NDS Submission:

Boarding House Regulation 2013

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About National Disability Services

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability.

Its Australia-wide membership includes around 700 non-government organisations, which support people with all forms of disability.

Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.
NDS welcomes the opportunity to comment on the Boarding House Regulation 2013, and the accompanying Regulatory Impact Statement (RIS). NDS recognises the importance of the regulation to protect the rights of some of the most vulnerable people in our society while raising the overall standards for people that live in boarding houses in NSW. In a special report tabled to Parliament in August 2011, the NSW Ombudsman highlighted the desperate situation of some residents and the need for urgent legislative and regulatory reform. In response to these concerns and mounting pressure from key stakeholders, including disability advocates, the Boarding Houses Act 2012 was passed by the NSW Parliament in October 2012. NDS is pleased to observe that Part 4 of the Act specifically aims to enact the purposes and principles of the rights of people with disability as outlined in the United Nations Convention on the Rights of People with Disability (UNCRPD).

As the disability sector continues to move toward a National Disability Insurance Scheme (DisabilityCare) and increased choice and control for people with disability, the rights-based approaches driving reforms must have consistent application across the boarding house sector. The Boarding Houses Act 2012 goes some way to address a range of deficiencies identified with the previous regulatory regime however the remainder of the Act cannot be brought into full effect until the Boarding House Regulation 2013 is developed.

NDS acknowledges that the Boarding Houses Regulation 2013 will replace many of the existing provisions of the Youth and Community Services Regulation 2010 while seeking to improve outcomes for people with additional needs by significantly improving accommodation and service standards. The effectiveness of the regulation will depend on the level of compliance by proprietors and the efficiency of external monitoring by local council and FACS enforcement officers. The NSW Government has a responsibility to ensure that skilled enforcement officers are continuously monitoring the compliance of proprietors in order to maintain the integrity of the Act and regulation and the protection of vulnerable residents.

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2 Boarding Houses Bill 2012
This submission will include a discussion of the preferred regulatory options as outlined in the RIS and comment on specific areas within the regulation that may benefit from some enhancement.

**The Draft Regulation**

The RIS goes into some detail concerning requirements to bring accommodation and service standards in assisted boarding houses into line with community expectations and the UNCRPD, in order to improve living conditions for people with additional needs. The regulatory and legislative environment, in which the for-profit congregate model of accommodation operates, does not reflect current disability service standards and practice within specialist disability services. The quality management requirements for specialist disability service providers\(^3\) and parameters of the Disability Service Act 1993\(^4\) give rise to an overall higher standard of care in specialist disability accommodation. Consequently, there are significant challenges in ensuring the needs of people with disability are fully met. NDS supports the overall direction taken in aligning the detail in the regulation to the UNCRPD and other applicable NSW legislation and regulation that govern the operation and standards of boarding houses. It is critical that the supporting regulation has its implementation and outcomes monitored and reviewed, in order to facilitate gradual but crucial improvement across the boarding house sector.

**Draft Boarding Houses Regulation 2013**

**Prescribed conditions of boarding house authorisations**

**Division 4 – 14 (1) – Division 4 – 14 (4)**

This clause of the regulation outlines conditions for the use of the screening tool to determine whether a person is an additional needs resident. While the majority of the clause is sound, Division 4 – 14 (4) (a), (b) and (c) essentially exonerate a proprietor form having to comply with Parts 1 and 2. As outlined in 4 (a), if a person requires emergency accommodation they do not need to be assessed following the conditions outlined in parts 1 and 2. This subclause could potentially be exploited to

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\(^3\) Quality Policy for ADHC funded services. Ageing, Disability and Home Care. November 2012
\(^4\) Disability Services Act 1993
allow for people with additional needs to move into a boarding house based on a proprietor’s interpretation of a personal emergency. If a person with additional needs is housed under these conditions, there is a possibility that they will never undergo the mandatory additional needs screening, leaving their support and health requirements undocumented.

