation as well as altered existing housing stock, with each premises housing between a few to a few hundred residents. Students rent a room and have shared access to facilities. The room configurations range from ensuited bedsits and boarding house style rooms, to three to five room units (some with ensuites) and communal kitchens, with all rented out by the room. They are usually fully furnished, apart from bed linen, and students self-cater. Larger establishments have onsite management. The primary target groups are international students, although domestic students are also accepted.

5. Sector overview

5.1 Size and structure of the residential services sector

The residential services sector comprises a wide variety of accommodation types and a range of client groups. It is not possible to obtain accurate information on all premises described as residential services because the data sources are incomplete. Information about the estimated size and structure of the residential services sector has been derived from data collected by the Office of Fair Trading in relation to residential service registrations, by RTA bond lodgments and by the Department of Housing which monitors boarding house closures.

In July 2006, 304 premises had been granted registration by the Office of Fair Trading, housing a total capacity of 6,349 residents. A further 83 premises, with a capacity of 2,918 residents, were pending registration at this time.

Some 79% of registered premises in July 2006 were Level 1 services (accommodation only), accommodating 66% of total capacity. Level 2 services (accommodation and food) comprised a minor part of the sector at 3% of premises and 7% of resident capacity and Level 3 services (accommodation, food and personal services) comprised 18% of premises and 26.5% of resident capacity.

The majority of registered services are located in Brisbane. It is estimated that almost two thirds of all registered services are in Brisbane, with over 80% of these located in the inner suburbs of Brisbane. 81% of all registered services are located in south-east Queensland.

At July 2006 the RTA held 2,495 bonds for residential services premises. Almost half of these were for student accommodation, 8.3% were for residential services registered with the Office of Fair Trading and 44% were classified "other".

As bonds are not mandatory for residential services, records of bonds held by the RTA do not represent comprehensive coverage. 1,189 bonds lodged with the RTA are in student accommodation premises, which are exempt from the registration requirements of the *Residential Services (Accreditation) Act 2002*. A further 847 bonds lodged with the RTA are recorded as "residential services" but are not registered with the Office of Fair Trading. 208 bonds were lodged from registered premises. Therefore there is limited overlap between data on registrations with the Office of Fair Trading and bond lodgments with the RTA.

Taking into account bond lodgments and residential services registrations and allowing for overlap, there are at least 12,000 residents/rooms presently covered by the Accommodation Act.

Table 1 summarises current information on estimated numbers of rooming premises which are:

- registered with the Office of Fair Trading; or
- pending registration with the Office of Fair Trading; or
- exempt from registration but have lodged bonds with the RTA; or
- have lodged bonds with the RTA and are not registered.

This data therefore excludes residential services which have not sought registration and have not lodged bonds, or exempt premises that choose not to lodge bonds.

Table 1: Estimated number of rooms registered with Office of Fair Trading or having bonds lodged with RTA

Type of premises	Number of rooms
Registered with OFT (208 bonds lodged)	6,349
Pending registration (251 bonds lodged)	2,918
Not registered, bonds lodged with RTA (student accommodation)	1,189
Not registered, bonds lodged with RTA (other)	849
TOTAL	11,305

Source: Residential Tenancies Authority bond data and Office of Fair Trading registration data, July 2006.

Of the currently registered premises, Table 2 illustrates the distribution of size of these premises:

Table 2: Summary of size of registered residential services premises in Queensland

Size range (max no. of residents)	Number of registered premises	%
4 – 10	87	29
11 – 20	117	38
21 – 30	51	17
31 – 50	27	9
51 – 70	15	5
71 – 100	4	1
100+	3	1
	304	100

Source: Office of Fair Trading Residential Services registration data, July 2006.

Determining the size of the student accommodation sector is difficult as there is no requirement to register the premises and providers, and can use existing domestic-style accommodation which is rented out on a room-only basis. A survey conducted by Matusik in *The Matusik Snapshot* (October 2005) indicated that there are about 4,300 student-specific beds available in Brisbane – 3,400 in University and TAFE colleges, 290 in hostels, 100 in private education houses and 450 in apartment-style accommodation. Most of these student beds are located on-campus with growth also occurring off-campus. Demand for student housing is higher than the supply as the number of overseas students studying in Australia has more than tripled over the last ten years.

In its report *Monitoring the Viability of the Residential Services Industry* (May 2006) the Department of Housing found, based on data from October 2004 to December 2005, that the average size of Level 1 services was 20 occupants, for Level 2 services it was 30 occupants and for Level 3 services it was 28 occupants.

Monitoring of boarding house closures by the Department of Housing led to the finding that significant numbers of closures had occurred in the two years following introduction of the residential service legislation, with an estimated loss of 12% of boarding house premises and 21% of supported accommodation premises, representing a total loss of at least 959 bedspaces (Department of Housing, 2004).

However, there has been a slowdown in the number of closures following the peak closure period in 2003. The percentage of lost supply in boarding houses was 2% in December 2005, compared to 12% reported in October 2004. Closures in the supported accommodation sector have also decreased overall to 14% lost supply recorded in December 2005 compared to a previous loss of 21% reported in October 2004.

The Department of Housing report also comments on a number of aspects of closures and residents in the sector:

- most closures occurred in locations where there have been significant increases in property values, linking the reason for closure with redevelopment pressures;
- the average of size of closed premises is significantly smaller than average sizes overall, suggesting that size is a factor behind closures and a business viability issue;
- ownership of premises is highly fragmented, with a small proportion of corporate and large scale operators;
- 30% of services had been approved for grant funding to assist in upgrading buildings to meet minimum building and fire safety standards;
- an analysis of Centrelink beneficiaries residing in boarding house and supported accommodation premises found that the majority (77%) were male;
- most Centrelink beneficiaries were receiving the disability support pension, Newstart allowance or Age pension;
- nearly two thirds of Centrelink recipients in boarding houses were aged over 40; and
- 72% of Centrelink recipients in supported accommodation were on a disability support pension.

5.2 Overview of legislative coverage of rooming accommodation around Australia and New Zealand

Coverage of rooming arrangements in tenancy law is still not universal around Australia and New Zealand, although several jurisdictions are considering the issue and others have recently extended coverage. Of those jurisdictions that do have coverage of rooming premises, there is a variety of terminology, definition and separate provisions (aside from general residential tenancy provisions) in use. Queensland is unique in having a separate Act for these arrangements and for having the associated Accreditation Act, dealing with standards of premises and their operation (although a couple of jurisdictions indicated they were concerned about weak regulation of standards of premises and were considering state legislation to address these issues).

Victoria has well established rooming house legislation contained as a section within its Residential Tenancies Act. It had originally been separate legislation that was rolled into the general tenancies legislation in 1997, although separate provisions are maintained for rooming houses. Minor amendments to the Act took effect from December 2005 and clarify application of these provisions to situations where residents share rooms.

South Australia similarly has rooming house provisions within its Residential Tenancies Act. The Act has recently been reviewed with some rooming house provisions proposed to be clarified, however details of these are not yet available. Changes to the Act are presently under consideration by the Government.

New South Wales exempts boarders and lodgers from coverage in its Residential Tenancies Act and there are no current proposals to extend coverage. However the NSW Residential Tenancies Act is presently being reviewed, and a government discussion paper, released for comment and submissions during 2005, suggested that “specific exemptions or modified laws could apply to particular tenancies” – examples provided are supported accommodation, community housing, student accommodation or housing co-operatives. The paper also suggests that parties excluded from the Act could by agreement seek to opt in to coverage by entering into a written agreement for their individual situation. The review is still underway.

In **Western Australia** boarders are not presently covered in its Residential Tenancies Act however the WA legislation has recently been reviewed, and policy options are being developed for the Government's consideration. Details of these are not yet available, although a 2002 report into the review of the Residential Tenancies Act, drawing on feedback from public consultations, recommended the Act cover boarders and lodgers and established provisions for these tenancies based on those set out in the 1995 Commonwealth Government report *Minimum Legislative Standards for Residential Tenancies in Australia*.

Tasmania extended coverage of the Residential Tenancies Act to boarders and lodgers in 2004, with separate provisions for these premises relating to house rules, notices of termination and provision for inspections.

In the **Northern Territory** boarders are covered in the Residential Tenancies Act and there is no differentiation of provisions in the Act between general tenancies and boarding houses. The Act applies to premises with more than three residents and exempts high need premises run by charitable organisations.

The **Australian Capital Territory** amended its Residential Tenancies Act in 2004 to provide for "occupancy agreements" which cover a very wide range of occupancy arrangements "that are granted for short periods of time" (including boarder or lodger agreements) (*Residential Tenancies Amendment Bill 2004, Explanatory Statement*). There is little in the way of specific provisions governing the occupancy agreements in the legislation, but rather reference to "occupancy principles" covering occupants' and "grantors" entitlements (eg. to clean and secure premises, to quiet enjoyment, to entry etc).

Boarders are not presently covered by the Residential Tenancies Act in **New Zealand**, however this Act is presently under review. There is already a Bill before Parliament to extend coverage to boarders, however officials working on the review are developing a new approach which will enable coverage to be extended to a range of tenancy models, including boarding/rooming arrangements.

Comparison of key provisions

While most jurisdictions have coverage of rooming arrangements, or are moving clearly toward coverage (with the notable exception of NSW), it is interesting to examine the various approaches in place, where coverage exists, to address some key provisions which may differentiate tenancy law as it applies to rooming arrangements. This mainly concerns provisions which may acknowledge the different management arrangements for rooming situations, concerning entry provisions, house rules and tenancy terminations.

