

RESIDENTIAL SERVICES AND OTHER LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Residential Services and Other Legislation Amendment Bill 2004*.

Policy Objectives of the Legislation

The policy objectives of the *Residential Services and Other Legislation Amendment Bill 2004* are to:

- exempt residential service-style independent student accommodation services from the *Residential Services (Accreditation) Act 2002*; and
- ensure residents and operators of residential service-style independent student accommodation services are subject to the *Residential Services (Accommodation) Act 2002*.

Reasons for Policy Objectives

The reasons for exempting independent student accommodation services from the *Residential Services (Accreditation) Act 2002* are:

- student accommodation was never intended to be captured by the *Residential Services (Accreditation) Act 2002*, yet some forms of this accommodation have been inadvertently captured by that Act's generic definition of a "residential service";
- exemption from the *Residential Services (Accreditation) Act 2002* already exists for a service conducted as a part of, or under an agreement with, a school or other educational institution mainly to provide accommodation to students or employees of the school or institution. Also exempt are services conducted

with financial assistance from the Department of Education mainly to provide accommodation to school students. However, room-only student accommodation services operated by industry independently from educational institutions or such financial assistance are not covered by these exemptions;

- the policy intent of the *Residential Services (Accreditation) Act 2002* was to regulate operators and premises housing an extremely vulnerable consumer group who suffer significant social, financial, physical and intellectual disadvantages, and are therefore often unable to exercise the consumer choices that might otherwise allow them to avoid situations of long-term exploitation, abuse or poor accommodation standards. Students are not considered subject to the same vulnerabilities as this target group. This is because students are able to exercise consumer choice in a growing and competitive market specifically aimed at providing a range of accommodation options for them, there are reports of a generally good standard of student accommodation, and the potentially higher incomes of international students;
- the student accommodation sector of the rental accommodation industry was not consulted in the policy development of the residential services regulatory regime;
- independent research into this sector of the rental accommodation industry has not provided evidence of poor accommodation standards or exploitation of residents. This suggests that application of the *Residential Services (Accreditation) Act 2002* may result in unnecessary regulation of the industry;
- the continued application of the *Residential Services (Accreditation) Act 2002* to student accommodation would lead to anomalies between premises rented by four or more students on a room-only basis (where the premises have to meet the registration and accreditation requirements of the *Residential Services (Accreditation) Act 2002*), and similar accommodation where students have the right to occupy the whole of the premises they reside in and which is governed by the *Residential Tenancies Act 1994* (thus avoiding the obligations of the *Residential Services (Accreditation) Act 2002*); and

- planning for the rollout of the *Residential Services (Accreditation) Act 2002* did not factor in the impact of regulating student accommodation. As a consequence, the intended focus of the *Residential Services (Accreditation) Act 2002* on vulnerable residents in boarding houses and hostels may be diluted in addressing the unintended capture of student accommodation.

The reason for ensuring residential service-style independent student accommodation services are subject to the *Residential Services (Accommodation) Act 2002* is that, while registration and accreditation is not considered necessary for the student sector, it is important students in room-only accommodation remain entitled to basic legislated tenancy rights. The loss of such rights would lead to an inconsistency of tenancy rights between students in room only accommodation who would have no legislated tenancy protection, and students accommodated in share houses who are afforded protection by virtue of the *Residential Tenancies Act 1994*.

How Policy Objectives will be Achieved

The policy objective of exempting independent student accommodation services from the *Residential Services (Accreditation) Act 2002* will be achieved by including in that Act's list of services that are not "residential services" services mainly providing accommodation to students enrolled in approved courses.

The policy objective of ensuring residential service style student accommodation is covered by the *Residential Services (Accommodation) Act 2002* will be achieved by amending the definition of a "residential service" in that Act to include services mainly providing accommodation to students enrolled in approved courses, where that service would, but for the exemption, satisfy the meaning of a "residential service" in the *Residential Services (Accreditation) Act 2002*.

Options to Achieve the Policy Objectives of this Bill

Four alternative options were identified to address this issue.

Alternative One

Amend the accreditation requirements to remove accreditation for the entire category of services that student accommodation falls under. This would result in exempting all boarding houses from the *Residential Services (Accreditation) Act 2002* and would defeat the fundamental objective of the *Residential Services (Accreditation) Act 2002* to protect the rights of vulnerable residents.

Alternative Two

Place the tenancy provisions of the reform package into the *Residential Tenancies Act 1994* as a new class of tenancy. In addition to the substantial amendments required to achieve this, the tenancy provisions under the *Residential Tenancies Act 1994* are not considered appropriate for multiple occupancy room-only tenancies involving common areas and house rules. These issues are already dealt with under the *Residential Services (Accommodation) Act 2002*.

