

Surf City Limits:

The unfair treatment of young
consumers in the rental
accommodation marketplace of
Schoolies Week

A Report by Legal Aid Queensland
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Executive Summary

This Report documents the experiences of young school-leavers who have contacted Legal Aid Queensland for advice about legal disputes they have had with accommodation houses and accommodation reservation businesses during Schoolies Week. This Report outlines some of the legal issues that have arisen from the 35 case studies collated here, and explores the ways in which school-leavers have reported being unfairly treated by traders.

This Report does not allege that every school-leaver who has booked Schoolies Week accommodation is dissatisfied with the service they received, nor does it criticise every dealing that traders who provide accommodation services to school-leavers have with those young consumers. Rather, this Report seeks to identify the major systemic concerns that appear to exist within the Schoolies Week accommodation marketplace.

As systemic concerns, many of the issues explored in this Report affect thousands of young school-leavers who enter into a rental accommodation arrangement with accommodation service providers during Schoolies Week. This Report focuses on those systemic marketplace issues, rather than the conduct of the small number of young people who have attracted adverse criticism for their behaviour over recent years.

This Report finds that Schoolies Week is a discrete marketplace, in which the principal product sold is short-term accommodation. The consumers in the Schoolies Week marketplace are young school-leavers, colloquially known as “schoolies”, who spend sizeable amounts of money during the end-of-year celebrations, thereby injecting significant sums into local economies. For many of these young people, the entry into an accommodation service contract will be their first sizeable consumer transaction.

Young people as consumers are more vulnerable than other consumers. Some young people claim, as this Report outlines, to have been unfairly treated by accommodation service providers during Schoolies Week. Young people as consumers need special protection from marketplace regulators.

The Schoolies Week accommodation marketplace is largely unregulated. Further, the marketplace appears to be dominated by one company, BreakFree Holidays Pty Ltd (“BreakFree”), which has trade marked the term “schoolies”.

The Schoolies Week marketplace is structured in such a way that young school-leaver consumers are adversely affected in numerous ways. These effects include concerns that the cost of accommodation is inflated across the marketplace, that the contracts which they are asked to enter contain unfair terms and conditions, and that there are no effective mechanisms for these young consumers to challenge the conduct of businesses in the event of legitimate disputes.

This Report contains recommendations for Schoolies Week marketplace reform which are directed broadly towards:

- Increased competition in the marketplace in order to foster a healthier marketplace in which the opportunities for competitive pricing are increased, and where the services offered by traders are a response to the actual needs of young people;
- Achieving a fairer balance in the relationship between young people as consumers of accommodation services and accommodation service providers.

A summary of the issues explored in this Report, and the Report’s recommendations follow:

Marketplace Dominance and Trade Marking the Term “Schoolies”

One company, BreakFree, dominates the Schoolies Week accommodation marketplace.

BreakFree has trade marked the term “schoolies”.

There is evidence to suggest that there is insufficient competition in the Schoolies Week accommodation reservation marketplace.

Recommendations

1. That the Australian Competition and Consumer Commission, and the Queensland Office of Fair Trading, as marketplace regulators take all steps necessary to encourage a more competitive Schoolies Week reservation marketplace.
2. That the Australian Competition and Consumer Commission, and the Queensland Office of Fair Trading, as marketplace regulators take all steps necessary to prevent traders claiming a trade mark over the terms "schoolies" or "Schoolies Week".
3. That BreakFree immediately cease its claim that it is the "official" Schoolies specialists.
4. That the Australian Competition and Consumer Commission, and the Queensland Office of Fair Trading, as marketplace regulators, investigate whether the claim by BreakFree that it is the "official" Schoolies Week website, is misleading and deceptive. In the event that it is, for the marketplace regulators to take appropriate action.
5. That the Queensland government cease recognition of any trade mark claim by BreakFree over the term "schoolies", in any Queensland government publications or communications relating to Schoolies Week.
6. That the Gold Coast City Council cease recognition of any trademark claim by BreakFree over the term "schoolies" in any of its publications, or communications relating to Schoolies Week.

The High Price of Rental Accommodation

School-leavers pay more for holiday accommodation during Schoolies Week than at other times of the year.

There is evidence to suggest that school-leavers pay more for holiday accommodation during Schoolies Week than other tenants during that same period of time.

Some accommodation houses refuse to accept bookings directly from school-leavers, but rather direct those young people to make bookings through BreakFree or a similar booking company.

Recommendations

7. That research be conducted into the following:
 - (a) the extent of any price differential between the cost of accommodation for school-leavers during Schoolies Week and the cost of accommodation for non-school-leavers during that same time period; and
 - (b) the causes of any such price differential.

The Australian Competition and Consumer Commission and/or the Queensland Office of Fair Trading, as marketplace regulators, are well-placed to facilitate this research. The research might be undertaken by an organisation with an appropriate consumer research background.

8. That accommodation houses cease the practice of refusing to accept Schoolies Week bookings directly from school-leavers and directing them instead to Breakfree or another accommodation reservation business to make bookings.
9. That the Australian Competition and Consumer Commission, as marketplace regulator, investigates whether the practice of some accommodation houses refusing to accept Schoolies Week bookings directly from school-leavers and directing them instead to Breakfree or another accommodation reservation business to make bookings, is in contravention of the *Trade Practices Act*.

Bond and Deposit Problems

School-leavers are required to pay bond for Schoolies Week accommodation, though other tenants staying in accommodation houses at other times of the year are not.

The bond is held by the accommodation service providers.

There is no independent dispute resolution process available to school-leavers who challenge an accommodation house's decision to withhold bond.

Recommendations

10. That in the event that a bond is paid by a school-leaver in relation to Schoolies Week accommodation, then an independent agency must hold those bond monies on trust for the school-leaver tenants. The interest generated on the investment of the bond amounts could then be used to fund the work of the agency, and to provide an independent dispute resolution scheme for young people in bond return disputes.

The Residential Tenancies Authority, which currently holds bond monies in relation to residential tenancy agreements and which would be available equally to all school-leavers, is well-placed to fulfil this role.

The Compulsory "Evolution" Dance Party

BreakFree requires that school-leavers booking accommodation through it also purchase, for a fee of \$25, a compulsory ticket to a dance party held by it.

Some school-leavers do not wish to purchase such a ticket.

Recommendations

11. That the Australian Competition and Consumer Commission and the Queensland Office of Fair Trading investigate whether the practices of BreakFree in selling tickets for the Evolution Dance Party in the way that it does, contravenes consumer fair trading or consumer protection laws.
12. That BreakFree refunds the amount of \$25 to every young person who has paid for, but did not attend, the Evolution Dance Party hosted by it in previous Schoolies Weeks.
13. That for Schoolies Week 2003 and subsequent Schoolies Weeks, BreakFree should not require that there be compulsory payment of any monies for any services offered by it as a condition of reserving accommodation through it. Any such amounts must not be artificially built into the accommodation rental price, but should be optional purchases.

The Failure to Provide School-leavers with "House Rules" Prior to Entry into the Contract

There is currently a systematic failure by BreakFree and/or accommodation houses to provide many school-leavers with copies of the "house rules" of accommodation houses before they enter into the accommodation rental contract.

The "house rules" contain conditions which non-schoolie tenants in those accommodation houses are not required to comply with at other times of the year.

Recommendations

14. That school-leavers be given a copy of the terms and conditions regulating the accommodation contract, including any "house rules" of the apartment complex, prior to their entry into the accommodation rental contract.

Unilateral Change of Apartment Bookings By BreakFree

BreakFree currently claims a right to change apartment bookings unilaterally without compensation to school-leavers in circumstances where the bookings are altered by BreakFree. This practice must change. School-leavers who have booked particular accommodation with BreakFree, or another accommodation reservation company, should be appropriately compensated in the event that they are not provided with the accommodation which they have booked and for which they have paid.

Recommendation

15. That the BreakFree contract not include any clause purportedly giving BreakFree any right to unilaterally cancel or change a booking without appropriately compensating tenants.
16. That in the event that BreakFree or another accommodation booking company does not provide the school-leaver with the apartment which has been booked, tenants are compensated accordingly.

"House Rules" – Unfair Terms and Harsh Consequences

Some of the "house rules" of accommodation houses are either inherently unfair, or produce unfair results when enforced.

In the absence of compelling empirical evidence to support the need for such onerous "house rules", those rules should be removed from accommodation agreements.

Recommendations

17. That accommodation booking service providers, and accommodation houses, review their terms and conditions to eliminate those terms which are unfair.
18. That the Office of Fair Trading amend the *Fair Trading Act* to incorporate provisions which enable a court to "reopen" a contract if either (a) in the circumstances it was entered into it was unjust, or (b) any of the terms and conditions of the contract are inherently unjust or produce unjust results.
19. That any "house rules" which purport to enable unauthorised "spot checks" of apartments, be removed.
20. That "house rules" of apartments which either (a) purport to give apartment managers the right to evict tenants for having guests in the unit beyond a banning time, and/or (b) purport to impose a charge for having guests in the apartment beyond the banning time, be removed.
21. That "house rules" of apartments which purport to give apartment managers the right to confiscate glass owned by tenants, and/or to subsequently evict tenants for bringing glass into the apartment, be removed.

Evictions

Some young school-leavers complain that they have been unfairly evicted from accommodation houses during Schoolies Week.

Apartment houses must have a complaint handling process in place by which school-leavers can bring legitimate complaints about, among other things, evictions.

In the event of a justifiable eviction of school-leavers by apartment management, the apartment managers must make reasonable efforts to relet the apartment, and to rebate unused portions of the rent to the evicted tenants.

Recommendations

22. That there be a complaints handling mechanism that is available during Schoolies Week for school-leavers to dispute whether an eviction should take place, and in the event of eviction, to determine what rent, if any, should be refunded to those school-leavers.
23. That in the event of an eviction of tenants from an apartment, accommodation service providers must take all reasonable steps to relet that apartment.
24. That where an apartment has been relet following an eviction, the evicted school-leavers must be refunded the relevant proportion of their rental.

Discrimination

School-leavers are treated differently to non-school-leavers in a number of respects when renting accommodation during Schoolies Week.

Unfair or Disrespectful Conduct of Apartment Complex Managers

Apartment managers are regulated by the provisions of the *Property Agents and Motor Dealers Act (Old) 2000* as restricted letting agents. They are required to comply with a Code of Conduct which, among other things, requires apartment managers to implement a complaints handling process in the event of disputes.

Recommendations

25. That apartment managers, as restricted letting agents regulated by the *Property Agents and Motor Dealers Act (Old) 2000*, be aware of their obligations under the Restricted Letting Agency Practice Code of Conduct.
26. That the provisions of the Code be enforceable.
27. That apartment managers comply with the Code, and that disciplinary action be taken by the Office of Fair Trading against restricted letting agents who contravene that Code.

1. Introduction

Since Schoolies Week 2000, Legal Aid Queensland has received complaints and advised young people and their parents in relation to a wide range of disputes arising out of Schoolies Week. In 2001 and 2002, Legal Aid Queensland established a Schoolies Week Specialist Legal Advice "Hotline" to provide advice to young people who found themselves facing legal problems during Schoolies Week.

Complaints were received about a number of legal issues, however disputes in relation to the provision of accommodation services were by far the most prominent. In responding to complaints, Legal Aid Queensland provided legal advice and practical recommendations to young people or their parents in relation to resolving those disputes. In some cases Legal Aid Queensland represented those young people in disputes that they were unable to resolve themselves.

This Report draws upon the experiences of young consumers of accommodation services during Schoolies Week as reported to Legal Aid Queensland. Appendix A to the Report is a compilation of 35 case studies where young people or their parents contacted Legal Aid Queensland for legal advice arising from accommodation disputes. The disputes recorded in those case studies affected approximately 150 young people.

Common accommodation disputes reported by those people seeking legal advice from Legal Aid Queensland included complaints about:

- excessively priced accommodation;
- unjustified eviction from apartments;
- breach of contract by accommodation providers;
- unfair terms and conditions in contracts;
- discrimination against school-leavers through the imposition of special Schoolies Week "house rules" and other issues; and
- unreasonable withholding of bond monies.

These issues are considered in more detail below.

The case studies, and the number of young people involved in the disputes recorded in them, suggest a significant body of young people who find themselves in legal disputes with accommodation service providers during Schoolies Week. In addition to the young people whose stories have been collated in the case studies, the news media has reported other complaints by school-leavers and their parents about unfair marketplace practices. Complaints have also been made to marketplace regulators such as the Australian Competition and Consumer Commission, and the Queensland Office of Fair Trading. When seen in the light of the historically low levels of consumer complaints made by young people compared with other consumers (discussed in more detail below), the case studies in this Report point to significant marketplace problems.

The volume and similarity of the complaints outlined in the case studies, indicates that there are serious systemic problems within the Schoolies Week marketplace.

If there is not significant marketplace reform, young school-leavers will continue to be unfairly treated in future Schoolies Weeks.

In documenting the experiences of young school-leavers renting Schoolies Week accommodation, this Report has the following aims:

- to alert consumers to some of the common problem areas in the Schoolies Week accommodation marketplace;
- to identify the unfair consequences for young consumers of some of the current accommodation practices during Schoolies Week;
- to encourage key stakeholders in the Schoolies Week accommodation marketplace to change their practices;
- to demonstrate the need for government marketplace regulatory authorities to investigate some of the practices of key players in the Schoolies Week marketplace;

- to demonstrate the need for marketplace reform in key aspects of the Schoolies Week accommodation marketplace; and
- to contribute to the Schoolies Week review being conducted by the Queensland Department of Premier and Cabinet at the time of the Report's release.

2. What is "Schoolies Week"?

2.1 A Brief History

"Schoolies Week" is the term commonly used to refer to the week(s) immediately following the completion of the school year, when Year 12 school-leavers congregate at a number of popular holiday destinations on the east coast of Australia to celebrate the end of the school experience. The celebration originated at the Gold Coast, and is thought by some to have had its genesis in the 'Pyjama Parties' of the early 1970s¹. In more recent years Schoolies Week has expanded to holiday destinations such as the Sunshine Coast and Cairns. The heart of Schoolies Week celebrations remains, however, the Gold Coast, as it has for approximately the last 30 years.

Large numbers of school-leavers from other states, in particular New South Wales and Victoria, also journey to Queensland to celebrate the end of their schooling. The usual staggered end to the school year in the various states has meant that Schoolies "Week" often extends over a number of weeks during late November and early December.

Since its beginnings, Schoolies Week has grown enormously in popularity. Estimates of the number of schoolies attending the celebration vary, with one source estimating that approximately 40,000 schoolies stayed at the Gold Coast in 2001².

2.2 A Ritual for Young People

The nature and the size of Schoolies Week, and the large numbers of school-leavers who celebrate it, has led it to being described by many commentators as a ritual: "with the decline in 18th and 21st birthdays as social markers, Schoolies is fast becoming the only public rite of passage from childhood to adulthood."³

Young school-leavers often save money from casual and part-time jobs for months in order to fund their attendance at Schoolies Week. Often young school-leavers plan and book for Schoolies Week months, and often over a year, in advance of the celebration. One report indicated that over 15,000 young people had, by December 2001, booked for the 2002 Schoolies Week with BreakFree.⁴

Powerful peer excitement and expectation surrounds attendance at Schoolies Week. Schoolies Week has become an annual event of cultural significance.

2.3 A Sizeable Economy, a Valuable Tourism Event

In addition to its cultural significance the annual pilgrimage of school-leavers means big business for the Gold Coast and other holiday destinations. Young people attending the celebrations inject significant amounts of money into the local tourist economies in the form of accommodation rentals, food and drink costs, and entertainment expenses.

Estimates vary as to how much Schoolies Week contributes to local economies. The Gold Coast Tourism Bureau estimated that the figure was likely to be approximately \$30 million for the Gold Coast in 2001⁵, while BreakFree states that "research into the 1999 event identified Schoolies as the Gold Coast's

¹ 6 January 2003, "Schoolies Festival – Learning From Past Mistakes" Presenter: Spencer Howson on 612ABC <http://www.abc.net.au/brisbane/stories/s758188.htm>, downloaded 11 February 2003, see Appendix B.

² Media Release, Gold Coast City Council, 12 November 2001 www.goldcoast.qld.gov.au/t_print.asp?PID=1106, downloaded 11 February 2003, see Appendix C.

³ Karen Brooks, "Oldies have blurred vision on schoolies", *Courier Mail*, 14 November 2002, pp15, see Appendix D.

⁴ Greg Roberts, "From cops to bottom, schoolies' party antics uncovered", *Sydney Morning Herald*, 1 December 2001, <http://www.old.smh.com.au/news/0112/01/national/national24.html>, downloaded 11 February 2003, see Appendix E.

