Boarding House Reform  
Law & Justice Directorate  
Ageing, Disability and Home Care, Department of Family and Community Services  
Level 4, 83 Clarence Street  
SYDNEY 2000.

In my capacity as an Official Community Visitor appointed under the Community Services (Complaints, Reviews and Monitoring) Act 1993 who has visited Assisted Boarding Houses, previously known as Licensed Boarding Houses or Licensed Residential Centers (LRC’s) for a period of five years I provide the following submission in respect of the Draft Boarding House Regulations 2013. Where I have not commented on a section or a clause it is because I have no valid (as in a view relating to my experience as an Official Community Visitor) comment. Other Official Community Visitors who have contributed to this document include Carolyn Smith and Jackie Klarkowski.

**Introduction of regulations.**

In a submission to the *Boarding House Act 2012* and formulation of any supporting Regulations OCV’s expressed concern about a legislative paradigm which promotes and condones congregate, institutional accommodation and support in ‘for profit’ models of accommodation for people with disability. There remains considerable concern that the current *Boarding Houses Act 2012* and proposed Regulation continues to legitimise a discriminatory form of social policy which excludes people with a disability living in the boarding house sector from experiencing or accessing their human rights, or services, supports and other benefits readily available to other more valued citizens, including peers with comparable support needs who receive funded services and supports.

For profit operations for the provision of disability accommodation and support is something PWDA, The Tenants’ Union of NSW 1 and many others who endorsed the Tenant’s Unions Position Paper on reforming marginal renting sector, has consistently and strongly opposed. Official Community Visitor views are similar. We believe that people with disability in need of support should receive it as a matter of right and that this right is compromised where the support or care is paid for from the pensions of low-income people with disability and delivered by private, for-profit landlords.

Notwithstanding this, the Act and the proposed regulations goes some way to addressing many of the issues I have noted over the past 5 years in the various visit reports I have

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1 Tenants’ Union of NSW (2011), Reforming marginal renting. A policy paper by the Tenants’ Union of NSW.
submitted following my visits to these facilities. and therefore I make the following comments about the proposed regulations in the best interests of improving an imperfect system of accommodation for people with a disability

I remain concerned however that the lack of skilled monitoring officers to ensure the regulations are indeed adhered to will continue to diminish the intent of the Act and the associated regulations and standards.

History has shown that if left to market forces and the individual behavior of authorised boarding house operators to improve the quality of support to the sector it simply will not happen. The NSW Government, in implementing the Boarding House Act of 2012 and these regulations, must concomitantly increase the number of trained officers to monitor the services provided by the assisted boarding house sector to minimize the levels of neglect and abuse and improve the quality of life of its vulnerable residents.

People who reside in assisted boarding houses are predominantly vulnerable people, often with multiple disabilities, who are not afforded the same level of service that their peers, who live in funded services, receive. The industry needs immediate reform and it is my submission that to allow current facilities to remain unchanged for a period of five years disregards the support needs of this vulnerable group. I submit that a more appropriate way to introduce new regulations would be by way of an individual transition plan developed between the owners and the legislation monitors for each facility. Agree to a transition plan would seek the commitment of owners to begin change for the benefit of residents immediately with a consequence of failure to achieve progress according to the agreed plan would lead to termination of the licence to operate?

It would also prevent the likelihood of the facility suddenly closing in five years time when the operator decides not to comply with changes thus leaving the state government to find alternative accommodation for residents with little or no notice. This comment also relates to PART 2 Physical Environment, Division 1 Housing of residents, section 5 Application of division to pre-existing assisted boarding houses.

I have appreciated the explanatory notes within the public consultation draft and believe that this explicit reference to all other applicable legislation/regulations should remain in some form within the new regulations to ensure that all parties affected by this regulation understand these requirements. This would include reference to the care & protection of children and young people, public health regulations and the crimes act.

PART 2 REGISTRATION OF BOARDING HOUSES.

5. Additional information on Register of Boarding Houses that may be published on internet for public access.

I submit that all enforcement action taken in respect of any registrable boarding house or their proprietors or staff must remain available for public viewing for as long as the facility is registered

PART 3 ASSISTED BOARDING HOUSES.

