



New South Wales

# Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to provide for the regulation of boarding houses and other places of shared accommodation:

- (a) by amending the *Environmental Planning and Assessment Act 1979* (***the Principal Act***) as follows:
  - (i) to enable powers of entry and inspection under the Principal Act to be exercised in relation to premises that are being unlawfully used for the purposes of a boarding house or other place of shared accommodation,
  - (ii) to facilitate proof of the use of premises as a boarding house or other place of shared accommodation in proceedings under the Principal Act,
  - (iii) to enable a court to sentence a person to a maximum of 6 months imprisonment for an offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation if the offence caused or contributed to appreciable danger or harm to any person,
  - (iv) to require proprietors of boarding houses to notify the Director-General of the Department of Services, Technology and Administration of

- relevant particulars and to require those particulars to be entered into a Register of Boarding Houses to be kept by that Director-General, and
- (b) by amending the *Environmental Planning and Assessment Regulation 2000* to provide for an increase in the penalty notice amount for an alleged offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation, and
  - (c) by amending the *Ombudsman Act 1974* to require the Ombudsman to report on the Ombudsman's work and activities in relation to any complaints made about the conduct of a council, or an authorised officer of a council, in the exercise of the proposed powers referred to in paragraph (a) (i).

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act 3 months from the date of assent to the proposed Act unless sooner commenced by proclamation.

## **Schedule 1      Amendment of Environmental Planning and Assessment Act 1979 No 203**

### **Powers of entry**

Division 1A of Part 6 of the Principal Act enables a council to authorise a person to enter and inspect premises for the purpose of enabling a council to exercise its functions. Section 118J of the Principal Act currently provides that these powers of entry and inspection are not exercisable by such a person (an *authorised officer*) in relation to residential premises except with the permission of the occupier concerned, under the authority of a search warrant or in other limited circumstances.

**Schedule 1 [2] and [3]** extend the circumstances in which an authorised officer may enter and inspect residential premises to include circumstances in which the authorised officer has reasonable grounds to believe that the premises concerned are being unlawfully used for the purposes of a boarding house or other place of shared accommodation.

**Schedule 1 [1]** makes a law revision amendment to section 118B that makes it clear that a council's authorised officer who enters premises under Division 1A of Part 6 has the power to take films, audio, video or other recordings in connection with the inspection, in line with the powers of authorised officers of the Department of Planning under Division 2C of that Part.

### **Facilitating proof in proceedings**

Section 124AA of the Principal Act currently provides that the Land and Environment Court may rely on circumstantial evidence to establish that particular premises are used as a backpackers' hostel.

**Schedule 1 [4]** re-enacts and extends section 124AA of the Principal Act to cover not only backpackers' hostels, but also boarding houses and other places of shared accommodation.

**Schedule 1 [6]** inserts proposed section 156 into the Principal Act to make it clear that in any legal proceedings under the Principal Act, evidence of the alteration of premises in a way that is consistent with the use of those premises as a boarding house or other place of shared accommodation is evidence that the premises are being, or are proposed to be, used for those purposes.

### **Penalties**

Section 126 of the Principal Act currently provides for a maximum penalty of 10,000 penalty units (\$1.1 million) for offences under that Act and a further penalty of 1,000 penalty units (\$110,000) for each day that the offence continues.

**Schedule 1 [5]** inserts proposed section 126A into the Principal Act. The proposed section makes a person who is guilty of an offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation liable to the same maximum penalty as provided for in section 126. In addition, it provides that the person is liable to a maximum penalty of 6 months imprisonment if the offence concerned caused or contributed to appreciable danger or harm to any persons.

### **Notification and keeping of Register**

**Schedule 1 [6]** inserts proposed section 156A into the Principal Act to give effect to the amendment referred to in paragraph (a) (iv) of the Overview above.

The boarding houses concerned are those in which sleeping accommodation is provided for 5 or more lodgers, or 3 or more lodgers in any one bedroom.

### **Savings and transitional provisions**

**Schedule 1 [7]** enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Environmental Planning and Assessment Regulation 2000**

**Schedule 2** makes the amendment to the *Environmental Planning and Assessment Regulation 2000* that is referred to in paragraph (b) of the Overview above.

## **Schedule 3      Amendment of Ombudsman Act 1974 No 68**

**Schedule 3** makes the amendment to the *Ombudsman Act 1974* that is referred to in paragraph (c) of the Overview above.





