

Boarding Houses Act 2012

This factsheet explains the rights of residents of registrable boarding houses under the Boarding Houses Act 2012.

What the Act covers

The Act applies to certain types of boarding premises. The premises may be a house or flat, or a complex of premises. If the premises is covered by the Act, the premises are known as a 'registrable boarding house'.

The Act applies to boarding houses whether or not they are registered, what matters is whether they should be registered. There are two types of registrable boarding house: 'general boarding houses', and 'assisted boarding houses'.

The Act provides for occupancy agreements between boarding house proprietors and residents, and gives the Consumer, Trader and Tenancy Tribunal power to deal with some disputes. See Factsheet 11: Consumer, Trader and Tenancy Tribunal for more information on attending the Tribunal.

A boarding house proprietor is the person or company who runs the boarding house. A proprietor may own the building, but they do not have to - it is possible for a tenant of the owner to be the proprietor. A proprietor may also employ a manager to take care of daily business for them.

The Act also requires registrable boarding houses to be inspected by the local council. Assisted boarding houses are subject to further regulation by NSW Ageing, Disability and Home Care.

General boarding houses

General boarding houses are boarding premises that:

- provide boarders and lodgers with a principal place of residence
- have beds for five or more residents (not counting the proprietor, manager or any relatives of proprietor or manager if they also reside at the premises)

Almost all registrable boarding houses are general boarding houses.

Assisted boarding houses

Assisted boarding houses (previously known as licensed boarding houses, or licensed residential centres) provide accommodation and other services to people with disability who need a high level of care.

Contact People With Disability Australia on 02 9370 3100 if you are a person with a disability looking for advice or advocacy in an assisted boarding house.

Occupancy agreements

Residents of boarding houses may have either a rental agreement or an occupancy agreement under the Boarding Houses Act.

An occupancy agreement is the agreement between yourself and the proprietor in which you agree on things like what money you will pay, how often and which room of the boarding house you will be in.

If your occupancy agreement is not in writing, it is still enforceable, and needs to comply with the Occupancy Principles.

Who/what the Act does not cover

The Act does not cover:

- boarders or lodgers not living in a registrable boarding house
- hotels, motels, backpackers hostels, serviced apartments and bed-and-breakfast accommodation
- schools and premises used by educational bodies for the accommodation of students
- premises used by employers for the accommodation of employees
- refuges and crisis accommodation funded by government
- private health facilities, public hospitals, mental health facilities, nursing homes and residential care facilities
- retirement villages, residential parks, holiday parks

If you are a boarder or lodger in premises that are not covered by the Act, see Tenants Rights Factsheet xxx Marginal Renters.

What the Act means for residents

The Act provides for occupancy agreements between boarding house proprietors and residents, and gives the Consumer, Trader and Tenancy Tribunal power to deal with some disputes.

It is a term of your occupancy agreement that your accommodation is provided in compliance with the occupancy principles.

Your rights under the Act and Occupancy Principles

See Warning at the end of this document

You are entitled to:

- be given a copy of the occupancy agreement
- know the rules of the boarding house before moving in
- not be required to pay a penalty for breaking either the rules of the boarding house or the agreement
- live in premises that are reasonably clean
- live in premises that are in a reasonable state of repair
- live in premises that are reasonably secure
- know why and how your agreement may be ended
- know how much notice will be given if your agreement is ended
- not be evicted without reasonable written notice
- have quiet enjoyment of the premises
- be given the opportunity to resolve disputes using reasonable dispute resolution processes
- not be charged more than 2 weeks occupancy fee as a security deposit
- receive your security deposit back within 14 days of the end of the agreement except for specific costs
- be given 4 weeks notice of an increase to the occupancy fee
- be given receipts for any money you pay to the proprietor
- be told what utilities you will be asked to pay for, and how the charges will be calculated by the time you enter into the agreement

Resolving disputes

If the proprietor breaches a term of your occupancy agreement, or breaches an occupancy principle, you can apply to the Consumer, Trader and Tenancy Tribunal to resolve the dispute.

The Tribunal can order the proprietor to stop breaching the agreement, to do something to fix a breach, or to pay you compensation for loss caused by that breach.

Ending Agreements

Your occupancy agreement should set out the amount of notice you are required to give before you end your occupancy agreement and move out.

If it does not, you should give notice equivalent to the period of your occupancy fee (so, for example, if you pay weekly, you would give one week's notice). In some cases, such as where the proprietor has seriously breached the agreement, you might give less notice.

If the proprietor wants you to leave, and you do not want to, they must give you notice that complies with the Occupancy Principles. If it does not, you are able to apply to the Consumer, Trader and Tenancy Tribunal for an order that they not evict you.

If the notice is valid and you are still at the premises when the notice period ends, you may be evicted by the proprietor. The proprietor does not need to apply to the Tribunal or court to evict you; they can do it themselves and, if you resist, they may use reasonable force to evict you. The proprietor can also ask the police to evict you; if you refuse, you may be guilty of an offence.

Warning

Occupancy agreements are not required to comply with the Occupancy Principles until 2 October 2013. The CTTT is limited in what decisions it can make under the Boarding Houses Act 2012 until that date. You may still be able to apply under the Consumer Claims Act 1998. If you have a dispute with a boarding house proprietor before that time you should seek advice from your local Tenants Advice and Advocacy Service.

FURTHER HELP: Tenants Advice and Advocacy Services

Sydney

- Inner 9698 5975
- Inner West 9559 2899
- South 9787 4679
- South West 4628 1678
- East 9386 9147
- West 8833 0911
- North 9884 9605
- North West 9413 2677

Regional

- Blue Mountains 1300 363 967
- Central Coast 4353 5515
- Hunter 4696 7666
- Illawarra Sth Coast 4274 3475
- Mid North Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1800 642 609

Aboriginal

- Sydney 9569 0222
- West NSW 1800 810 233
- South NSW 1800 672 185
- North NSW 1800 248 913

Older persons 1800 131 310

Website www.tenants.org.au

NSW Fair Trading 133 220



This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia.
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