Submission

Draft Boarding House Regulation 2013 and associated Regulatory Impact Statement

April 2013

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1. People with Disability Australia (PWDA)

1.1. About us

PWDA is a national disability rights and advocacy organisation. We operate from an international human rights framework and provide a number of activities, which include individual, group and systemic advocacy, consumer protection, information, education and training.

Individuals with disability and organisations of people with disability are our primary voting membership. We also have a large associate membership of people and organisations committed to the disability rights movement.

Founded in 1980, in the lead up to the International Year of Disabled Persons (1981), as a means to provide people with disability with a voice of our own, PWDA has a fundamental commitment to self-help and self-representation for people with disability, by people with disability.

We have a cross-disability focus – membership is open to people with all types of disability. Our services are also available to people with all types of disability and their associates.

PWDA’s vision is of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated.

1.2. Our standing to make this submission

As national representative organisation, a NSW Peak body, the largest provider of individual advocacy services for persons with disability in Australia including delivery of the NSW Boarding House Advocacy Project, PWDA is well placed to make a submission on the Draft Boarding Houses Regulation and associated Regulatory Impact Statement.

PWDA has provided state-wide individual and group advocacy support to people with disability across NSW for over 20 years. Over this time we have prioritised support to people with disability who live in boarding houses both licensed and unlicensed as well as people who are homeless or at risk of homelessness.

PWDA has provided targeted support to residents of NSW licensed residential centres through the NSW Boarding House Advocacy Project funded by the NSW Family and Community Services – Ageing, Disability and Home Care (ADHC) for the past 10 years. This regular ongoing outreach to all residents is based on an annual schedule of regular monitoring visits to all licensed residential centres across NSW. PWDA has extensive experience supporting residents of licensed boarding
houses in their transition from licensed boarding houses due to a change in needs or closure of the licensed boarding house and through this process witnessed the marked improvement in quality of life, health outcomes, skills and personal self worth experienced by people following their relocation from licensed boarding houses.

PWDA has long campaigned for the closure of congregate, institutional forms of accommodation, promoting alternative measures of appropriate housing and housing support for people with disability; we have made repeated submissions and representations relating to the need for boarding house reform, improvements in residential tenancy rights; and the prevention and response to violence, abuse and neglect have been consistent themes through PWDA’s systemic advocacy work.

PWDA is a long standing member of the Family and Community Services – Ageing, Disability and Home Care (ADHC) Boarding House Expert Advisory Group (BHEAG), providing regular feedback to the Minister for Disability Services and ADHC with regard to policy developments relating to the licensed boarding house sector and associated Boarding House Reform Program (BHRP).

1.3. Approach to our submission

In formulating this submission PWDA has liaised with ADHC staff, other advocacy groups and interested parties in considering the draft Regulations, proposed approach for implementation and key aspects of our submission. PWDA attended ADHC’s information session on this matter on 2 April 2013.

1.4. Primary comments

PWDA continues to stand by its objections to the Boarding House Act 2012 and formulation of any supporting Regulation which promotes and condones congregate, institutional accommodation and support in exploitative, ‘for profit’ models of accommodation for people with disability.

We strongly maintain our view that boarding houses established for the purpose of accommodating people with disability (defined under the Boarding Houses Act 2012, as assisted boarding houses for persons with additional needs) in congregate models, including those with a ‘for profit’ motive, cannot uphold the human rights principles articulated under the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which Australia ratified in 2008. Nor can they reflect and deliver a contemporary understanding of disability service provision as articulated by the principles of the NSW Disability Services Act 1993 which is the benchmark applicable to all other funded and government provided forms of accommodation and support for people with disability in NSW.
PWDA maintains its position that everyone has a right to adequate housing and to adequate social support. That people with disability should be able to choose where and with whom they live, and have the same housing options as other members of the community. We strongly advocate that people with disability must not be obliged to live in specified environments including segregated settings, on account of this being the only way they can receive essential support.

Article 19 of the CRPD clearly states the rights of people with disability to live independently and be included in the community. As a civil and political right, it must be immediately complied with. The transition to this right is not in compliance with CRPD.

CRPD Article 28 guarantees the right to an adequate standard of living, including the right to adequate housing and support. As an economic, social and cultural right, it can be progressively achieved over time.

Governments can pursue the right to adequate housing and the right to adequate social support progressively, but they must do so in a way that immediately complies with the right of persons with disability to live in and be a part of the community.

It is therefore not open to governments to claim, for example, that institutional accommodation and social support are a justifiable stage of achievement in progress towards the full realisation of the right to adequate housing and the right to adequate social support for persons with disability.

The following comments by the Office of the High Commissioner for Human Rights with regard to Article 19 have particular resonance for the drafting of the Boarding House Regulation:

“The provisions of article 19 of the Convention carry far-reaching implications for all forms of institutionalized care of persons with disabilities. The recognition of the right of persons with disabilities to independent living and community inclusion requires the shift of government policies away from institutions towards in-home, residential and other community support services. The key element of any intervention aimed at giving effect to the right to independent living and community inclusion is the explicit legal recognition of the right of persons with disabilities to determine where and with whom to live. This recognition should also openly reflect the unlawfulness of arrangements for residential care made against the wishes of a person with disabilities.”

Source: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf)
De-institutionalization is necessary but not sufficient to achieve the goal of independent living. In most cases, a national strategy that integrates interventions in the area of social services, health, housing and employment, at a very minimum, will be required. For the effective implementation of such strategies it is necessary that the independent living principle be rooted in a legislative framework which clearly establishes it as a legal right and in turn places duties on authorities and service providers, while also allowing for recourse in case of violation. Such legislative frameworks shall include the recognition of the right to access the support services required to enable independent living and inclusion in community life, and the guarantee that independent living support should be provided and arranged on the basis of the individual’s own choices and aspirations, in line with the principles of the Convention.”

As previously raised in our submission to the Exposure Draft – Boarding Houses Bill in August 2012, we again note the failure of the proposed Regulation to reflect national disability reform directions or adhere to commitments made by the NSW Government to make individualised funding available to 100 per cent of disability service users by 1 July 2019\(^2\), a date not inconsistent with the proposed 5 year implementation of the proposed Regulation to the current licensed boarding house sector.