⁵ Media Release, Gold Coast City Council, 12 November 2001 www.goldcoast.qld.gov.au/t_print.asp?PID=1106, downloaded 11 February 2003, see Appendix C.

highest money earner, bringing in over \$59 million into the economy".⁶ Whatever the exact amount of income generated by the event, Schoolies Week has been described by the Gold Coast Tourism Bureau as "now one of the Gold Coast's most valuable tourism events."⁷

Given the annual nature of the celebrations, and the size of the contribution to the economy, Schoolies Week can be usefully described as a discrete marketplace, with young school-leavers being the principal consumers. Understanding Schoolies Week in terms of a marketplace sheds important light on many of the legal problems which young people face every year in their dealings with businesses during Schoolies Week.

⁶ BreakFree website, at <http://www.schoolies.com.au/new2003b/aboutschoolies.asp>, downloaded 17 February 2003, Appendix F.

⁷ Media Release, Gold Coast City Council, 12 November 2001 www.goldcoast.qld.gov.au/t_print.asp?PID=1106, downloaded 11 February 2003, see Appendix C.

3. "Schoolies Week" as a Marketplace

The Schoolies Week marketplace is shaped by the activity of a number of key players.

3.1 Young School-Leavers as Consumers

"Schoolies" is a colloquialism for school-leavers. Approximately 95,000 schoolies finish Year 12 each year around Australia.⁸ Tens of thousands of those attend Schoolies Week on the Gold Coast.

Young people attending Schoolies Week largely stay in accommodation houses where they rent an apartment for the duration of the week. Apartments are usually shared by young people in group bookings, commonly of between 2 – 5 people. Young people "purchase" those accommodation services as consumers.

The majority of Queensland school-leavers are under the age of 18 at the time they enter into an accommodation service agreement for Schoolies Week. They are "minors" for the purposes of the law of contract. There is no legal obstacle, however, to young people entering such contracts as minors. School-leavers from other states are often over the age of 18 when they arrive at Schoolies Week, though many may be under the age of 18 when they book the accommodation and enter into the contractual agreement to rent accommodation.

For many of these young people, the entry into an accommodation service contract will be their first sizeable consumer transaction.

Children and young people are a major consumer demographic in Australian society:

"Children and young people are significant consumers of goods and services. Markets in toys, fast food, entertainment and clothes are directed explicitly at children. Young people often have direct spending power from pocket money and their own earnings."⁹

The July 2002 Report "Consumer Issues and Youth: A Research Report into Best Practice in Consumer Education Targeting Young Australians" prepared for the Commonwealth Consumer Affairs Advisory Council estimated that young Australians represent a \$4 billion a year commercial market.¹⁰

In addition to youth markets in areas such as entertainment, fashion, and telecommunications, might be added the provision of accommodations services during Schoolies Week.

Every year young school-leavers contribute millions of dollars to the economy of the holiday destinations where they gather to celebrate Schoolies Week, such as the Gold Coast. Estimates of the size of this contribution to local economies vary, though it has been put at approximately \$30 million dollars on the Gold Coast.¹¹

Whilst Schoolies Week is an opportunity for young people to relax with friends and other school-leavers in a sunny beachside city, it is also often their first trip away from home independent of their parents, and often the first significant consumer transaction they enter into. Within the context of the schoolies marketplace, this leaves young school-leavers vulnerable to exploitation and/or unfair treatment by less than scrupulous traders or by systemic problems within the marketplace.

The complaints received by Legal Aid Queensland are likely to be the proverbial "tip of the ice-berg". The numbers of complaints are significant. To this must be added the fact that children and young people do not complain about unjust treatment as consumers to the same extent that other sections of the community do. In its landmark Inquiry into children and the legal process, the Australian Law Reform Commission observed:

⁸ 15 November 2002, "Churches plan for Schoolies Week", Presenter: Linda Mottram on AMABC Radio www.abc.net.au/am/s727599.htm, downloaded 11 February 2003, see Appendix G.

⁹ *Seen and heard: priority for children in the legal process* Australian Law Reform Commission, Report No 84, 1997, p 220

¹⁰ *Consumer Issues & Youth: Desk Research, Consultations, and Focus Groups*, July 2002, Prepared for the Commonwealth Consumer Affairs Advisory Council by Colmar Brunton Social Research, p6

¹¹ 12 November 2001, Media Release, Gold Coast City Council, "*Tourism bureau tips \$30m from Schoolies*", www.goldcoast.qld.gov.au/t_print.asp?PID=1106, downloaded 11 February 2003, see Appendix C.

"The major barrier to children taking advantage of their consumer rights is that they generally do not know they have those rights. Even if they do know that they have rights, children may not understand how to enforce them or may not feel confident about pursuing a remedy."

Reflecting upon this phenomena, the Inquiry formed the view that:

"...it is essential that complaints mechanisms are complemented by regulatory requirements and educational initiatives that effectively safeguard child consumers' well-being."¹²

The "Consumer Issues and Youth" Report referred to above, reached similar findings:

"It is clear from focus group research, consultations and desk research that children in Australia require a better understanding of consumer rights and redress. This includes improving awareness levels, but also convincing youth that their issues will be taken seriously."¹³

Young people as consumers are more vulnerable than other consumers. Some young people have, as this Report outlines, been unfairly treated by accommodation service providers during Schoolies Week. Young people as consumers need special protection from marketplace regulators.

3.2 Accommodation Providers

The principal product sold to school-leavers during Schoolies Week is short-term accommodation. That accommodation is provided by numerous holiday apartment complexes at the Schoolies Week destinations. Apartment owners rent out their units, and the apartment managers are responsible for overseeing the letting arrangements.

While some apartments are booked directly by young people or their parents, it appears that this is unusual. This appears to be explained partly by the refusal of some accommodation providers to take Schoolies Week bookings unless they are made through a specified booking company, such as BreakFree Holidays Pty Ltd.

One such accommodation provider, in correspondence to Legal Aid Queensland on 7 April 2002, explained its policy:

"... all schoolie bookings are handled by Breakfree and Teenbreak. These two companies take the bookings; collect all monies; take the bonds; issue the documentation and so on. The reason that schoolies is handled in this way is that accommodation is only one element of the schoolies package. Accommodation providers are not able to handle the complete package which is a specialist job."

(See also case studies 20 & 26, and the Courier Mail article of 19 November 2002, p6 at Appendix H).

3.3 Booking Agents and Reservation Businesses

Most young people reserve their accommodation during Schoolies Week through third parties, rather than booking their accommodation directly with accommodation providers. As noted above, some apartment complexes refuse to accept bookings from young school-leavers unless they are made through a booking company such as BreakFree.

In some instances where school-leavers approach a travel agent to handle their accommodation booking, that travel agent in turn contacts an accommodation reservation company to carry out the Schoolies Week booking (see Case Study 33).

The majority of young people staying in apartments during Schoolies Week book their accommodation through a single reservation company, BreakFree. The size and influence of BreakFree is such that it warrants separate consideration below.

¹² *Seen and heard: priority for children in the legal process* Australian Law Reform Commission, Report No 84, 1997, p 220.

¹³ *Consumer Issues & Youth*, op cit, p6

Another reservation business is Teenbreak. Only one of the groups of young people seeking advice from Legal Aid Queensland about a Schoolies Week legal dispute, identified that they had booked their accommodation through Teenbreak.

3.4 BreakFree Holidays Pty Ltd¹⁴

BreakFree dominates the accommodation-booking marketplace during Schoolies Week, and plays a central role in the Schoolies Week experience for tens of thousands of young people each year. BreakFree itself claims to have managed the accommodation bookings for over 33,000 young people during 2002 alone.¹⁵

The majority of complaints received by Legal Aid Queensland about problems with accommodation services involved accommodation that was booked through BreakFree. Ninety-one percent (or 20 out of 22) of legal disputes where young people identified the reservation company they used, said they had booked through BreakFree.

BreakFree promotes itself as a “reservations office” for Schoolies Week accommodation. Young people using BreakFree will commonly book accommodation either over the phone, or via the BreakFree website. Unlike traditional travel agents, BreakFree describes itself not as an “agent”, but as a “principal” for the purposes of reserving accommodation. This means that it is BreakFree itself that agrees to provide school-leavers with accommodation. At the date of the writing of this Report, BreakFree’s website indicates that it has relationships with 84 accommodation houses at the Gold Coast.

Young people who book accommodation through BreakFree, find that they will participate in a Schoolies Week “package” experience coordinated by BreakFree that includes (a) wearing photo identification arranged by BreakFree, (b) payment of bond and deposit to BreakFree which controls the bond-return process to young school-leavers after their holiday is finished, (c) purchasing a compulsory ticket in a party arranged by BreakFree, irrespective of whether that young person wishes to attend the party, and (d) staying in buildings which are patrolled by security guards organised by BreakFree.

BreakFree claims a trademark over the term “schoolies” (see below at 4.2).

¹⁴ In this Report “BreakFree” refers to BreakFree Holidays Pty Ltd. An associated company, BreakFree Limited was listed in 2002 on the Australian Stock Exchange. BreakFree operates a website named “schoolies.com”.

¹⁵ BreakFree website “*Why schoolies.com?*” www.schoolies.com.au/new2003b/whybreakfree.asp, downloaded 5 February 2003 see Appendix I.

4. Market Dominance and Trade Marking the Term “Schoolies”

4.1 Market Dominance

BreakFree dominates the Schoolies Week accommodation booking marketplace.

Signs of this dominance include the following:

- in 91% (or 20 out of 22) of the case studies where the reservation company used to book the accommodation was identified, that reservation company was BreakFree;
- that BreakFree itself claims to have handled the accommodation bookings for enormous numbers of school-leavers, including 33,000 in 2002 alone;
- that accommodation houses have indicated that they will not take Schoolies Week bookings directly from young people, but will only do so through BreakFree;
- that the Queensland government refers to BreakFree (and its trade mark of the term “schoolies”) in some of its literature.

BreakFree shapes the entire Schoolies Week experience for many young people. Its influence on the Schoolies Week experience for many young school-leavers includes:

- setting the rental price for accommodation, rather than that price being set by apartment complexes;
- creating the processes by which accommodation reservations for the majority of young school-leavers will be conducted;
- handling the accommodation bookings for the majority of school-leavers;
- hosting a dance party – “Evolution” – for which the ticket purchase is compulsory for young people booking through BreakFree;
- providing a “package” of services to accommodation houses such as identification verification processes, and security for accommodation houses;
- controlling the bond payment, return and retention processes for bond paid by school-leavers booking through BreakFree.

BreakFree claims that it is the “official” Schoolies Week specialists, as a statement on its website indicates:

“Thankyou for choosing Schoolies.com – the Official Schoolies™ specialists for 14 years. Only Schoolies.com offers you the authentic Schoolies™ experience ...”¹⁶

There is, in our view, no grounds for it making this claim. The fact of its having registered the term “schoolies” as a trademark does not, in our view, provide any basis for doing so. We are concerned that this claim by BreakFree may have misled some young school-leavers, or their parents, into believing that BreakFree is in some sense “approved” by an appropriate regulator or responsible government agency, to provide Schoolies Week reservation services. We are concerned that an inference exists that BreakFree has, in some sense, been granted a status that its competitors have not. This is not so.

It should be noted that BreakFree has indicated to Legal Aid Queensland that it intends to remove the reference to it being the “Official” Schoolies Week specialists from its website.

4.2 Trade Marking the Term “Schoolies”

4.2.1 BreakFree’s trade mark

¹⁶ BreakFree website “*Why schoolies.com?*” www.schoolies.com.au/new2003b/whybreakfree.asp, downloaded 5 February 2003 see Appendix I.

BreakFree claims a trade mark over the term "schoolies". It does so by placing the letters "TM" after the word "Schoolies" when that word appears in many of its publications including its:

- website;
- promotional material;
- tax invoices;
- correspondence; and
- terms and conditions.

BreakFree (under its previous name of Sports Break) was granted a trade mark for the term "Schoolies" on 25 October 1993 under six classes including "Transport and travel services" and "Hotel reservations".

Each of the six BreakFree trade marks has an "endorsement" on it. This means that the Trade Mark Examiner who approved the trade marking of "schoolies" made it a condition of the trade marking that, if, after the date of registration, the term "schoolies" becomes generally accepted as a term used to describe the name of the service within the relevant class, BreakFree will no longer have the exclusive use of the trade mark.¹⁷

In 2000 BreakFree's trade mark claim over the term "schoolies" was the subject of a court challenge by another trader (see below).

4.2.2 Who owns the term "schoolies"?

The terms "schoolies" and "Schoolies Week" have had defined historical and cultural meanings and value prior to any applications to trade mark that term.

In 2000 the Federal Court of Australia considered the use of the term "schoolies" by BreakFree in the case of *Sports Break Travel Pty Limited v P&O Holidays Limited* [2000] FCA 924 (7 July 2000). BreakFree was formerly known as Sports Break Travel Pty Limited ("Sports Break"). In that case, BreakFree sued P & O Holidays Limited ("P&O") for infringing its trade mark over the term "schoolies" after P&O used the term in a number of its publications. The Court rejected BreakFree's claim.

In the course of his judgement the Honourable Justice Burchett considered at length the use of the terms "schoolies" and "Schoolies Week" within the community and commented, relevantly, that "the name of the market should not be the unique preserve of one trader".¹⁸ He also found:

"The evidence makes it quite clear that the expression "Schoolies Week" and the word "schoolies" were firmly established in colloquial usage, in the senses relevant to this case, at least by early in the decade commencing in 1981. The word "schoolie", of course, was well known in Australian usage long before then to express two different meanings: it could refer to a school prawn, or it could be a somewhat offhand, or even slightly derogatory, term for a schoolteacher. The meanings relevant to this case are much more recent, and seem to have originated in connection with the Gold Coast, and in Queensland. The present use of the word "schoolie" is, perhaps, best indicated by the *Australian Oxford Dictionary* (1999):

"Aust. colloq. **1** a schoolteacher. **2** a secondary school student, especially one who has just completed year 12. **3** a school prawn. **schoolies' week** colloq. a period of post-exam celebrations for year twelve students, especially on the Gold Coast, Queensland."

In the *Sports Break Travel Pty Limited v P&O Holidays Limited* case P&O also brought a cross-claim against BreakFree, arguing that the trade mark register should be amended to cancel the trade mark "schoolies". The ground upon which P&O argued that the mark ought to be cancelled was that the trade mark was "not capable of distinguishing [Sports Break's] services in respect of which the trade mark was sought to be registered from the services of other persons."¹⁹ The Court agreed that the trade mark did not distinguish the relevant services and reached the conclusion that P&O's case had been made out.

¹⁷ s24(2) Trade Marks Act (Cth) 1995

¹⁸ *Sports Break Travel Pty Limited v P&O Holidays Limited* [2000] FCA 924 (7 July 2000), para 22.

¹⁹ *ibid*, at para 19

In that case, the Court ordered that P&O bring in “short minutes of orders” appropriate to reflect the reasons in the judgement, the effect of which, one could have expected, was that the trade mark registry be rectified by the cancellation of the trade mark “schoolies”. The case was, however, settled on 31 July 2000.²⁰ The trade mark registry was never amended. The trade mark over the term “schoolies” was never cancelled.

4.2.3 Recognition of BreakFree’s Trade Mark by Others

There has been recognition of BreakFree’s trade mark claim during recent Schoolies Weeks in a number of publications, including publications funded or supported by the Queensland government. This recognition has continued even after the *Sports Break Travel Pty Limited v P&O Holidays Limited* case.

The Queensland state government, through the Department of Health, currently supports and recognises the trade mark of BreakFree on its schoolies web-site (www.schooliesweek.com.au). That web-site is an important gateway through which the Queensland government communicates Schoolies Week messages to young Queensland school-leavers. The home page of that site²¹, which is clearly branded as a Queensland Government Queensland Health site, includes the notation:

Note: Schoolies is a registered trademark of BreakFree Holidays.

The Queensland government has also recognised the trade mark in other government-auspiced publications, such as the “Schoolies Week booklet”²² in the following words:

“Schoolies” is used by permission of Breakfree Holidays

The recognition of that trade mark by the Queensland government is not limited to any particular contexts, such as transport and travel services, or hotel reservations in respect of which BreakFree has registered a trade marks. The Queensland government’s recognition of the term as described above is unlimited and therefore goes significantly beyond the marketplace categories over which even BreakFree claims a trade mark.

The Gold Coast City Mayor has also recognised the trade mark claim of BreakFree in an undated letter of support from the Mayor on the BreakFree website²³.

4.2.4 The Dangers of Trade Marking the Term “Schoolies”

There are, in our view, grave dangers in a person or company being able to claim a trade mark over a term such as “schoolies”. There are also, in our view, dangerous consequences when others with an interest in Schoolies Week recognise such a trade mark.

Terms such as “schoolies”, along with terms like “Christmas” and “New Year” have distinct cultural meanings. They belong to the community, not to any one person or company. They should not, in our view, be appropriated by any single person or company.