Division 1 Introductory

6. Establishing that individual is a person with additional needs.
I am familiar with the current screening tool used to assess people as suitable or otherwise for assisted accommodation. In my experience this tool is often applied vicariously and as a result I meet many people living in LRC’s whose support needs cannot be met in the LRC they have moved into. A widely reported example of this is where people who require assistance with medication and are prescribed bedtime medication are assessed as suitable for an LRC where there is no overnight support. The end result is that the resident is given both dinner time and night time medication together at dinner time which is usually around 5pm.

It is my considered opinion therefore that the development of any tool to establish that a person has additional needs must change from being used simply to screen out people and instead be multipurpose. i.e. Continue to screen people whose support needs cannot be met by the facility out, but to also to identify the more specific support needs of potential residents to ensure that these will be met in any proposed accommodation.

**Division 2 Applications for authorization and approvals.**

7 Additional information to be provided by applicants.

Clear and objective criteria need to be developed to ascertain capacity of potential operator of an assisted boarding house and the meeting of all of the criteria should be part of any application process.

9 Additional grounds for refusing authorizations and manager approvals

(2) Interim permits.

In my experience, not only as an Official Community Visitor, but as professional of thirty years experience in developing policy for and managing community services in both the public and NGO sectors, I have noted that the issuing of interim and temporary permits to operate any type of service outside of legislated conditions rarely benefits the people who are accessing those services. It is my view that no interim permit should be granted. Applicants and facilities will either meet the criteria and be authorized or not.

**Division 3 Revocation of interim permits.**

My comments at section 9 Additional grounds for refusing authorizations and manager approvals refer. No interim permits should be granted.

**Division 4 Prescribed conditions of boarding house authorizations**

12 Condition relating to standards for authorized boarding houses.

My submission includes comments in regards to Schedule one and this follows the comments on the body of the proposed regulations.

13 Condition relating to notification of presence of young residents.

After five years of visiting children in out of home care I submit that this clause should be amended to state that no person under the age of 18 should be permitted to live in a boarding house without the consent of his or her legal guardian. Furthermore that in the instance where the Minister is the legal guardian consent should only be given for a specific
facility and with the support of the Children’s court to further protect the child from abuse and neglect.

14. Condition relating to screening of actual and proposed additional needs residents.

(1) Condition

See comments Division 1 Introductory 6, Establishing that individual is a person with additional needs.

(2) Screening of proposed additional needs residents

Given my knowledge of how quickly the needs of a person requiring additional assistance may change I believe that this clause should be changed to read a person who has been absent from any authorized boarding house for 6 weeks or more rather than 6 months.

(4) Non application of sub clause (1) and (2)

My comments regarding the presence of young residents at section 13 Condition relating to notification of presence of young residents should be noted and their exclusion in this sub clause should be considered.

(5) Re-assessment of additional needs residents in certain circumstances.

An additional sub clause (c) should be added to include at the request of the resident, or his or her legal guardian or persons responsible under the Guardianship Act.

(6) If it is the intention of this clause to state when planning for relocation should commence rather than the relocation actually take place it should be amended to state 2 weeks from the determination of the assessment to protect the resident from further deterioration and or potential neglect and abuse.

15 Conditions relating to provision and display of information

(1) Given the low levels of literacy in people with additional needs a sub clause needs to be included the provision of this information in accessible formats i.e. easy to read English, Braille and or audio formats.

(2) I often meet people living in assisted boarding houses who carry out regular work, on behalf of the operator of the facility in kitchens, laundries and gardens. Rewards associated with the performance of these duties by any resident should be included in any occupancy agreement.

(3) (b) The phrase in accessible formats should be included.

