SUPRA

SYDNEY UNIVERSITY POSTGRADUATE REPRESENTATIVE ASSOCIATION

William Murphy, Director
Fair Trading Policy
Department of Fair Trading
c/o Ms Virginia McKay
Senior Policy Officer
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19th October 2010

Dear Mr. Murphy,

RE: comment on draft regulations

I write in response to your letter of 16th September 2010 wherein you invited SUPRA to make comment upon the draft *Residential Tenancies Regulations 2010.* We wish to make comment upon the following:

A. Draft Regulation 18 – Residential colleges in educational institutions:

SUPRA notes and welcomes the changes made to the form of this Draft Regulation pursuant to the feedback sought from a range of parties in July this year. Notwithstanding this we wish to make the following comments about the September version of this draft regulation:

RE: sub-clause (3) wherein the draft regulation defines an *educational institution* at sub-sub-clause (b) SUPRA **recommends** that the word "or under" be deleted so that sub-clause (3)(b) will read: *"a tertiary institution that provides formal education and is constituted by an Act"* AND

RE: sub-clause (3) wherein the draft regulation defines a *residential college* in two parts, parts (a) and (b) SUPRA **recommends** that the word *"or"* be deleted from the sub-sub-clause (a) AND THAT sub-sub-clause (b) *"that are owned by the institution or provided for that purpose by a person or body that is affiliated with the institution"* be deleted in its entirety.

SUPRA makes these recommendations because:

- Residential colleges which do not meet the criteria of being constituted under an Act are more usually provided as 'student accommodation'. If these services called 'student accommodation' do not meet the case law criteria for providing boarding or lodging facilities (that is, no right to exclusive possession and services are included in the rent paid), then they should rightly come underneath the *Residential Tenancies Act 2010* so to provide the normal tenancy protections for the resident tenants in such student accommodation which the Act provides.

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- Over time the entities within Universities known as residential colleges have become just one form of student accommodation which is provided by a University.
- Due to lack of space and other changes, new forms of student accommodation have been created, from the Private Public Partnership arrangement between the University of Sydney and the Transfield-derived company known as Campus Living Apartments (CLV) to the private developer arrangements near a University such as that provided by the company, Unilodge.
- This has lead to many residents in these services being declared exempt from the *Residential Tenancies Act* on the basis of misunderstanding by the Tribunal as to exactly what is provided in these forms of student accommodation and what actually happens within their confines.
- The practices within much of the university provided student accommodation and which is claimed to be provided on a boarder or lodger basis, when examined is not actually either a boarding or lodging situation.
- Rather these arrangements are fundamentally about investor and financier requirements and no services are provided which would meet the boarding or lodging criteria nor would there be any difficulty for a student tenant in proving that they have exclusive possession of the premises they are renting (at a market rent).
- The CLV managed Sydney University Village (SUV) is a classic example of this. SUV residents have the same tenancy problems as other tenants yet, because the entity is 'affiliated' with the University, they are deemed to be exempt from the Act.
- SUPRA believes that entities such as SUV and the private developer arrangements such as that provided by Unilodge should come under the *Residential Tenancies Act 2010*.
- In addition and as was mentioned in our previous submission of 14th July 2010, student accommodation provided by the University of Sydney itself, including the low-cost student accommodation, is provided in houses purchased over time by the University or purpose built near to the campus but not directly on the University grounds.
- This student accommodation is handled through the unit known as Campus Infrastructure and Services (CIS). The handling of this student accommodation cannot be described as a student service. Many disputes arise between student tenants and the University via the CIS and these disputes are about all the normal landlord/tenant issues of concern: return of bond, condition of the premises at the end of the tenancy compared to the beginning of the tenancy, locks and security devices, rent arrears and so on.
- SUPRA in its casework experience with these students who reside in this type of University-provided student accommodation can see that the criteria for providing boarding and/or lodging are also not met by the University.
- **If the University is not going to provide tenancy protections to the student residents in these forms of student accommodation, then the State must act to ensure that these student tenants are allowed access to the CTTT.**
- As previously stated the CTTT is cheap and an independent body – students who are tenants but who happen to be living in one of the other forms of student accommodation provided by Universities or by companies on behalf of universities or by private developers nearby a university should come under the umbrella of the Act to allow those student tenants access to an independent arbiter.

- **Deletion of the words "or under" and the other deletions we recommend will result in the capture of all the variations of student accommodation which educational institutions are now competing with each other to provide.**
- This will mean that student residents in other forms of student accommodation which are not 'residential colleges' created by an Act have access to fair and independent processes.
- If this is implemented by the state government then it will be another factor which can be quoted in promotional material to attract students to this state.
- It is of note that Campus Living Villages has no problem with complying with the residential tenancies legislation in both Victoria and the ACT and they clearly stated this to the inaugural *Student Housing Summit* held in Melbourne in early September 2010 – if this is the case then there is no argument for CLV-provided student accommodation to not be covered by the *NSW Residential Tenancies Act 2010.*

B. Draft Regulations – there should be a standard form of a 'transfer of tenancy' as per Section 10(a) of the Act:

SUPRA notes the provision in Section 10(a) of the Act wherein a tenant in shared households can be recognized as a tenant if *"a tenant under that agreement transfers the tenancy to the person or the person is recognized as a tenant (see Part 4)".*
To facilitate this process of formally transferring a tenancy, which is very common in student households, SUPRA **recommends** that a **Standard Form to Transfer Tenancy** be developed (in cooperation with stakeholders such as SUPRA and other student organizations and the Tenants' Union of NSW) and that it become a fourth Schedule to the Act and regulations just as the current draft schedules provide administrative detail for the Standard Form Agreement, the Condition Report and the Penalty Notice Offences.

C. Draft Regulations – addition of one important form of termination available to a tenant which was in the *Residential Tenancies Act 1987*:

SUPRA was concerned to see that existing Section 53(g) of the current Act has not been included in the new Act. The Department would be aware that Section 53(g) is:
"(g) if the tenant delivers up vacant possession of the residential premises with the prior consent of the landlord, whether or not that consent is subsequently withdrawn".

SUPRA's casework experience both in shared student households and in the experiences of international students who rent shared accommodation that many situations arise, due to tension which can develop between head-tenants and sub-tenants, wherein an argument develops and the head-tenant asks the student sub-tenant to leave in the heat of an argument and then withdraws that demand or claims that they withdrew it.

SUPRA recently assisted two international students before the CTTT wherein an altercation developed between the head tenant and the students who were sub-tenants. A fight developed and both parties called the police who advised the sub-tenants that they would be better off to leave the premises as soon as they could. During the course of the altercation between the parties and before the police had been called, the head-tenant told the students to "piss off". It was argued to the Tribunal member that the fact

the students vacated the premises the next day, then the situation came under Section 53(g).

Whilst the Tribunal member in this matter did not accept that the words "piss off" constituted providing notice to vacate the premise, and that rather it was granting the students permission to leave, the students were eventually and for other reasons ordered by the Tribunal member to have returned to them their unreturned bond and the unreturned rent paid in advance. This matter is provided as an example of the kind of things which can happen in a share household.

SUPRA, therefore, **recommends** that Section 53(g) be made into a regulation and pertaining to Section 103 of the Act as this appears to be the most logical and/or sensible Section to link such a regulation to.

We look forward to seeing the Regulations in their final form soon and the commencement of the new Act not long thereafter.

Yours sincerely,

John Nowakowski
President