The risk of such an appropriation is that the person or company claiming a trade mark over the term, might seek to actively assert their exclusive rights over the term, and may exert pressure over others who attempt to use that term. Ultimately, litigation in court may be used in an attempt to “protect” the trade mark, and prevent others from using it.

An inappropriate claim of a trade mark may inappropriately restrict competition in a marketplace.

BreakFree sued P&O in order to prevent it using the term “schoolies” in its promotional brochures. Further, one of BreakFree’s few competitors, Teenbreak, is extremely careful not to use the term “schoolie” on its website.²⁴

In light of all of the above, it is our view that the recognition of the trade mark by the Queensland government is bad policy. It supports the market dominance of BreakFree. The market dominance of

²⁰ See Appendix J

²¹ See Appendix K

²² See Appendix L

²³ BreakFree Website “Mayor’s Message” <http://www.schoolies.com.au/new2003b/whybreakfree.asp>, downloaded 5 February 2003, see Appendix I.

²⁴ See website of Teenbreak: www.teenbreak.net

BreakFree has contributed to, or risks contributing to, a Schoolies Week marketplace which is asymmetrical and unhealthy. It is young Queensland consumers - significantly more vulnerable than many other consumers - who suffer most from many of the Schoolies Week marketplace problems raised in this Report.

The trade marking of the term "schoolies" by BreakFree, the subsequent recognition of that term by others with a stake in the operation of Schoolies Week, and the claim by BreakFree that it is the "Official Schoolies specialist", may have assisted in consolidating a marketplace which is dominated by one trader at the expense of consumers.

4.3 Market Dominance and Consumer Detriment

Competition is a fundamental tenet of a healthy marketplace. One of the objects of the *Trade Practices Act 1974* – the legislation which articulates the means by which a fair marketplace in Australia is achieved - is "to enhance the welfare of Australians through the promotion of competition..."²⁵. In ensuring that the marketplace in Australia is as fair as possible, the *Trade Practices Act 1974* also identifies circumstances where a marketplace might be unfairly shaped by businesses.²⁶

Consumers usually suffer in marketplaces without sufficient competition. The opportunity to choose between traders in a marketplace is a fundamental consumer right. An overly dominant trader in a marketplace can shape that marketplace in ways which have adverse consequences for consumers. There are signs that BreakFree Holidays has, in our view, an unhealthy market dominance in the Schoolies Week accommodation reservation marketplace.

These signs include:

- a restrictive range of choices of alternative products or services. In this respect, see the discussion on BreakFree's use of its trade mark over the term "schoolies";
- complaints of excessive, or non-competitive pricing. One of the most common results of insufficient competition is that consumers pay more for the product they purchase than they would otherwise. Competition usually drives price down. (see however 5.1 below);
- that products and/or services being offered in the marketplace are designed less as a response to the needs of consumers, than the imperatives of the trader. In this respect school-leavers booking through BreakFree must purchase a ticket to the "Evolution" dance party that BreakFree hosts, even though they do not want to go to that party (see 5.3 below);
- that the trader controls the processes which operate within the marketplace. In this respect some accommodation houses are refusing to take bookings directly from school-leavers, but insist rather that they book through BreakFree and purchase the BreakFree "package";
- the relationship between consumers and traders is unbalanced, with the weaker party vulnerable to exploitation (see 5.6 below).

One of the ways in which such a dominance has been created, or consolidated, is in our view, as a result of BreakFree registering, and subsequently claiming, a trade mark over the term "schoolies". By BreakFree claiming as its "unique preserve" the very name of the Schoolies Week marketplace, any prospective competitor would, without the capacity to also use the name of the marketplace, be at an extreme disadvantage in its attempts to compete with BreakFree.

Marketplace regulators must take appropriate steps to encourage a more competitive Schoolies Week accommodation marketplace.

Recommendations

²⁵ s 2 *Trade Practice Act (Cth) 1974*

²⁶ See for example s46 *Trade Practice Act (Cth) 1974*, which prohibits the misuse of market power by corporations.

1. That the Australian Competition and Consumer Commission, and the Queensland Office of Fair Trading, as marketplace regulators take all steps necessary to encourage a more competitive Schoolies Week reservation marketplace.
2. That the Australian Competition and Consumer Commission, and the Queensland Office of Fair Trading, as marketplace regulators take all steps necessary to prevent traders claiming a trade mark over the terms "schoolies" or "Schoolies Week".
3. That BreakFree immediately cease its claim that it is the "official" Schoolies specialists.
4. That the Australian Competition and Consumer Commission, and the Queensland Office of Fair Trading, as marketplace regulators, investigate whether the claim by BreakFree that it is the "official" Schoolies Week website, is misleading and deceptive. In the event that it is, for the marketplace regulators to take appropriate action.
5. That the Queensland government cease recognition of any trade mark claim by BreakFree over the term "schoolies", in any Queensland government publications or communications relating to Schoolies Week.
6. That the Gold Coast City Council cease recognition of any trademark claim by BreakFree over the term "schoolies" in any of its publications, or communications relating to Schoolies Week.

5. The Major Dispute Areas

5.1 High Price of Rental Accommodation

Complaints

Legal Aid Queensland has received complaints from consumers who have been concerned that the cost of Schoolies Week accommodation rental has been overpriced or excessive. There have been two categories of this complaint:

- that the price of rental accommodation is excessive when compared with what non-school-leavers pay for the same or similar accommodation; and
- that the price of rental is excessive given the quality of the accommodation.

5.1.1 Schoolies Week Rental Prices Inflated

Staying in an apartment during Schoolies Week is significantly more expensive than at other times of the year.

A key question for consumers is whether this price difference is a reflection of usual market forces of supply and demand (Schoolies Week being a high demand period), or whether those differences are accounted for, or contributed to, by additional factors in the Schoolies Week marketplace.

It is beyond the scope of this Report to reach a final conclusion in relation to this issue, though there are a range of indicators which point to other marketplace factors contributing to the high price of accommodation for school-leavers. Further, and equally importantly, there is evidence which suggests that school-leavers pay more for their accommodation than non-school-leavers do during the same period.

Some consumers have said that they have compared prices between those offered to schoolies and those offered to non-schoolies for comparable apartment accommodation, and that the price quoted for schoolies was different. The Courier Mail has reported that it has received similar complaints²⁷.

Case Study 20

The mother of a son who will be staying with 7 other boys in an apartment on the Sunshine Coast during Schoolies Week 2003 called. Her son and his friends had booked through Break Free. The mother rang seeking advice about whether there was any recourse that could be taken about what she believed was the excessive pricing of rental accommodation for young people during Schoolies Week.

Her son's friend had been the organiser for the booking. They had entered into an agreement to pay \$2,408 for the apartment. The mother subsequently discovered that the same apartment was being advertised at the same time for \$1,694, and she herself contacted the apartment and obtained a quote for that amount. In the course of that conversation the apartment manager told her that the apartment did not take bookings from schoolies except through Break Free.

The mother rang BreakFree and says that she was told that "because schoolies is a specified product the charges are not subject to any sort of regulation". She strongly believed that it was unfair that young people could not rent accommodation during Schoolies Week for the same price as adults.

In a marketplace where many accommodation houses refuse to accept bookings directly from young school-leavers, but instead require bookings to be made through a third party, it is unsurprising that the cost of that accommodation would be higher. Unless the use of a third party reservation company

²⁷ Joel Dullroy "Apartments at almost double the usual cost" *Courier Mail*, Tuesday 19 November 2002, pp. 6, see Appendix H.

brings with it efficiencies of scale which outweigh the third party costs, then the rental price will be higher because of those third party expenses, and profit.

Other determinant factors in the price of accommodation rental for school-leavers during Schoolies Week include:

- Any lack of competition in the Schoolies Week accommodation reservation marketplace which would otherwise place down-ward pressures on price;
- That the price payable to BreakFree includes a compulsory component for a ticket to the "Evolution" dance party hosted by BreakFree, irrespective of whether the young person wishes to attend that party (see below);
- That there are other expenses built into the package of services BreakFree offers accommodation houses, such as security and ID passes

Prices of accommodation booked through BreakFree are calculated not on a per apartment basis, as is the usual method of fixing rental, but on a per person basis. The per person amount is not, however, merely a fixed apartment rental amount divided by the number of people staying in that apartment. Rather the sum cost of renting the apartment increases significantly depending on the number of people staying there. This pricing policy has been the subject of complaints (see case studies 19 & 22).

The table below exemplifies the pricing arrangements. For example, BreakFree advertises a 2 bedroom apartment at the Peninsular Resort between 6 December and 13 December 2003. BreakFree's website quotes three prices, each on a per person basis, depending on the number of people staying in the apartment.²⁸

Number of people sharing	Cost per person for 7 nights	Total apartment cost
5	\$366	\$1,830
4	\$391	\$1,564
3	\$486	\$1,458

BreakFree describes its Schoolies Week accommodation package in the following terms:

"We want you to have a fantastic time on Schoolies, and to do so you need to feel safe. Only schoolies.com offers you the following safety measures:

- Evolution – a non-alcohol, supervised dance party exclusive to schoolies.com
- Qualified security guards on all Schoolies buildings
- A 24-hour help-line during Schoolies
- Photo-ID building entry pass for every Schoolie
- We support council activities and volunteers to keep you safe on the streets of Surfers Paradise.

In addition to our Safe Schoolies program, here are some more reasons to book with schoolies.com:

- We are the central reservations office for Schoolies™ bookings no need to ring around loads of properties to find availability and prices.
- Reservations can be made simply and cheaply via the website an online booking discount also applies.
- Telephone and email support is available.
- We have friendly and experienced consultants who know what you want.
- Only schoolies.com offers you the Official Schoolies™ Passport packed with discounts on theme parks, tours, restaurants and heaps more!"²⁹

Some young people may want to book accommodation through BreakFree in order to "purchase" a package of services and/or benefits. It is unfair, however, that a school-leaver does not have the choice

²⁸ For example, "Booking Quote – BreakFree Peninsula Resort", see Appendix M.

²⁹ BreakFree website: <http://www.schoolies.com.au/new2003b/whybreakfree.asp>, downloaded on 17 February 2003, Appendix I.

of booking accommodation directly through an accommodation house, in the same way that other tenants are able to.

School-leavers should have that choice of electing to book accommodation directly through accommodation houses, or reserving accommodation as part of a “package” of services offered by a trader such as BreakFree. School-leavers should not be forced by the marketplace, to pay higher prices for accommodation than other tenants. The marketplace must allow for consumer choice, and must not discriminate against school-leavers in denying that choice (see also part 5.8 below).

5.1.1 High Prices for Average Quality Apartments

A number of young people, or their parents, have complained that the cost of the accommodation was excessive given the quality of the accommodation. In this respect, Legal Aid Queensland received complaints that:

- The quality of the accommodation was poor (see case studies 9, 16, & 30);
- Accommodation advertised as being of a certain quality was in fact less than that quality (see case study 5);
- Of overcrowding (see case study 28)

Recommendation

7. That research be conducted into the following:
 - (a) the extent of any price differential between the cost of accommodation for school-leavers during Schoolies Week and the cost of accommodation for non-school-leavers at that same time; and
 - (b) the causes for any such price differential.

The Australian Competition and Consumer Commission and/or the Queensland Office of Fair Trading, as marketplace regulators, are well-placed to facilitate this research. The research might be undertaken by an organisation with an appropriate consumer research background.

8. That accommodation houses cease the practice of refusing to accept Schoolies Week bookings directly from school-leavers and directing them instead to Breakfree or another accommodation reservation business to make bookings.
9. That the Australian Competition and Consumer Commission, as marketplace regulator, investigates whether the practice of some accommodation houses refusing to accept Schoolies Week bookings directly from school-leavers and directing them instead to Breakfree or another accommodation reservation business to make bookings, is in contravention of the *Trade Practices Act*.

5.2 Bond and Deposit Problems

Complaints

One of the largest areas of dispute relates to the taking of bond during Schoolies Week. Disputes included the following:

- That schoolies are being treated differently from other tenants, by being required to pay bond;
- That the process by which bonds are kept and returned is unfair;
- That bonds are being unlawfully withheld by accommodation providers;
- That even if a bond is returned to a young person, only the bond amount, and not any interest earned by the accommodation reservation business that had held it, is refunded to the young person.

5.2.1 The practice of demanding bond and deposit payments

Most young people who book accommodation in apartment complexes during Schoolies Week pay a bond as a condition of their staying at the apartment complex. The bonds have been reported as being "per person" amounts. Bonds are said to be taken in order to cover damage to rooms and common property. Bonds are payable in advance by a school-leaver staying in an apartment. In the case of BreakFree it is payable at least 60 days before Schoolies Week³⁰. BreakFree says the money is held in a trust account³¹.

The size of the bond reported by young people to Legal Aid Queensland was:

- \$100 per person for bookings through BreakFree;
- \$200 for a booking made through QANTAS;
- \$250 booking through Harvey World travel.

Some school-leavers have complained that, having paid a bond in advance of Schoolies Week, they have been required to pay an additional bond amount at check-in (see case studies 4, 9 & 26). They have complained that they have had no choice but to pay the additional amount demanded.

While the taking of bond from young people during Schoolies Week is common practice, it is not so for tenants booking holiday accommodation at other times of the year. School-leavers are treated differently from non-school-leavers in relation to the practice of taking bonds.

After Schoolies Week, accommodation providers using BreakFree's services make an application to BreakFree to retain bond monies to cover any damages they allege to have been caused by the school-leaver. Approximately 10 working days after checking out, schoolies can log on to the 'Bond Refund' section of the website to learn whether any of their bond has been deducted and how much if it has been. There is no independent dispute resolution process available for schoolies who believe that their bond has been unlawfully or unfairly retained by the accommodation provider.

There is no legislation which regulates how any bonds are dealt with during Schoolies Week. The *Residential Tenancies Act (Qld) 1994* does not apply to accommodation booked for Schoolies Week, as s21 of that Act specifically excludes occupation for holiday purposes from coverage of the Act.

5.2.2 Bond Retention Regime: Community Event, Private Benefits

Last year BreakFree claimed to have booked schoolies accommodation for 33,000 students³². It might therefore be assumed that BreakFree had approximately \$3,300,000 of schoolies money in their trust fund for at least 2 months, though it is likely that some of that amount was held for periods of time greater than 2 months.

It is likely that this bond amount was invested in an interest-bearing account. In the event that bond monies are returned to school-leavers after Schoolies Week, any such interest amounts are not paid to school-leavers with that bond.

³⁰ See BreakFree's terms and conditions: Appendix N.

³¹ 18 November 2002, Presenter: Tim Callanan on Gold Coast ABC, see Appendix T for transcript.

³² BreakFree website "*Why schoolies.com?*" www.schoolies.com.au/new2003b/whybreakfree.asp, downloaded 5 February 2003 see Appendix I.

In the event that BreakFree (or other traders who hold bond monies for school-leavers) invests that bond for financial gain, it may be seen as unfair that the private company benefits from the interest received from the bond, rather than the school-leavers themselves. A comparison with the way that bonds payable in residential tenancies are held is revealing. That comparison is set out in the table below.

ISSUE	SCHOOLIES	RESIDENTIAL TENANCY
Basis on which Bond Imposed	Per person	On the premises
Size of bond?	\$100 per person	Four weeks rent eg. Weekly rent = \$100, bond = \$400
When paid?	At least two months in advance	On approval of application to rent
Who holds the bond?	BreakFree (or other booking agency)	Residential Tenancies Authority (RTA)
Is there an independent dispute resolution process?	No. Tenants complain only to the accommodation provider.	Yes. The Dispute Resolution Service is available to assist in mediation. If no agreement, one party can apply to the Small Claims Tribunal
When is Bond released?	Upon the direction of the accommodation provider to BreakFree (or other agent)	Upon the agreement of the tenant and landlord/real estate agent OR upon a decision of the Small Claims Tribunal
Bond invested?	Bond held in BreakFree trust account	Bond held by the RTA
How is any interest earned on invested bond used?	BreakFree	Used to fund the RTA

Rather than any interest earned on invested bond being kept by the booking company, that interest could be put towards a beneficial purpose equally accessible to all schoolies. Such a purpose might include the administration of an independent bond processing system, not unlike that conducted by the Residential Tenancies Authority.

5.2.3 Bond Return Disputes

Young people have complained that in many cases the accommodation provider has withheld the bond in circumstances where there is no reason to do so.

Circumstances in which young people have complained that bond was unlawfully withheld include the following:

- school-leavers being charged for damage they did not cause, such as where damage was caused by previous tenants (see case studies 15 & 34) or where damage was done to common areas by others;
- Bond money being used to pay for fair wear and tear of units (see case studies 16 & 21), or in circumstances where there has been no damage at all (see case studies 14, 30 & 31);
- The amount claimed to have been required to repair damage being excessive (see case study 8).