We remain highly concerned that the current Boarding Houses Act 2012 and proposed Regulation continues to legitimise a discriminatory form of social policy, not without similarity to an apartheid system of disability services and supports\(^3\), which excludes people with 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.

We also reiterate our comments made in its submission to the Exposure Draft Boarding Houses Bill that we strongly believe children and young people residing in any form of boarding house is unacceptable and exposes them to both foreseeable and unacceptable risk of harm\(^4\).

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1.5. Primary Recommendations

Recommendation 1:

PWDA recommends the Boarding Houses Act 2012 be immediately amended into transitional legislation with the express objective of closing all assisted (or licensed) boarding houses/residential centres for people with additional needs (persons with disability).

Recommendation 2:

In the interim, it is recommended the proposed Regulation (with further amendments noted below), be implemented for any existing operators (of current assisted boarding houses or general boarding houses converting to assisted boarding houses) from the time the Regulation is commenced until final amendments to restrict the establishment of all assisted boarding houses are made to the Boarding Houses Act 2012 at the 18 months review date.

This will allow for a transition period in which all assisted boarding houses would transition to closure.

Recommendation 3:

In the interim, it is recommended that the Director-General of Ageing, Disability and Home Care, Family and Community Services (ADHC) develop and implement a policy which prevents the establishment of any new assisted boarding houses.

Recommendation 4:

PWDA recommends a commitment through the proposed 2013 Regulation that guarantees all services and support for people with disability living in assisted boarding houses, including those directly provided by operators of the assisted boarding house, are delivered in line with the NSW’s Government’s commitments to person centred and individualised approaches.

Recommendation 5:

Should the NSW Government choose to continue to authorise this form of accommodation PWDA strongly recommends the maximum capacity of an assisted boarding house be prescribed in the Regulation to a maximum capacity of 6 residents which is consistent with the size of a typical suburban house with four to six bedrooms, each in single bedrooms only.

The exception to this being where the bedroom is occupied by a family group, in which case there needs to be a minimum floor space requirement for bedrooms with multiple occupants. Standards under regulation must also be introduced to guide the number/size of kitchen, laundry facilities and recreational space per resident.
Recommendation 6:

Should the NSW Government choose to continue to authorise this form of accommodation and support for people with disability, **PWDA recommends that any future assisted boarding houses be limited to being licensed to not forprofit providers.**

For profit operations for the provision of disability accommodation and support is something PWDA, The Tenants’ Union of NSW and many others who endorsed the Tenant’s Unions Position Paper on reforming marginal renting sector, has consistently and strongly opposed. 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.

For profit operators have one primary focus, achieving a return. This profit is commonly dependent on efficiencies of scale and shortcuts that typically compromise service quality and care, limit individualised or person centred focus, and diminishes the realisation of human rights. Without effective market mechanisms, on account of the captured market whom have few or no alternative options for alternative accommodation and support, the for-profit industry is devoid of any pressures to improve or achieve quality services. Whist the introduction of regulation is supported, regulation can only ever aim to offset some of the effects of the for-profit model, not prevent its impact all together. The value of any regulation is also highly dependent on its implementation and the level of compliance expected and enforced.

Recommendation 7:

**PWDA recommends an amendment to the Boarding House Act 2012, and proposed 2013 Regulation to preclude the accommodation of children and young people in all registrable boarding houses.**

If the NSW Government chooses to proceed with the intention of Boarding Houses Act 2012 to permit the accommodation of children and young people in registrable boarding houses **PWDA recommends the following amendments to the Regulation:**

Part 2, Section 4 **Clause (j) be amended to include the collection of information on numbers of children and young persons (as defined by the Children and Young Persons (Care and Protection) Act 1998)by the Commissioner.**

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5 Tenants’ Union of NSW (2011), Reforming marginal renting. A policy paper by the Tenants’ Union of NSW.
This information should not be included on any public register but used by the Commissioner to notify the Director-General of the presence of children and young persons within a registrable boarding house as per Section 122 of the *Children and Young Persons (Care and Protection) Act 1998* that requires a person who provides residential accommodation for another person who the person has reasonable grounds to suspect is a child living away from home without parental permission to inform the Director-General of the child's whereabouts.

A Memorandum of Understanding and policy must be established by these joint agencies to ensure the timely exchange of this information and for the undertaking of a risk assessment of the child or young person’s accommodation in a registrable boarding house and if determined not suitable for the needs of the young person, their relocation to appropriate alternative accommodation.

**Part 3, Division 4, Section 13 (3) must also be amended to require the immediate notification of the Director General of the presence of young residents.**

An additional clause must be added which states:

> **If it is determined, following assessment of the young resident’s needs (whether or not they are a young person with additional needs) that the authorised boarding house is not a suitable residence for the young person, arrangements must be made by the Department for the relocation of the young person to appropriate alternative accommodation within 14 days of the determination.**

### 1.6. Specific comments

Notwithstanding the primary recommendations above we submit the following specific comments.

#### 1.6.1 Introduction of Regulations

As noted above, PWDA supports the view that there are insufficient market forces or voluntary initiatives to drive change and improve outcomes with the Boarding House sector, especially the assisted boarding house sector. Even with limited regulation under the *Youth and Community Services Act 1973* (YACS Act) improvements and compliance of standards necessary for the protection of residents and quality outcomes in service delivery has been difficult to achieve.

The Act and proposed Regulation goes some ways to addressing some identified deficiencies, although its effectiveness will depend on the level of compliance and enforcement of compliance.
Recommendation 8:

The NSW Government must appoint a sufficient number of skilled and trained enforcement officers with an active intent for ensuring compliance to the 2013 Regulation, regardless of the cost incurred by Government. A compliance program must ensure the integrity of the legislation and associated Regulations, the protection of vulnerable persons and quality outcomes for these persons and the community.

1.6.2 Standards for assisted boarding houses in compliance with the CRPD

As noted by the objects of Part 4 of the Boarding Houses Act 2012, there is a mandate to enact provisions for standards that are consistent with the purposes and principles in the CRPD. Yet there remains the impression that the NSW Government is not only being selective in its reference and application of articles of the CRPD but also less than genuine in its commitment to the implementation of its human rights obligations.

Given the NSW Government’s mandate to the CRPD, it is highly concerning that the proposed Regulation and options presented in the Regulatory Impact Statement (RIS) for its implementation do not demonstrate compliance with the CRPD.