The following table provides a comparison of the tenancy law provisions applying to rooming arrangements and selected areas of operation across Australia and New Zealand.

5.3 Comparison of provisions for rooming arrangements in tenancies legislation, September 2005

Jurisdiction	Coverage	House rules	Entry	Termination
Queensland	Rooming houses covered in <i>Residential Services (Accommodation) Act</i>	Provides for house rules about identified matters: <ul style="list-style-type: none"> • Shared facilities • Consumption of alcohol or illegal drugs • Parking • Noise • Other matters can be prescribed by regulation Prescribes processes for changing house rules and objection processes.	Similar to <i>Residential Tenancies Act</i> , 48 hours for inspections, 24 hours for other entry.	Provides for service providers to remove residents themselves and end agreements for serious breaches, eg. serious damage to premises, endangering another person.
Victoria	Rooming houses covered in <i>Residential Tenancies Act</i>	General reference to house rules and provision for owner changing rules and residents appealing against rules to the Victorian Civil and Administrative Tribunal.	24 hours written notice, specified reasons for entry.	Owner can issue notice to leave on grounds of violence, and then apply to tribunal to permanently evict.
South Australia	Rooming houses covered in <i>Residential Tenancies Act</i>	Requires house rules in writing and establishes principles for house rules; no specific provision for objecting to/changing house rules.	No specific entry provisions for rooming houses, though reference to code of conduct for proprietors.	Provides for proprietor to terminate agreement on notice, grounds for breaches, specified rent arrears and immediate written notice and termination in serious circumstances.
New South Wales	Presently exempt, but recent <i>Residential Tenancies Act</i> review raised option of “modified laws applying to particular tenancies” and opt in provisions for exempt classes of tenancy.	n/a	n/a	n/a
Western Australia	Presently exempt but a review in 2002 recommended coverage of boarders. Policy options for amendments to the WA <i>Residential Tenancies Act</i> presently being developed.	n/a	n/a	n/a

Jurisdiction	Coverage	House rules	Entry	Termination
Tasmania	Boarding premises covered in <i>Residential Tenancies Act</i> since 2004.	Requires house rules to be displayed or available on demand and specifically mentions: <ul style="list-style-type: none"> • Meal times • Restrictions and costs on use of facilities • Access to bathrooms and showers • Visitors • Parking and goods storage • Availability times of other services on premises • Smoking • Alcohol consumption • A method of changing rules and taking tenant's views into account. 	Provides owner with right to enter premises without tenant's permission on grounds of: <ul style="list-style-type: none"> • Tenant is ill or injured • Denial of access would result in damage • A risk to tenant or other person on premises • Damage has occurred • Premises have been abandoned. Otherwise tenant's permission is required – notice periods range from 24 to 48 hours notice depending on the reason.	An agreement can be terminated on court order on grounds of intentional or reckless damage to premises or causing or likely to cause physical injury.
Northern Territory	Boarders and lodgers (minimum three residents on premises) covered in <i>Residential Tenancies Act</i> .	No specific provisions for boarders and lodgers.	No specific provisions for boarders and lodgers.	No specific provisions for boarders and lodgers.
Australian Capital Territory	Recent amendments to <i>Residential Tenancies Act</i> introduce occupancy agreements, covering a wide range of premises previously excluded from coverage.	General reference to rules in “occupancy principles” – “an occupant is entitled to know the rules of the premises before moving in” (s71E(b)).	General reference to entry in “occupancy principles” (s71E) – grantor (of occupancy) is “entitled to enter the premises at a reasonable time on reasonable grounds” (S71E(e)).	General reference to terminations in “occupancy principles” – “an occupant is entitled to know how and why the occupancy may be terminated, including how much notice will be given before eviction”. Notice times not specified.
New Zealand	Presently exempt but consideration being given to coverage of a flexible range of tenancy models.	n/a	n/a	n/a

6. Background of reform

6.1 Residential services reform

In 2002 the Queensland Government introduced a package of measures to reform the residential services sector. Elements of the package include:

- *Residential Services (Accommodation) Act 2002*, which is the subject of this paper, and provides tenancy processes and a framework of rights and responsibilities and is administered by the Residential Tenancies Authority (RTA);
- *Residential Services (Accreditation) Act 2002*, which establishes minimum standards for buildings and services to protect the health, safety and basic rights of residents through a registration and accreditation process administered by the Office of Fair Trading;
- Resident Support Program, which is a joint Disability Services Queensland (DSQ) and Queensland Health (QH) funded initiative which aims to provide support services to eligible residents with a disability living in private residential facilities, to access health, well-being and disability support services;
- an expanded role for Tenant Advice and Advocacy Services (Queensland) to provide assistance for residents in understanding their accommodation rights and responsibilities;
- an expanded role for the Community Visitor Program in the Office of the Adult Guardian, to provide assistance for residents with impaired capacity at supported accommodation/hostel facilities in dealing with concerns about services or issues affecting their rights and interests; and
- financial assistance and business support for service providers in complying with the new laws and maintaining the supply of low cost housing.

The review of the Accommodation Act is the first formal process of review of the legislative elements of the Queensland Government's reforms.

6.2 The Accommodation Act

The object of the Accommodation Act is to balance the rights and responsibilities of residents and service providers relating to the provision of accommodation. This is achieved by regulating residential service agreements and establishing a process for the resolution of related disputes.

The Accommodation Act covers a range of issues including:

- the requirement for residential service agreements and notices to be in writing;
- rules about how rent is paid, increased or decreased and the need for receipts;
- limits on amount of rental bond charged and a requirement for bonds to be lodged with the RTA;
- providing processes for altering house rules;
- controls over entry into residents' rooms in terms of reasons and frequency;
- options for ending residential service agreements by either party;
- processes for handling breaches of residential service agreements by either party;
- how goods or money left behind should be handled;
- dispute resolution processes, requiring the RTA's Dispute Resolution Service to be used before applying to the Small Claims Tribunal for a determination, if necessary; and
- penalties against some provisions of the Act for non-compliance.

Subordinate legislation, the *Residential Services (Accommodation) Regulation 2002*, outlines prescribed house rules and what standard terms must be included in a residential service agreement.

7. The current review

In 2002 the Queensland Government stated its commitment to review the Accommodation Act after its first two years of operation. The RTA is responsible for administering the legislation and is undertaking the review process.

The purpose of the review is to evaluate whether the Accommodation Act is achieving its intended purpose of balancing the accommodation rights and responsibilities of residents and service providers, and to determine the effectiveness of the Accommodation Act in the context of its role within the Queensland Government's reform package for the residential services sector.

7.1 Review Process

Milestones of the review process have included:

October 2004	Formation of Stakeholder Working Party
February 2005	Release of discussion paper and calls for submissions through advertising and targeted mailouts
April 2005	Public workshops held around Queensland
29 April 2005	Closing date for written submissions
May–October 2005	Development of recommendations to address issues

Stakeholder Working Party

The Residential Services Stakeholder Working Party was convened to provide advice on issues arising out of the review of the Accommodation Act and to ensure that those affected by the legislation or who have a significant interest in it have opportunities to provide their views into the review process. The RTA's working party of stakeholder representatives was one method of obtaining input and advice for key elements of the review.

The Stakeholder Working Party consists of representatives from:

Boarding House Action Group	Boarding House Owners' and Managers' Association
Queensland Disability Housing Coalition	Supported Accommodation Providers' Association
Tenants' Union of Queensland	Real Estate Institute of Queensland
Australian Pensioners' and Superannuants' League	Aged Care Queensland
University of Queensland Accommodation Office	EL Property Management (student accommodation providers)

Between October 2004 and October 2005, the Stakeholder Working Party met nine times to discuss, debate and negotiate issues arising out of the review of the Accommodation Act and submissions, while representing their client base.

Discussion paper

A discussion paper was released in February 2005 to more than 600 recipients who had an interest in the residential services sector. The discussion paper identified areas where the RTA was seeking specific comment on the operation of the Accommodation Act. These areas had been identified through the RTA's ongoing monitoring of the Accommodation Act and related to:

- general issues – balance of Act and compliance;
- coverage and definitions;
- responsibilities of residents and service providers;
- residential service agreements;
- rent payments, fees and charges – including rental bonds;
- house rules;
- entry;
- breaches and disputes;
- ending agreements and removing residents – including goods and documents left behind;
- impaired capacity; and
- other issues.

A double-sided, one page flyer was also produced, condensing the discussion paper to a manageable size for residents.

Public workshops

The RTA held 13 consultation workshops in April 2005 which were attended by 123 clients. Locations included Brisbane, Ipswich, Toowoomba, the Gold Coast and Townsville. Special sessions were held for aged rental residents and service providers, and government agencies.

On-line consultation

The discussion paper was available on-line from the RTA's website and through the youth GENERATE website.

Submissions

Sixty-seven written submissions were received. Not all identified who sent them, what sector they represented or what geographical area they were from. These comprised:

- 12 from advocates,
- 15 from residents,
- 22 from service providers,
- 10 from government,
- 8 from peak bodies.

Of these 31 specifically related to boarding houses, three to supported accommodation, seven to student accommodation and one to aged rental. Most submissions came from Brisbane (48), then Sunshine Coast (4), Townsville (4) and one each from Ipswich, Mt Isa and Cairns.