The absence of an independent dispute resolution mechanism means that young people wishing to challenge a decision by an accommodation provider and/or BreakFree to withhold bond, must commence legal proceedings in the Small Claims Tribunal or the Magistrates Court.

It is extremely difficult for young people who have travelled to the Gold Coast from New South Wales or Victoria, for example, to adequately pursue a bond refund dispute, as it is time-consuming and expensive for them to travel back to Queensland where any litigation would need to take place.

Recommendations

10. That in the event that a bond is paid by a school-leaver in relation to Schoolies Week accommodation, then an independent agency must hold those bond monies on trust for the school-leaver tenants. The interest generated on the investment of the bond amounts could then be used to fund the work of the agency, and to provide an independent dispute resolution scheme for young people in bond return disputes.

The Residential Tenancies Authority, which would currently holds bond monies in relation to residential tenancy agreements, and which would be available equally to all school-leavers, is well-placed to fulfil this role.

5.3 Compulsory “Evolution” Dance Party

Complaints

Legal Aid Queensland received complaints about “Evolution”, a schoolies-only alcohol-free dance party, which is part of the BreakFree schoolies “package”.

Complaints were received on a number of issues, including:

- That the dance party had been overbooked;
- That schoolies did not want to attend the dance party, but had to nevertheless pay \$25 for a ticket to a service that they did not want;
- That there were difficulties in obtaining tickets.

5.3.1 Compulsory nature of the Ticket Purchase

All students booking accommodation on the Gold Coast through BreakFree are required to purchase a ticket to the Evolution Dance Party at a cost of \$25. As discussed above, some accommodation houses refuse to take bookings directly from school-leavers, requiring instead that bookings be made through a reservation company such as BreakFree. Such a practice further channels school-leavers into the compulsory BreakFree ticket purchase.

Having booked accommodation through BreakFree, and paid for the compulsory ticket, school-leavers must then make arrangements with BreakFree to book a ticket, and, once at Schoolies Week, to collect their ticket from a ticketing booth.

It is unfair to force schoolies to purchase a ticket to a party regardless of whether or not they want to attend. It is particularly unfair given BreakFree's dominance of the Schoolies Week accommodation reservation market as discussed above, as that dominance leads to reduced choice of reservation agencies, and reduced bargaining power for young consumers (see case study 19).

5.3.2 BreakFree's capacity to provide the service

Complaints were received from one group of school-leavers who were not able to redeem their tickets for the 2001 dance party.

Case Study 12

A girl who had booked Schoolies Week accommodation in 2001 through Break Free rang for legal advice in relation to the compulsory purchase of a ticket for a dance party. At the time the five girls in question booked, it was a condition that they pay an additional \$25 each for the “Evolution Dance Party”.

The tickets were not sent out, but rather, schoolies had to pick them up on the day of the dance party from a ticket collection point. The girls took a taxi to pick up their tickets. They were told when they arrived at the collection point that they could not attend on their preferred Wednesday evening party as it was fully booked. They reluctantly agreed to go to the Tuesday night party. On Tuesday the girls caught another taxi to the event, but when they arrived they were told that the party had been cancelled. There were no signs saying to return the next night and in addition they were aware that it had been booked out.

The girls were seeking refunds of the taxi fares and their tickets. BreakFree refused to refund the ticket amount or to pay compensation to the young people for their taxi fares.

Last year BreakFree sold approximately 33,000 tickets to the Evolution Dance Party. It was reported in the *Courier Mail*, that the venue for the dance party, the Trocadero Entertainment Centre, only had a capacity for 1,200 and was only booked for five nights³³. BreakFree was reported as having only made provision for 6,000 young people to attend the event, which appears to indicate that either 27,000 missed out, or did not ever intend to go to the party.

³³ Joel Dullroy “Dance Party Overbooked” *Courier Mail*, Tuesday 19 November 2002, pp. 7, see Appendix V.

A press report indicated that BreakFree would not consider providing refunds to schoolies who could not gain entrance³⁴. This was what the school-leavers in case study 12 reported took place to them.

Consumer fair trading laws prohibit the practice of a trader accepting payment without intending or being able to supply goods and services as ordered³⁵.

It should be noted that BreakFree has indicated to Legal Aid Queensland that the Courier Mail's report as referred to above, was inaccurate. BreakFree says that the venue it booked has a capacity of 1000 people, and that one party is held each night during Schoolies Week. It says that it allocates approximately 2000 tickets each night, because at any one time only approximately 50% of ticket-holders are inside the party venue. BreakFree says that, accordingly, it has capacity to provide access to a party for approximately 14,000 young people in any one week during Schoolies' celebrations. It says that in the first week of Schoolies Week 2002 it handled bookings for less than 14,000 young people, and that it could, contrary to suggestions in the media, therefore accommodate all of the young people it booked with tickets.

It should, however, be noted in relation to arrangements for the party that:

- Not all of the young people buying the compulsory ticket can attend the party on the night of their choosing;
- Some nights might be more popular than others for attending the party (eg a Friday or Saturday night);
- Young people who want to go to the party might not be able to attend it on a night other than the night(s) of their preference because of other commitments. In such event they might miss out on going to the party, even if they wanted to;
- In the event that BreakFree does not allocate its full quota of tickets on any one night, it sells tickets to young people who have not booked accommodation through it, for \$30.

Recommendations

11. That the Australian Competition and Consumer Commission and the Queensland Office of Fair Trading investigate whether the practices of BreakFree in selling tickets for the Evolution Dance Party in the way that it does, contravenes consumer fair trading or consumer protection laws.
12. That BreakFree refunds the amount of \$25 to every young person who has paid for, but did not attend, the Evolution Dance Party hosted by it in previous Schoolies Weeks.
13. That for Schoolies Week 2003 and subsequent Schoolies Weeks, BreakFree should not require that there be compulsory payment of any monies for any services offered by it as a condition of reserving accommodation through it. Any such amounts must not be artificially built into the accommodation rental price, but should be optional purchases.

³⁴ *Ibid*

³⁵ *Fair Trading Act 1989 (Qld)*, s48, and *Trade Practices Act 1974*, s58 and s75AZL.

5.4 Failure to Provide School-leavers with “House Rules” Prior to Entry into the Contract

Large numbers of young people report that they were not provided with the “house rules” of their apartment complex until check in (see case studies 3, 4, 6, 9, 10, 16, 26, 29, 30, 32, 33), though in one reported instance the “house rules” were sent out to the young people prior to the check in by the apartment complexes (see case study 13).³⁶ The “house rules” are the rules which accommodation service providers rely on in evicting or otherwise disciplining a tenant. Examples of apartment complex “house rules” are attached at Appendices O - Q. The “house rules” are specific to Schoolies Week. They are different from, and additional to, any normal by-laws or body corporate regulations governing the stay in an apartment complex. An example of the usual body corporate by-laws of one apartment complex is attached at Appendix S.

Providing copies of a document as fundamental as the “house rules” only at check-in is unfair. School-leavers report that it produces unjust results. These unjust results include that:

- young people are denied the opportunity to know what the “house rules” of the apartment complex they are staying in are, prior to entering into the accommodation rental contract;
- young consumers are denied the ability to choose between apartment complexes based on the individual “houses rules” of a particular apartment complex;
- school-leavers make preparations for their Schoolies Week holidays without being aware of restrictions imposed by the “house rules”. When they are given the “house rules” those preparations may be significantly affected (see for example case study 29).

Providing “house rules” to young people as late as check-in, may also not comply with the requirements of contract law, for a number of reasons.

A school-leaver enters into a contract with the accommodation provider, and/or the booking reservation service prior to staying at an apartment during Schoolies Week. It is the contract which sets out the obligations of each of the parties to it. The contracts which school-leavers enter into have been drafted by either the accommodation provider, and/or the booking reservation service. This means that the terms and conditions of the contracts - which sets out the detail of the obligations of the parties – is in the control of the accommodation provider and/or booking reservation company.

An understanding of the process by which most schoolies enter into a contract to stay in an apartment during Schoolies Week is critical to an appreciation of some of the problems they face. That process usually consists of 7 basic steps:

³⁶ See for example Aarons Holiday Inn: Appendix R.

THE BOOKING PROCESS

Step 1 Deciding who to stay with.

Young people usually stay with a group of friends, such as school-mates during Schoolies Week.

Step 2 Finding a suitable apartment.

Step 3 Booking an apartment.

The majority of young people do so by booking through BreakFree, either on its website or by making telephone contact. One of the members of the group, the "Group Organiser" is then required to make the initial booking. A number of forms are completed (for example on-line) by the young person in making the booking.

Step 4 Paying the "deposit"

Each young person in the group is then expected to pay to BreakFree a \$110.00 non-refundable deposit within 2 days of making the booking.

Step 5 Paying the Bond

Subsequently the young people must each pay BreakFree \$100.00 bond within 60 days of the booking date.

Step 6 Paying the Balance of the Rental Amount

Step 7 Checking In and Receiving the "House Rules"

The contract between a young person and BreakFree (or other reservation company) is formed when the school-leaver pays the deposit. For reservations through BreakFree this takes place within two days of booking accommodation through the schoolies.com website or over the phone. The terms and conditions of the contract between the schoolie and BreakFree is found on its website.³⁷

For school-leavers who book accommodation through BreakFree, the contract they enter into is between them and BreakFree. The contract can only consist of the terms and conditions that BreakFree has made a reasonable attempt to draw to the attention of school-leavers. If the attempt is found to be reasonable and a schoolie has simply not bothered to read them, then they are still bound by them³⁸.

A number of questions arise as to whether a process such as that established by BreakFree successfully incorporates the "house rules" of the apartment complex into the contract the young person enters into for accommodation during Schoolies Week. Ultimately, these questions can only finally be answered by a Court. In our view, however, if the "house rules" are only provided to the consumer at the time of check-in – when it is too late in all practical sense to choose alternative accommodation – those rules will not be regarded as having been incorporated into the terms of the contract.

BreakFree gives some indication, on its website, of the types of "house rules" that school-leavers might expect to be asked to comply with by accommodation houses.³⁹ That information is indicative only. As BreakFree says, the rules it lists do not apply to all accommodation houses, school-leavers "may" be asked to comply with them, but that ultimately the list is only "to be used as a guide".

The failure to provide young school-leavers with some of the critical terms and conditions of the accommodation agreement, falls well below the demands of the law of contract. It is also a practice which causes young school-leavers real detriment.

Case Study 32

³⁷ See BreakFree's terms and conditions: Appendix N.

³⁸ *L'Estrange v F Graucob Ltd* [1934] 2 KB 394.

³⁹ See Appendix N.

A group of five boys booked an apartment at Schoolies Week 2000 through a travel agent at a cost of \$340 each and \$20 bond each. One of the boys was over the age of 18, and had finished school a year or two earlier, while the other four were school-leavers. The rental charges, and the size of the bond, were less because one of the party was over the age of 18, and was not a "schoolie".

When they arrived to check in they were given some papers including a document containing a set of rules.

The group of young people arrived at the apartment at about 11.30 am, Saturday 18 November 2000 to check in, and was given papers, including a copy of a document "the Schoolies Rules". Though the young people were given the hours rules to look at – the first time they had ever seen them – they did not believe they had signed an undertaking to be bound by them. The boys did not read the rules closely, and were not given copies of them.

In the early afternoon on Saturday 18 November 2000 three of the boys used the fire stairs to leave the building because the lift was slow in arriving as a result of the large numbers of other young people using it to check in. Unknown to them, the "rules" prohibited use of the fire stairs. In using the stairs on this one occasion the boys did not believe that they were doing anything contrary to the rules. At about 3pm they returned to the building and sought to enter via the fire-stairs. They tried their keys on the fire-stair door but could not get in. The Night Manager of the apartment was passing by and the boys approached him, told him that they had used the stairs earlier and asked him if they could get in with the keys that they had. The night manager then advised them that it was against the Schoolies Rules to use the fire-stairs. He notified them that he was going to evict them.

The three boys were escorted by the night manager to the apartment in order to pack their gear and leave. While in the apartment the night manager noticed glass bottles and threatened to evict the other two young people in that apartment pursuant to another clause in the house rules that prohibited glass in the apartment. After subsequent discussions about the effect of the house rules, it was discovered that one of the three young people intended to be evicted did not have his name written down on the house rules. He was relieved on this basis. The other two boys were evicted.

On the evening of being evicted the two boys drove around the streets until 2pm, and then stayed in a cramped caravan with another friend.

One of the boy's fathers sought to negotiate a return to the apartment for the boys. The night manager agreed that a meeting take place at 3pm on Sunday 19 November with the two who had been evicted, to discuss the basis on which they might be readmitted.

The night manager arrived early at approximately 2.45 pm and entered the unit without knocking. Apparently he did so in reliance of another clause in the Schoolies Rules. The night manager noticed more bottles and proceeded to evict all of the young men from the unit. They were told that they were banned from the complex at night, though they could visit during the day.

All of the boys stayed the night of Sunday 19 November in friends' apartments (which in turn was likely to be in breach of the house rules of those other apartments). On Monday 20 November they booked into another apartment complex and paid for the remainder of the week. They did not all stay for the full week however, as some of them left Schoolies Week early.

The young people believed they had been unfairly evicted. They sought refunds of their rental and bond. The apartment complex refused to give it to them. The apartment complex refused to respond to written correspondence in relation to the dispute, and refused to provide copies of any documents which they said the young people had signed.

The young people made a complaint to the Anti-Discrimination Commission, and the dispute was ultimately settled almost a year later.

(See also case study 29)

Recommendations

14. That school-leavers be given a copy of the terms and conditions regulating the accommodation contract, including any "house rules" of the apartment complex, prior to their entry into the accommodation rental contract.

5.5 Unilateral Change of Apartment Bookings By BreakFree

A number of young people, or their parents, have complained that after having booked an apartment months in advance of Schoolies Week, they discovered close to the commencement of Schoolies Week, or as late as check-in, that their bookings had been changed by BreakFree. In some cases they have learnt that they would not be staying in the apartment they had reserved but had been moved to another apartment (case study 23), had been moved to another apartment complex entirely (case study 25), or had had their booking cancelled (case study 17).

The apartment to which some of the young people were moved was reported by those young people to be of a poorer quality than that which they had originally booked.

Case Study 25

Four girls booked an apartment through BreakFree via the internet. They paid \$100 each at the time of booking. At the time they were to pay the remainder of the rental amount, which they did one month after the booking, they were told that they had been unilaterally moved to another apartment complex. They were advised that the reason for this was that in the intervening period someone had purchased the apartment they were going to be staying in.

They were very unhappy and wanted their deposit back because they did not want to change apartments, and did not want to stay in the apartment complex BreakFree now proposed.

BreakFree refused to refund the booking deposits. The girls subsequently booked elsewhere and want this refund.

Ordinarily, a failure to provide a service so fundamental to the agreement between the young person and the accommodation service provider would amount, in our view, to a breach of the contract which would entitle the tenant to claim damages from BreakFree.

BreakFree's "booking conditions", however, contain the following term⁴⁰:

"Schoolies.com reserves the right to at any time and in its absolute discretion modify any accommodation or travel arrangements and to cancel the same without notice".

Such a term is, in our view, unnecessary to protect the interests of BreakFree, and has potentially severe consequences for school-leavers, particularly in the light of there being no provision for the payment of compensation in appropriate circumstances. See, however, Appendix T for an outline of some of the circumstances in which BreakFree says bookings are changed by it.

The term, however, like others dealing with prices and refunds, may also not have been properly incorporated into the contract.

The contract that many school-leavers enter into with BreakFree takes place online. BreakFree's terms and conditions are located on its website, and a copy of those terms and conditions can be found at Appendix N. It is likely that traditional principles of contract will apply to a contract entered into online situation i.e. the customer will be bound by the terms appearing on the website only if he or she can be regarded as having consented to them. This will be the case if the provider has taken reasonable steps to bring the terms to the attention of the customer, and that this occurred before, or upon, contract formation⁴¹.

In our view, the mere fact that the terms and conditions of the contract are located somewhere on the same website that is visited by the consumer in order to enter the contract, does not necessarily mean that those terms and conditions have been successfully incorporated into the contract. Whether or not those terms and conditions are incorporated successfully by a trader into the contract depends, partly,

⁴⁰ See BreakFree's terms and conditions: Appendix N.

⁴¹ Willmott, Christensen and Butler, *"Contract Law"*, Oxford University Press, Victoria, 2001, pp 216 and 218.

on whether they have been satisfactorily brought to the attention of the consumer so that they can be considered to have consented to them.