Alternative Three

No change. This would result in the unintended capture of a significant number of service providers who were not consulted before the enactment of the reform package for residential services. It would also result in the unintended capture of students who generally enjoy a good standard of accommodation and who are not considered part of the vulnerable consumer group the residential services reforms target. Industry would incur costs and an administrative burden in having to meet the legislative compliance requirements, and government resources would be diverted from effectively focusing on the target group of the legislation. It would represent an overregulation of a sector of industry where no evidence for regulation has been identified.

Alternative Four

Exempt student accommodation from the *Residential Services (Accreditation) Act 2002*, but maintain coverage under the *Residential Services (Accommodation) Act 2002*. This is the method adopted to achieve the policy objectives of this Bill. This method is reasonable and appropriate as it:

- a. removes unnecessary burden on industry associated with meeting registration and accreditation requirements;
- b. allows this issue to be addressed before the deadlines for industry to comply with requirements under the legislation;
- c. allows more efficient use of government resources in administering the legislative scheme and maintaining a focus on the intended target group of the legislation;
- d. ensures tenancy rights for room-only student accommodation;
- e. preserves coverage of non-student accommodation under the *Residential Services (Accreditation) Act 2002*; and
- f. does not require substantial legislative amendments.

Administrative Cost

There are no anticipated administrative costs to government, including staffing and program costs, as a result of this legislation.

Fundamental Legislative Principles

One potential infringement of fundamental legislative principles is the term “approved course” being defined with reference to Commonwealth legislation and a Commonwealth instrument. Incorporation by reference of the contents of external documents has a tendency to undermine the institution of Parliament by effectively delegating the making of Queensland law to outside bodies. Subsequent changes to that legislation or instrument by the Commonwealth could potentially change the scope of the services covered by this definition.

It is recognised however, that there are cases where there are practical arguments in favour of use of this drafting device. The following reasons justify use of the Commonwealth definition in this exemption:

- a. the Commonwealth definition provides a necessary element for defining the relevant kind of service in the most appropriate way. The relevant approved courses are set out in the Determination. The Determination is brief, concise and uses a clear table of all types of tertiary and secondary courses and institutions that it applies to - all in the one location;

*Residential Services and Other Legislation Amendment
Bill 2004*

- b. the practical effect of the current Commonwealth definition is to refer to courses approved by the relevant State accrediting bodies; and
- c. a change of the Commonwealth definition affecting the scope of the *Residential Services (Accreditation) Act 2002* is likely to be preceded by consultation with Queensland, allowing time for making any necessary amendments.

In addition, the following issue has been raised. There is an argument that the exemption of student accommodation from the *Residential Services (Accreditation) Act 2002* affects the rights of some student residents by removing an implied right to have their accommodation accredited pursuant to the *Residential Services (Accreditation) Act 2002*.

Any such potential loss of rights would be justified on the following grounds:

- a. students do not form part of the vulnerable consumer group that is the target of the *Residential Services (Accreditation) Act 2002*, and therefore it was never the intention of the *Residential Services (Accreditation) Act 2002* to apply to independent student accommodation services. As such, any rights, implied or otherwise, that student residents may be entitled to under the *Residential Services (Accreditation) Act 2002* were not intended to be conferred;
- b. only one student accommodation service has been registered to date, and none have been accredited. Therefore the effect of this exemption will result in only minimal real practical effect or direct change in the current circumstances of student residents; and
- c. one of the objects of the *Residential Services (Accreditation) Act 2002* is the protection of the health, safety and basic freedoms of residents. This is primarily achieved however, not by conferring rights on residents, but by way of imposing obligations on, and sanctions against, service providers. Only the Office of Fair Trading has power under the Act to enforce these obligations against non-compliant accommodation providers. With the exception of a right to remedies in tort in limited types of reprisals by a service provider against a person, the *Residential Services (Accreditation) Act 2002* does not expressly confer, nor is it a stated intention of the *Residential Services (Accreditation) Act 2002* to confer, any other actionable rights on student

residents, including a right for residents to have their accommodation registered or accredited. This being the case, only one potential right would be affected by the exemption. Given that only one independently operated student accommodation provider has been registered to date, the removal of the reprisal right will have only minor consequences.

Consultation

A two-tiered consultation process was implemented with industry, community and government.