7.2 Main issues

The main issues arising from consultation with the sector were:

Coverage and definitions	<ul style="list-style-type: none"> • Lack of coverage of some accommodation • Unworkable definitions affected coverage and application of responsibilities (e.g. common areas) • The need for the Accommodation Act to have its own definitions
Responsibilities of residents and service providers	<ul style="list-style-type: none"> • Clarification needed for practical applications
Agreements	<ul style="list-style-type: none"> • Greater encouragement for compliance with written agreements
Rent payments, fees and charges	<ul style="list-style-type: none"> • Problems with obligations for rent where services were not provided • Inappropriate charging of mandatory fees • Types of rental bonds charged
House rules	<ul style="list-style-type: none"> • Problems with rules about visitors and smoking • Current provisions for changes to house rules were unworkable • Inability to effectively dispute or have rulings on “unreasonable” house rules
Entry	<ul style="list-style-type: none"> • Problems with residents’ quiet enjoyment of premises • Difficulty with communal and common areas and obligations for service providers
Breaches and disputes	<ul style="list-style-type: none"> • Inappropriate time periods for notices and to rectify breaches • Inability to make “urgent” applications to the Small Claims Tribunal
Ending agreements and removing residents	<ul style="list-style-type: none"> • Contentiousness of current provisions allowing service providers to self-evict residents • Limitations for ending agreements by other means • Contentiousness of current provisions allowing service providers to terminate agreements immediately for serious breaches • Processes for storage of goods left behind was problematic
Impaired capacity	<ul style="list-style-type: none"> • Issues about residents with impaired capacity or diminishing capacity

Specific comments from stakeholders submitted as part of the review process can be accessed in the *Consultation Feedback Report* at www.rta.qld.gov.au

As a result of consultations to date, the Queensland Government has developed a preferred position on proposed amendments to the Accommodation Act.

The Appendix (pages 19 – 48) outlines the issues identified through the review process, the amendments proposed and the reasons behind the proposed amendments. This is the information stakeholders are asked to consider and feed back to the RTA as part of this review.

8. The next step

This Policy Review Paper has taken into account all submissions received in response to the discussion paper, including written, verbal and personal presentations. It contains the Queensland Government's preferred provisions to enhance existing provisions to ensure better balance and effectiveness of rights and responsibilities in rooming-style accommodation.

Submissions relating to the proposed amendments contained in the Appendix (pages 19 – 48) must be in writing and received by close of business on 15 December 2006.

This is the final opportunity for the public to put their views forward on these issues for consideration by the Queensland Government.

Following the Queensland Government's consideration of these further submissions, it is intended to prepare a Bill to amend the Accommodation Act for consideration by the Queensland Parliament. It is anticipated that an amendment Bill would be considered by the Queensland Parliament in 2007.

Appendix

Overview of proposed amendments

The Queensland Government wants to hear your comments about the information contained in this section, particularly what you think about the proposed amendments.

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>1. Coverage and definitions</p>	<p>Coverage</p> <p>The Accommodation Act applies to residential services defined by the Accreditation Act, as well as to independently operated rooming-style student accommodation. Specific types of residential services are exempted under the Accreditation Act.</p> <p>Concerns were raised about services currently exempted solely on the basis they were funded or operated by the Queensland Government. There is a significant amount of rooming style accommodation which is a person's principal place of residence that is operated by government agencies or by community organisations funded by them.</p> <p>Current exemptions create confusion in identifying whether the Act applies because of such funding arrangements, if the premises are spread across multiple locations or because of ownership structures.</p>	<p>Amendment 1:</p> <p>The Accommodation Act be amended to apply to all rented rooming-style accommodation which is a person's principal place of residence regardless of the size of the premises with exemptions in the following categories:</p> <ul style="list-style-type: none"> • Where there are existing legal rights or frameworks (such as arrangements regulated by the <i>Commonwealth Aged Care Act 1997</i>); • Where the tenancy legislation framework is unworkable (such as hospitals, prisons, boarding or short term emergency accommodation); • Where it is a domestic arrangement (where the lessor lives on the premises and rents fewer than four rooms unless it is clearly a commercial operation); and • Holiday or other accommodation of a short-term nature (such as backpackers, hostels, motels and serviced apartments where stays are less than six weeks). 	<p>The Act was developed in conjunction with the Accreditation Act to provide for minimum standards in a range of areas, not just tenancy rights. Both Acts exempt services that protected residents with established accreditation schemes or similar arrangements. However amendments to both Acts in 2004 regarding independently operated rooming-style student accommodation reflected a policy view that tenancy rights and responsibilities should be regulated irrespective of whether an accreditation regime was necessary, or who provided funding.</p> <p>The RTA considers that the Accommodation Act should apply in principle to all rented rooming-style accommodation which it is a person's principal place of residence. Exemptions should only apply when there are existing legal rights or where the application of the Act is unworkable. The Accommodation Act would continue to also apply to residential services as defined by the Accreditation Act. Extensions to coverage of the Accommodation Act would not affect current coverage under the Accreditation Act.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
		<p>Amendment 2: That government operated or funded rooming-style accommodation that is a person's principal place of residence not be exempted from the Accommodation Act.</p>	<p>The RTA considers that the application of the Act to government funded or operated accommodation is workable. For example, there are no significant problems in the application of the Residential Tenancies Act to self-contained rental accommodation operated by government or funded organisations. The application of the Accommodation Act would also provide clarity in dealing with tenancy related disputes and breaches, be fairer and provide greater procedural certainty when breaches of agreements occur.</p>
	<p>The Accommodation Act applies to independently operated rooming-style student accommodation which is usually privately owned and located off-campus. Accommodation provided by educational institutions or under an agreement with an educational institution is exempt.</p>	<p>Amendment 3: That boarding schools and similar accommodation for school students operated in conjunction with a primary or secondary school should be exempted from the Accommodation Act because the application of the Act is clearly unworkable.</p>	<p>Boarding schools and similar primary/secondary school accommodation has always been exempt from tenancy law and there is no justification to change this position.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
		<p>Amendment 4: That the Accommodation Act apply to any student accommodation provided by commercial operators regardless of location and to any off-campus accommodation provided by a university or non-profit organisation.</p>	<p>The nature of student accommodation in the tertiary sector has changed in the last decade. In addition to traditional on-campus colleges and halls of residence operated by the university or a non-profit organisation, some accommodation may be provided on-campus by commercial operators, some universities own and rent out off-campus houses and flats, and some off-campus operators target students and may have agreements with one educational institution including TAFE.</p> <p>The RTA considers that there is no cogent reason why commercially operated student accommodation either on- or off-campus should be exempt, even if it is operated under an agreement with an educational institution. Similarly, there is no apparent reason why any off-campus accommodation should be exempt solely because it is operated by a university or non-profit organisation.</p>
		<p>Amendment 5: Further work be undertaken to establish whether the Accommodation Act should apply to on-campus accommodation provided by an educational institution or a non-profit organisation under an agreement with an educational institution.</p>	<p>However, there may be grounds for exemption of traditional on-campus colleges and halls of residence, on the basis that they provide substantially more than accommodation and tenancy law would be unworkable. Few stakeholders in the educational sector such as universities, colleges and student organisations have commented on the review. Further work and consultation with stakeholders is necessary to establish whether such an exemption is warranted.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
	<p>The Act currently does not apply to premises licensed under the <i>Liquor Licensing Act 1992</i>.</p>	<p>Amendment 6: That further work and consultation be undertaken to confirm that accommodation in premises licensed under the <i>Liquor Licensing Act 1992</i> not be exempt from the Accommodation Act, where the accommodation is not short-term or for holiday purposes.</p>	<p>It has become apparent that some accommodation in hotels in some outer suburban areas and in many regional areas is a person's principal place of residence.</p> <p>Some larger style, independently-operated student accommodation complexes targeting mainly international students offer resort-style premises with swimming pools, communal games areas and, in a few instances, may have a licensed area within the complex to encourage socialising. The intention would be to ensure these premises are covered by the Accommodation Act as the primary service provided is accommodation.</p> <p>The RTA does not see any significant difficulty in the Act applying to hotels and motels generally. Travellers and other short-term residents would continue to be exempt under the grounds of short-term and holiday accommodation arrangements. However, consultation is required with affected parties such as hotel licensees to investigate whether the application of the Act would result in unintended consequences.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
	<p>Rooming-style accommodation for employees and contractors was exempted from the Accreditation Act and the Accommodation Act by amendments to the <i>Residential Services Accreditation Regulation 2002</i> which commenced in 2004. The exemption was introduced on the grounds that the application of the Accreditation Act to such accommodation was an unintended consequence which was onerous and not in keeping with the aim of the residential services reform to protect vulnerable, low income residents. It was also considered that employees also had protections provided through their employment awards and agreements.</p>	<p>Amendment 7: That further consultation be undertaken with employer and employee groups to identify if the Accommodation Act should apply to employee accommodation.</p>	<p>Employers in many regional areas provide rooming-style accommodation for employees particularly in the tourism and mining industries. If it is a house or flat, it is covered by the Residential Tenancies Act, which includes a ground to give notice to terminate the agreement where the person's employment ends. This provision in the Residential Tenancies Act is not problematic and provides clear procedures to follow where the parties are in dispute. Consequently the RTA considers that it would not be equitable to exclude employees from tenancy protection and that the application of the Act would not impose any great burden on employers, particularly since the more onerous requirements for accreditation would not apply. However, further consultation would be required with employer and employee groups to establish whether there may be unintended consequences in the application of the Act.</p>
<p>Aged rental accommodation premises are generally self-contained and similar to units or townhouses in community title developments. This style of accommodation is currently covered by the Accommodation Act and Accreditation Act because meals are provided in conjunction with the accommodation.</p>		<p>Amendment 8: It is proposed that such accommodation revert to coverage through the Residential Tenancies Act rather than the Accommodation Act.</p>	<p>The Residential Tenancies Act is a more appropriate way to regulate self-contained premises because provisions under the Accommodation Act for communal living such as house rules are not relevant. At the same time, the continued application of the Accreditation Act will ensure residents are protected by regulation of minimum standards for food and personal care services.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
	<p>The <i>Residential Tenancies Act 1994</i> does not apply to accommodation regulated by the <i>Accommodation Act</i>. It has been suggested that service providers should have the capacity to 'opt in' to the <i>Residential Tenancies Act</i> on the grounds that some larger operators have a range of properties, sometimes on the same site, which is a mix of rooming-style accommodation covered by the <i>Accommodation Act</i> and self-contained accommodation covered by the <i>Residential Tenancies Act</i>.</p>	<p>Amendment 9: It is proposed that service providers be allowed to 'opt in' to coverage under the <i>Residential Tenancies Act</i>.</p>	<p>It would be administratively simpler for such premises to all be covered by the <i>Residential Tenancies Act</i>. In addition, some social housing providers prefer to contract to the greater obligations imposed on lessors under the <i>Residential Tenancies Act</i>. A similar provision was introduced by the <i>Australian Capital Territory</i> in amendments to the <i>Territory's Residential Tenancies Act</i>.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Definitions</p>	<p>The definitions of key terms are the same for both the Accommodation Act and the Accreditation Act but the definitions only appear in the Accreditation Act.</p> <p>There is ambiguity over provisions which refer to the number of residents. For example, a residential service is defined as a service providing accommodation to four or more residents, while the threshold for disputing changes to house rules is 50% of residents. Since at times there may be more than one occupant in a room, the number of residents in the premises may change.</p> <p>A “service provider” is defined as a person registered as such under the Accreditation Act or, for an unregistered service, the person conducting the service. Ambiguity arises in newer styles of premises common to the aged rental and student accommodation sector which are similar to community title style accommodation where units are owned by different individuals, while an on-site manager manages the accommodation. In such situations it is not clear who is the service provider and leads to gaps in coverage.</p> <p>There is a lack of clarity about the responsibilities of caretakers in more traditional boarding house style accommodation. Caretakers may be residents who, for reduced or no rent, act on the owner’s behalf by letting accommodation, handling maintenance issues and liaising with residents. In some circumstances, such as entry issues, it is not clear what the respective responsibilities of service providers and caretakers are.</p>	<p>Amendment 10: That the Accommodation Act be amended so that its application and provisions be defined in terms of rooms rather than number of residents.</p> <p>Amendment 11: That the Accommodation Act be amended by replacing the term “service provider” with the term “lessor” and that any responsibilities for the lessor’s agent be detailed in the Act.</p> <p>Amendment 12: That the Accommodation Act be amended to replace the term “resident” with the term “tenant”.</p>	<p>It is currently inconvenient to refer to the Accreditation Act for the definition of residential service. There was strong support for the Accommodation Act to contain its own definitions. The RTA considers it is important for legislation to be a useable document and for all definitions of key terms to be contained in the Accommodation Act. The RTA considers that ambiguity can be reduced by defining the application of the Accommodation Act in terms of rooms rather than residents. This is consistent with the application of the Act proposed in Amendment 1.</p> <p>The RTA considers that for the purposes of the Accommodation Act, some issues can be effectively addressed by using the standard terms of “lessor” and “agent”, which are commonly used in tenancy law. The “lessor” is a person who gives someone a right to occupy the premises and who has overriding responsibilities. An “agent” is a person who acts on the lessor’s behalf in specified circumstances and the agent may have specific responsibilities for which they can be held accountable, such as giving entry notices before they enter.</p> <p>If the Accommodation Act is to use the above terms commonly used in tenancy law, then it is logical that other common terms such as “premises” and “tenant” are also used.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>The Act as a document</p>	<p>The Accommodation Act and the Residential Tenancies Act both deal with tenancy law but are separate pieces of legislation. It was argued that the relevant sections for rooming-style accommodation could be incorporated as a separate and distinct part of the Residential Tenancies Act in the same way that the Residential Tenancies Act has distinct parts for moveable dwelling tenancies such as caravans. The result would be that tenancy law was contained in one Act, although the Act would have distinct parts for different types of premises with different provisions.</p>	<p>Amendment 13: That recommendations for amendment in this report be implemented by amendment of the Accommodation Act or amendment of the Residential Tenancies Act if the Accommodation Act is amalgamated with it.</p> <p>Amendment 14: That the question of incorporation of provisions for rooming-style accommodation as a separate and distinct part of the Residential Tenancies Act be canvassed with stakeholders in the residential rental sector generally in the review of the Residential Tenancies Act to be conducted in 2006.</p>	<p>There are some advantages to amalgamating the Residential Tenancies Act and Accommodation Act. The provisions for rental bonds (comprising about 25% of the Accommodation Act) is identical in both Acts. The Accommodation Act is also linked to parts of the Residential Tenancies Act for the administration and enforcement of the Act and for provisions about keeping bond accounts and appointment of conciliators. The RTA recognises that it may be more efficient to reduce duplication of common parts of both Acts by incorporating the provisions of the Accommodation Act as a distinct part of the Residential Tenancies Act. The RTA considers that the views of residential services sector stakeholders and the views of stakeholders in the rental sector generally be canvassed, to determine if the Accommodation Act should be incorporated as a separate part of the Residential Tenancies Act in the future.</p>