Has BreakFree taken reasonable steps to bring its own terms and conditions to the attention of school-leavers? This would ultimately be a matter for a court. It will, in our view, depend on precisely what the customer was required to do when making the booking on the internet. For example, where a consumer is required to indicate agreement to the terms and conditions before placing an order online (e.g. by clicking an "I Agree" icon) there would be a strong argument that the provider has taken reasonable steps to draw the customer's attention to the terms⁴². The inverse may also be true – that courts may be less likely to find that terms and conditions formed part of the contract if they simply appear on the website⁴³. This latter process is the one which BreakFree appears to adopt.

Recommendation

15. That the BreakFree contract not include any clause purportedly giving BreakFree any right to unilaterally cancel or change a booking.
16. That accommodation service providers and reservation companies such as BreakFree guarantee to provide a school-leaver the apartment that has been booked, and in the event that this does not happen to compensate that school-leaver accordingly.

⁴² ibid
⁴³ ibid

5.6 “House Rules” – Unfair Terms and Harsh Consequences

Many young people, or their parents have complained that in addition to not being provided with copies of the “house rules” prior to entry into the contract, some of the “house rules” themselves contain terms which are unfair or which, when enforced rigidly by accommodation managers, produce unfair and harsh results. Copies of some sets of “house rules” are found at Appendices O - Q.

The “house rules” which apartment complexes seek to impose on school-leavers varied with each accommodation house. The sanctions which apartment complexes seek to avail themselves of in the event of a contravention of the “house rules” also differs with each accommodation house. The most common sanctions, however, are fines or eviction.

The rationale for the imposition of the various house rules is difficult to extract from the rules themselves. It might be assumed, however, that the “rules” are a response to challenges facing accommodation houses during Schoolies Week. Those challenges might include:

- Articulating clearly to tenants what is expected of them;
- Controlling the numbers of tenants staying in apartments;
- Reducing risks of damage to property, and injuries to people.

There appears to be widespread agreement that the majority of young people are not “trouble-makers” during Schoolies Week. The numbers of school-leavers who cause problems appears to be low. It is important that any response to such challenges be proportionate. In this respect we are not aware of any data or other empirical evidence on the size of any such perceived problems as those listed above. Without being informed of the size of any such challenges, there is a great risk that imposing onerous “rules” on all school-leavers results in unfairly treating the majority of them.

Recommendations

17. That accommodation booking service providers, and accommodation houses, review their terms and conditions to eliminate those terms which are unfair.
18. That the Office of Fair Trading amend the *Fair Trading Act* to incorporate provisions which enable a court to “reopen” a contract if either (a) in the circumstances it was entered into it was unjust, or (b) any of the terms and conditions of the contract are inherently unjust or produce unjust results.

Some of the more commonly relied on “house rules” are discussed in more detail below.

5.6.1 Spot Checks by Management

It is common practice for accommodation providers to arrange for “spot checks” of apartments, which it is assumed is an attempt to “catch out” any tenants who might be in contravention of the “house rules”. The purported right to do so is contained in the “house rules” of apartments. Apartment inspections take place without the consent of the tenant, and may take place at any time of the day or night.

An example of such a “house rule” is as follows:

“The management & Security reserves the right to inspect rooms at any time without notice.”⁴⁴

This practice has been of concern to some parents. Parents and young people have regarded such inspections as an invasion of privacy. It can be a concern for a 17 year old girl to have male security guards and apartment managers entering their apartment late at night.

Other tenants are not subjected to this kind of attention. Some young people have felt that the inspections are intimidatory. Other school-leavers have said that they feel that the inspections amount to a form of harassment.

Case Study 28

⁴⁴ Extract from Aarons Holiday Inn “House Rules”, see Appendix O.

A mother rang on behalf of her daughter who was in a room with two other girls at a resort at the Gold Coast booked through Break Free. They paid \$430 per person for a one bedroom unit in which they slept on two single beds and a fold out bed. They did not realise that one of the girls would have to sleep in a fold out bed at the time they booked it.

The mother said she felt intimidated when she dropped them off, and that it seemed more like a military camp where they were forced to line up to check in. There were three "burly guys" checking them in and there were about 30 fold out beds stacked in the corner.

At the time of check in, the kids were asked to record every mark on the wall. The principle concern from the mother at the time that she called was that the security guards and hotel management had been conducting room checks without consent and that they had been fairly regular at about 7.30pm each evening. They were done by three men and had been conducted both when the girls were in the apartment and when they were out of the apartment. The checks were without consent. One of the girls felt so intimidated and uncomfortable by these random inspections that she left the apartment complex.

They were upset by the random inspections, the mother said they had no idea this would take place at the time they booked the room. The terms and conditions had only been made available at time of check in.

The mother spoke to BreakFree who responded that this was a matter for individual resorts.

(See also case studies 3, 4, 13,)

Some spot check have been reported as involving physical contact with a school-leaver, such as forcibly taking a handbag from a young person and tipping its contents upside down.⁴⁵ In our view this conduct is likely to amount to the criminal offence of assault and/or trespass against the young person.

Recommendation

19. That any "house rules" which purport to enable unauthorised "spot checks" of apartments, be removed.

5.6.2 Bans on Visitors

It is not uncommon for apartment complexes to include, as one of their "house rules", a rule restricting the right of tenants to have guests visit them in their apartments.

Examples of such rules include:

"...only 2 visitors per unit at any one time. For security reasons no visitors on site between the hours of 6pm and 8am. The accommodation has been reserved in the names of the guests supplied to management & Security. Any person who stays overnight or found on site after 6pm will incur a charge to the relevant unit of \$100.00 per night. Due to fire regulations the number of guests in the units is restricted and management must first be informed if any additional person wishes to occupy a unit."⁴⁶

And

"Only registered guests are permitted access between the hours of 5.00pm and 8.00am, outside these hours only 2 visitors per unit at any one time. Proof of identity to be made available at any time on request."⁴⁷

⁴⁵ Ryan Heffernan and Greg Stolz, "Uninvited searches stun schoolies", *Courier Mail*, 20 November 2002, pp 6, see Appendix U.
⁴⁶ Extract from Aarons Holiday Inn "House Rules", see Appendix O.
⁴⁷ Extract from Surfers International "House Rules", see Appendix P.

Should a tenant have guests in their rooms after the banning time, even if only a few minutes afterwards, those tenants are liable to being evicted from their apartment, or to being fined. Young school-leavers have reported being evicted for minor infringements of this rule.

It is not clear exactly what the rationale behind this rule is, though a clear distinction can be drawn between prohibiting short-term visitors, and limiting the number of people who are allowed to stay overnight in an apartment. There appears to be a blurring of the two issues in the rules themselves.

The rules themselves in one of the above examples refer to “security reasons”. There is not, as far as we are aware, any explanation that is available in the public domain, which articulates what such “security reasons” are. Nor is there any empirical research which makes a reasoned argument for why rules banning visitors at such early times, is necessary.

Rather, it is the experience of some school-leavers that rules banning visitors from late afternoon are unfair, and produce harsh results. These rules have been reported as being arbitrarily used to evict tenants, in circumstances where the eviction is unreasonable. (See also case studies 4, 6, 10, 26) Further, “house rules” which do not enable groups of friends to gather in apartments in the evening, arguably contribute to greater numbers of young people being “forced” to congregate and socialise in public spaces.

An additional motivating factor might exist in relation to the imposition of these rules. As the pricing structure of BreakFree is based on a per person (rather than a per apartment rate), a person staying overnight is more than simply a “fire regulation” issue (as described in one for the rules quoted above). It is also potentially lost revenue for BreakFree (or another trader who operates on a “per person” basis.

Rules purporting to impose a charge (such as \$100) on tenants for every person who over-stays the banning time, are, in our view penalties, rather than any pre-estimation of any loss suffered by the apartment managers for having non-tenants visit past a time nominated by the apartment complex.⁴⁸ The imposition of such fees is, in our view, unlawful, and would not be enforceable in a court.

Recommendation

20. That “house rules” of apartments which either (a) purport to give apartment managers the right to evict tenants for having guests in the unit beyond a banning time, and/or (b) purport to impose a charge for having guests in the apartment beyond the banning time, be removed.

5.6.3 Bans on Glass

Many apartment complexes contain a “house rule” to the effect that school-leavers are prohibited from taking glass into their apartment with them. Examples of such rules include:

“STRICTLY NO GLASS BOTTLES ALLOWED IN BUILDING”

“Cans and plastic bottles only are to be brought onto the premises. Security guards will confiscate any glass bottles and they will be returned only upon departure. Save yourself the bother and do not purchase bottled drinks”⁴⁹

and

“We further acknowledge that cans only are permitted and stubbies will be confiscated”.⁵⁰

and

“No glass is permitted on the property, except containing food products. To ensure the safety of our guests any glass stubbies or glass containing drinks will be confiscated. NO GLASS OR ALCOHOL IN THE POOL/BBQ AREA.”⁵¹

Only one of the three examples of such rules quoted above, provides any rationale for the rule – that being to “ensure the safety” of guests. It might be assumed that this rule is a response to risks of

⁴⁸ See, for example Turner C, in *Australian Commercial Law*, 23rd Ed, Law Book Company, Sydney, 2001 at pp 205-207.

⁴⁹ Extract from 2000 Moroccan “House Rules”, see Appendix Q.

⁵⁰ Extract from Surfers International “House Rules”, see Appendix P.

⁵¹ Extract from Aarons Holiday Inn “House Rules”, see Appendix O.

stubbies or glass bottles being thrown from balconies. As far as we are aware, there is no analysis in the public domain of whether this response is a reasonable and necessary one in the light of the size of any perceived risk. There will, after all, still be glassware in most apartments in the form of drinking glasses and other kitchen and dining items.

The implementation of such a rule has been reported by young people as producing harsh and unfair consequences. School-leavers have reported being evicted for minor infringements of rules such as these (see also case studies 26, 29, 32 & 33).

One young person has observed that in circumstances where she arrived at an apartment at check-in time, and had not previously been given a copy of the "house rules", school-leavers find themselves in difficult positions. In the event that they cannot bring in alcohol in glasses, they may not be able to purchase other non-glassed alcohol because of their age, or otherwise may not have the funds to do so.

Case Study 29

A girl went to Schoolies Week at the Gold Coast. Her parents dropped her off on the Saturday for check in at reception. It was a lengthy check in process and the girls were asked to sign contracts. By the time they were given the contracts, the girls' parents had left. This was the first time they had seen the contract and it said they had to agree to comply with certain "house rules".

There was a term in the contract, which said that they were only allowed to bring cans and no stubbies into the apartment complex. This girl had 12 glass stubbies with her. She did not previously know there was a ban on bringing glass into this apartment, as she had not seen these rules before. She made the observation that if she had known about the rule before check in, she would not have brought stubbies. She also said that it was very chaotic and there was no real opportunity to hand the bottles over. She said she was faced with a dilemma at the time of check in – her parents had already left so she could not give them to them to take back to Brisbane and she did not want to give them to reception so she took them upstairs.

On the first night there was an inspection, management discovered the stubbies and they were confiscated.

After what had been a "happy" Schoolies Week the girl asked for her stubbies back at check-out time. The management refused. They said they were unable to give them back because if they did they would be supplying alcohol to a minor. The girl said that it was all right because her father was about to pick her up and they could give them to him. When the father arrived to pick them up the management said that they could not give him the 12 stubbies because they had received advice from the Liquor Licensing Commission to destroy the stubbies.

The girl subsequently asked for \$25 in damages, but the hotel management refused.

The conduct of the apartment manager in the above case study amounts, in our view, to an offence.

Other excessive use of this rule includes the report that one apartment manager sought to enforce a similar rule by confiscating a jar of vegemite.⁵²

Recommendation

21. That "house rules" of apartments which purport to give apartment managers the right to confiscate glass owned by tenants, and/or to subsequently evict tenants for bringing glass into the apartment, be removed.

⁵² Ryan Heffernan and Greg Stolz, "Uninvited searches stun schoolies", *Courier Mail*, 20 November 2002, pp 6, see Appendix U.

5.7 Evictions

Complaints

Legal Aid Queensland has received numerous complaints from young people, or their parents, about the eviction of school-leavers from their Schoolies Week accommodation. Issues of concern that were raised include:

- That the eviction was unwarranted;
- That the eviction was not carried out in accordance even with the “house rules” of the apartment complex;
- That “warnings” given to tenants by apartment managers were arbitrary and inconsistent;
- That “warnings” were given for activities that were not in contravention of the “house rules”;
- That the “house rules” which were relied on as the basis for the eviction, were unfair;
- That young people had not been shown the “house rules” at all;
- That young people had not been given any meaningful opportunity to read and consider the “house rules”, having only been given them at check-in;
- That no refunds or rebates of rental charges were paid to young people who were evicted, often early in their tenancy.

5.7.1 Unwarranted Evictions

In cases where evictions of young school-leavers from an apartment takes place, it is usually for what it alleged by the apartment manager to be a contravention of the “house rules” of that apartment.

As has been discussed above, those “house rules” are often not seen by a young person until the time of check-in to the apartment. There is often no meaningful opportunity for school-leavers to read the “house rules” and to consider their effects, prior to their entry into the contract.⁵³ This has the effect of denying a young person the right to exercise choice and book into another apartment complex.

Further, as has been discussed in the context of other sections of this Part of the Report, many of the “house rules” are unfair. An example of one set of “house rules” used during the 2000 Schoolies Week⁵⁴ is as follows:

- “6. EVICTION – Anyone breaking the following rules will be evicted:
- a. Using the pools/spas/BBQ areas outside the operating hours of 7am to 9pm daily;
 - b. Using the fire stairwells at any time other than when the fire alarm is activate;
 - c. Throwing objects from balconies including cigarette butts;
 - d. Using foul language or excessive noise from units;
 - e. Non-registered guests staying overnight in units. Management will undertake random inspections; and
 - f. Any other serious offence that Management believes violates the safety and convenience of other guests, or the security and integrity of the building’s fittings and facilities”

A number of young people and their parents reported extreme dissatisfaction with the manner in which some apartment managers evicted tenants. Some evictions appeared to have been arbitrarily or inconsistently carried out. It was claimed that on some occasions when the tenants or their parents sought to question the apartment manager about the basis for the eviction, or sought to provide an explanation to an apartment manager about the circumstances which led to an eviction, that apartment managers refused to engage in any discussions and refused to consider the explanations offered by the young people or their parents.

The obligations on apartment managers to implement a complaints handling process are discussed in more detail at 5.9 below.

When an eviction is made, a young tenant is forced onto the street. It can be difficult to find accommodation during Schoolies Week if it has not been booked in advance, with apartments often full due to the popularity of the event. This means vulnerable young people can be left in a situation where

⁵³ But see Appendix R (Aarons Apartments).

⁵⁴ See Appendix O – Q for examples of “House Rules”

they have no accommodation and no significant source of income to find other accommodation. This is accentuated because these young tenants are not refunded for the remaining unused days in the apartment.

5.7.2 Failure to Provide Refunds

A number of school-leavers or their parents complained that having been evicted, the young people were not provided any refund of any portion of their rental for nights that they were no longer going to stay in the apartment.

Evictions usually take place for what apartment managers allege are contraventions of the “house rules” of an apartment such as those discussed above, that is, they take place because of what the apartment manager claims is a breach of the accommodation contract entered into by the school-leaver.

It is a fundamental principle of contract law that if a contract has been breached, the injured party can claim damages for the loss they have suffered as a result of that breach. The injured party must, however, take all reasonable steps to reduce that loss.⁵⁵ Where the apartment manager claims that a tenant has breached the contract, it must take all reasonable steps to reduce the amount of loss resulting from that breach. In order to fulfil this legal obligation, it must in our view, take reasonable steps to relet the apartment to other tenants. In our view, where the apartment manager takes no steps to relet the apartment during the period in which it is vacant and chooses instead merely to retain the full amount of the rent paid by the school-leavers, it is failing in its legal obligation to mitigate its loss.

Case Study 26

A girl called Legal Aid Queensland from a public phone one morning during Schoolies Week outside the apartment from which she had just been evicted.

She said that a group of 5 girls had booked their Schoolies Week accommodation through QANTAS. Each of the girls had paid approximately \$500 per person. They paid \$100 in bond originally.

At the time of check in the girls were asked to pay a further \$100, thereby totalling \$200 in bond each. They felt they had no choice but to pay the additional bond amount. They were also asked to sign a “contract” which they saw for the first time. One of the terms was that you could not have visitors after 6pm. There was another term which said that no bottles were allowed to be brought into the apartment.

One evening the five girls invited six boys who were staying in the apartment immediately below them to their room for a party. They did not know them. This took place between 6.30 and 7pm. Of those 6 boys, four were tenants of the apartment below and two of them were visitors to that lower apartment.

The hotel manager came up at some time between 6.30 and 7pm and entered the apartment. He subsequently evicted the 5 girls. There were no warnings given. They were evicted on two grounds 1) that they had in their apartment after 6pm two people who were not staying in the apartment complex and 2) that they had alcohol in bottles in the apartment. The hotel manager said it was irrelevant that the girls did not know that two of the boys were not staying in the apartment complex.