With regard to the three of the four RIS options (A, B and C) the NSW Government knowingly puts forward options that by its own admission cannot achieve compliance to the CRPD. Given this, we question how these can be presented as viable options for consideration?

Option D is considered to ‘improve consistency with the United Nations Convention on the Rights of Persons with Disabilities for all assisted boarding house residents immediately’, but is not the option reflected in the proposed Regulation.

Recommendation 9:

PWDA urges the NSW Government to use this opportunity to demonstrate its commitment to the human rights of persons with disability by amending the proposed Regulation to recognise and implement all articles of the CRPD in full and as intended.

1.6.3 Institutionalisation of people with disability

PWDA does not support the proposed capacity limit of 30 for assisted boarding houses for persons with ‘additional needs’/ persons with disability.
By all definitions, including ADHC’s own definition, any premises with a capacity of greater than 7 persons is considered an institution.

**Small residential/institutions are usually located on large parcels of land and provide 24 hour residential support in a congregate or cluster setting of 7 to 20 beds.**

**Large residential/institutions are usually located on large parcels of land and provide 24 hour residential support in a congregate setting of more than 20 beds**\(^6\).

The rational presented in the RIS for establishing the maximum number of residents is the aim to ‘avoid the potential sense of institutionalisation that could occur in larger boarding houses’\(^7\). If this rational is genuine then based on ADHC’s own definition of residential centre/institution alone, the maximum capacity should be reduced to under 7 in order to avoid the categorisation of ‘institution’ and potential sense of ‘institutionalisation’.

It must be noted also that addressing the size capacity as a means to reduce institutionalisation fails to recognise that capacity is but one factor impacting on the effects of institutionalisation. Issues identified by numerous NSW Ombudsman reports as well as the Coroner’s report with regard to 300 Livingstone Road were not exclusive to 30+ sized premises, but rather reflect the impact of for profit congregate models of accommodation and support which do not reflect contemporary disability service standards and practices commensurate with either funded disability services or reference instruments such as the CRPD.

Research by Drake\(^8\) (research quoted in the RIS) notes three main reasons why licensed boarding houses do not uphold the human rights principles of deinstitutionalisation including: ‘the outdated knowledge and skills of licensed boarding house proprietors and managers; the congregate model; and the for profit nature of licensed boarding houses’.

Drakes’ research (which is heavily supported by extensive other research) also points out that the effects of institutionalisation are a direct result of many other factors including:

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\(^6\) Disability Services NSWE Minimum Data Set Collection Data Guide: Family and Community Services – Ageing, Disability and Home Care (ADHC) Version 2.0 May 2012


\(^8\) Drake, G (2010) The privatization of the back wards: The accommodation of people with intellectual disability and people with mental illness in licensed boarding houses in Sydney, pg 219
- reliance on structured routines, efficiencies created due to limited staff or
established for staff convenience, including communal washing of clothes
and scheduled meal times to set menus;

- limiting access to areas of the facility such as locked kitchens;

- little to no consideration for individual preferences but a focus on the
group’s needs, ‘curtailment of self’, ‘role dispossession’, loss of ‘physical
integrity’ or sense of safety, ‘forced deference’ to those in authority, loss of
self-determination;

- the limited availability of supports for access to the community; and

- poverty due to the majority of a resident’s pension going to fees and the
rest on medications and cigarettes, leaving little resources for community
access/engagement, increasing isolation and dependence.

Analysis of research on safeguards for people with disability against violence
and abuse\(^9\) completed by PWDA has also highlighted clear linkages between
factors commonly associated with institutionalisation and risk of abuse
including:

- cultures of depersonalisation and lack of autonomy, isolation;

- lack of privacy;

- inactivity and isolation from community activities or external services;

- established hierarchies, cultures and practices of control which teach and
reinforce compliance;

- refusals of care and consent for services and supports promoted as
individual choice; and

- conditioning of bystanders and the community to accept poor conditions
and treatment as ‘there is nowhere else’ or ‘it’s better than being homeless’.

Whilst it is true that these factors are compounded by the congregation of large
numbers of people, PWDA strongly argues that setting the maximum capacity to

Foubert , A (1998) ‘Risk factors inherent in the structures of institutions and staff working in them’. In
Approaches to Stopping Harm. Integrated Ecological Theory of Abuse (Originally proposed by Sobsey,
1994; adapted by Fitzsimons, 2009) at International Symposium Everybody’s business: stopping the
abuse and neglect of people with intellectual disability, Griffith University, April 2011.
a limit of 30 will do little to address or ameliorate these institutionalising elements or the associated risk of abuse. Furthermore, the aim should be to prevent such effects not simply ‘avoid the sense’ of them.

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\textsuperscript{10} 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.

The aim of the NSW Government’s proposal for the maximum capacity to be set at 30 ‘to avoid the potential sense of institutionalisation’, must also be considered in the context of the other proposed elements of the draft Regulation. It is PWDA’s view that any ‘benefits’ arising from the introduction of the proposed 30 capacity limit, will in fact be offset by the new Regulation, which overall proposes an increase in institutional measures and thus a sense of institutionalisation. Furthermore, as noted above, given that the proposed reduced capacity will only affect 4 of the current 23 remaining licensed boarding houses, we argue that the overall institutionalising effect of the proposed Boarding Houses Regulation 2013 will be greater for the majority of current premises and residents, not less.

The basis for this view is formed on account of either the following newly proposed requirements or loss of existing licence condition or Regulation (as stipulated by the current 2010 YACS Regulation):

- Requirement permitting shared bedrooms.

PWDA does not support the proposed provisions of the draft Regulation permitting shared bedrooms in cases where ‘residents know each other and have requested a bedroom’. This proposed provision simply makes a mockery of the NSW Government’s intention to limit the sense of institutionalisation within

\textsuperscript{10}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
assisted boarding houses. As noted by Drake’s research, shared sleeping quarters is directly quoted as one of the factors which negatively impact on people residing in institutions with regard to their loss of self, loss of physical integrity, sense of safety, loss of self determination.\textsuperscript{11}

PWDA also strongly believes that there is a high and foreseeable risk to the interpretation and application of this proposed Regulation by operators who will use the impacts of this, particularly any measures for reducing their licensed capacity, to promote threat of closure, displacement and homelessness of residents. This in turn will be used to ‘encourage’ the ‘choice’ of residents to shared rooms (as well as arguments for the not capping overall capacity). All current residents of licensed boarding houses would be considered to “know each other” especially where they currently already share a bedroom through necessity rather than choice.