2. Responsibilities of residents and service providers

Responsibilities

The Accommodation Act, in establishing the responsibilities of residents and service providers, aims to strike a reasonable balance between the sometimes competing interests of both parties. Some areas need clarifying and common concerns were: standards of cleanliness for residents' rooms, ambiguity in the resident's responsibilities for the condition of the room at the end of the agreement, obligations for cleaning common and communal areas and residents' quiet enjoyment of premises.

The Accommodation Act also does not currently provide for residents to attach fixtures and make structural changes to their rooms, with the service provider's agreement.

Obligations for cleaning common areas (and/or communal areas) are complicated by configurations of premises, such as student accommodation using domestic premises where the common areas are the lounge/dining/kitchen areas of an apartment.

Unannounced entry into these areas could breach the residents' quiet enjoyment. Within the same complex are communal areas, such as the pool and games areas, where the obligation for the service provider is much clearer and wouldn't impose on the residents' quiet enjoyment.

There is also a need to clearly articulate obligations for service providers for standards of the premises and locks and keys. Not all premises captured under the Accommodation Act are protected by the building and service standards of the Accreditation Act and, unlike the Residential Tenancies Act, there is no stated requirement to meet standards required under local or other laws.

Amendment 15:

That the Accommodation Act be amended to include the following:

Residents' rights and responsibilities

- Clarify residents are responsible for keeping their room and its inclusions clean, considering their condition at the start of the agreement.
- Provide for residents to attach fixtures to the premises, with the service provider's agreement.
- Provide examples of how residents can contribute to fire safety.
- Clarify responsibilities for cleanliness of common areas.

Service providers' rights and responsibilities

- Clarify responsibility for cleaning of common areas.
- Introduce a penalty for breaching quiet enjoyment (reasonable peace, comfort and privacy).
- Clarify obligations to supply and maintain locks and keys.
- Introduce obligations to notify residents of change of agent or caretaker.
- Introduce an obligation to comply with local and relevant laws relating to health and safety, and building requirements, and ensure the premises remain fit for occupation.
- Allow service providers to "opt out" of obligations for cleaning of common areas, with the agreement of residents, where the common area is part of a domestic configuration.

Both parties would be assisted by clearly stating obligations for residents to clarify some of the confusion around "common areas" and "communal areas". Obligations for cleaning common areas should be able to be negotiated between the residents and service provider. Residents should be able to "opt out" of the service provider's cleaning service by mutual agreement. This would help with common areas in domestic configurations where privacy is an issue. Opting out of the service providers' obligations for cleaning common areas would need the agreement of both residents and service providers – the obligations to **maintain** the common areas, and to **clean and maintain** the communal areas, would continue.

Clarification of responsibilities will help when an issue is in dispute, particularly when it involves subjective elements such as "cleanliness" and clearly stating obligations for areas such as rooms and common areas. Obligations for elements such as "quiet enjoyment" can also be addressed through ongoing community education activities. The RTA considers that it is clear from submissions and operational intelligence that there are several areas where clarification of residents' and service providers' obligations will reduce ambiguity and help resolve disputes.

Addressing definitional issues, particularly in terms of obligations for "service providers" to extend to agents acting on their behalf, and distinguishing between obligations for "communal" and "common" areas, is also necessary to remove some of the confusion.