18 Condition relating to notification of eviction of additional needs residents

In the interests of natural justice and the safety of people with additional needs I believe this section should be amended to require the eviction of an additional needs resident be reported to the Director General either at the time the eviction notice is provided or at the time of eviction.
Division 5 Records

20 Additional needs residents’ personal information register

As an Official Community Visitor visiting people with additional needs I would have occasion to know the name and contact details of any legal guardian, or person responsible, within the meaning of the Guardianship Act, who is authorized to make substitute decisions concerning healthcare, accommodation and services on behalf of the resident. Therefore all details regarding authorized guardianship, the orders and powers made and any reasons for decision to appoint a substitute decision maker as well as any potential review dates should also be on file.

21 Additional needs resident health records

As per comments above this clause should include details of substitute decision makers and copies of any authorized consents to treatment including medication.

23 Staff information records

To ensure that criminal records checks remain valid the date of when the last CRC was completed should be included in these files.

24 Complaint information records

The purpose of a complaint register is, in my view, to be able to ascertain not only the nature of the complaint but what was done to consider the complaint and resolve it. This clause, therefore, should be amended to provide for information on what action was taken to resolve the complaint.

Division 6 Reporting Requirements

26 Additional reportable incidents involving residents: section 83 of the Act

In the interests of ongoing safety of residents the manager should also report assault to a police officer as soon as is reasonably practical after becoming aware of the incident concerned and the event number recorded on the record of the incident.

Division 7 Other Matters

30 Display of interim permit

I refer to my comments in Division 2, Section 9 Clause (2) and my view that facilities should be required to meet all aspects of the act, all regulations and standards before being authorized.
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Please find attached continuation of my submission on Draft Boarding House Regulations 2013 specifically comments on Schedule One Standards for authorized boarding houses.

**SCHEDULE ONE.**

**Part 1 Staffing**

1. **Staffing levels**

   (1) & (3) A tool for the provision of staffing ratios that is based on the identified needs of the group of residents living in the authorized boarding house needs to be developed as a ratio sufficiency test.

   (2) The definition of premises needs to be clarified to ensure that where several cottages and or buildings containing bedrooms exist on a single titled property each of those buildings is declared an authorized boarding house and staffing levels in the proposed regulations apply to each of those buildings regardless of single land title on which they sit. Examples of this situation in my current knowledge of the existing complement of now authorized boarding houses would include facilities at Wallerawang and Riverview at Cooranbong.

2. **Staffing qualifications, skills and training**

   (1) (a) Given my previous comments in regards to regulations concerning young people living in assisted boarding houses I believe that it would be appropriate to amend this sub clause to read that where a person under the age of 18 years is employed by the owners of the facility this person should not live on the premises.

   (2) In order to ensure that an approach of continuous service quality improvement is adopted as well as increasing the numbers of vocationally qualified members of the human services industry a requirement should be introduced where those employees without tertiary qualifications are, conjointly between the NSW Government and the Licensee, provided opportunity for continuing professional development that is relevant to the providing of services and supports to people with additional needs.

3. **Minimum qualifications for managers.**
(b) (ii) In the interests of residents with additional needs, the phrase relevant experience in the management of assisted boarding houses needs to be amended to provide an objective time period of experience in the management of an assisted boarding house that has not had any enforcement taken against them including action taken under part 4 of the act.

4 Use of volunteers

In order that a volunteer may positively contribute to the life of the additional needs resident as well as fulfill their own purpose for volunteering, provision needs to be made to ensure that a volunteer receives a minimum amount of professional support and supervision to ensure his or her safety and the safety, respect and dignity of the resident.

PART 2 Physical environment

Division 1 Housing of residents

5 Application of division to pre-existing assisted boarding houses

My comments at the beginning of the submission apply here. I believe that this section should be amended to require pre-existing assisted boarding houses to engage in an immediate and agreed, between parties to the regulations, transition process to ensure current facilities make a commitment to improve conditions and services to additional support needs residents from the outset of the promulgation of regulations. Failure to receive this commitment could result in a mass exodus of pre-existing facilities in five years time when current operators decide not to improve facilities and support leaving many people with additional needs seeking emergency funded accommodation from the NSW Government at the time.