The ensuing subclauses (b) and (c) outline notification of the Director-General and arranging an assessment with the screening tool, both within one business day; as sufficient grounds to repeal parts 1 and 2. Similarly, these actions are largely dependent on the compliant and ethical practice of the proprietor and cannot consistently be applied across boarding house intake. Mechanisms need to be in place to monitor new arrivals to boarding houses to ensure that they have been appropriately screened.

The regulation must also take into account screening tools used in the health, disability and aged care assessments such as the ACAT or ADHC intake. Consideration of external assessments will help to determine a consistent interpretation of low and high care needs residents. It will also reduce duplication, and stop people having to repeatedly tell their stories, which aligns with the person centred agenda.

Physical Environment

Sleeping Arrangements

Schedule 1 - Division 1 (7)

The regulation has tried to address some of the concerns around shared rooms by capping the maximum number of occupants per room to 2. Although this reduces gross overcrowding, it does not adequately address some of the additional issues around dual occupancy. In line with contemporary ideology around choice and control, people with additional needs have the right to decide where they live and with whom. This choice, however, must be informed and made in a supported environment free of coercion. If the decision to share a room is made outside of these parameters it could amount to a breach of the UNCRPD.
Provisions must be made in the regulation to allow a person to change their mind about sharing a room. At present there is no detail in the subclauses that would assist a person that has been in a shared living arrangement transition to a single room. As relationships and situations change, a person with additional needs has the right to request a single room if the situation they are in is unsustainable. Proprietors must make the avenues available to transition back to a single room available before and during the uptake of a shared room. This would help to alleviate the perception of being ‘locked in’ to a particular living arrangement while maintaining practice that facilitates choice for people with additional needs.

**Room Size**

**Schedule 1 – Division 1 (7)**

NDS contends that the room size requirements stipulated in the Notice of Licence Conditions\(^5\) and the Youth and Community Services Regulation 2010 (YACS Regulation 2010)\(^6\) should be maintained for two distinct reasons. A reduction in room size from 7.5 square meters to 5.5 square meters as proposed in the draft regulation will give residents significantly less space to move in their rooms. It is important that residents have somewhere to sit, particularly when guests visit, that is not on their bed. A reduction in room size may also make living quarters particularly tight for people with additional needs that use mobility aids. If boarding house proprietors are currently adhering to room size requirements of 7.5 square meters, it makes little sense to change the minimum requirement to a smaller size room.

**State of Premises**

**Division 2 – (9) (11)**

**Light and Ventilation (9), Heating and Electrical Equipment (11)**

The wording used in Division 2 (9) and (11) needs to be developed to include the mandatory requirement to have both adequate light and ventilation and heating and electrical equipment. At present the clauses stipulate the need for maintenance of light and ventilation, and heating and electrical equipment without there being a

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\(^5\) Regulatory Impact Statement: Draft Boarding House Regulation 2013

\(^6\) ibid
requirement to have the equipment in the first place. An improved articulation of standards would close any loopholes for not providing these basic amenities for boarding house residents.

Facilities and Equipment

Division 3 – (13) (14) (16) (18)

Division 3 (13) – Storage Facilities

The regulation could be improved by outlining what kind of storage facilities should be available in the boarding house site and in rooms. Currently the regulation lists equipment and belongings that the boarding house must have secure facilities for, without explaining their nature or features. The subclause could be amended to include a bedside table (with locks) a stand-alone cupboard (with locks), and potentially an outdoor storage space for bikes and other equipment that cannot be stored inside.

Division 3 - (14) – Communal Space

It will be important for this subclause to include requirements around equipment and safety for people with additional needs that use mobility aids or that have limited mobility. Proprietors must be required to install rails in at least one of the showering and toilet facilities. New establishments have the capacity to build toilet and washing facilities that are friendly to people with additional needs by having wider door entry, no steps and accessible taps and shower heads.

Division 3 – (16) – Communal Space

This clause outlines conditions for communal spaces to be used by boarding house residents. Subclause (16) – 2 explains that a communal area may be located outdoors if the climate and temperature are appropriate. NDS does not support the use of outdoor communal spaces, as a primary or only communal space. Residents will essentially be exposed to the weather elements while opportunities are reduced to have facilities such as a TV, radio, and computers available. In addition, people with additional needs that have limited mobility may struggle to access an outside

7 Boarding House Regulation 2013. Public Consultation Draft
space. In line with the majority of accommodation in the community, boarding house residents should have access to a communal living space *inside* first, and then if the boarding house has capacity for an outdoor space for use, this can act as a second communal space.

**Division 3 – (18) – Private or Quiet Rooms**

The language used in this subclause needs to be amended to require private or quiet rooms be available for residents of shared rooms that is *not* the communal space.
Assessment of Proposed Regulation – Option (C)

Option C: The draft *Boarding Houses Regulation 2013* is enacted as proposed, with all new requirements (including those for single occupancy rooms and maximum resident limits in assisted boarding houses) applying both new entrants immediately and to existing licensees within five years after enactment.

Of the options presented for consideration in the RIS, option (C) has the most capacity to improve the overall standards in the boarding house sector. Importantly, this option includes the requirement for single occupancy rooms and maximum resident limits. It also will allow for the gradual improvement of conditions in the boarding house sector by making the new requirements mandatory for new entrants and existing licensees over time.

**Costs**

The most significant requirements in the regulation, those of single occupancy rooms and a maximum number of residents, will have a number of ramifications for proprietors and the boarding house sector. There will be additional capital works costs for proprietors that choose to stay in the sector beyond 5 years. Proprietors will also have to adhere to the material costs outlined in the regulation for the purchase and installation of call bells, locks and furniture. Although the regulation will impose costs on proprietors, the mandatory capital works and material requirements will assist in reducing risks and increasing quality of life for boarding house residents.

The NSW Government could look to develop a range of practical supports to assist proprietors through the transition. Through the Industry Development Fund (IDF)\(^8\), NDS is currently rolling out a range of business related supports, and offering professional development opportunities to support the disability service sector through the implementation of the disability reform agenda. The IDF and its works are an example of how practical supports can be implemented to support organisations through significant change.

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\(^8\) Directions Report NSW Disability Service Sector: Directions for Industry Development. June 2010
Timeframe

The five year time frame provided means that proprietors will be given ample time to plan and prepare for the new requirements. As changes of this scale cannot be made without considerable foresight, NDS recommends incremental targets for proprietors to meet between the commencement of the regulation and the five year transition period. For example, for a large boarding house that needs to vacate 30 rooms in order to adhere to conditions, plans should be made as soon as practically possible to detail actions around transitioning residents out of the boarding house. Enforcement officers should be tasked with monitoring the implementation of plans developed by proprietors including the steps being taken to meet new requirements within appropriate timeframes.

Viability of Sector

To some extent the viability of the assisted boarding house sector is compromised by the requirement to adhere to higher standards under the new regulation. Proprietors could choose to stay in the industry until just before the end of the transition period, and then sell their property. They could also choose to exit the assisted boarding houses sector completely and run a general boarding house that operates under less regulation. An exit of proprietors will undoubtedly effect the sustainability of the sector, however, it could be argued that the regulation has had its intended result by pushing out proprietors that have little or no commitment to supporting people with additional needs. As noted in the regulation⁹, the NSW Government recognises the potential impacts of higher standards and has committed to a review in 18 months to determine whether additional incentives are necessary. NDS supports the commitment to review the effectiveness of the regulation while it is still in its infancy, as a means to inform further changes or action if required.

In addition, effective use of screening tools should stop people with additional needs inappropriately becoming residents of boarding houses.

⁹ Regulatory Impact Statement: Draft Boarding House Regulation 2013
NDS acknowledges the complexity of boarding house regulation and the various challenges around meeting the needs of all residents, particularly those with additional needs. Consideration of the recommendations the above could help to provide a solid foundation for the Boarding House Act and any future legislation.

NDS looks forward to reviewing the final regulation and the full enacting of the Boarding Houses Act 2012.