That evening, some members of a community-based volunteer organisation sought to “mediate” the dispute and the girls were allowed to stay that night, but had to check out the following morning. A number of the parents of the girls contacted the apartment complex to discuss what had taken place. The management refused to reverse its decision and refused to refund any monies.

They parents were upset that there was only one instance where any rules had been broken and no warnings had been given before they were evicted. They said that the grounds on which they were evicted were unfair, certainly in relation to having two people who did not happen to be guests, in circumstances where the girls assumed that they were. In relation to

⁵⁵ See for example, Willmott, Christensen and Butler, op cit, pp 706

having alcohol in bottles the parents believed it was an excessive response and that eviction was unjust and unfair.

A Legal Aid Queensland solicitor rang the apartment complex and spoke with the manager who said that every schoolie who checked in had to sign a contract. The manager acknowledged that the tenants had not seen the contract beforehand. He said that his policy was that, irrespective of what else the rules might say, there are three "fundamental" rules which will result in eviction: (a) no objects to be thrown from the balconies, (b) no alcohol allowed in glassware in units, and (c) no visitors after 6pm

The manager said that it was his policy that when he evicts people he does not refund the rent as he does not try to re let the room. He said that in addition to the schoolies who were renting apartments, he has non schoolies who rent rooms during that period of time as well, such as an American tourist, and some elderly ladies who come up each year.

He said the particular room rented by the girls was on "sale" to QANTAS and that they had reserved the room and there was a lease back from QANTAS which would enable him to re-let it, but that he did not intend to do that. He said that if he was to refund money in circumstances in which he was not going to re-let he would be losing money. He said that BreakFree is usually their "agent" during Schoolies Week but that QANTAS "forced" him to take it.

He said he had a few spare rooms, but he did not wish to let them. He said he had received "a dozen phone calls" from people wishing to book accommodation during Schoolies Week, but that he was not going to let it to them because he was concerned that they might be people "coming to prey on schoolies". He also said that he was not prepared to put the room on the internet because he would risk "getting louts who want to prey on girls".

Recommendations

22. That there be a complaints handling mechanism that is available during Schoolies Week for school-leavers to dispute whether an eviction should take place, and in the event of eviction, to determine what rent, if any, should be refunded to those school-leavers.
23. That in the event of an eviction of tenants from an apartment, accommodation service providers must take all reasonable steps to relet that apartment.
24. That where an apartment has been relet following an eviction, the evicted school-leavers must be refunded the relevant proportion of their rental.

5.8 Discrimination

Complaints

Young people and their parents complained that school-leavers were treated differently – and more harshly – than non-school-leavers in renting Schoolies Week accommodation.

Background

Young school-leavers who rent apartments during Schoolies Week are treated differently to people who rent apartments at other times of the year. There are a great many ways in which this occurs, some of which include:

- The refusal by some accommodation houses to take bookings directly from young people, but instead requiring them to book through an accommodation reservation company such as BreakFree;
- The charging of bond to stay in apartments;
- Pricing accommodation on a “per person” basis rather than a “per apartment” basis;
- Requiring school-leavers to comply with “house rules” which are far more onerous than the usual by-laws of an apartment

The *Anti-Discrimination Act (Qld) 1992*

The *Anti-Discrimination Act (Qld) 1992* prohibits discrimination in the area of the provision of accommodation on the grounds of age.⁵⁶

It is arguable that the different treatment of young school-leavers compared with other people staying in the same apartment complexes at other times of the year is discriminatory.

Ultimately, the issue of whether or not unlawful discrimination occurs is a question to be determined by the Queensland Anti-Discrimination Tribunal, should a complaint be made. There has been no such determination of the Tribunal to date, though young school-leavers have made complaints to the Anti-Discrimination Commission which have been settled without proceeding to the Tribunal.

⁵⁶ *Anti-Discrimination Act (Qld) 1992*, s7 and Part 4, Division 8.

5.9 Contraventions of Restricted Letting Agents Code of Conduct

Complaints

Many of the young people, and the parents of those young people who have complained to Legal Aid Queensland, were concerned that they had received harsh treatment from apartment managers. Those complaints included:

- Disrespectful treatment of young people;
- Disrespectful treatment of parents;
- Refusal to provide young school-leavers with copies of contracts, in the event that a dispute arises;
- Refusal to listen to complaints, or alternative explanation for incidents, from school-leavers or their parents;
- Stealing property belonging to tenants (see Case Study 29);
- Directing tenants, on the threat of eviction, to perform the “punishment” of cleaning the common areas around a pool (See Case Study 7).

5.9.1 The Obligations of Apartment Managers as “Restricted letting Agents”

Apartment managers are regulated by the provisions of the *Property Agents and Motor Dealers Act (Qld) 2000* (“PAMDA”). For the purposes of the provisions of PAMDA, apartment managers are known as “restricted letting agents”⁵⁷. Their conduct towards tenants is regulated partly by the provisions of PAMDA, including its Restricted Letting Agency Practice Code of Conduct (“the Code”)⁵⁸.

The Code requires apartment managers to, among other things:

- act honestly, fairly and professionally in the conduct of a restricted letting agency practice (section 7(1) of the Code);
- treat a customer honestly and fairly (section 7(2) of the Code);
- not engage in high pressure tactics, harassment or unconscionable conduct in the conduct of a restricted letting agency practice (section 14 of the Code).

Some of the complaints about the conduct of apartment managers is such that the conduct would, in our view, fall well below the standards set out in the Code.

The Code also requires apartment managers to implement a complaint handling process in the event of disputes. The Code provides that “The agent must have a reasonable, simple and easy to use procedure in place for handling complaints by clients or customers of the agent” and that the apartment manager “must have information readily available to inform clients and customers of the procedure”.⁵⁹

The widespread experience of school-leavers or their parents who have a dispute with the accommodation manager over an issue relating to the rental of accommodation is that there appears to be no procedures at all in place for handling complaints, let alone were they provided with any information about such a procedure.

5.9.2 Other Causal Factors in Poor Relationships

In our view, part of the problem underlying these complaints of poor or disrespectful treatment of young people by apartment managers or security guards, is that the relationship between them is shaped to some extent by the “house rules” of many apartment complexes which purport to give apartment managers extreme powers over tenants (such as by allowing them to enter apartments at any time of the day or night without permission and without the tenants being present). The removal of such unfair terms from “house rules” would go part way to establishing a more respectful relationship between tenant and manager.

Recommendations

⁵⁷ s 11 *Property Agents and Motor Dealers Act (Qld) 2000*.

⁵⁸ *Property Agents and Motor Dealers (Restricted Letting Agency Practice Code of Conduct) Regulation 2001*

⁵⁹ s38 of the Code.

25. That apartment managers, as restricted letting agents regulated by the *Property Agents and Motor Dealers Act (Old) 2000*, be aware of their obligations under the Restricted Letting Agency Practice Code of Conduct.
26. That the provisions of the Code be enforceable.
27. That apartment managers comply with the Code, and that disciplinary action be taken by the Office of Fair Trading against restricted letting agents who contravene that Code.

Appendix A: Case studies

Case Study 1

Query from teacher at a Gold Coast school about 3 areas of concern which his students had raised with him in the week immediately prior to Schoolies Week. These students would be staying in rented apartment accommodation during Schoolies Week. The concerns of the young people were:

1. whether it was lawful for bond to be taken from schoolies, but not from other tenants;
2. whether students' parents could have their credit cards billed for very large amounts of money when they gave credit card details to the apartment managers at the time of check in as "security". The students were concerned about whether their parents were liable in such event, and if so whether that liability was unlimited.
3. whether the practise of apartment managers not allowing schoolies to check in unless they had a credit card imprint from their parents, was lawful.

Case Study 2

The father of a girl who stayed at an apartment during Schoolies Week rang on the morning after she was threatened with imminent eviction from what he called a "reasonably high profile complex". The incident which led to the eviction threat took place early in the week. All of the girls staying in this apartment were told by the apartment manager that they were to be evicted because the manager believed that one of them had set off the fire alarm. At the time the father rang for advice the threat was still hanging over the girls' head that they would need to check out by 9am the following day. The manager had indicated that a charge of some description would be billed to the father's credit card in relation to the incident.

The girls said that none of them had set off the alarm. The father was concerned about whether his daughter and her friends could be evicted from their apartment in such circumstances. He was also concerned about whether any amounts could be debited to his credit card in relation to the incident which the manager believed one or more of the girls was responsible.

Case Study 3

The mother of a girl who attended Schoolies Week with four other girls on the Gold Coast, having booked their accommodation through BreakFree, rang with some concerns about the "house rules" of the apartment complex after the girls had checked in.

The mother said that the apartment manager told her daughter at check-in that management would do "spot checks" of their apartment to see if there was any damage to the apartment or if the apartment was unclean. The mother wanted advice about whether or not management had the right to perform spot checks at any time of the day or night. She queried what would happen if the girls refused to allow people to enter their room, and whether, in such circumstances, some of the bond paid by the girls would be kept.

Case Study 4

A girl called seeking advice about problems that had arisen with the management of the apartment complex. She instructed that a group of girls had arrived at their apartment at about 3pm or 4pm on the Saturday to check in to their Schoolies Week accommodation at Surfers Paradise. One of the group did not arrive until 5pm or 6pm to check in. The girls had booked through BreakFree and paid in advance, including an amount of \$100 as bond. When they arrived to check in, the manager told them that they were required to pay a further \$100 in bond, or to provide a credit card imprint. At the time they checked in they were asked to sign a "contract". The girls were reluctant to sign the document, but were told by management that if they did not sign it the booking would be cancelled. The felt they had no choice and signed the documents, that they know to be the "house rules".

Having checked in, the girls wanted to move into their room. The apartment manager refused to give the girls the keys, however, until the remaining girl who was party of their party had arrived, and checked in. The girls were forced to wait for some time until they were allowed to move into their unit.

On the first night they stayed in the apartment the girls had been listening to music on their stereo. There was a complaint about noise and management told them to keep their noise down. There were permanent residents living on either side of their apartment. This was a fair response. The girls lowered the noise.

On the Sunday night another 3 friends visited them in their apartment. At approximately 8pm 5 or 6 people from a Schoolies Week volunteer organisation came to their room. It appears that the volunteers play a role during Schoolies Week of liaising between schoolies and the police or apartment managers in order to limit "problems" during the week.

After the volunteers had arrived, and while 3 of the girls were on the balcony talking, the apartment security came to the room. The girls say that they did not believe that they were making excessive noise. The girls were told that there are too many people in the room and that there was some issue about: (a) the fire escapes being used, (b) too much noise, and (c) that you can't visit each others' rooms after 7pm even if you're staying in another room in the complex. These rules were included in the terms and conditions of the "house rules". They were not advised that there was a policy that eviction would occur after three warnings.

At 9.40pm that evening all the girls but two had left the apartment. One of the girls was sick and she was lying down. The two girls were in a bedroom watching TV when one of the managers entered the apartment, without seeking consent, and told them that everyone was being evicted. The grounds that the manager gave were: excessive door slamming of the fire escape door, noise in the corridor and noise in the lift.

One of the two girls in the apartment at the time tried to respond that the girls in their apartment were not responsible for any such excessive noise as alleged, and that there were five groups of schoolies on the floor. The girl said she felt that they were being singled out. The girls were given 15 minutes to pack at which time they had to be in the foyer.

There were a number of phone calls between some of the girls' parents and the manager. The manager told the parents of one of the girls that she was intoxicated and had been "abusing guests". The girl was upset at this allegation, which she said was untrue. She said that she believed that he had labelled her intoxicated because she was being assertive in resisting his efforts to evict them. In the course of debating with the manager whether they should be evicted, the manager said that on the 1st evening they were given a "warning" about the noise. The girls said that the warning was couched in terms of "turn it down or we will take away the stereo", and that it had not in any way been described as the first of a number of accumulating warnings which might lead to eviction. She said that they had never been advised of any "warnings policy" of the apartment complex.

Case Study 5

The mother of one of a group of girls which had booked accommodation through Sports Break (BreakFree) rang seeking legal advice. Some of the parents had accompanied their daughters at check-in. They went to the room with their daughters and formed the view that the room was "the pits" – the carpet was smelly, the kitchen table was missing - it was, the mother said, "beyond imagination". The mother was concerned that the accommodation was being promoted as 3 ½ stars and that it was much less than that.

The mother said that they were so shocked with the standard of the accommodation that they did not want to stay there any longer. The girls did in fact stay there, but the mother was concerned about whether they would get their \$100 bond back and were concerned that the apartments would try to use that money to do repairs. No condition report was done at the time they checked in. In the absence of a condition report, the girls took photos at the time to record the condition. One girl felt it was so bad that her holiday was diminished. They felt they had no option but to stay because they thought there would be no accommodation available at Schoolies Week at the last minute.

Case Study 6

A group of guys stayed on the Gold Coast. At the time they checked in they were given "a bit of paper to go through". The guy who called seeking advice said that a girl who was soaking wet visited the boys'

apartment at 9.05pm one evening and there was some rule prohibiting this. Management was saying what had taken place was a breach of contract.

The caller said that what had taken place was trivial, and that their visitor was only a few minutes after the time the rule prohibited visitors. He says that there are a number of older people who are non-schoolies staying in the apartment and queries whether they would have to comply with a rule like this.

Case Study 7

A group of guys were staying in accommodation on the Gold Coast. The manager threatened all of the boys with eviction (and to withhold the bond) because a security guard said he saw one of them urinating off a balcony at 6.10am one morning. The caller said that none of their group did this and queried whether maybe it was someone from an apartment below or above theirs. The manager subsequently decided not to evict them but directed the group to clean the common areas of the block. They had already cleaned the common areas on one day and they had been directed to do it again on another day. The caller said heaps of other groups had been "punished" as well by doing cleaning in common areas. The caller wanted advice about whether they had to continue to do the cleaning as management directed. They are concerned that if they don't they will be evicted. There were issues about the punishment of a group of people for the alleged behaviour of one person.

Case Study 8

A group of 5 girls had guests from another unit in the apartment complex they were staying in visit them. The group of guests, however, also included someone who was not staying in the same apartments. This person had not been invited by the girls, but was a friend of the group invited by the girls. This person sprayed the unit with a white chemical powder i.e. the fire extinguisher. The girls said they did not authorise him to do it, he was not a guest and they had no control over him, yet they were sent an invoice for \$500 which was broken down as recharge of fire extinguisher \$200, shampoo carpet of \$100, dry cleaning of furnishing \$150 and general fee \$50. The girls were very concerned that this fee was the exact amount of their bond i.e. \$500 and that they were being billed for amounts that may not have been expended, or were not the actual cost of repairs.

Case Study 9

A group of girls were staying at the Gold Coast during Schoolies Week. When they arrived to check in they were asked to pay an extra \$100 bond per person even though they had already paid that amount as a bond to BreakFree who they booked through. They paid three months in advance \$100 as a deposit/bond and \$350 each, plus the extra \$100 on arrival. They were given a contract to sign when they checked in but said they could not read the terms and conditions. After check-in, they went to their room and were upset about the quality of the apartment. There were three warnings for noise very early on (i.e. first couple of nights) and they were subsequently evicted.

They were then seeking to transfer to other accommodation and the query was whether they were entitled to a refund on the unused nights in the new place.

Case Study 10

The father of one of four boys staying at the Gold Coast rang for legal advice in relation to his son's experiences during Schoolies Week. The boys paid \$385 each i.e. a total of \$1,540. The father of one of the boys sent a cheque for that amount. The boys were given the apartment's "house rules" at the time of check-in. They had not seen the "rules" beforehand.

The boys were evicted from their apartment after two nights. The father spoke with the manager soon after the decision to evict the boys had been made, and was advised that there had been one occasion when they were asked to keep the noise down and there were a few times when they were a bit loud. The manager told the father that the ground on which the boys were evicted was for having people in the room past 6pm and that this was contrary to one of the terms of the contract. The friends of the boys had stayed overnight in the apartment, and were packing to leave when the guest was discovered.

They were evicted soon after 6pm in the evening. The father was concerned that the tenants were given the rules to look at only when they checked in, that it was unfair for all of the boys to have been evicted for what had happened, that the boys were only 17 years of age and had nowhere to stay that night, and that the manager said there would be no refunds even though they had paid for the week and only stayed two nights.

Case Study 11

The mother of one of five guys went to the Gold Coast for schoolies, rang for some legal advice about what had happened to her son. Her son had advised her that a visitor to the apartment threw some furniture off the 21st floor apartment balcony. The son was not present when this took place, and had not happened with the consent of the son. This was a major incident, and the police had been called. The boys were evicted. The apartment complex wanted the name of the person who had thrown the furniture. It appears that the boys did not want to give the apartment complex the name of that person for risk that this person would be charged with an offence. In the course of the discussions between the boys and the apartment manager, the management was said to have said words to the effect of "give us the name of the person and we won't evict you."