6. Maximum number of residents

In my view a maximum of 30 residents for an assisted facility is too high. Notwithstanding that it contravenes ADHC’s own definition of a large residential facility it compromises the rationale presented in the impact statement for establishing a maximum number to avoid the potential sense of institutionalization that could occur in larger assisted boarding houses.

What must also be considered with regard to the effect of the proposed reduced capacity limit is that it will have little benefit to reducing the ‘sense of institutionalisation’ across the sector as a whole, as the reduced maximum capacity of 30 will only affect 4 premises of the existing 23 licensed boarding house stock. Excluding those 4, all remaining assisted boarding houses are currently licenced with a capacity under 30 persons. With regard to the remaining 19 current licensed boarding house the average licensed capacity is actually less than half that of the proposed maximum at just 14. Whilst this figure is still considered a small institution by ADHC’s definition and more than double the size recommended by PWDA, it would have greater effect of reducing the sense of institutionalisation, than the current proposed number of 30.

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2 ADHC (2011) NSW Licensed Residential Centres List - Riverview Hostel, Corranbong: current licensed capacity 105; Raintree Retreat, Green Point: current licensed capacity 59; Rosnel Guest House, Bundanoon: current capacity XX; Smiths Hall, Rozelle: current capacity 34
In the assisted boarding house facilities I currently visit I find that the support services for residents where there are less than 15 have, in general, better outcomes. I have reported fewer issues associated with abuse (client on client) and neglect where resident numbers have been less than 15 and overnight support is provided. I have also observed that the interpersonal relationships between resident and resident and facility staff and resident are more positive in facilities where there are less than 20 residents. In addition I have noted that where a person from a large (more than 20 persons) assisted boarding house moves into a smaller one, (less than 15 persons) and have their own bedroom a more homelike environment exists, positive relationships develop, self esteem increases and a stability in accommodation occurs.

7 Sleeping arrangements

I am concerned that the proposed regulations seek to reduce the current License Condition (B License) which stipulates the requirement for a single bedroom to have a floor space of no less than 7.5 meters. I note the reference to clause 46 of Public Health Regulation 2012 however believe in a situation where a bedroom may be the only private space that a person has in his or her life, a space of 5.5 sq meters is just not sufficient. For example it would not allow for the option of a double bed or a single bed desk and chair and book case which is not an unreasonable expectation.

With regard to clause 7 (b). The word “know” does not imply informed consent and ignores the fact that in a boarding house everybody knows everybody. This sub clause could provide the impetus for less scrupulous operators to justify 99% shared bedrooms in his or her facility.

Where vulnerable people are involved I am concerned that this clause may be used to push people into a sharing arrangement that is not appropriate on a permanent basis and may be used by some operators to maintain the status quo. It would also limit the opportunity for a vulnerable person to be able to respond to a change of circumstance /mind about sharing if need be.

The proposed regulations should be amended to state that the maximum number of persons that may occupy, on a permanent basis, the same bedroom in an assisted boarding house should be one. This would provide for people to occupy the room of another person, with consent, on a temporary basis, but would ensure that the person with additional needs would have the security of their own space when required such as when their general health deteriorated or mental health became unstable. This view is supported by reference to G. Drake in the Regulatory Impact Statement.

If this regulation was to remain unchanged then there should be provision within the regulations for any resident who is sharing a bedroom to require NSW State Government assistance, including bearing any costs, to find alternative single room accommodation if and when they so desired.

Notwithstanding my comments about single room size I support proposed regulations at 7(2), (3) and (4)

Division 2 State of premises.

Reference to all clauses in this division should refer to other legislation such as the public health regulations and Disability Service standards in an assisted boarding house.
10. Furniture and Fittings

The regulations should state minimum requirements for furniture and fittings in an assisted boarding house and should not be diminished in any form from previous Youth and Community Services Act regulations, e.g., the need to provide individual lockable bedside cabinets. It should however also allow for a resident to have their own furniture, including a bed, if desired, without the expectation that they will also supply and launder their own bed linen.

11 Heating and electrical equipment.

This clause requires amendment to state that heating is required since there is nowhere in NSW where the temperature in the winter is such that heating would not be required in normal circumstances.