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>3. Agreements</p> <p>Compliance with written agreement provisions</p>	<p>The requirement for written agreements is intended to ensure the rights and responsibilities for both parties are clearly stated and that residents are provided with the necessary information to help them abide by the terms of the agreement. There were concerns about providing written agreements, compliance with provisions, implications for residents with impaired capacity and short-term agreements.</p> <p>There is reported low compliance in the sector with the requirement for written agreements, which was assumed to be hindered by a lack of enforcement provisions within the Accommodation Act.</p> <p>An issue was also raised about the number of residents accommodated in premises, particularly in domestic style configurations. For example, a resident may rent a room in a premises with five rooms expecting four or five occupants, and find that over time there may be eight or nine residents which significantly affected their amenity.</p>	<p>Amendment 16: The Accommodation Act be amended to include a timeframe within which residential service agreements should be signed and returned.</p> <p>Amendment 17: The RTA conduct community education activities on the requirement to sign agreements.</p> <p>Amendment 18: The RTA consider including a maximum number of residents allowed in the premises on the residential services agreement (approved form).</p>	<p>Although a number of submissions identified a general lack of written agreements in the sector, the RTA's operational experience is that the number of residents with written agreements has increased over time. There have also been relatively few specific complaints lodged with the RTA's Investigations Unit about this issue.</p> <p>The RTA considers that there are several opportunities to encourage compliance more formally, such as reviewing penalties and including time periods for required actions, as well as by encouraging voluntary compliance through education and awareness. The RTA supports activities to tackle the issue of compliance holistically, to encourage overall compliance with the legislation.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Impaired capacity and understanding obligations</p>	<p>The ability for some residents to sign agreements, particularly where impaired capacity is a concern, is problematic and questions were raised about the legality and effectiveness of written agreements signed by people who may have impaired capacity. There are also concerns about the ability of other residents to understand the agreements and obligations, including those with language, literacy or other communication difficulties.</p>	<p>Amendment 19: The RTA include a section on the residential services agreement (approved form) to include a third party nominated by the resident who must receive notices as well as the resident, such as for breaches, entry, etc.</p> <p>Amendment 20: That the Accommodation Act be amended to include an obligation on the service provider to contact the third party, where they have been advised of the details.</p> <p>Amendment 21: The RTA conduct community education in conjunction with relevant government agencies about issues for people with impaired decision-making capacity regarding residential service agreements.</p>	<p>The RTA considers it would not be appropriate for tenancy law to empower third parties who were not formal decision makers appointed through either the <i>Guardianship and Administration Act 2000</i> or the <i>Powers of Attorney Act 1998</i> to sign agreements on another person's behalf. Overall, issues about protection of people with impaired capacity is a significant issue which needs to be addressed mainly through measures other than tenancy law.</p> <p>However, the RTA supports the inclusion of a third party on written agreements nominated to receive notices as well as the resident, as this would provide practical support for residents to understand their obligations, notices and action required. The intention of the provision would be to ensure a support person can help make the resident aware of, and understand the implications of, the notices. All parts of the sector generally agreed in principle with the option to include a nominated third party on written agreements to provide support for the residents.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Short-term agreements</p>	<p>The perceived over-regulation of short-term accommodation options (for example where residents were undecided about the location, their intended length of stay and the suitability of the accommodation and fellow residents), as well as GST impacts on rent charges were identified as issues. It is generally a fairly transient accommodation option for some residents, with a small number moving regularly. Some type of flexibility for both parties in the earlier stages of a residency may be beneficial, and the example was given of short-term moveable dwelling provisions in the Residential Tenancies Act which require less paperwork and shorter notices.</p>	<p>Amendment 22: There is to be no change at this stage, on the basis that the sector does not generally support changes. However, the RTA supports further investigation into the viability of establishing different timeframes and obligations for a short-term tenancy (similar to short-term moveable dwelling agreements) as it would address some of the issues identified in some of the written submissions and by the sector.</p>	<p>Short-term tenancies cause confusion in the sector by complicating arrangements. It is important that residents have as much information about agreements and conditions as possible, and it wouldn't be advisable to reduce requirements for information or lessen rights. Through discussions and submissions, it is clear that resident advocates do not support proposals for short-term tenancy provisions, and the option was not generally supported by service provider groups. The RTA, however, considers that establishing a two-tier tenancy option could be viable, but that further investigation and consultation with the sector would be required.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>4. Rent Payments, Fees and Charges</p> <p>Rent</p>	<p>The most contentious aspects of rent, apart from affordability, is attributing what components apply to what type and level of service, and the ability for residents not to have to pay for services not received, for example meals not received when they are hospitalised or on holidays.</p> <p>The Accommodation Act requires components of rent (accommodation, food, services) to be identified on the agreement so residents can make an informed choice between premises.</p> <p>There are situations where residents would be aware of impending absences, such as holidays or medical arrangements, and situations where the resident could not reasonably anticipate absences, such as medical or family emergencies. On the other hand, service providers may have unavoidable expenses to maintain services, and do not have the ability to cover significant or unplanned loss of income. The sector agrees the resident should be liable for the accommodation component of rent, but there is a strong view by resident advocates that there should be a discount for meals not taken or personal care services not used. Service providers argue the economies of scale, fixed staff costs and the need to pre-purchase food and goods restricts their ability to reduce rent costs in these circumstances.</p>	<p>Amendment 23: The Accommodation Act be amended to include an option that a reduction in service cost due to absences can be negotiated and become a term of the agreement.</p> <p>Amendment 24: The Accommodation Act be amended to include an ability for the Small Claims Tribunal to make orders about rent reduction where services are not provided, or are provided but to an inadequate standard.</p>	<p>Central to the argument about rent components is whether the services, such as meals, are optional or required services. This affects the ability of residents to “opt out” of payments and negotiate terms of their agreement, as well as their inability to “opt in” to these services. The ability for residents to “opt out” of situations where food was a standard service, such as aged rental, could result in increases being passed on to other residents because of higher costs associated with varying levels of service delivery.</p> <p>Although residents captured by the Accreditation Act can lodge complaints with the Office of Fair Trading about the standard of services supplied, advocates supported additional options under the Accommodation Act by allowing residents to apply to the Small Claims Tribunal for a reduction in “rent” if there was a reduction of amenity, such as inadequate services or non-supply of a service. The RTA considers that allowing the Small Claims Tribunal to make orders about rent reduction, or inadequate standards of services supplied, gives an additional opportunity for residents to dispute standards, other than the Accreditation Act, and can achieve some savings for the resident and address some affordability issues. This will be particularly important if the Accommodation Act is extended to rooming style accommodation not covered by the Accreditation Act.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Charging rent</p>	<p>There was some confusion in the sector about how to calculate rent payments, including obligations to pay rent for every day the premises are occupied by the resident. In the Residential Tenancies Act this is clarified by stating how rent accumulates and is apportioned upon termination.</p>	<p>Amendment 25: Amend the Accommodation Act to include provisions to clarify that rent accumulates on a daily basis.</p>	<p>It is beneficial for parties to an agreement to understand their obligations in terms of rent and how rent accumulates, which will aid in resolving disputes. This will help clarify obligations for rent where there is a dispute over rent payments or arrears at the end of an agreement.</p>
<p>Fees and services</p>	<p>Some residents appear to be charged a number of fees and services, some of which could be interpreted as a form of rental bond which generally isn't lodged. These include key deposits, linen deposits, remote control bonds and non-refundable cleaning fees.</p> <p>There are also a range of fees charged which aren't negotiable. Charges appear quite prevalent in the student accommodation sector, where the client base has more income, and may include letting fees, cleaning fees for common areas, kitchen packs and for visitors staying overnight. The Act also doesn't state that service providers should be required to pay all out-goings and service charges, unlike the Residential Tenancies Act. This would include costs of preparing the written agreements, as well as costs for which the service provider should be reasonably liable, such as service charges associated with the property.</p>	<p>Amendment 26: The Accommodation Act be amended to include provisions to prohibit mandatory fees and charges (while clarifying what's a bond), but allow for optional agreed services such as cleaning or linen services to be negotiated and charged. There would be an exemption for food and personal care services provided in registered Level 2 and 3 residential services.</p>	<p>There is a need to address issues surrounding fees and charges. The Residential Tenancies Act prohibits collateral contracts, where tenants are not allowed to be required to purchase services from nominated suppliers. The Accommodation Act should limit charges and fees by nominating what the residents can reasonably be charged for and to establish that residents cannot be compelled to use mandatory services. It would still be open for residents to opt in to services such as regular cleaning services or 'furniture packs' by mutual agreement.</p> <p>The RTA considers that residents should not be permitted to "opt out" of food or personal care services in Level 2 and 3 registered residential services, as these form part of the specific package of care and accommodation offered by residential services, and there are other accommodation choices in the market for those seeking accommodation only. These changes should prevent the automatic charging of cleaning fees which are often charged up-front in certain parts of the sector.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Rent receipts</p>	<p>Paperwork and receipts cause some problems in the sector. Most relate to issues surrounding the resident's right to know what payments are for, and the need for service providers to better document payments by including room numbers and what the payment is for and giving residents the right to access information such as rent records where rent receipts aren't required.</p>	<p>Amendment 27: The Accommodation Act be amended to include specifications for rent receipt requirements to clarify the extent of required information (such as room numbers) and to require rent records to be provided on request.</p>	<p>The RTA considers that greater accountability on rent receipts, such as including room numbers, and processes for rent records will assist in resolving disputes over rent payments.</p> <p>If amendments 21, 22 and 24 are introduced, there is a need to include a requirement to indicate what the rent payment represents, particularly if the resident is not receiving identified services (for example, paying the accommodation component to retain the premises, but not the food or personal care components during an absence).</p>
<p>Rental bonds</p>	<p>The main concerns about rental bonds are the amounts charged, the variety of money charged under different guises, and the practical aspects of bond refunds, particularly for international students.</p> <p>The amount of rental bond charged relates to both large amounts (exceeding maximums) and obligations for smaller amounts. Service providers argue that the costs, paperwork and effort involved in lodging these smaller amounts are unnecessary bureaucracy. The maximum amount of bond is also confusing for some as additional amounts are charged on top of the base bond, but these additional amounts are not always lodged with the RTA, either deliberately or through ignorance. In some sectors, there was still a reluctance to lodge bonds with the RTA. Bond refunds can be difficult, either because of smaller amounts and efforts required to retrieve those bonds, but mainly for the international student accommodation market where students are leaving the country before they can retrieve their rental bond.</p>	<p>Amendment 28: Amend the Accommodation Act to define rental bonds more clearly to clarify that key deposits and other charges are rental bonds.</p> <p>Amendment 29: The RTA to review bond refund processes to accommodate international students.</p>	<p>Rental bonds are linked with key deposits and other charges, and are affected by sector practice. Service providers in boarding houses and some student accommodation, for example, often charge key deposits as an incentive for the keys to be returned rather than representing a cost of replacement. These smaller amounts are still a form of financial protection and are considered bonds.</p> <p>The suggestion to establish a minimum bond amount, under which amount there would be no requirement to lodge that bond money with the RTA, was not supported as it was in conflict with the philosophy of rental bond legislation.</p> <p>The RTA will undertake work to review operational bond refund and dispute resolution processes to help overseas students access their bond money.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>5. House Rules</p> <p>Changing house rules</p>	<p>The processes for changing house rules were flawed, particularly in the student accommodation sector where premises may house up to 400 or 500 students and organising the required 50% majority within seven days to dispute the proposed rule change is unworkable. For some, the seven day period to dispute the rule change is too short, and residents with impaired capacity may need more time to understand the implications. Disputes over house rules also currently need to go through the RTA's Dispute Resolution Service, rather than directly to the Small Claims Tribunal, and there is no ability for a representative hearing for the whole-of-premises at present.</p>	<p>Amendment 30:</p> <p>The Accommodation Act be amended to provide for changes to house rules. The RTA will develop options for house rule changes, including altering the required number of residents rather than time periods to dispute the change, in consultation with the sector. The changes would establish the minimum number of residents required to dispute changes by setting a benchmark size for the premises in consideration of larger and smaller premises.</p>	<p>The current provisions for required numbers to dispute house rule changes are unworkable in many premises where there are large numbers of residents.</p> <p>The RTA recommends that further work is required to identify a workable solution to establish required numbers. It should be noted, however, that the required number only reflects the ability to dispute the proposed changes, rather than preventing the changed rules from happening.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Smoking</p>	<p>Smoking is clearly a contentious issue since many residents smoke and was raised regularly. The central issues for service providers are insurance, fire safety concerns and workplace health and safety. For residents and advocates, the restrictions on smoking limit personal choice for residents, especially in conjunction with impacts of recent legislation prohibiting smoking in public areas and near doorways.</p> <p>It is also important to consider the impact on residents with restricted mobility who don't have the option of leaving their rooms to smoke. Restrictions on where anyone can smoke (for example, coffee shops and public areas) are increasing, and limitations on smoking in the residents' homes will have a significant effect on them as not all premises have dedicated, weather-proof smoking areas, nor are required to have these for residents.</p> <p>Service providers also report that banning smoking (generally in bedrooms) is often a condition of obtaining insurance. Smoking in rooms may also be a fire hazard in older buildings, and service providers consider their choices limited, other than to prevent smoking.</p>	<p>Amendment 31: Amend the Accommodation Act to including smoking as a topic about which house rules can be made.</p>	<p>Not all residential premises ban smoking and to introduce a blanket house rule in the Accommodation Act to restrict smoking would be unfair on those residents who have greater freedom to smoke in or near their rooms.</p> <p>The RTA considers that allowing smoking as a topic about which house rules can be made would allow flexibility between premises, as some currently allow residents to smoke in their rooms. Additional safeguards would also allow residents to dispute "unreasonable" house rules in the Small Claims Tribunal.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Visitors</p> <p>Visitors are a major concern for the sector and can, in part, be addressed under general house rules about “resident’s and guest’s behaviour” but this is not stated clearly. Essentially, these issues need to consider who has control of the premises and the residents’ rights which are limited to their rooms and the right to use common areas. Most of the issues concern visitors staying overnight (which may represent a cost for service providers and be in breach of building and fire restrictions), the behaviour of some guests, the right of residents to access support people and advocates, and the service provider’s ability to restrict some people from entering the residential premises (such as ex-residents who were evicted). This needs to be balanced against the residents’ rights to enjoy their premises.</p>	<p>Amendment 32: The Accommodation Act be amended to include “visitors” (including overnight visitors) as a topic about which house rules can be made.</p> <p>Amendment 33: The Accommodation Act be amended to include a requirement that residents have the right to have reasonable access to allied health professionals, advocates and community care workers.</p>	<p>The RTA supports allowing flexibility within premises by allowing “visitors” as a topic about which house rules can be made, rather than specifying restrictions.</p> <p>It is debatable whether former residents should be placed in a different category of “visitor”, or whether the term “visitor” should remain a generic term able to be applied to all non-residents. There are other legal options available to service providers where behaviour is an issue, and tenancy law is not an appropriate vehicle for controlling behaviour and behavioural issues. The RTA considers there is a risk of excluding people based on “types”, however it is necessary to clarify that residents have rights to reasonable access to allied health professionals, advocates and community care workers.</p> <p>While house rules need to be tailored to specific circumstances to suit premises and households, there is a need for additional safeguards such as access to the Small Claims Tribunal to dispute onerous house rules about visitors.</p>	