The mother said that her son had told her that at check-in he had signed something, but that he hadn't read it properly.

The mother sought advice about the liability of her son for the damage to the furniture, and whether he should have been evicted for what had taken place.

Case Study 12

A girl who had booked Schoolies Week accommodation for 2001 through BreakFree rang for legal advice in relation to the compulsory purchase of a ticket for a dance party. At the time the five girls in question booked, it was a condition that they pay an additional \$25 each for the "Evolution Dance Party".

The tickets were not sent out, but rather, schoolies had to pick them up on the day of the dance party from a ticket collection point. The girls took a taxi to pick up their tickets. They were told when they arrived at the collection point that they could not attend on their preferred Wednesday evening party as it was fully booked. They reluctantly agreed to go to the Tuesday night party. On Tuesday the girls caught another taxi to the event, but when they arrived they were told that the party had been cancelled. There were no signs saying to return the next night and in addition they were aware that it had been booked out.

The girls were seeking refunds of the taxi fares and their tickets. BreakFree refused to refund the ticket amount or to pay compensation to the young people for their taxi fares.

Case Study 13

A parent of one of a group of girls who had booked into an apartment at the Gold Coast during Schoolies Week through BreakFree rang for some advice about a range of issues that the parents were concerned about. The apartment complex had sent out to the girls a copy of its "house rules" prior to check-in.

Some of the parents accompanied the girls at the time of check-in to inspect the apartment their daughters would be staying in. The parent had concerns which included the following:

1. that the "house rules" appeared to give security guards the right to check the apartment at any time
2. whether or not the cost of a replacement key was actually \$100
3. that the accommodation was in poor condition;
4. that the cost was in this woman's words "excessive" given the condition. It was, she said "in disgraceful condition".

She said that on inspection the apartment smelt musty, there were stains on the carpet and the smoke detector was lying on the floor. The parents of the girls saw the quality of the apartment at check in and

were going to refuse to allow the girls to stay there. But they were concerned that if they did that they would lose the \$500 bond the girls had paid. They paid \$299 per person plus \$100 bond each.

Case Study 14

A mother of a girl who had stayed at an apartment complex booked through BreakFree contacted Legal Aid Queensland to complain about a bond refund dispute.

She said she went to pick up her daughter after Schoolies Week on the Saturday morning and helped her daughter and some of the other girls check out. Approximately 15 mins on the way back to Brisbane they realised that one of the girls in the car hadn't returned her copy of the key to reception. The mother rang the apartments on her mobile and spoke with the receptionist. She explained that it would take approximately an hour to turn around and get back to the apartment given the traffic blockages and asked whether it was alright to return the key the following day. The receptionist said that it "was not a problem" to do so.

The following day the mother drove back to the apartment complex with her daughter and returned the key.

Subsequently the daughter went on to the BreakFree website to check on the status of the return of the bond for her and her friends. She discovered that each of the four of them had been deducted \$25 from their bond in relation to that key which was returned late. The mother rang the apartment manager to query what had taken place. The mother said that the apartment manager was extremely rude and refused to acknowledge that the conversation with the receptionist had taken place. He said that a replacement key may have been cut and if so it was a term of the contract that they be billed \$100 for the cost of a replacement key.

The mother was concerned about a number of issues, including:

- that no money should have been deducted at all for the key because it had been returned as arranged with the apartment complex;
- that the apartment complex failed to address the complaint, and had instead been rude;
- that the only way to retrieve the bond was to litigate against the apartment and/or BreakFree
- in the event that a key is lost, then the amount for a replacement should be debited against the tenant who lost the key, not all of the tenants;
- that the alleged cost of a replacement key was exactly the amount of the bond. The mother queried whether the cost of replacing the key was in fact \$100 or if that amount was arbitrarily chosen

Case Study 15

A young woman contacted Legal Aid Queensland for some advice in relation to a bond retrieval dispute. The girl had booked through BreakFree to stay in an apartment with 2 friends during Schoolies Week.

Before check out they cleaned their apartment extremely well. They were advised by the hotel managers that they were not allowed to check out until a physical inspection of their apartment had been done by one of the managers and that they needed to be physically present at the time it took place. They were therefore required to wait around the apartment complex while they waited for the hotel manager to inspect the premises. This was inconvenient for them. The inspection nevertheless took place and they passed and were allowed to check out.

At some stage later the hotel manager advised them that he believed that there had in fact been damage caused to the apartment. He said that there were burns in the carpet under a curtain and in a main bedroom and that the burns were picked up by the hotel cleaner when the apartment was being cleaned sometime after the inspection. The hotel manager's claim was that it was not possible to pick these up until the cleaner commenced cleaning and he believed he did not need to look closely because on the face of it the apartment had been so well tidied and cleaned.

Each of the three tenants had paid \$100 bond per person (total \$300). She went on to the BreakFree return of bond website and discovered a notification on that site which said: "severe staining and burning of carpet from use bong" and that they were retaining the \$300.

The young person was concerned about a number of aspects of what had taken place, including that (a) they did not cause the damage during their stay, (b) they had not used a bong, (c) they had not seen the damage that was alleged as they had already passed the inspection and checked out, (d) it is extremely difficult to challenge the allegation of the apartment complex. In this last respect, she observed that it is an effort for them to return to the Gold Coast in order to see what damage has been allegedly caused. They do not know, for example if in fact any damage had been caused, and if it had whether it was caused before they checked in by previous guests or whether it was caused afterwards. She was concerned that there was no dispute resolution mechanism other than the Small Claims Tribunal.

Case Study 16

A group of four girls booked accommodation at the Gold Coast through Harvey World Travel. That accommodation was a BreakFree-controlled apartment complex. They paid \$520 per person and were charged \$250 bond each.

At the time of check-in, the girls signed documents, the "house rules" and other papers, but were not given copies of them. When the girls, and one of their parents, went up to the apartment, they noticed certain damage already done to the apartment. They noted certain items on an inspection report, which was returned to management. In filling out that form, their inspection focused on items which had been soiled or were in need of repair on the inside of the apartment, these included: (a) that the carpet was soiled and stained in various places, especially in the dining and living areas; (b) that the walls of the apartment were marked throughout; and (c) that the cupboard door above the kitchen was loose.

The door to the apartment was also broken when they checked into the apartment. Their inspection prior to moving in did not reveal this. They assumed at that early point in time that the door to the apartment would be functioning. They later realised that the closing mechanism of the door did not engage fully, which meant that the door did not "click" closed when shut. This problem existed prior to the girls taking possession of the apartment.

Additionally there was a split in the wood on the external part of the door near the hinges which the girls maintain was due to a lack of a door stop.

The girls argued that the door was damaged, either by someone, or over a period of time prior to them checking into it. The girls had no control over the failure to have a doorstop put in. It was the responsibility of the management or the hotel owner.

A security guard noticed the problem and alerted the apartment manager to it. The apartment manager accused the girls of breaking the door. The girls were charged \$880 for the repair of the door.

After Schoolies Week was over the girls were sent a cheque for \$120 – the difference between the total \$1,000 bond and \$880 in repairs. The letter enclosed a quote for a new door for \$588 but did not break down the other costs eg locksmith and painting.

In attempting to resolve the dispute, the girls sought copies of the documents they signed, however the apartment manager failed to provide those documents.

The girls are extremely concerned that their bond is being used for damage that previously existed, or was a result of fair wear and tear in addition to the failures of the hotel management to put a door-stop in place to prevent such damage. They are concerned that the amount of their bond has been kept without any itemisation of the amounts it is said to relate to. They are concerned that the only mechanism to pursue a return of their bond is to commence legal proceedings.

Case Study 17

The mother of a girl who had gone to Schoolies Week in 2002 called. Her daughter and three friends had paid \$100 deposit approximately a year ago through BreakFree in order to stay in an apartment at Surfers Paradise. The apartment was supposed to be good quality. The bookings were arranged by one of the girls who was the "organiser". In September 2002, each of the girls paid \$416. On October 16 one of the girls downloaded the booking form from the BreakFree site which noted all four girls' names.

On the first day of Schoolies Week all the girls arrived at their accommodation and were advised that their booking had been cancelled.

The girls later discovered that instead of paying \$416 per person, they should have paid approx \$498 and that each was short \$82. It is not clear whether the price was increased after the initial booking had been made. BreakFree cancelled their booking on 19 October, without advising them. The mother's daughter was upset that BreakFree had not contacted her, or other friends to advise them of its intentions, as BreakFree knew that she would be staying in the apartment and had received a very significant amount of money from her to stay there. The mother of this girl had also written a covering letter to BreakFree at the time of the payment of the \$416. That letter included the parents' contact details. BreakFree said that it had sent an email to the girl who was the booking organiser, advising that they were required to pay additional monies. By the time the email was sent, however, the booking organiser had changed her email address. There was no other attempt to contact any of the girls in the groups.

One of the fathers of the girls accompanied them to check-in. After 5 hours of discussions and negotiations, including involving the father, the girls were relocated to a different block of apartments. The second block were of a significantly lesser quality and in a considerably lower price range. They were told they would get a \$112 refund each because of the difference.

Some days later one of the mothers sent an email to BreakFree querying how the \$112 had been arrived at because she was concerned that it did not adequately reflect the difference in the quality of the two apartments. She received an email reply from BreakFree to the effect that the previous offer of a refund had been a mistake and that it would not be providing any refund at all.

She was extremely concerned that BreakFree had the girls' money from September until Schoolies Week (including from October 19 when they cancelled the booking until Schoolies Week). She had a conversation with BreakFree in which they said that the booking was cancelled within 45 days of the commencement of schoolies week and that as a result there was a right of forfeiture. In the conversation with BreakFree, it claimed it had tried to contact one family member but that the telephone number was different. The mother also said that she had a safety concern as the two sets of girls were separated when they were put into the emergency accommodation.

Case Study 18

A mother rang about her son who was one of eight friends who paid approximately \$400 each for the week at Schoolies Week. The son became ill before Schoolies Week and could not go to Schoolies Week. He sought a refund of bond/deposit. No refund was going to be provided.

Case Study 19

The mother of a boy called for advice in relation to a number of issues flowing from her son's booking of Schoolies Week accommodation. She said that two rooms of five people each were booked through BreakFree by a travel agent. The total amount paid had been \$6,400, broken down as 10 x \$515 (\$5150), plus 10 x \$25 for compulsory dance ticket (\$250) plus 10 x \$100 bond (\$1000). Just prior to the final payment on 10 September 2002 one person was unable to attend, and was forced to withdraw.

The mother called the travel agent who in turn contacted BreakFree, to enquire about whether it would be a better option to cancel the current 5 person booking and rebook for 4 people. She described what she was told and her observations in this respect as follows:

"1. If one person pulled out they would lose all of the money & there would be no refund at all of any sort. Therefore they would keep \$640.00, and

2. If that person did pull out then the other 4 would have their rate increased to cover the fact that there were only now 4 staying in the room and not 5. Therefore the room price would increase (we did not discuss by how much) but would be in excess of the \$515.00 they had already paid.

After a great deal of discussion in trying to establish with them how they could keep the \$640.00 and then charge the others more, we effectively told them that the "other person" would not be cancelling and would keep her booking.

They then told us that no matter the circumstances, if only 4 were in the room then extra money would be payable, and no refund would be made on the 5th person!

It is of concern that BreakFree have a monopoly on "schoolies", and that the prices are extremely inflated for those bookings, whether it be by schoolies or the accommodation places themselves, or possibly more correctly both. My other concern is the charge for the "compulsory" evolution party. There are a number of students who are not interested in attending this and yet a booking through BreakFree for accommodation cannot be made without this charge being incurred.'

Case Study 20

The mother of a son who will be staying with 7 other boys in an apartment on the Sunshine Coast during Schoolies Week 2003 called. Her son and his friends had booked through BreakFree. The mother rang seeking advice about whether there was any recourse that could be taken about what she believed was the excessive pricing of rental accommodation for young people during Schoolies Week.

Her son's friend had been the organiser for the booking. They had entered into an agreement to pay \$2,408 for the apartment. The mother subsequently discovered that the same apartment was being advertised at the same time for \$1,694, and she herself contacted the apartment and obtained a quote for that amount. In the course of that conversation the apartment manager told her that the apartment did not take bookings from schoolies except through BreakFree.

The mother rang BreakFree and says that she was told that "because schoolies is a specified product the charges are not subject to any sort of regulation". She strongly believed that it was unfair that young people could not rent accommodation during Schoolies Week for the same price as adults.

Case Study 21

A guy from the Sunshine Coast checked in to accommodation on the Gold Coast with some of his friends.

The door to the apartment was missing an essential component – the slow-release "elbow" which controlled the speed of the door's opening and closing, and which prevented the door from swinging all the way back and hitting the wall. The boy's noticed that this problem had already caused there to be pressure on the hinges of the door from the door's use by previous tenants. The door kept hitting the wall despite the best endeavours of the tenants to prevent it from happening.

In the course of the week, one of the top hinges from the door fell off. The boys noticed this when they were returning to the apartment. They believed that someone had tried to break into the apartment so they notified the security guard who came up to have a look at the door. It was at this time that they discovered that there was a problem with the door. They learnt from the security guard that all the other apartments had elbows on the doors.

The door was fixed during Schoolies Week while they were there but after it was fixed the door handle and the closing mechanism did not operate properly. This resulted in the door not opening on the final evening of Schoolies Week when all the boys had returned to the apartment. This caused them significant inconvenience. Ultimately a security guard used a knife to open the door.

The handy man from the apartment building came up on the Saturday morning to fix the door but, was initially unable to. He was about to ring a locksmith when one of the boys was able to operate the door. They rang reception and told reception it would not be necessary to call the locksmith. Someone from reception came up and agreed the door was fixed and it worked fine from then on.

After the end of Schoolies Week the boys discovered that they were charged \$727 for a new door. Their bond of \$600 (6 x \$100) was retained and they were advised they would be billed for the remaining \$127.

The boys were concerned that they were not responsible for the damage to the door, but that rather that responsibility should lie with the apartment manager who had failed to have an elbow on the door. The damage was caused by fair wear and tear of the door in those circumstances.

The boys believed that their bond was being used to repair a problem that was pre-existing and was not of their making.

Case Study 22

A mother called Legal Aid Queensland about son who booked into an apartment with his girlfriend and a friend. The bookings were done through BreakFree. The three young people had paid a security deposit of \$300 in January 2002. In September 2002 her son paid another \$409, the friend paid \$400. By September, however, the girl was not going because they had broken up.

In approximately Sept/Oct the mother rang BreakFree to see what the ramifications of the girlfriend withdrawing would be. BreakFree advised her it would cost more for her son and his friend to stay in the apartment if the girl did not accompany them. BreakFree advised her that the extra amount would be "no more than \$30 or \$35". On 5 November the boy's friend got a call from BreakFree and was told he had to pay a further \$91 and that the mother's son would need to pay \$80 in order to make up for the cost of the girl not being there.

On 6 November the mother rang BreakFree and spoke with a receptionist. She queried the latest advice and said that she had previously been told it would be a maximum of \$35 extra. The receptionist said words to the effect of: "No, we would never have said that", and told the mother that either they pay the combined extra \$171 or the booking would be cancelled. After subsequent discussions, it was agreed that the mother would pay \$71 by credit card then and that BreakFree would try to use the \$100 paid in January by the girl as the remainder of the \$171 figure. The mother asked that this arrangement be put in writing and the receptionist agreed. On the following Monday the mother spoke with that same receptionist again, who said they must pay the extra \$100 or that the booking would be cancelled. The mother reluctantly paid it by credit card.

On the next Friday evening another friend of the son decided he wanted to join the group. The mother tried to ring BreakFree, but it was after hours and there was no answer so she rang the apartment complex directly. In the course of that conversation the woman working there made a comment in relation to the rental paid by her son: "that is a lot of money for this place because this is a three star, not a four star hotel".

On the Saturday morning of Schoolies Week the third boy paid \$299 directly to the accommodation provider at the time of check in. There was no deposit paid. The apartment receptionist told the mother to ring BreakFree and advise them of what had happened. The mother was given a 24 hour number which she rang but could not get through.

The mother subsequently rang BreakFree on Monday 18 November to advise them what had taken place as she was advised to do by the apartment complex. She spoke with the same receptionist she had previously, and told her that a third person had joined their party. She asked the receptionist for some information about how they could now get a refund of the \$171. The receptionist told her to send a fax making that request. The mother faxed the letter on 19 November and subsequently spoke with the receptionist who said she had not received the fax but that at any rate BreakFree would not refund it. They would only refund \$100.

The mother was extremely concerned about the failure by BreakFree to refund the extra \$71 as a matter of principle. She was especially so given what she indicated was the basic nature of the accommodation: a single bedroom and no kitchen, just a kettle and a bar fridge.