Firstly, a written consultation paper outlining the issues, possible solutions and requesting feedback was sent to 98 stakeholders in industry, community and government. This included student accommodation providers, university student accommodation services, university student associations, peak industry bodies including Aged Care Queensland, Australian Pensioners and Superannuants League, Supported Accommodation Providers Association, ACROD, the Real Estate Institute of Queensland, the Property Owners Association of Queensland, the Tenants' Union of Queensland, Qld Shelter, Qld Youth Housing Coalition Queenslanders with Disabilities Network, all relevant local governments, the Local Government Association of Queensland, government agencies represented on the Residential Services Sector Coordinating Committee as well as the Department of Education and the Office of Youth Affairs. The discussion paper was also published on the Residential Tenancies Authority website and information published on the GENERATE website of the Office of Youth Affairs. 12 written responses were received.

Secondly, the stakeholders outlined below were invited to attend targeted consultation meetings.

Community and Industry

The following community and industry entities attended consultation workshops:

Community Sector: the Queensland Shelter and the Tenants' Union of Queensland.

Industry Sector: EL Property Management, Property Search, Unilodge Brisbane, Budget Accommodation Solutions Pty Ltd and Monique and Graham Bond.

Student Services Sector: University of Queensland Accommodation Services, Griffith University, Queensland University of Technology.

Government

Consultation occurred with the following Federal, State and Local Government entities: Commonwealth Department of Education, Science and Training; Centrelink; Department of the Premier and Cabinet; Queensland Treasury; Office of Queensland Parliamentary Counsel; Department of Education and the Arts; Department of Housing; Youth Affairs; Department of Justice and Attorney General; Department of Main Roads; Department of Primary Industries and Fisheries; Queensland Fire and Rescue Service; Department of Employment and Training; Department of Emergency Services; Department of Communities; Department of Local Government and Planning; Local Government Association Queensland; and Brisbane City Council.

Uniform or Complementary Legislative Scheme

This Bill is not part of a legislative scheme involving substantially uniform or complementary legislation with the Commonwealth or other States.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

PART 2—AMENDMENT OF RESIDENTIAL SERVICES (ACCOMMODATION) ACT 2002

Clause 2 provides that Part 2 of the Bill amends the *Residential Services (Accommodation) Act 2002*.

Clause 3 clarifies the relationship between the *Residential Services (Accommodation) Act 2002* and the *Residential Services (Accreditation) Act 2002* as a consequence of the amendments proposed to be made by this Bill.

Clause 4 provides a definition of “independent student accommodation service” as a service conducted mainly to provide accommodation to persons who are enrolled in courses that are approved courses of education or study under the *Social Security Act 1991* (Cwlth), section 569B, and that would satisfy the other key components of the definition of a “residential service” under the *Residential Services (Accreditation) Act 2002*.

It intends to remove doubt by confirming that services conducted as part of, or under agreement with, a school or other educational institution mainly to provide accommodation to students or employees of the school or institution, or conducted with the financial assistance from the Education Department mainly to provide accommodation to school students, or conducted in a licensed premises under the *Liquor Act 1992*, remain exempt from the *Residential Services (Accommodation) Act 2002*, even if those services are conducted mainly to provide accommodation to students enrolled in courses that are approved courses of education or study under the *Social Security Act 1991* (Cwlth), section 569B.

The words “mainly to provide” are intended to take into account that student accommodation services can have a mix of students and non-students at any one time, and, that over a period of time, the number of student residents may fluctuate. It is not intended that having one or more non-student residents in the accommodation service will necessarily mean a service is no longer being conducted mainly to provide accommodation to persons who are enrolled in courses that are approved courses of education or study under the *Social Security Act 1991* (Cwlth), section 569B, therefore requiring the service to meet the registration and accreditation requirements of the *Residential Services (Accreditation) Act 2002*. In these cases however, the service provider is expected to establish the service is still being conducted mainly to provide accommodation to students who meet the above criteria.

It is intended that the question of whether a service mainly provides accommodation to students enrolled in an approved course be determined on a case-by-case basis after considering all of the circumstances. The primary consideration will be the number of residents in the accommodation who, over an appropriate period of time, are enrolled in approved courses. In cases where it is not clear whether the service mainly provides accommodation to students, other factors might be taken into account, including, but not limited to: the purpose the accommodation is built for; the type of resident the accommodation is operated for and marketed to; any “student-specific” facilities provided to residents; the number and tenure of non-student residents who fall within the target group of the *Residential Services (Accreditation) Act 2002*; and, the academic year or normal time of year students would be enrolled in approved courses.

The words “mainly to provide” are consistent with the wording of several other exemptions already in the *Residential Services (Accreditation) Act 2002*.