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Other issues</p>	<p>There was some support for extending the topics house rules can be made about including rules about excessive drinking, taking illicit drugs and fire safety (use of candles, incense, etc). Service providers also sought additional grounds for entry to ensure house rules were being adhered to, and what to do if residents broke house rules. Resident advocates warned against extending topics for house rules as there was a danger of controlling residents' lives.</p>	<p>Amendment 34: The Accommodation Act be amended to allow a house rule to be disputed on the grounds it is unreasonable.</p> <p>Amendment 35: The Accommodation Act be amended to provide a power for the Small Claims Tribunal to make orders about house rules.</p>	<p>There are many different perspectives about what can or should be house rules for premises. It is preferable to keep house rules generic with the ability for different premises to amend them to suit specific circumstances. Many issues can be addressed through communication between the parties and community education activities, rather than legislative change.</p> <p>The RTA considers an essential element to include in the Accommodation Act is the ability to more effectively dispute house rules, such as through the Small Claims Tribunal and dispute processes, including the ability to dispute them on the grounds the rules are "unreasonable". This would introduce safeguards for residents to dispute unreasonable house rules, and for the Small Claims Tribunal to be able to make orders.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>6. Entry Provisions</p> <p>Entry provisions</p>	<p>The Accommodation Act sets out the rules for entry which aim to recognise the rights of service providers to monitor their premises, as well as the residents' right to reasonable peace, comfort and privacy (quiet enjoyment). Resident advocates argue strongly for residents' rights to privacy and use of their rooms without fear of interruption or unnecessary monitoring. Service providers are similarly clear about their need to ensure the premises and other residents aren't in danger, to prevent damage to property or to ensure none are in breach of any house rules.</p> <p>There was some confusion over regular entry, particularly for Level 3 services providing personal care involving regular entry and how notices are given. Some service providers, for example, incorrectly thought they had to give entry notices each time they entered the resident's room to provide personal care, such as to give medication. In student accommodation with domestic configurations, it was common to receive complaints about misuse of entry provisions to conduct "defacto inspections" by the service providers' cleaners reporting back on students' behaviour or inspecting the premises while doing the fortnightly cleaning.</p>	<p>Amendment 36: The RTA conduct ongoing community education campaigns about rights and responsibilities of the rules of entry and "reasonableness".</p> <p>Amendment 37: The Accommodation Act be amended to link quiet enjoyment provisions (s.10) to the rules of entry provisions (ss.65-71) by including an example in the legislation.</p> <p>Amendment 38: The Accommodation Act be amended to include specific provisions around entry for sale for third parties, such as selling agents.</p> <p>Amendment 39: The Accommodation Act be amended to clarify definitions for common areas and communal areas which indicate different dwelling types, and allowing parties to "opt out" of obligations, such as not wanting the service provider to clean common areas.</p> <p>Amendment 40: The Accommodation Act be amended to provide the Small Claims Tribunal with the power to change the rules of entry and make whole-of-premises orders, and make it explicit in the legislation that the Small Claims Tribunal has these powers.</p>	<p>The major issues with entry for operational matters is confusion about entry requirements when providing services, particularly for Level 3 services, and meeting fire safety obligations. The RTA considers these issues are better addressed through ongoing community education responses as it is clear there is a lack of understanding about entry provisions within the sector, and it would appear that most entry issues can be negotiated between the parties. The RTA believes there is no reason to change the rules in most instances, however, there is still a need to ensure the entry processes are complied with.</p> <p>The RTA considers quiet enjoyment of common areas could be addressed through other means, such as clarifying definitions and responsibilities and the role of service provider/caretakers, and linking it to obligations for service providers. Access by caretakers to common areas is complicated where caretakers live in the premises and may share common areas with other residents, or enter common areas to show other potential residents through and is a definitional issue affected by dwelling types and caretaker living arrangements.</p> <p>Continued next page...</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>6. Entry Provisions (continued)</p>	<p>Entry by third parties was problematic in the student accommodation and aged rental sector where individual units are privately owned and were being sold to investors and both residents and service providers were unable to control entry by selling agents or strategies such as “open houses”.</p> <p>Entry notices are required for a person’s room, as it is their home, however there are conflicting opinions as to whether entry notices should be given for common areas as the right for residents to their premises extended to both their rooms and common areas. Entry to common areas is complicated by configurations of premises and where there are on-site managers or caretakers who may share common areas with residents. There is also no stated ability for whole-of-premises applications to go before the Small Claims Tribunal.</p>		<p>The obligations for common areas and communal areas need to be distinguished and should also consider the residents’ rights to quiet enjoyment of common areas. Residents should also be able to negotiate at the outset the service provider’s responsibilities for common areas, which can help clarify obligations for notices of entry (see Amendment 13).</p> <p>The RTA considers an important element of dispute resolution for entry was the Small Claims Tribunal’s power to change rules of entry and to make whole-of-premises arrangements for applications by some, but not necessarily all, residents. This is necessary in large-scale developments where there may be hundreds of residents and it is unrealistic to have multiple applications to the Tribunal about an issue (such as inappropriate entry by the service provider) that affects the whole premises.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
7. Breaches and Disputes	<p>Breaches</p> <p>Rent arrears processes and time periods were contentious and the opinions of the sector are polarized as to whether the time periods should be shorter (to lessen service providers' economic loss) or longer (to help residents redress rent arrears, for example). Advocates argued that the focus for time frames should be on the impact on residents (who stand to lose housing) rather than service providers (who stand to lose profit) and suggested time periods for the Residential Tenancies Act be used.</p> <p>Short term tenancies have shorter time periods for rent arrears and the distinction between rent arrears processes for shorter (less than 28 days) and longer (more than 28 days) residencies was confusing when determining which rent arrears process and timelines should apply.</p> <p>Repeat breaches provisions do not appear in the Accommodation Act but are in the Residential Tenancies Act, where if a breach occurs more than twice within an identified period, the other party can apply to the Small Claims Tribunal for a termination order. The intention of those provisions is to encourage terminations for identified reasons, to allow additional grounds for terminations, and to discourage multiple breaches, such as rent arrears or behavioural matters.</p>	<p>Amendment 41: There be no change to time periods in the Accommodation Act to remedy breaches.</p> <p>Amendment 42: Amend the Accommodation Act to introduce provisions for repeat breaches, so residential service agreement can be terminated on application to the Small Claims Tribunal where a resident or service provider has breached the agreement in the same way more than two times in a nominated period (for example, two years).</p> <p>Amendment 43: The RTA coordinate a community education response, as breach provisions and notice times are minimum requirements which can be negotiated and extended by service providers.</p>	<p>One factor supporting longer notice periods in the Residential Tenancies Act is the usual presence of a rental bond as a measure of financial protection. In contrast, rental bonds are much less common in the more traditional boarding house/supported accommodation part of the residential services sector, although they are more commonly required in aged rental and student accommodation.</p> <p>Increasing the length of notice periods would probably increase the requirements for a rental bond. A danger would be increased barriers for low income residents accessing accommodation.</p> <p>While “no change” is a less desirable option for all stakeholders, other changes can be made to support the effectiveness of the legislation, such as allowing “urgent” applications to the Small Claims Tribunal.</p> <p>The Accommodation Act establishes minimum timeframes which can be negotiated and extended by service providers.</p> <p>While the notice period times in the Accommodation Act are shorter than those in the Residential Tenancies Act, they are comparable to the notice periods for similar legislation in other states. The RTA considers there is no evidence to justify a change to time periods because they are in line with other jurisdictions, and principles need to be balanced with practicalities in operating such communal living style arrangements.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Disputes</p>	<p>The Accommodation Act mirrors the Residential Tenancies Act in requiring a two-step dispute resolution process – first accessing the RTAs free Dispute Resolution Service for assistance in negotiating outcomes suitable to both parties, then progressing to the Small Claims Tribunal if an agreement cannot be reached. These processes also encourage self-resolution, supported through education and information. There is currently no ability to make applications directly to the Small Claims Tribunal as an “urgent” matter.</p> <p>The relationship between service providers and residents is aggravated because the parties often live in the same premises and don’t have the same separation of location as do general tenants and lessors/agents.</p> <p>In the student accommodation sector, residents often leave the country immediately at the end of the agreement and are unable to access dispute resolution, particularly over bond refund matters.</p>	<p>Amendment 44: The Accommodation Act be amended to allow for “urgent” Small Claims Tribunal applications for identified reasons (using the Residential Tenancies Act as a guide).</p>	<p>Currently, few disputes in the residential services sector advance to the Small Claims Tribunal for a hearing. There are several areas where conciliation is unlikely to be effective and where an application directly to the Small Claims Tribunal would save time. Support for the Small Claims Tribunal to hear an increased number of such “urgent” applications is supported. The RTA will investigate other matters that would benefit from “urgent” applications to support the effectiveness of the legislation in its application.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>8. Ending Agreements and Removing Residents</p>	<p>Right to immediately terminate agreements for serious breach</p> <p>The Accommodation Act allows a service provider to immediately end an agreement where a serious breach has occurred. Many of the submissions from service providers and from some residents strongly argued that these provisions were an essential protection for other residents in violent or very disruptive situations. Many resident advocates' submissions argued the provisions were misused, unfair and breached fundamental rights. Examples were given of immediate eviction for less serious behaviour such as noise or breach of house rules and the provisions were sometimes used to intimidate residents and that residents (due to past experiences) were reluctant to enforce their rights because of the fear of immediate eviction.</p>	<p>Amendment 45:</p> <p>Further discussions be held with the Queensland Police Service, the Department of Justice and Attorney General, and the Chief Magistrate about the development of a practical alternative which will allow residents to be required to leave immediately in cases of serious breach, while allowing a speedy process for a resident to seek the reinstatement of their tenancy. If introduced, it is recommended section 79 would be removed. If no practical alternative can be developed, the RTA recommends that section 79 of the Accommodation Act be retained.</p>	<p>The RTA considers that in communal living arrangements the greatest weight must be given to the rights of the majority when there are serious breaches such as violence or serious disruption. Residents also have the right to be treated fairly and to dispute their eviction, but there are significant difficulties in practically balancing these competing interests. It is accepted that some action to protect residents is necessary in serious cases such as violence, threatening behaviour or serious damage to the premises; however interest groups differ on how this can be achieved. Criminal law and legislation such as the <i>Peace and Good Behaviour Act 1982</i>, provide some protection, however service providers argue that a resident is not necessarily charged when Police attend an incident and that even if a person is charged with an offence, they can be back at the premises within a short period as it is still their place of residence.</p> <p>An alternative suggestion is the introduction of provisions similar to sections 368-371 of the <i>Police Powers and Responsibilities Act 2000</i> which allow a police officer to ultimately direct a person to leave and not re-enter a caravan park for 24 hours, allowing a park owner or manager to urgently apply to the Small Claims Tribunal to end the tenancy. Such an option would require consultation with the Queensland Police Service about the amendment of the <i>Police Powers and Responsibilities Act</i> and the agreement of the Small Claims Tribunal to deal with any related applications very quickly.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Ending agreements in general</p>	<p>The Accommodation Act provides a number of grounds on which either party can give notice to end the agreement.</p> <p>A number of submissions suggested additional grounds which could be included in the Accommodation Act, such as death, domestic violence, excessive hardship and unsuitability of accommodation due to the resident's health or related issues. Section 75 "Ending of agreement" does not allow for an agreement to be ended by the Small Claims Tribunal, and it was not clear how a resident could end a fixed term agreement when the fixed term ended.</p>	<p>Amendment 46: The Accommodation Act be amended to clarify the Small Claims Tribunal's power to end agreements.</p> <p>Amendment 47: The Accommodation Act be amended to introduce grounds for ending agreements by either party for excessive hardship to capture events such as unsuitability or health reasons.</p> <p>Amendment 48: The Accommodation Act be amended to include grounds of "death" to terminate agreements (for example the death of the last person named as a resident on the agreement).</p> <p>Amendment 49: The Accommodation Act be amended to include a notice period to terminate fixed term agreements.</p>	<p>Since a number of recommendations will allow additional applications to the Small Claims Tribunal about the termination of agreements, the RTA considers the Act should be amended to specifically provide for the Small Claims Tribunal to make an order terminating an agreement.</p> <p>The RTA considers that there are situations such as deteriorating health where either party may wish to end the agreement. Providing the ability for either party to apply to the Small Claims Tribunal to end an agreement on the grounds of excessive hardship would allow a flexible response to a range of circumstances. Ambiguity also arises when a resident dies and can result in unnecessary and sometimes distressing paperwork for next of kin. Therefore it is appropriate that the Accommodation Act be amended to end the agreement simply and to set out the obligations of the resident's estate and the service provider regarding the tenancy.</p> <p>The notice to end an agreement without grounds gives either party some flexibility where they do not wish to continue the arrangement. The RTA considers that residents have reasonable protection and time to make alternative arrangements due to the length of the notice a service provider must give.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Removing residents</p>	<p>A service provider does not require a <i>Warrant of Possession</i> from the Small Claims Tribunal to evict a resident. The Accommodation Act allows a service provider to remove a resident refusing to leave using reasonable force short of bodily harm, but can only use force if a Police Officer is present.</p> <p>Submissions reflected strong views about this provision focusing on unfair outcomes for residents versus time and cost due to waiting times for the Small Claims Tribunal.</p> <p>Some submissions suggested an eviction should be tested before an independent Tribunal which, if justified, would issue a Warrant to be executed by Police and that there was no justification for a person other than a Police Officer using force. It was also argued that because an agreement could be ended immediately and the service provider could then evict a resident, residents were intimidated if the provisions were used unfairly.</p> <p>Service providers generally argued that the waiting times for Small Claims Tribunal hearings followed by delays for Police to execute a warrant were costly and affect the financial viability of low margin premises and would lead to problems with other residents. These arguments are more applicable to lower cost boarding house and hostel type accommodation where rental bonds are less commonly taken. Evictions are usually a last resort for service providers because of their inherent financial interest in receiving rent for their accommodation.</p>	<p>Amendment 50:</p> <p>The RTA hold further discussions with the Department of Justice and Attorney General, the Chief Magistrate and the Queensland Police Service to explore whether applications for <i>Warrants of Possession</i> could be processed and executed within a practical timeframe to allow the Act to be amended to require <i>Warrants of Possession</i> for evictions. It is possible, then section 82 would be removed. If no practical alternative can be developed, the RTA recommends that section 82 be retained.</p>	<p>It is a basic principle in tenancy law that evictions be carried out by Police and only after there has been an opportunity to dispute the termination of the agreement. However the effective operation of this principle in general tenancies is underpinned by the capacity of the lessor to take a rental bond as some financial protection due to the time required for such a process, which can extend for several weeks. In the residential services sector, RTA data indicates that few rental bonds are lodged for boarding house and hostel residents, although they are more often taken in student accommodation. It is also generally agreed that due to the low incomes of residents in the traditional part of the sector, most residents cannot afford rental bonds.</p> <p>The RTA considers that there are practical difficulties which mitigate against amending the Accommodation Act to require <i>Warrants of Possession</i> to be issued and then executed by the Police. While the traditional residential services sector housing low income residents is in decline, longer time frames to remove residents for non-payment of rent, in the absence of rental bonds, will place further financial pressure on the sector leading to less available accommodation. Nevertheless it may be possible, due to the relatively small size of the sector and its concentration in larger cities, to achieve a practical timeframe such as a total of two weeks, through administrative measures, for applications of warrants to be heard by a Tribunal and if issued, executed by the Police. This option would require the support of the Courts and the Police and will be investigated.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Goods and documents left behind</p>	<p>The Accommodation Act sets out how goods and documents left behind are dealt with. Goods that are perishable or worth less than \$100 may be disposed of immediately. If valued at more than \$100, they must be stored for 28 days unless reclaimed earlier. The service provider can require the resident to pay reasonable storage costs before releasing them or deduct this cost from sale proceeds.</p> <p>The obligation to store goods was onerous for some service providers, since storage costs could rarely be recouped. There were also some concerns that storage was problematic and some premises had little suitable storage space.</p> <p>There is also some confusion about whether goods that are either a health or safety hazard must be stored.</p>	<p>Amendment 51: The Accommodation Act be amended to clarify that the values of goods left behind are market values.</p> <p>Amendment 52: The Accommodation Act be amended to clarify that goods that are a health or safety hazard may be disposed of immediately.</p>	<p>It is apparent from the RTA's operational experience and submissions that the current provisions in the Accommodation Act are not well understood and that service providers are only obligated to store goods with some market value. The clarification of market value was recently introduced in the Residential Tenancies Act for general tenancies, and this will provide some consistency of interpretation. The RTA considers that no significant problems have been identified and that major changes are not required. However, some minor changes would clarify the provisions, such as obligations for storage of goods posing a health or safety hazard.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
9. Impaired Capacity Impaired capacity	<p>Impaired capacity, including assumptions of incapacity or capacity, remains a volatile issue marked by lack of understanding as well as raising practical issues in administering the Accommodation Act and having enforceable, written agreements.</p> <p>Resident advocates and government agencies were particularly concerned about the vulnerability of residents and the potential for abuse. The original intention of the residential service reforms were directed mainly at vulnerable residents, and there are additional safeguards provided in those types of premises through the Accreditation Act, such as controls on service providers and financial management. However the coverage of the Accommodation Act does extend to premises beyond those covered by the Accreditation Act.</p>	<p>Amendment 53:</p> <p>The RTA approach other government agencies regarding guardianship issues and progress this discussion at a whole of government level.</p>	<p>There were important issues raised about impaired capacity, but these are best addressed through the guardianship framework, not tenancy law. Most of these issues need to be considered in terms of a whole of government response and the residential service reform package.</p> <p>Amendments 17 and 18 will provide an option of including a third party notification on RTA forms to address some of the more practical issues associated with agreements and notices. The Accommodation Act currently adequately provides for situations where there is a financial consideration, such as notices of rent arrears.</p>
10. Other Issues Other issues	<p>A number of other issues were raised by stakeholders, not all of which require a legislative response or may be addressed as a consequence of other proposed changes. The major consideration was the ability for government agencies to pass on information to other relevant authorities within the context of the privacy regime.</p> <p>The current non-availability of RTA forms at post offices was raised by resident advocates, particularly given the difficulties of access by residents to electronic or other forms distribution options.</p>	<p>Amendment 54:</p> <p>The RTA continue to raise issues affecting other government agencies within the residential services sector at inter-governmental forums and directly with appropriate agencies.</p>	<p>The RTA has commenced negotiating with Australia Post to have some Accommodation Act forms available at selected post offices, based on demographics of the area, in the future.</p> <p>Other higher level and strategic issues raised by stakeholders but outside the scope of the Accommodation Act such as the role of service providers as guardian (formal or informal) and financial administrators, will continue to be raised by the RTA at inter-governmental forums and progressed through appropriate agencies.</p>