Division 3 Facilities and Equipment

13. The proposed Regulation also removes the current requirements specified in the YACS Regulation 2010 for personal storage space including wardrobe space for the storage of personal clothing and belongings and a bedside cabinet that can be locked by the resident. Whilst this may result in saving floor space area, it directly increases the institutionalising effect on residents as they no longer have direct access to personal storage space for clothes and other belonging and must rely on staff to store and access these items elsewhere on the premises. We argue that these measures increase dependency, limit decision-making and choice as well as stifle individuality and self-determination, privacy and dignity.

15. The inclusion of call bells in the regulations is positive but it does not go far enough. Call bells must be amended to include requirements for positioning of such call facilities within the common zone of reach including tactile elements/contrast and signage to facilitate recognition and activation. A procedure must be established for staff and residents in the use, activation and response to call bells.

Records, as in Part 3, Division 5 – must be amended to include a section for records to be kept with regard to activation and response to call bells including:

a) name of person activating call bell;

b) time of activation;

c) name of staff responding to the call bell;

d) length of time taken to respond to the call bell;

e) reason for call bell activation; and

f) action taken in response to the call bells.

16 Communal space

My visiting experience leads me to believe that one of the most important physical environment attributes of any assisted boarding house is more than one recreational space. This facilitates an opportunity for people of like minds and needs to get
together without interrupting others with different wants and promotes harmony, particularly in groups of more than 5.

In addition to the above the regulatory proposal to require a single recreation, indoor or outdoor, space is most concerning for the following reasons.

Firstly it may force non smokers to share outdoor recreational space with smokers if no indoor space is provided.

Secondly the proposed regulations seek to reduce the current License Condition (B License) which stipulates the requirement of three (3) square meters of internal recreation space per resident in the nature of lounge, leisure and therapy rooms excluding dining, office, staff and bedroom space, must be provided. This requirement as a minimum must remain under the current proposal that allows for shared bedroom space.

If Schedule 1 item 7 is amended to require single room occupancy as per my view of the proposed regulations I believe it would be appropriate to require a minimum of a single indoor recreation area as well as ensure that there is adequate covered outdoor recreational space available to all residents. Adequate should be defined in square meters that are currently used. i.e. Three (3) square meters per person.

18 Private or quiet rooms

People with additional support needs often have to meet with service providers and there should be adequate facilities to do this privately without the person having to invite a service provider representative into his or her bedroom space. This is the case regardless of whether or not they share a bedroom or have their own room.

I note also that the proposed regulations make no provision for a “sick room” which is currently required. This is absolutely necessary if a shared bedroom arrangement was to be maintained. Notwithstanding this I believe that this current requirement should remain as a health precaution for people who either live on or attend the facility.

19 Food preparation areas

I support the additional requirement for authorized boarding houses to have a food preparation area for residents use. I would, however, seek to have the standard amended to include the addition of utensils i.e. pots, pans and containers suitable for use in a microwave.

20 Laundry

The denial of access to a laundry to carry out personal washing is a return to institutionalised living. Regardless of the arrangements that a service may have for laundry to be attended to offsite there should be a laundry facility available for residents use.

PART 3 LIFESTYLE

I see no reason as to why the current Disability Service Act Standards should not apply here. It has always been of concern to me that a person with a disability who
lives in an assisted boarding house does not have the same rights to a quality of life as those of their peer’s in funded services.

21 Telephone amended to include requirements for accessible positioning within zone of reach, type of phone suitable to the needs of residents including (but not limited to) large digits, tactile, volume adjustment.

22 Protection of private property

In order to protect a person’s private property a further clause should be added referring to the keeping of a register of personal property. This record should be signed off by the residents and or their legal guardian, advocate or person responsible when taking up residence in an assisted boarding house.

23 Protection of financial affairs of additional needs residents

Currently in the sector, managers of assisted boarding houses often have access to an individual’s discretionary funds even if they are under the protection of the NSW Trustee. This has always been of concern to me particularly when I have been denied access to view registers where funds have been allegedly dispensed and received. I believe the standards should require certain levels of book keeping on the part of the service manager where they manage comfort funds for a resident. Residents should also receive additional statements explaining where additional funds have been charged to their board by operators for things such as haircuts.