PWDA strongly urges the NSW Government to recognise the fact that single bedrooms for all is the only way to promote real choice. The option of shared bedrooms does not, for the reason that it removes the choice of the resident to change their preference at a later stage or on account of a change in compatibility with a room-mate or changing support needs. Shared bedrooms also prevent and make inappropriate intimate relationships for either party.

PWDA Advocates have firsthand experience with residents of licensed boarding houses and those being relocated at times of closure. When approached with regard to the choice of a single bedroom when relocating to new premises, it is our experience that there is always an overwhelming majority who express the choice for a single bedroom. We have also had feedback from residents following relocation that ‘a room of my own’ is one of the most life changing, welcomed and appreciated outcomes of a closure/relocation. Reasons for this include increased privacy and dignity, because it meant that their ‘stuff’ was less likely to be interfered with and because it allowed them a space to get away from others.

In the recent relocation of residents from Sunshine Lodge where a number of residents were in relationships, all indicated a preference for a single room regardless of being in a couple. Residents told PWDA Advocates that they wanted the option of being able to be together when they wanted to be together but that it was important to them to also to have their own room so that they could get away when they needed. Reasons for this included when

\textsuperscript{11}Drake, G (2010) The privatization of the back wards: The accommodation of people with intellectual disability and people with mental illness in licensed boarding houses in Sydney, pg 32.
their mental health became unstable, or when their general health deteriorated or due to the fact that they lived in a communal home with lots of other people with few other spaces to go to be alone. The single bedroom space was needed when they simply didn’t want to be with another person even their partner. Unlike for most couple’s living spaces there is no other way to have private space or time by yourself when you live in a congregate facility such as a boarding house than to have your own bedroom. PWDA has also experienced people with disability refusing to take up accommodation in a licensed boarding house on the basis that they would have to have a shared bedroom and their sense that this reduced their sense of safety and wellbeing.

It must also be acknowledged that the argument that residents choose shared bedrooms on account of it being cheaper is not a sufficient rationale to support this proposed Regulation. It is commonly known that residents of licensed boarding houses typically already pay the majority of their pension toward board, lodging and support costs. As such operators have already reached a ceiling height on fees and costs brought about by capped pension rates and residents’ limited income.

It is also a fact that residents have never benefited from a reduction in the cost of board and fees in licensed boarding houses due to the diminishing expectations afforded to operators as changes have been made to licence conditions and introduction of new Regulations. The progressive reduction in expectations of operators to provide and support resident’s individual needs including their support for community participation is one example discussed in this submission below. These were once requirements of operators under YACS licence conditions\(^\text{12}\), and by extension a service residents paid for as part of their overall board and fees. However, when the expectations for operators to provide ‘a program of activities and care’ was replaced by funded Boarding

\(^{12}\) Notice of Licence Conditions: Licence condition 5.5 (in part) ‘The staff shall provide to the satisfaction of the Director-General, a program of activities and care that ensures that individual needs of the persons with disabilities in care may be met’; Licence Condition 4.7 ‘The Licensee shall provide a record of efforts made to facilitate the integration of residents into the community activities either recreational or therapeutic; Licence Condition 5.5.4 ‘Opportunities shall be provided for each person with a disability to participate in activities in the community when such participation is consistent with the requirements that the person’s individual needs be met’; Licence Condition 5.5.5 ‘The Licensee and Licensed Manager must actively participate in the linking of residents to community activities either recreational or therapeutic; Licence Condition 6.4 ‘The Licensee shall ensure that every person with a disability admitted to the licensed premises, receives satisfactory care while remaining on the premises or while participating in the program of activities, whether conducted by or on behalf of the Licensee on the licensed premises or elsewhere’. 
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House Reform Program services there was no subsequent reduction in charges to residents.

In the current scenario, should the proposed Regulation be commenced as it is currently proposed, then it too will result in a diminished level of services and facilities in comparison to what is currently provided and paid for by residents under the current Notice of Licence Conditions and 2010 Regulation. Therefore, we argue that there should be a reduction in overall fees and boarding costs for residents on account of the new Regulation and it possible for such cost offsets to be used to cover any increases then associated with the provision of single rooms.

**Recommendation 10:**

PWDA recommends that an amendment must be made to proposed Regulations relating to Schedule 1 - Sleeping arrangements - 7 (1) b (i) (ii) removing option for shared bedrooms where residents ‘know each other and have requested a shared bedroom’. An alternative provision added to ensure single bedrooms must be provided for all.

- **Loss of specifications for the configuration of beds in shared bedrooms.**

Unlike the current YACS Regulation 2010, the draft Regulation fails to provide specifications for distances between beds in shared bedrooms. Whilst PWDA strongly believes the 2010 Regulation which stipulates each residents’ bed must be placed at least 75 centimetres from the side of any other bed and 90 centimetres from the head or foot of any other bed is draconian and far from adequate for ensuring the privacy and dignity of each individual, let alone any best practice measures for accessibility (further discussion on accessibility is noted below in section 1.6.23), the presence of these standards do at the very least act as a minimum guide.

Should the NSW Government decide to maintain shared bedrooms within assisted boarding house, the loss of a minimum guide could result in shared bedrooms being configured in a way that does not allow individual’s sufficient personal space, let alone any measure of privacy and dignity, or modesty when undertaking personal care such as continence management, grooming or dressing. These factors clearly increase the institutionalising effects of this form of accommodation for residents by ensuring their depersonalization, value and dignity.

**Recommendation 11:**

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13 Youth and Community Services Regulation 2010 – Part 2, Clause 5 (a)
Should the NSW Government keep the proposed Regulation for sleeping arrangements a guarantee must be made to residents in all shared bedrooms that should their choice, or compatibility, change with respect to their occupation of a shared bedroom and no other single bedroom is available within their assisted boarding house, that the NSW Government bears the cost of finding the new accommodation. This provision must be included as an amendment to the proposed Regulation.