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>11. Balance of Act and Compliance</p> <p>Balance of Act</p>	<p>No sector group or individual considered the Accommodation Act perfect, and all were able to identify some points where it could be adjusted.</p> <p>The legislation is now generally more accepted throughout the sector than it was during the earlier implementation phase. The main consensus was that the Accommodation Act represented a “good starting point” in terms of legislation and a framework of rights, providing greater protection and certainty for both sides, although there was obviously room for improvement.</p> <p>Service providers clearly thought the Accommodation Act was structured in favour of residents, and resident advocates clearly thought the Act favoured service providers.</p> <p>Resident advocates strongly supported moving away from the Accommodation Act, and adopting the standards of the <i>Residential Tenancies Act 1994</i>, arguing that more vulnerable residents needed greater levels of protections (such as length of notice periods, and termination procedures) rather than reduced levels of protection offered by the Accommodation Act. Service providers indicated the sector was a low-profit industry, with high risks and stressed the need to achieve workable solutions in communal living environments.</p>	<p>Amendment 55: Amend the Accommodation Act to incorporate changes to other elements of legislation identified throughout this report, such as coverage, definitions, penalties, and specific sections of the Act which will address issues of balance.</p> <p>Amendment 56: The RTA to support amendments to the Accommodation Act with ongoing community education programs and compliance activities (both RTA investigations and Accreditation Branch investigations).</p>	<p>The review of the legislation has helped identify some practical matters that need to be addressed, and the preceding amendments will go a long way to achieving this.</p> <p>There needs to be a number of amendments, as identified throughout this report, to improve its overall effectiveness and to ensure a better, more workable balance.</p> <p>It was not expected that consensus would be achieved on perceptions of balance, as interest groups feel strongly about their positions. The balance of legislation can be considered in terms of stated “rights and responsibilities” of the parties, but relies on compliance and enforcement.</p>