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New South Wales

# Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010

No. , 2010

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## A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* to regulate the operation of boarding houses and other places of shared accommodation; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Environmental Planning and Assessment Amendment (Boarding Houses) Act 2010</i> .	3 4
<b>2 Commencement</b>	5
This Act commences 3 months from the date of assent to this Act, unless commenced sooner by proclamation.	6 7

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<b>Schedule 1</b>	<b>Amendment of Environmental Planning and Assessment Act 1979 No 203</b>	1
		2
<b>[1] Section 118B Inspections and investigations</b>		3
	Omit “or photographs” from section 118B (e).	4
	Insert instead “, photographs, films, audio, video or other recordings”.	5
<b>[2] Section 118J In what circumstances can entry be made to a residence?</b>		6
	Insert at the end of section 118J (d):	7
	, or	8
	(e) if the person authorised to enter premises under this Division has reasonable grounds to believe that:	9
	(i) the premises concerned are being used for the purposes of a boarding house, or other place of shared accommodation, of a class prescribed by the regulations, and	10
	(ii) the use is in contravention of this Act.	11
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<b>[3] Section 118J (2)</b>		16
	Insert at the end of section 118J (as amended by item [2]):	17
	(2) A reference in this section to a use that is in contravention of this Act is a reference to a use that is:	18
	(a) in contravention of section 76A (1) or 76B, or	19
	(b) in the case of development referred to in Division 10 (Existing uses) of Part 4—otherwise in contravention of this Act or the regulations.	20
		21
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		23
<b>[4] Section 124AA</b>		24
	Omit the section. Insert instead:	25
<b>124AA Evidence of use of premises as place of shared accommodation</b>		26
	(1) This section applies to proceedings before the Court under this Act to remedy or restrain a breach of this Act in relation to the use of premises as a boarding house, backpackers’ hostel or other place of shared accommodation.	27
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- (2) In any proceedings to which this section applies, the Court may rely on circumstantial evidence to find that particular premises are used as a place of shared accommodation. 1  
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- Note.** The term “place of shared accommodation” is defined in section 4 to include “a boarding house, a common lodging house, a house let in lodgings and a backpackers hostel”. 4  
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- Examples of circumstantial evidence include (but are not limited to) the following: 7  
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- (a) evidence of the premises being advertised expressly or implicitly for the purposes of a place of shared accommodation (including advertisements on the premises, on public notice boards, in newspapers, in directories or on the Internet), 9  
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  - (b) evidence relating to internal and external signs and notices at the premises (including price lists, notices to occupants and offers of services) that is consistent with the use of the premises as a place of shared accommodation, 13  
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16
  - (c) evidence of the layout of rooms, and the number and arrangement of beds, at the premises that is consistent with the use of the premises as a place of shared accommodation, 17  
18  
19
  - (d) evidence relating to persons entering and leaving the premises (including the depositing of luggage) that is consistent with the use of the premises as a place of shared accommodation. 20  
21  
22

**[5] Section 126A** 23

Insert after section 126: 24

**126A Penalty—boarding houses and other places of shared accommodation** 25  
26

- (1) A person who is guilty of an offence involving development for the purposes of a boarding house, or other place of shared accommodation, in contravention of this Act is liable to a maximum penalty of: 27  
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- (a) 10,000 penalty units or (in circumstances of aggravation) 6 months imprisonment, or both, and 31  
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  - (b) in the case of a continuing offence, a further daily penalty of 1,000 penalty units. 33  
34
- (2) For the purposes of this section, a person commits an offence in circumstances of aggravation if the offence caused or contributed to appreciable danger or harm to any persons. 35  
36  
37
- (3) A reference in this section to development that is in contravention of this Act is a reference to development that is: 38  
39
- (a) in contravention of section 76A (1) or 76B, or 40