Case Study 23

A mother called on behalf of the son, who stayed in a two bedroom unit during Schoolies Week which had been booked through BreakFree on the internet.

In February 2002, 4 people had paid \$100 deposit each. In September they paid a further \$367 each total amount \$1,868. On 11 November 2002 they checked into the apartment and discovered they had been booked into a one bedroom unit. There was initially a dispute with the apartment complex about whether it was one or two bedrooms that had been booked, but the boy produced a voucher which confirmed it was a two bedroom booking. The apartment then claimed the booking was a late booking which the boy maintained it was not.

The manager said that the apartments were full. The manager tried to get them into another apartment block, but it was also full. The boys ultimately decided to stay in the one bedroom apartment as they felt they had no choice. The apartment complex then requested another \$20 for a fold out bed.

BreakFree was subsequently contacted with a view to arrange for a refund for the difference between the one and two bedroom units. The receptionist of the apartment complex left a message on the answering machine of the mother saying that the difference would be refunded. The mother then checked the internet prices of that apartment for an indication about what the likely difference between apartments, and therefore refund, was going to be. One bedrooms were \$1,078 off peak and two bedrooms \$1,498.

BreakFree however advised the boys that they would only refund \$5 as the difference.

Case Study 24

The mother of another of the boys involved in Case Study 23 called later in relation to the same incident, and BreakFree's refusal to refund anything more than \$5.

Case Study 25

Four girls booked an apartment through BreakFree via the internet. They paid \$100 each at the time of booking. At the time they were to pay the remainder of the rental amount, which they did one month after the booking, they were told that they had been unilaterally moved to another apartment complex. They were advised that the reason for this was that in the intervening period someone had purchased the apartment they were going to be staying in.

They were very unhappy and wanted their deposit back because they did not want to change apartments, and did not want to stay in the apartment complex BreakFree now proposed.

BreakFree refused to refund the booking deposits. The girls subsequently booked elsewhere and want this refund.

Case Study 26

A girl called Legal Aid Queensland from a public phone one morning during Schoolies Week outside the apartment from which she had just been evicted.

She said that a group of 5 girls had booked their Schoolies Week accommodation through QANTAS. Each of the girls had paid approximately \$500 per person. They paid \$100 in bond originally.

At the time of check in the girls were asked to pay a further \$100, thereby totalling \$200 in bond each. They felt they had no choice but to pay the additional bond amount. They were also asked to sign a "contract" which they saw for the first time. One of the terms was that you could not have visitors after 6pm. There was another term which said that no bottles were allowed to be brought into the apartment.

One evening the five girls invited six boys who were staying in the apartment immediately below them to their room for a party. They did not know them. This took place between 6.30 and 7pm. Of those 6 boys, four were tenants of the apartment below and two of them were visitors to that lower apartment

The hotel manager came up at some time between 6.30 and 7pm and entered the apartment. He subsequently evicted the 5 girls. There were no warnings given. They were evicted on two grounds 1) that they had in their apartment after 6pm two people who were not staying in the apartment complex and 2) that they had alcohol in bottles in the apartment. The hotel manager said it was irrelevant that the girls did not know that two of the boys were not staying in the apartment complex.

That evening, some members of a community-based volunteer organisation sought to "mediate" the dispute and the girls were allowed to stay that night, but had to check out the following morning. A number of the parents of the girls contacted the apartment complex to discuss what had taken place. The management refused to reverse its decision and refused to refund any monies.

They parents were upset that there was only one instance where any rules had been broken and no warnings had been given before they were evicted. They said that the grounds on which they were evicted were unfair, certainly in relation to having two people who did not happen to be guests, in circumstances where the girls assumed that they were. In relation to having alcohol in bottles the parents believed it was an excessive response and that eviction was unjust and unfair.

A Legal Aid Queensland solicitor rang the apartment complex and spoke with the manager who said that every schoolie who checked in had to sign a contract. The manager acknowledged that the tenants had not seen the contract beforehand. He said that his policy was that, irrespective of what else the rules might say, there are three "fundamental" rules which will result in eviction: (a) no objects to be thrown from the balconies, (b) no alcohol allowed in glassware in units, and (c) no visitors after 6pm

The manager said that it was his policy that when he evicts people he does not refund the rent as he does not try to re let the room. He said that in addition to the schoolies who were renting apartments, he has non schoolies who rent rooms during that period of time as well, such as an American tourist, and some elderly ladies who come up each year.

He said the particular room rented by the girls was on "sale" to QANTAS and that they had reserved the room and there was a lease back from QANTAS which would enable him to re-let it, but that he did not intend to do that. He said that if he was to refund money in circumstances in which he was not going to re-let he would be losing money. He said that BreakFree is usually their "agent" during Schoolies Week but that QANTAS "forced" him to take it.

He said he had a few spare rooms, but he did not wish to let them. He said he had received "a dozen phone calls" from people wishing to book accommodation during Schoolies Week, but that he was not going to let it to them because he was concerned that they might be people "coming to prey on schoolies". He also said that he was not prepared to put the room on the internet because he would risk "getting louts who want to prey on girls".

Case Study 27

A girl rang. She had booked Schoolies Week accommodation through BreakFree with four friends. They paid approximately \$700 each at a total of approximately \$3,500.

Someone threw a sparkler off the balcony of her apartment. The girl was not there at the time and did not know the person. Management evicted all five of them. They checked in on Saturday 16 November and were evicted on Wednesday 20 November. The management also threatened to fine the young people "for drinking in their room".

She was concerned that (a) they were unfairly evicted, (b) they lost 3 days accommodation, and were not being given refunds at all, and (c) that they might have "fines" taken out of their bond.

Case Study 28

A mother rang on behalf of her daughter who was in a room with two other girls at a resort at the Gold Coast booked through BreakFree. They paid \$430 per person for a one bedroom unit in which they slept

on two single beds and a fold out bed. They did not realise that one of the girls would have to sleep in a fold out bed at the time they booked it.

The mother said she felt intimidated when she dropped them off, and that it seemed more like a military camp where they were forced to line up to check in. There were three “burly guys” checking them in and there were about 30 fold out beds stacked in the corner.

At the time of check in, the kids were asked to record every mark on the wall. The principle concern from the mother at the time that she called was that the security guards and hotel management had been conducting room checks without consent and that they had been fairly regular at about 7.30pm each evening. They were done by three men and had been conducted both when the girls were in the apartment and when they were out of the apartment. The checks were without consent. One of the girls felt so intimidated and uncomfortable by these random inspections that she left the apartment complex.

They were upset by the random inspections, the mother said they had no idea this would take place at the time they booked the room. The terms and conditions had only been made available at time of check in.

The mother spoke to BreakFree who responded that this was a matter for individual resorts.

Case Study 29

A girl went to Schoolies Week at the Gold Coast. Her parents dropped her off on the Saturday for check in at reception. It was a lengthy check in process and the girls were asked to sign contracts. By the time they were given the contracts, the girls’ parents had left. This was the first time they had seen the contract and it said they had to agree to comply with certain “house rules”.

There was a term in the contract, which said that they were only allowed to bring cans and no stubbies into the apartment complex. This girl had 12 glass stubbies with her. She did not previously know there was a ban on bringing glass into this apartment, as she had not seen these rules before. She made the observation that if she had known about the rule before check in, she would not have brought stubbies. She also said that it was very chaotic and there was no real opportunity to hand the bottles over. She said she was faced with a dilemma at the time of check in – her parents had already left so she could not give them to them to take back to Brisbane and she did not want to give them to reception so she took them upstairs.

On the first night there was an inspection, management discovered the stubbies and they were confiscated.

After what had been a “happy” Schoolies Week the girl asked for her stubbies back at check-out time. The management refused. They said they were unable to give them back because if they did they would be supplying alcohol to a minor. The girl said that it was all right because her father was about to pick her up and they could give them to him. When the father arrived to pick them up the management said that they could not give him the 12 stubbies because they had received advice from the Liquor Licensing Commission to destroy the stubbies.

The girl subsequently asked for \$25 in damages, but the hotel management refused.

Case Study 30

A boy checked into an apartment during Schoolies Week 2001 with four friends. They booked through Teenbreak and each paid \$100 bond, being a total of \$500 bond.

At the time of check-in the boys were asked to sign contracts which they had not seen before. They had no choice but to sign them. They were not given copies.

When the boys first saw the unit, they noticed that it showed signs of wear, such as (a) towel racks in the room were in a broken state when they arrived, in which respect they requested a handyman to repair them which took place, (b) the dishwasher in the apartment required fixing, which was again something that a handyman repaired; and (c) the apartment was in a general sense “a bit worn”.

During the course of the week, one of the boys tripped over a glass table, breaking the glass. Another boy misplaced an apartment key.

Following Schoolies Week the boys discovered that the apartment complex intended to retain \$383 bond, which the apartment said was for (1) carpet cleaning, (2) additional cleaning, (3) dry cleaning, (4) replacement of a glass table top, and (5) a lost key. He accepted the two latter charges, but not the cleaning charges.

The boys say that they had looked after the room, and cleaned it diligently. Rather, the apartment had been a "worn" apartment anyway. They did no damage to the apartment's carpet requiring it to be cleaned in any other way than it normally would between tenants. That cleaning component amounted to \$171 of the amount the \$383 the apartment retained.

The boys were unable to obtain a refund of the amounts retained for alleged cleaning fees. The boys were concerned that commencing legal proceedings against the apartment and/or Teenbreak would be difficult for them because they lived in Victoria, and would not be able to travel to Queensland for any hearing.

The \$117 of undisputed amount was not paid to the boys until after May 2002

Case Study 31

A boy and two of his friends booked a unit through a travel agent to stay at the Gold Coast during Schoolies Week 2001. He believes that the travel agent then booked the accommodation through BreakFree. Each of the young people paid \$456 for the week and \$100 for bond. At the end of their stay they cleaned the apartment, returning it to what they believed to be the condition it was in when they arrived. Each expected return of the \$100 bond.

In mid January the young people received an \$84 refund cheque with no explanation as to why \$16 had been retained. One of the young people wrote to the apartment manager on 21 January 2002 requesting the \$16 be returned. It was not. Upon obtaining legal advice, the young person's lawyers wrote to the apartment complex on 22 March 2002 demanding the return of the \$16. The \$16 was then subsequently returned to him.

The young person was concerned that \$16 had arbitrarily and without explanation been retained by the apartment complex. He was further concerned at the lengths that he had to go to get his money back.

Case Study 32

A group of five boys booked an apartment at Schoolies Week 2000 through a travel agent at a cost of \$340 each and \$20 bond each. One of the boys was over the age of 18, and had finished school a year or two earlier, while the other four were school-leavers. The rental charges, and the size of the bond, were less because one of the party was over the age of 18, and was not a "schoolie".

When they arrived to check in they were given some papers including a document containing a set of rules.

The group of young people arrived at the apartment at about 11.30 am, Saturday 18 November 2000 to check in, and were given papers, including a copy of a document "the Schoolies Rules". Though the young people were given the hours rules to look at – the first time they had ever seen them – they did not believe they had signed an undertaking to be bound by them. The boys did not read the rules closely, and were not given copies of them.

In the early afternoon on Saturday 18 November 2000 three of the boys used the fire stairs to leave the building because the lift was slow in arriving as a result of the large numbers of other young people using it to check in. Unknown to them, the "rules" prohibited use of the fire stairs. In using the stairs on this one occasion the boys did not believe that they were doing anything contrary to the rules. At about 3pm they returned to the building and sought to enter via the fire-stairs. They tried their keys on the fire-stair door but could not get in. The Night Manager of the apartment was passing by and the boys approached him, told him that they had used the stairs earlier and asked him if they could get in with

the keys that they had. The night manager then advised them that it was against the Schoolies Rules to use the fire-stairs. He notified them that he was going to evict them.

The three boys were escorted by the night manager to the apartment in order to pack their gear and leave. While in the apartment the night manager noticed glass bottles and threatened to evict the other two young people in that apartment pursuant to another clause in the house rules that prohibited glass in the apartment. After subsequent discussions about the effect of the house rules, it was discovered that one of the three young people intended to be evicted did not have his name written down on the house rules. He was relieved on this basis. The other two boys were evicted.

On the evening of being evicted the two boys drove around the streets until 2pm, and then stayed in a cramped caravan with another friend.

One of the boy's fathers sought to negotiate a return to the apartment for the boys. The night manager agreed that a meeting take place at 3pm on Sunday 19 November with the two who had been evicted, to discuss the basis on which they might be readmitted.

The night manager arrived early at approximately 2.45 pm and entered the unit without knocking. Apparently he did so in reliance of another clause in the Schoolies Rules. The night manager noticed more bottles and proceeded to evict all of the young men from the unit. They were told that they were banned from the complex at night, though they could visit during the day.

All of the boys stayed the night of Sunday 19 November in friends' apartments (which in turn was likely to be in breach of the house rules of those other apartments). On Monday 20 November they booked into another apartment complex and paid for the remainder of the week. They did not all stay for the full week however, as some of them left Schoolies Week early.

The young people believed they had been unfairly evicted. They sought refunds of their rental and bond. The apartment complex refused to give it to them. The apartment complex refused to respond to written correspondence in relation to the dispute, and refused to provide copies of any documents which they said the young people had signed.

The young people made a complaint to the Anti-Discrimination Commission, and the dispute was ultimately settled almost a year later.

Case Study 33

A group of girls paid \$439 plus \$100 bond for accommodation booked on the Gold Coast for Schoolies Week 2000. The girls booked through a travel agent which they believe in turn booked the accommodation through BreakFree. The total rental cost was approximately \$1,756.00 with total bond of \$400.

The girls checked into the apartment complex with their friends on Saturday 18 November 2000. The check-in procedure required them to go to the reception counter of the building at which time they were given a wad of papers, including some "house rules". The girls were also required to pay for, and wear around their necks, a tag which identified them as "schoolies" during their stay at the apartment.

In the early morning of Tuesday 21 November, a manager of the apartment entered the girls' apartment, at which time two of the girls were home. One of the girls heard a sound at the door, and believing it to be one of her friends, opened the door. The other girl was asleep at this time. Rather than being one of her friends it was the manager at the door. He entered the apartment without having been invited in, and without the consent of the girls. He observed one or more glass bottles in the apartment and told one of the girls that they were not allowed to have glass bottles there and that they could be evicted. There was a clause in the Schoolies Rules which read:

4. ***Strictly No Glass Bottles Allowed in Building***
Cans and plastic bottles only are to be brought onto the premises. Security guards will confiscate any glass bottles and they will be returned only upon departure. Save yourself the bother and do not purchase bottled drinks

He then told the girl that he believed that another tenant may at that time be seeking to bring a guest into the apartment and that if she did so, they would all be evicted. This other tenant subsequently

arrived at the apartment with a guest and the manager then evicted all of the five girls. The Schoolies Rules contain a clause which reads:

***Eviction-** Anyone breaking the following rules will be evicted:
e Non-registered guests staying overnight in units. Management will undertake random inspections.*

The manager did not enquire as to whether the guest was staying the night or merely visiting. There were not more than two guests in the apartment at the time.

The girls were extremely upset and refused to leave in the middle of the night, as the manager demanded. They ultimately left the apartment at approximately 9.00 am on the morning of Tuesday 21 November.

The apartment refused to refund any of the rental money paid by the girls.

What they had intended to be a full week holiday was shortened to a few days. The girls' holiday – an extremely important holiday for them, and one they had saved for and been looking forward to for a long time – was ruined. They believe they suffered as a result of the loss of their holiday, including the loss of enjoyment of their vacation, and the indignity of being evicted.

The young people made a complaint to the Anti-Discrimination Commission, and the dispute was ultimately settled almost a year later.

Case study 34

A group of four girls booked accommodation through BreakFree. Each paid \$336 for the accommodation and \$100 bond.

On the second day of their stay, they discovered that a couch in their room was broken. The girls maintain that they did not break it, but rather that it had been previously damaged.

The girls had their bond withheld for the cost of replacing the couch. The hotel management claimed that because the couch was part of a pair, two new couches were bought.

The girls were extremely upset that the apartment used their bond money to pay for damage they did not cause.

Case study 35

One of the young men involved in case study 32 above, was involved in another dispute when, after being advised that he was banned from returning to the apartment complex at night, he entered the apartment complex in the evening, in order to escort his girlfriend, who was also staying in the apartment, home. His girlfriend, who had a medical condition, had passed out. He was very concerned about her health and wanted to ensure that she was escorted to bed. Having done so, the young person was identified leaving the building by the hotel security. This night manager made a complaint to the police which resulted in the young person being charged with trespass.

The young person was forced to appear in the Magistrates Court at Southport to defend the charge. He successfully defended that charge and was found by the court to have had a lawful excuse for returning to the building.

The young person was extremely concerned by what he believes was the unreasonable and vindictive conduct of the apartment manager.