The term “approved course” is intended to preclude vague or subjective notions of the term “study” that might otherwise exempt accommodation not intended to be covered by this exemption. An “approved course” is defined in “Determination No. 2002/1 of Education Institutions and Courses Under Subsections 3(1) And 5d(1) of *The Student Assistance Act 1973* (Cth)”. Unlike the numerous State legislation and regulations that apply to education services in Queensland, the Determination provides concise coverage of the type of courses it applies to in one place. Further, the practical effect of this Determination is that it incorporates by reference courses accredited by the relevant State accrediting bodies. Use of the Determination will be of assistance to industry, particularly to those services accommodating a wide range of students studying courses in institutions governed by different types of legislation or regulations.

As the Determination is used for assessing student assistance payments under the *Social Security Act 1991* (Cth) and also for determining what secondary and tertiary courses will be GST-free, any changes to the Determination are likely to be preceded by consultation with the State. This would allow time for changes to be made to this exemption, should any be required as a consequence of a change to the Determination. The use of “approved course” is restricted to the meaning in the Determination. It is not intended that other aspects of Austudy or Youth Allowance eligibility are relevant.

Clause 5 provides that for the purposes of the *Residential Services (Accommodation) Act 2002*, a “residential service” means a residential service under the *Residential Services (Accreditation) Act 2002*, or, an independent student accommodation service. It also clarifies that for the purposes of the *Residential Services (Accommodation) Act 2002*, an “unregistered service” means a residential service that is not registered under the *Residential Services (Accreditation) Act 2002* or an independent student accommodation service. This clause also makes another consequential amendment.

PART 3—AMENDMENT OF RESIDENTIAL SERVICES (ACCREDITATION) ACT 2002

Clause 6 provides that Part 3 of the Bill amends the *Residential Services (Accreditation) Act 2002*.

Clause 7 amends subsection 4(5) of the *Residential Services (Accreditation) Act 2002* by stating that a service conducted mainly to provide accommodation to persons who are enrolled in courses that are approved courses of education or study under the *Social Security Act 1991* (Cwlth), section 569B, is not a residential service.

The words “mainly to provide” are intended to take into account that student accommodation services can have a mix of students and non-students at any one time, and, that over a period of time, the number of student residents may fluctuate. It is not intended that having one or more non-student residents in the accommodation service will necessarily mean a service is no longer being conducted mainly to provide accommodation to persons who are enrolled in courses that are approved courses of education or study under the *Social Security Act 1991* (Cwlth), section 569B, therefore requiring the service to meet the registration and accreditation requirements of the *Residential Services (Accreditation) Act 2002*. In these cases however, the service provider is expected to establish the service is still being conducted mainly to provide accommodation to students who meet the above criteria.

It is intended that the question of whether a service mainly provides accommodation to students enrolled in an approved course be determined on a case-by-case basis after considering all of the circumstances. The

primary consideration will be the number of residents in the accommodation who, over an appropriate period of time, are enrolled in approved courses. In cases where it is not clear whether the service mainly provides accommodation to students, other factors might be taken into account, including, but not limited to: the purpose the accommodation is built; the type of resident the accommodation is operated for and marketed to; any “student-specific” facilities provided to residents; the number and tenure of non-student residents who fall within the target group of the *Residential Services (Accreditation) Act 2002*; and, the academic year or normal time of year students would be enrolled in approved courses.

The words “mainly to provide” are consistent with the wording of several other exemptions already in the *Residential Services (Accreditation) Act 2002*.

The term “approved course” is intended to preclude vague or subjective notions of the term “study” that might otherwise exempt accommodation not intended to be covered by this exemption. An “approved course” is defined in “Determination No. 2002/1 of Education Institutions and Courses Under Subsections 3(1) And 5d(1) of *The Student Assistance Act 1973* (Cth)”. Unlike the numerous State legislation and regulations that apply to education services in Queensland, the Determination provides concise coverage of the type of courses it applies to in one place. Further, the practical effect of this Determination is that it incorporates by reference courses accredited by the relevant State accrediting bodies. Use of the Determination will be of assistance to industry, particularly to those services accommodating a wide range of students studying courses in institutions governed by different types of legislation or regulations.

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PART 4—CONSEQUENTIAL AMENDMENTS

Clause 8 provides that the schedule amends the Acts mentioned in the schedule.

SCHEDULE

CONSEQUENTIAL AMENDMENTS

Section 8

POLICE POWERS AND RESPONSIBILITIES ACT 2000

Clause 1 inserts a reference to “residential service” in section 372B(3) to state that a “residential service” is defined in the *Residential Services (Accommodation) Act 2002* schedule.

RESIDENTIAL TENANCIES ACT 1994

Clause 2 replaces the existing schedule 3 definition of “residential service” in the *Residential Tenancies Act 1994* with the reference that a “residential service” is defined in the *Residential Services (Accommodation) Act 2002* schedule.