(b)	in the case of development referred to in Division 10 (Existing uses) of Part 4—otherwise in contravention of this Act or the regulations.	1 2 3
<b>[6]</b>	<b>Sections 156 and 156A</b>	4
	Insert before section 157:	5
<b>156</b>	<b>Proof of use of premises as boarding house or other place of shared accommodation</b>	6 7
	In any legal proceedings under this Act, in addition to any other method of proof available, evidence of the alteration of premises in a way that is consistent with the use of those premises for the purposes of a boarding house or other place of shared accommodation is, until the contrary is proved, evidence that the premises are being, or are proposed to be, used for those purposes.	8 9 10 11 12 13 14
	<b>Note.</b> See also section 124AA in relation to circumstantial evidence.	15
<b>156A</b>	<b>Boarding houses—notification and keeping of Register</b>	16
(1)	This section applies to a boarding house in which sleeping accommodation is provided for:	17 18
(a)	5 or more lodgers, or	19
(b)	3 or more lodgers in any one bedroom.	20
(2)	A proprietor of a boarding house to which this section applies must notify the Director-General, in accordance with this section, of the following particulars:	21 22 23
(a)	the name and address of the proprietor,	24
(b)	the address of the boarding house,	25
(c)	the number of lodgers residing at the boarding house,	26
(d)	the total number of bedrooms provided as sleeping accommodation for those lodgers,	27 28
(e)	such other particulars as may be prescribed by the regulations.	29 30
	Maximum penalty: 330 penalty units (in the case of a corporation) or 65 penalty units (in the case of an individual).	31 32
(3)	The proprietor must notify the Director-General of the particulars referred to in subsection (2):	33 34
(a)	as soon as practicable after the person becomes the proprietor of a boarding house to which this section applies, or	35 36 37

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Schedule 1      Amendment of Environmental Planning and Assessment Act 1979 No 203

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- (b) in the case of a person who, on the commencement of this section, is a proprietor of a boarding house—as soon as practicable after that commencement. 1  
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3
- (4) The Director-General is to keep a Register of Boarding Houses containing the particulars required to be notified to the Director-General under this section. 4  
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6
- (5) For the purposes of enabling the Director-General to keep the Register up-to-date, the proprietor of any boarding house to which this section applies must notify the Director-General of any change in the particulars referred to in subsection (2), including the date on which the change occurred. The proprietor must notify the Director-General as soon as practicable after the change occurs. 7  
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Maximum penalty: 330 penalty units (in the case of a corporation) or 65 penalty units (in the case of an individual). 14  
15
- (6) If any premises cease to be a boarding house to which this section applies, the person who, immediately before that cessation, was the proprietor of the boarding house must notify the Director-General of that cessation and the date on which it occurred. The person must notify the Director-General as soon as practicable after the cessation occurs. 16  
17  
18  
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21  
Maximum penalty: 330 penalty units (in the case of a corporation) or 65 penalty units (in the case of an individual). 22  
23
- (7) The Director-General is to ensure that the Register is made publicly available in such manner as the Director-General determines. 24  
25  
26
- (8) The Director-General may enter into arrangements with councils in relation to the notification scheme provided for by this section. 27  
28
- (9) Without limiting subsection (8), any such arrangements may make provision for the collection and disclosure of information by or to the Director-General or to a council for the purposes of this section. 29  
30  
31  
32
- (10) The regulations may make provision for or with respect to charging or payment of fees for services provided in connection with this section. 33  
34  
35
- (11) This section has effect despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998*. 36  
37
- (12) In this section: 38  
**Director-General** means the Director-General of the Department of Services, Technology and Administration. 39  
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- proprietor* of a boarding house means: 1
- (a) in the case of a boarding house consisting of premises that 2  
are leased—the lessee who is entitled to immediate 3  
possession of the premises, or 4
  - (b) in any other case—the owner of the premises concerned. 5

**[7] Schedule 6 Savings, transitional and other provisions** 6

Insert at the end of clause 1 (1): 7

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9

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## **Schedule 2 Amendment of Environmental Planning and Assessment Regulation 2000**

### **Schedule 5 Penalty notice offences**

Omit the matter relating to section 125 (1) of the Act in relation to contravention of section 76A (1).

Insert instead:

Section 125 (1) of the Act in relation to contravention of section 76A (1)

In the case of development relating to a Class 1 or Class 10 building:

- (a) \$750 for an individual
- (b) \$1,500 for a corporation

In the case of development for the purposes of a boarding house, or other place of shared accommodation, consisting of premises of a class prescribed for the purposes of section 118J (1) (e) of the Act:

- (a) \$5,500 for an individual
- (b) \$11,000 for a corporation

In any other case:

- (a) \$1,500 for an individual
- (b) \$3,000 for a corporation

Section 125 (1) of the Act in relation to contravention of section 76B by carrying out development for the purposes of a boarding house, or other place of shared accommodation

In the case of development for the purposes of a boarding house, or other place of shared accommodation, consisting of premises of a class prescribed for the purposes of section 118J (1) (e) of the Act:

- (a) \$5,500 for an individual
- (b) \$11,000 for a corporation

In any other case:

- (a) \$1,500 for an individual
- (b) \$3,000 for a corporation