24 Information about available support services.

I have observed situations where service providers are obstructed in offering their services to people with additional needs. E.g. only permitted on the property if a resident has specifically requested their presence. In order for a person with additional needs to make a choice of support services they must have information about them and this information often needs to be provided on a one to one basis. The standards should specifically support services proving face to face information sessions on the premises of an assisted boarding house.

25 Personal relationships

My comments at Schedule 1 no 18 should be noted here

26 Recreation

My comments at Schedule 1no 16 should be noted here

PART 4 HEALTH AND WELLBEING

Division 1 Medication

I would support the PWDA recommendation. The current best practice guidelines with regard to medication handling applicable to licensed boarding houses is outlined in the NSW Health Medication Handling in Community-Based Health Services/Residential Facilities in NSW – Guidelines (PD2005_105). And the proposed regulations be amended to cover the gaps identified in their submission.
Division 2 Health Monitoring

29 Choice of and access to health care advisers

The notion of informed choice should be included here. The standard should also be changed to state that where a health care provider such as GP and or Psychiatrist visits a facility at the request of the operator, the manager should keep records that show the resident was informed of other choices and how he could access those choices before he or she consented to receiving services from the facility’s attending MO.

30 Assistance with health issues

Given the known demographics of current assisted boarding houses and the likelihood of additional needs residents having diagnosed mental health issues I believe that it would be appropriate to include here a clause about access to behavior management services. This is particularly important if the person’s mental illness impacts on his or her ability to interact appropriately with other residents and puts at risk their accommodation or the ability to take part in additional quality of life opportunities such community access services.

As an Official Community Visitor I have reported occasions where residents with additional needs have been “evicted” from their assisted boarding house placement because of the inability to get along with other residents or their peculiar behavioral characteristics. Unlike funded services for people with a disability, opportunities for residents of assisted boarding houses with challenging behavior to receive therapeutic services to manage the challenges they experience are not always readily promoted and or supported by current assisted boarding house operators. I believe that if a person has been prescribed medication to moderate their behavior they have a right to receive Behavior Intervention Support Planning services that meet current ADHC standards. Concomitant with this right any strategies developed by a service provider to help the individual maintain stability in accommodation, access community services or experience positive interpersonal relationships, should be respected and implemented by assisted boarding house staff. This right and this responsibility should be enshrined in these standards.

Division 3 Food and Nutrition

31 Food and Nutrition

I support these proposed standards and would add the need for records of implementing them be kept by staff responsible for providing nutritional aspects of board and lodgings.

Division 4 Safety

32 Evacuation procedures
(1) I support these standards and would add the need for procedures to be available in accessible formats.

33 First Aid kits

(2) If residents are to have access to first aid kits they should receive training in the use of them.

Additional requirements Community visitor guidelines for the reporting of safety of a resident are significantly broader than the above mentioned matters and to bring these regulations into line with our own reporting guidelines about resident safety I support PWDA submission and recommend the inclusion of the following.

(3) The NSW Government amend the proposed Regulation to include a section 34 under Division 4 – Safety of Schedule 1 of the existing provisions which make an active statement about prevention of abuse and neglect as specified by Part 2, Obligations of licensees and managers, Section 13 of the current YACS Regulation 2010 which states:

(1) Residents must not be subject to abuse or neglect.

(2) For the purposes of this clause, abuse or neglect, in relation to a resident, means any one or more of the following:

(a) any act against the resident that constitutes a criminal offence under the Crimes Act 1900,

(b) misconduct that could adversely affect the health, comfort, safety or proper care of the resident,

(c) derogatory, obscene or threatening conduct or language against, or towards, the resident,

(d) unauthorised use of the resident’s property,

(e) unlawful or excessive physical or chemical restraint techniques used on the resident,

(f) failure to ensure the resident has adequate food, clothing, shelter, health care and supervision.