Recommendation 12:

Whilst PWDA clearly recommends amendment of the proposed Regulation to ensure single bedrooms for all residents (as noted above), should the NSW Government decide to maintain the proposed Regulation for shared bedroom space however, PWDA recommends the Regulation must be amended to include increased limited measurements sufficient for the placement of individual furnishings including a separate bed, wardrobe storage for personal clothing and belongings and a bed-side cabinet that can be locked by each resident, for each resident, within each shared bedroom. Provisions must be introduced to ensure all shared bedroom space is configured to maximize each resident’s privacy, dignity, accessibility and individual needs.

- **Reduction in the current space requirements for a single bedroom and the loss of requirements for personal storage space for residents.**

Before discussing the sizing of single bedroom spaces PWDA wishes to address a technical issue with the drafting of the proposed Regulation in relation to Schedule 1 (7).

It is our understanding that the specific requirements for space within bedrooms in the proposed Regulation have been drawn from sections of the *Local Government Act 1993*, *Local Government (General) Regulation 2005*, and *Public Health Regulations 2012*. However, we question the legal application of these standards on account of the wording of the *Local Government (General) Regulation 2005*, Section 83 which outlines relevant standards for certain places of shared accommodation defining such places as:

(a) places of shared accommodation that are class 3 buildings under the *Building Code of Australia* (within the meaning of the *Environmental Planning and Assessment Act 1979*),

(b) places of shared accommodation that are general boarding houses within the meaning of the *Boarding Houses Act 2012*. 
This wording excludes ‘assisted boarding houses’ which are defined separately to ‘general boarding houses’ under the meaning of the Boarding Houses Act 2012.

The lack of reference to assisted boarding houses under these legislative provisions effectively means that once the Notice of Licence Conditions specified under the YACS Act become void, following the commencement of the Boarding Houses Regulation 2013, there will be no bedroom space requirements applicable to assisted boarding houses under the law.

This cannot be allowed to occur. The proposed Boarding Houses Regulation must be amended to include minimum bedroom sizes applicable to assisted boarding houses. Furthermore, any bedroom space requirements for persons with disability eligible under the screening tool for entry to an assisted boarding house must be directly linked to the person’s individual needs including any need for accessibility for mobility and use of the space.

Any reference to short term accommodation periods as is currently the case under the proposed Regulation that require a different standard of bedroom or any other space dimensions, must not be replicated. A person with additional needs regardless of their length of stay within an assisted boarding house should be entitled to the exact same standards and rights as any other resident.

Whilst the provisions noted in the proposed Regulation are in our view legally unenforceable (as currently drafted), it would appear from their inclusion that single bedrooms with a minimum of 5.5 square metres is being considered for residents of assisted boarding houses. It must be noted that this is an immediate loss of 2 square metres per room, from the current requirements of 7.5 square metres specified in Notice of Licence Conditions ‘A’ and ‘B’ for all single bedrooms within current licensed boarding houses.

When considering basic measurements of furnishings for a bedroom including a standard sized single bed, small wardrobe and bedside cabinet, 5.5 square metres leaves very little space for a resident’s mobility within the room, their active use of the space or its personalisation. Nor does it leave any possibility for factoring in individualised requirements due to a person’s disability support needs or simply their physical stature that may require them to need a larger than standard sized single bed for example.

Again it is our view that a person’s sense of privacy and dignity has direct links to the adequacy of their personal space, a comparative example of this is the

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14 Notice of Licence Conditions – Physical, Structural; and General Requirements, licence condition 2.9.
People with Disability Australia (PWDA) – Submission on the Draft Boarding Houses Regulation 2013 and associated Regulatory Impact Statement

Aged Care Accreditation Standards that seek a measure of a persons sense of privacy, dignity against their access to adequate personal space. 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 bed-side 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.

Relevant comparison points for determining the appropriate space and accessibility within assisted boarding houses include:

- Livable Housing Australia Design Guidelines which recommend “bedroom space should encourage ease of movement and be free of obstructions”;

- Disability (Access to Premises - Buildings) Standards 2010 which aim to improve the opportunities for people with disability to participate in and contribute to the economic, cultural, social and political life of our community as equal citizens.

- NSW WorkCover Office floor space recommendations which state a “good rule of thumb for personal space is to allocate 6.25 square metres per individual workstation, including furniture and fittings, but excluding passageways and amenities. Ten square metres per person for the general, air-conditioned office areas including passageways and amenities, is the design recommendation in AS 1668.2–2002”.

- NSW WorkCover Health and Safety Guide - Preventing Violence in the Accommodation Services and Social and Community Services Industry;

- NSW Work Health Safety Act 2012 and associated Work Health and Safety Regulations; and


Youth and Community Services Regulation 2010 – 5 Sleeping requirements; 9 Personal Storage Space.

www.livablehousingaustralia.org.au

Care Services Certification.

Recommendation 13:

PWDA recommends that the proposed Regulation be amended to include provisions relating to single bedroom space which states all single bedrooms must cater for the individual needs of the resident and have a floor area of no less than 7.5 square metres.

It must also be amended to include provisions for wardrobe space for the storage of personal clothing and belongings and a bedside cabinet that can be locked by the resident, located within the resident’s bedroom.

Furthermore, any reference to short-term accommodation periods requiring a different standard with regard to bedroom or any other space dimensions must be removed from the proposed Regulation. A person with additional needs regardless of their length of stay within an assisted boarding house should be entitled to the exact same standards and rights as any other resident.

- Loss of specified space requirements for internal recreation space; and Loss of opportunity to be given support to participate in activities in the community and for recreational needs of residents.

PWDA does not support the proposed Regulation relating to communal space as outlined in Schedule 1, Section 16 - Communal space. We believe the proposed provision for communal space it is highly inappropriate and far from adequate in that it approves one communal living space only, and that this could be located outdoors with no requirement for an indoor alternative. It is also a direct loss of the current requirement of “B” Notice of Licence Condition which stipulates a provision for 3 square metres of internal recreation space per resident of the nature of lounge, leisure and therapy areas, excluding dining, office, staff and bedroom space to be provided.

Furthermore, the proposed Regulation in relation to community access, engagement and recreation provisions is tokenistic at best. The proposed requirements remove all obligations on the boarding house to provide opportunities to participate in the community, let alone provide person centred supports which facilitate or encourage the activity and engagement of residents in meaningful activities, or community participation. This is with the exception
of the provision of information, which places the onus on the person with additional needs/disability to manage their own need for services and supports. This may be suitable to some residents living in assisted boarding houses, but certainly not all.

This latest reduction in provisions for recreation and community access is consistent with the NSW Governments progressive removal of rights from residents of licensed boarding houses to receive support to participate in the community. PWD’s submission to the public consultation on the proposed YACS Regulation 2010 in July 201019 clearly outlines and recommends against this progressive removal of rights. Whilst we acknowledge the role of the funded Boarding House Reform Program (BHRP) - Active Linkage Initiative, funding levels to this program have traditionally been poor and insufficient to provide residents with individualised programs. The end result of these combined factors has resulted in many spending large periods of their time unoccupied and trapped within the licensed boarding house.

We also strongly believe that there are direct correlations between the practice and effects of institutionalisation and the configuration of communal space proposed for assisted boarding houses under the draft Regulation. Allowing for one communal space only, albeit ‘of an appropriate size and space for residents to socialise’ has unfortunate similarity to the structure of wards in institutions. When considering a single communal space for 30 residents, PWDA questions how this space could present and maintain a homelike environment; promote resident’s privacy and dignity; confidentiality; level of comfort with sufficient and appropriate furniture; maintain a comfortable level of noise, be appropriate for and facilitate the entertainment of guests; facilitate mobilising and access?

Furthermore, if this space is only provided outdoors, as allowable under the proposed Regulation, we again question whether such as space can promote the safety, comfort and positive image of people with disability or facilitate their relationships with visitors? An all too common scene in existing licensed boarding houses is the dirty, broken, mismatch of furniture on front veranda’s and in backyards where people sit daily for want of something else to do or somewhere else to go. In winter, for the lack of indoor recreation space, residents pile on all their clothes at once to try and stay warm. Outdoor recreation spaces are also areas where people will smoke, a non-smoker or person wanting to quit or reduce smoking would be exposed to high levels of passive smoke and its associated health risks should this be the only space

afforded to them. These scenes do not represent lives well lived or a contemporary standard of disability services and support.

It is shameful that the NSW Government does not appear to be using this opportunity for Boarding House reform seriously. It is not showing any genuine commitment to promoting the human rights of persons with disability, its statements of intent to ‘avoid the potential sense of institutionalisation’, its commitments to person centred services and individualised support or attempts to end the degradation and exploitation of people with disability living in boarding house accommodation by closing all licensed boarding houses.

**Recommendation 14:**

PWDA recommends a minimum standard of no less than 3 square metres per resident to be maintained with regard to internal recreation space and ideally increased to a level that represents a reasonable standard of living. These changes must be included as an amendment to the proposed Regulation.

**Recommendation 15:**

We also recommend the amendment of the proposed Regulation to ensure the inclusion of standards for the person centred and individualised supports for community access and participation.

- *Loss of requirement for laundry on premises*

The proposed Regulation states that the boarding house must have ‘laundry arrangements whether on the premises… or through another facility, service or arrangement’. Again that this is yet another reduction of the standards outlined in the current Notice of Licence Conditions, which require an adequately equipped laundry provided on site.\(^{20}\)

We believe that removing the requirement of a laundry on site also further diminishes opportunities for residents to undertake their laundry, to develop or maintain associated daily living skills in the home and increases resident dependence and sense of institutionalisation. It may also result in additional costs to residents for laundering that they can ill afford.

**Recommendation 16:**

PWDA recommends an amendment to the proposed Regulation to maintain the current requirement specified in the Notice of Licence Conditions with regard to the provision of a separate, equipped laundry.

\(^{20}\)Notice of Licence Conditions – Physical, Structure and General Requirements, 2.5.
Recommendation 17:

PWDA strongly recommends that there must be no diminishing of standards under this new Regulation when compared to the current applicable Notice of Licence Conditions and YACS Regulation 2010.

- No provision to prevent the co-location of assisted boarding houses.

The Boarding Houses Act 2012 and proposed Regulation is also silent on the co-location of premises where operators hold licenses for separate, but multiple houses co-located together and jointly managed. Current examples within the licensed sector include the seven licensed premises in Wallerawang. Individually these premises do not exceed the proposed maximum 30-person limit, however their combined capacity is 52 persons. Obviously this co-location and joint operation of premises dilutes any benefits of reduced capacity or aim to reduce the sense of institutionalisation.

PWDA has consistently opposed the co-location or clustering of accommodation and supports for people with disability arguing it is little more than a ‘modern’ form of institutionalisation which fails to conform with contemporary disability service standards under the Disability Services Act 1993 or UN CRPD.

Drake’s research refers to a study by Emerson\(^{21}\) which notes the following with regard to co-location of premises or ‘cluster housing’:

- people supported in cluster housing were more likely to live in larger settings, be supported by fewer staff, be exposed to greater changes or inconsistencies in living arrangements, be exposed to more restrictive management practices (seclusion, sedation, physical restraint, polypharmacy), lead more sedentary lives, be underweight, and participate in fewer and a more restricted range of leisure, social and friendship activities.

Recommendation 18:

PWDA recommends amendment to the proposed Regulation to place a restriction on the authorisation, under licence or permit, of separately licensed but co-located or clustered premises owned or operated by a single licensee.

1.6.4 Part 2, Section 4 – Additional particulars to be notified about Registrable boarding houses

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The Boarding House Act 2012 refers to a resident’s right to occupy, *for a fee or reward*, one or more rooms in the boarding house as a resident of the house.

**Recommendation 19:**

**Amendment of Part 2, Section 4 is required to:***

1. **Clause (f)** to ensure recording of information relating to ‘reward’, how this is calculated to be fair, reasonable and not exploitative as a means of payment.

2. **Clause (h) must be amended** to include kinds of services provided and available to residents by the Registrable Boarding House as well as any external local services and support.

3. **Clause (i) must be amended** to include description of facilities, including kitchen, laundry, communal space and any other resident facilities, available on site at the registrable boarding house.

4. **Additional clause to be added** to include information about staffing levels including number present at the premises at all times.

1.6.5 **Part 2, Section 5 – Additional information on Register of Boarding Houses that may be published on internet for public access**

It is PWDA’s understanding that whilst this section of the proposed Regulation relates to public access to information about enforcement action taken in respect of registrable boarding houses, this is limited to information of prosecutions only, and does not include notices of non-compliance or any associated action plans to addresses breaches.

As noted extensively in PWDA’s submission on the Exposure Draft – Boarding Houses Bill 2012, PWDA believes that the regulatory requirements and compliance system introduced through this proposed Regulation should be modelled on existing regulatory and compliance frameworks already established within comparable sectors providing services to vulnerable persons including the aged care and child care sectors. Modelling these existing regulatory and compliance frameworks to the Boarding Sector is relevant to the whole Exposure Draft but there are specific precedents with regard to public access to information which is specifically relevant to Part 2 of the proposed Regulation.

Precedent exists within the Australian Aged Care Accreditation system for public access to information on failure of Aged Care facilities to meet compliance requirements as well as public access to related sanction reports and
outcomes. Each time the Department of Health and Ageing imposes a sanction on an aged care facility, information stating that sanctions have been imposed is published on the Department of Health and Ageing’s website.

The NSW Department of Education and Communities also has public access to enforcement actions lists which provide details of:

- providers who have been convicted for offences under NSW children's services legislation and had that conviction recorded and penalties imposed by the court; and

- authorised supervisors who have been convicted for offences under NSW children's services legislation and had that conviction recorded and penalties imposed by the court; and

- providers who have had action taken by the department to suspend, revoke, or refuse to grant a provider licence or service approval; and

- providers who have had additional conditions placed on their licence or a service approval by the department; and

- providers who the department has had reason to believe are committing offences and so informed parents of children enrolled in their services that it was inadvisable for the children to continue to attend services.

Whilst PWDA supports the public access of information relating to particulars of enforcement action taken in respect of registrable boarding houses, their proprietors and staff, we do strongly believe that the register of public information must include particulars which relate to sanctions prior to legal prosecution, as well as any improvement programs established in conjunction with the enforcement agency to address breaches. We believe this information is essential for current and future residents to guide and inform their decisions on where to live.

Recommendation 20:

Section 5, Part 2 of the proposed Regulation, relating to public access of information must be amended to include publication on the internet particulars which relate to sanctions prior to prosecution, as well as any improvement programs established in conjunction with the enforcement agency to address breaches.

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At this point we also feel it is relevant to include a further recommendation made by PWDA in its Submission on the Exposure Draft – Boarding Houses Bill 2012, which we still believe necessary. This recommendation relates to the need to establish a new and separate ‘Compliance and Oversight Agency’ for the NSW Boarding House sector, the implementation and monitoring of the *Boarding Houses Act 2012* and its associated Regulation.

Evidence which supports this, particularly with regard to the licensed boarding house sector are the numerous NSW Ombudsman’s reports which have repeatedly found critical failings on the part of ADHC to fulfil its responsibilities to monitor licensed boarding houses and ensure their compliance with requirements.\(^{24}\)

Similarly, the 2012 Coroner’s Inquest into the death of six residents of a licensed boarding house made the following recommendation as a result of its findings:

> ... a regulatory body separate from DADHC is enacted with powers to monitor, prosecute and arbitrate disputes between boarding house operators and tenants in a similar manner to a residency tribunal.\(^{25}\)

**Recommendation 21:**

**PWDA recommends the establishment of a new and separate ‘Compliance and Oversight Agency’ for the NSW Boarding House sector.**

This Agency should act as a discrete joint cross-government entity established for the purposes of implementing the regulatory framework with specific functions around the monitoring of supply of boarding houses; developing initiatives to deliver affordable housing; providing appropriate protections for residents of this sector including persons with additional needs; management of the register and utilising the new sources of information to assist in the examination of residents needs and their access to services; undertaking monitoring of compliance programs for improvement, and undertaking prosecutions.

The establishment of such an agency is important to ensure a consistency of practice across the range of functions proposed under the *Boarding House Act*

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\(^{25}\) State Coroner’s Court of NSW Inquest into the deaths of Shaneen Batts; Ilona Takacs; Dorothy Hudson; Ian Birks; Donald Mackellar; Mohammed Ramzen, 11 May 2012. Pg 2.
2012, which once the full Act is commenced, will be implemented by three separate agencies which operate across multiple regions and local government areas. Its independence from ADHC, in particular, is essential to reduce the possibility of a conflict of interest within ADHC as the agency responsible for the enforcement of the Act and regulation for assisted boarding houses, as well as any displacement and relocation of residents that may occur as a result of active and effective enforcement.

1.6.6 Part 3, Division 2, Section 7 – Additional information to be provided by applicants.

The Boarding House Act 2012 defines the meaning of "close associate" in the following terms:

*a person is a "close associate" of an applicant for an authorisation, approval or exemption under this Part or an authorised operator if the person:

(a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person), in the business of the applicant or operator that is or will be carried on under the authority of the authorisation, approval or exemption, and by virtue of that interest or power is or will be able (in the opinion of the Director-General) to exercise a significant influence over or with respect to the management or operation of that business, or

(b) holds or will hold any relevant position, whether in the person's own right or on behalf of any other person, in the business of the applicant or operator that is or will be carried on under the authority of the authorisation, approval or exemption.

Given this definition and the entitlement of a ‘close associate’ to exercise significant influence over the management and operation of the assisted boarding house, Section 7 – Additional information to be provided by applicants must be amended.

Recommendation 22:

Amend Section 7 – Additional information to be provided by applicants to include specific reference to ‘close associate’in addition to ‘applicant’ for purposes of determining (1) (a) (i) and (ii) with regard to their capacity; experience to provide appropriate accommodation and services to additional needs residents; capacity to exercise overall supervision of an assisted boarding house;
as well as (1) (b) any particulars about relevant authorisation or relevant approval previously cancelled, revoked or suspended, or previous application for such an authorisation or approval that has been refused.

1.6.7 Part 3, Division 2, Section 9 – Additional grounds for refusing authorisations and manager approvals

Recommendation 23:

Amendment must be made to sections (1), (2) and (3) of Part 3, Division 2, Section 9 – Additional grounds for refusing authorisations and manager approval to include ‘close associate’ where there is any reference to ‘applicant’ in all instances.

1.6.8 Part 3, Division 4, Section 13 – Condition relating to notification of presence of young residents.

See recommendations in sections 1.4 and 1.5.

1.6.9 Part 3, Division 4, Section 14 – Condition relating to screening of actual and proposed additional need residents.

Recommendation 24:

Amendment must be made to section (2) (b) Part 3, Division 4, Section 14 – Condition relating to screening of actual and proposed additional need residents to include the wording ‘or former licensed residential centre’; and (c) to include ‘general hospital and correctional facility’.

1.6.10 Part 3, Division 4, Section 14 – Condition relating to the provision and display of information

Recommendation 25:

Amendment must be made to include requirements for provision and display of accessible information in a format/s suited to the individual needs of residents.

Section (3) (c) amended to include display of rewards accepted as a means of payment of board and lodging.

1.6.11 Part 3, Division 4, Section 16 – Condition relating to development of policies

PWDA has on numerous occasions highlighted the policy and practice gap that
exists between licensed boarding houses and the rest of the disability services sector, advocating for a closure of this gap. PWDA’s Accommodating Violence research report notes most improvements for residents of licensed boarding houses have resulted from the introduction of funded services under the BHRP, which are subject to a higher standard of service and policy practice, than changes or improvement in standards and practice by licensed boarding house operators. Since the introduction of the BHRP the licensed boarding sector has been excluded from new directions in disability services in NSW including the NSW Government’s *Stronger Together – A new direction for disability services in NSW 2006 – 2016*; and *Better Together - A new direction to make NSW Government services work better for people with a disability and their families: 2007 – 2011*.

Drake’s research also notes the anomaly between the funded disability sector and licensed boarding houses as well as the conclusion that licensed boarding houses do not uphold the principles aimed for with respect to deinstitutionalisation. Where people with disability have become stuck in a place of ‘neither here nor there’, where they lack the opportunity to fully experience human rights as they were envisaged by deinstitutionalisation.

As discussed at length above, PWDA does not believe that there should be any diminishing expectation on assisted boarding houses in comparison to the existing benchmarks or standards for best practice for current licensed boarding houses, or when compared to services funded to provide accommodation and support.

It must also be remembered that many of the current best practice reference points for licensed boarding houses have arisen from recommendations made by the NSW Ombudsman following reviews of practice in licensed boarding houses or reviews of the deaths of people with disability living in licensed boarding houses. Action on these recommendations must not be lost in the drafting of this new Regulation.

Furthermore, it is an opportunity for the NSW Government to close the policy and practice gap that currently exists between funded disability services and licensed boarding houses.

**Recommendation 27:**

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27 Drake, G (2010) The privatization of the back wards: The accommodation of people with intellectual disability and people with mental illness in licensed boarding houses in Sydney,
Amendment must be made to Section 16 (1)Part 3, Division 4, Section 16 – Condition relating to development of policies to include all relevant ADHC policies applicable to people with disability living in funded accommodation services including all relevant policies under the following policy topic areas listed on ADHC’s website: Ageing, Behaviour, Children and Young People, Cultural Diversity, Inclusion, Learning New Skills, Somewhere to live and Your Rights.

If the NSW Government does not support this recommendation in full, at a minimum, there must be no diminishing of expectations and all current policies listed as best practice references for licensed boarding houses.

In this case Section 16 must be amended to include policies for:

- Decision Making and Consent Policy;
- Health Care Policy;
- Nutrition and Swallowing Policy;
- Palliative Care Policy.

PWDA also strongly recommends inclusion of policies on prevention of, and response to violence (including domestic violence), abuse and neglect as a minimum requirement.

Note: further comment and recommendations in relation to violence and abuse are made under section 1.6.29 Schedule 1, Part 4 – Health and Wellbeing, Division 4 – Safety below.

Furthermore, given the Screening Tool for entry into a licensed boarding house currently approves a person with low risk for harming themselves or others and provides for the recording of any behavior management plan in place, PWDA strongly recommends inclusion of policies on Behavior Support and Restrictive Practices as a minimum standard.

Amendment must be made to clause (1) (a) (vi) to read: prevention and response to infectious diseases.

Amendment must be made to clause (1) (b) to read: ensure that copies of those policies are available in accessible formats at the authorised boarding

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30. ADHC Screening Tool for Entry to Licensed Residential Centres, Section 1, Threshold Question 7 and 8.
people with disability australia (pwda) – submission on the draft boarding houses regulation 2013 and associated regulatory impact statement

1.6.12 part 3, division 4, section 17 – condition relating to staff arrangements

recommendation 28:

clause (1)(ii), part 3, division 4, section 17 must be amended to include an explanation of how a reduction of staffing hours or number of staff members at an authorised boarding houses is sufficient to cater for the needs of the additional needs residents who are resident.

1.6.13 part 3, division 4, section 18 – condition relating to notification of evictions of additional needs residents.

recommendation 29:

given a resident must not be evicted without reasonable notice as per boarding house act schedule occupancy principles 1(10) as well as the potential vulnerability of a person with additional needs being without accommodation and supports necessary for their health, wellbeing and safety, part 3, division 4, section 18 must be amended to ensure the eviction notice must be made simultaneously to the director general as provided to the resident.

to maintain consistency with section 14 (6), this section must also be amended to ensure conditions must be made for arrangements, in consultation with the adhc, for the relocation of the resident to appropriate alternative accommodation by the date of eviction.

1.6.14 part 3, division 5, section 20 – additional needs resident personal information register.

recommendation 30:

clause (1), part 3, division 5, section 20 to be amended to include:

(r) a description or photo as adequate identification of the resident;

(s) name and contact details of authorised guardian and any associated powers, review or expiry dates.

(t) any legal authorities which restrict or prevent residents from other parties as per schedule 1, 25 (3).
1.6.15  Part 3, Division 5, Section 21 – Additional needs resident health records

Recommendation 31:

Amend to include (h), Part 3, Division 5, Section 2 to read: any guardianship authorities regarding medical treatment.

1.6.16  Part 3, Division 5, Section 22 – Occupancy agreement records

Recommendation 32:

Amend clause (1), Part 3, Division 5, Section 22 to include any written occupancy agreement must be recorded in a manner which is accessible to the resident and caters to their individual communication needs.

1.6.17  Part 3, Division 5, Section 23 – Staff information records

Recommendation 33:

Amend Part 3, