Mr Jim Longley
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Ageing, Disability and Home Care
Department of Family and Community Services
Level 5, 83 Clarence Street
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Attention: Boarding House Reform, Law & Justice Directorate
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Dear Mr Longley

NSW Ombudsman submission on the draft Boarding Houses Regulation 2013

We appreciate the opportunity to comment on the draft Boarding Houses Regulation, and to inform improvements to the boarding house sector.

Overall, we consider that the proposed Regulation provides for substantial improvements in the safeguards and standards of care for people with additional needs in authorised boarding houses. In particular, we welcome the proposed changes to:

• ensure that a broader range of incidents involving residents are reported (including assaults, serious accidents and medication administration errors)
• improve residents’ ability to get help when they need it, including by installing call bells and ensuring that at least one staff member is present at all times, and
• meet the nutritional needs of residents, including undertaking menu planning with reference to published dietary guidelines or, when necessary, the advice of a qualified dietician or nutritionist.

Condition relating to the development of policies (section 16)

We support the introduction of policy guidance for operators and staff of authorised boarding houses in key areas, including handling complaints, and food and nutrition. However, in our view, it would be unreasonable to expect authorised boarding house operators to independently develop policies (that meet the standards specified in Schedule 1) without considerable assistance.

We consider that ADHC should provide support and practical assistance to operators to enable them to meet this condition, including:

• providing policies and procedures that operators could adopt in their facilities that would enable them to meet the standards, and
• providing training for operators, staff, residents and other relevant service providers (such as Boarding House Reform Program services) on the standards, requirements and policies.

We note that operators of authorised boarding houses are highly likely to require assistance to understand and comply with many of the requirements in the proposed Regulation, including those relating to complaint information records (section 24), reporting of complaints and other incidents (section 26), installation of call bells (Schedule 1, Part 2, section 15), medication administration (Schedule 1, Part 4, Division 1), and food and nutrition (Schedule 1, Part 4, Division 3).

It will also be important for ADHC to work in partnership with key service providers and other stakeholders in relation to determining the strategies for providing clear guidance and support to operators. (These agencies would include Primary and Secondary Health Care services, allied health Senior Practitioners, and our office).

**Compliance with occupancy principles**

Section 30(3) of the *Boarding Houses Act 2012* (‘the Act’) states that the regulations may make provision for, or with respect to, a) what constitutes, or what does not constitute, compliance with the occupancy principles, and b) the issuing of guidelines for that purpose. However, while the Regulation refers to the records that need to be kept in relation to occupancy agreements (section 22), it does not appear to include any reference to the occupancy principles.

In our view, it will be important to ensure that:

• the Regulation includes provisions relating to section 30(3) of the Act
• the guidelines include an easy English version to improve their accessibility for residents and boarding house staff, and
• there is active monitoring of compliance with the occupancy principles, with provision of support where necessary to improve the understanding and implementation of the principles in registrable boarding houses.

In our submission on the draft Act, we also indicated that to ensure that the occupancy principles are taken seriously and upheld in relation to people with additional needs, they should form part of the authorisation conditions for assisted boarding houses.

**Eviction of additional needs residents from authorised boarding houses** (section 18)

In our submission on the draft Act, we stated that there should be increased safeguards in relation to the exiting of residents from authorised boarding houses. We indicated that there was a need to include a requirement on staff of authorised boarding houses to notify the Director-General of the intention to exit a person with additional needs and, whenever practical, provide sufficient time to allow the Director-General to consult with the resident regarding alternative accommodation options.
Section 18 of the draft Regulation indicates that it is a condition of boarding house authorisation that the authorised operator ensures that the Director-General is notified that an additional needs resident ‘is being (or has been) evicted within 7 days after the resident has been issued with an eviction notice or been evicted, whichever comes first.’

The wording of this section appears to enable authorised operators to notify the Director-General about the eviction of a person with additional needs after the fact. In our view, this does not provide sufficient safeguards for residents with additional needs. It is important that, prior to the eviction occurring, the Director-General is notified by an operator of the intention to evict a person with additional needs, unless the particular circumstances makes this impractical.

On a related note, the occupancy principles outlined in Schedule 1 of the Act state that a resident must not be evicted without reasonable written notice, and that in determining what is reasonable notice, the proprietor may take into account the safety of other residents, the proprietor and the manager of the registrable boarding house (section 10). As it stands, this section provides leeway for boarding house operators to evict residents with additional needs, on the grounds of ‘safety’, with as little notice as they see fit.

When there are unacceptable safety risks, immediate eviction may be the only appropriate response. However, in the vast majority of circumstances, in the absence of relevant guidelines specifically dealing with this important issue, there is likely to be inconsistent and suboptimal practice in connection with determinations about what constitutes ‘reasonable written notice’ of eviction.

**Probity checks on staff members of authorised boarding houses**

We welcome the inclusion in the draft Regulation of additional probity checks for licence applications for assisted boarding houses, including requiring referee checks on licence applicants (section 8). However, we note that, while s84(7) of the Act indicates that the Regulation may make provision for, or with respect to, the obtaining and conduct of criminal record checks relating to staff members of authorised boarding houses, the draft Regulation does not include any provision relating to this issue.

In our submission on the draft Act, we recommended that the Act and/or the associated regulations ought to cover three other related issues:

1. the capacity to prescribe certain offences that prohibit people from being employed in these services
2. the capacity to require operators to comply with certain fundamental ‘client safety’ requirements\(^1\) (these could be spelt out in the Regulation or in policies issues under the Regulation), and
3. specific requirements on operators in relation to them carrying out appropriate risk assessments in relation to current (and potential) employees whose past conduct –

\(^1\) For example, conducting referee checks, and conducting risk assessments of residents with serious offending backgrounds.
including (but not limited to) relevant criminal conduct – indicates that they may pose a significant risk to residents.

**Additional needs resident health records (section 21)**

We are pleased to note the inclusion of requirements relating to the health records which will need to be kept for residents in authorised boarding houses who have additional needs: including the nature and circumstances of any significant injury and the particulars of treatment given, and the details surrounding the death of any resident.

It may also be useful to clarify the requirements relating to section 21(d) relating to records to be kept on ‘any written authorisation for emergency medical, hospital, dental and ambulance services’. It is not clear what (or why) authorisation would be required for emergency treatment.

We would be happy to discuss our comments or provide further information as necessary. If you have any questions, please contact Kathryn McKenzie, Principal Project Officer, Disability, on 9286 0984 or email kmckenzie@ombo.nsw.gov.au.

Yours sincerely

Bruce Barbour
Ombudsman

Steve Kinmond
Deputy Ombudsman
Community and Disability Services Commissioner

8 April 2013 8 April 2013