Appendix: Overview of proposed amendments

Topic	Issues identified	Proposed amendments	Reasons for amending
<p>Compliance</p> <p>The key issues emerging were of non-compliance with requirements of the legislation, the need to review attribution of penalties to sections and amounts of penalties, and a call for the RTA to take a more proactive approach to enforce compliance through prosecutions, rather than a community education approach.</p> <p>There was some reported widespread non-compliance within the sector. The role of the RTA was also criticised, with resident advocates strongly recommending that the RTA progress from a community education response to one of prosecuting penalty breaches in the Magistrates Court to “send a message” to the sector and strengthen the compliance agenda.</p> <p>The presence, and amount, of penalty units in the Accommodation Act is often used as an indicator by the sector to interpret “balance” of the legislation. The value of penalty units was compared by resident advocates to those in the Residential Tenancies Act, and found in some areas to be smaller by comparison, however these values were set in consideration of the marked differences between general tenancies and residential services.</p> <p>One of the difficulties identified for the RTA in following through with prosecutions is the ability or inability of residents to gather evidence which is required in the Magistrates Court process, and the unwillingness of residents to take a stand due to issues such as fear of retaliation (from service provider or other residents), fear of homelessness or not understanding the processes to be followed.</p>	<p>Amendment 57:</p> <p>Amend the Accommodation Act by adding penalties to sections addressing fundamental issues, such as giving copies of house rules, quiet enjoyment, giving written agreement within identified timeframes, and unlawful evictions.</p>	<p>A factor supporting compliance for residential services is meeting the accreditation standards required under the Accreditation Act. Compliance with some requirements of the Accommodation Act (such as written agreements) would be encouraged by full adoption of Accreditation Act requirements.</p> <p>An area of great confusion has been that of coverage, and recommendations to extend coverage to room-only accommodation styles will help with compliance by removing some of the uncertainty and inconsistency in coverage under tenancy law.</p> <p>The RTA considers penalties can be added to those areas representing fundamental principles to encourage greater voluntary compliance, and assist with the RTA’s investigations activities.</p>	<p>Reasons for amending</p>

Residential Tenancies Authority
GPO Box 390 Brisbane Qld 4001
33 Herschel Street Brisbane
Telephone: 1300 366 311
Facsimile: 07 3361 3552
Website: www.rta.qld.gov.au

Version 2
10 November 2006



Queensland
Government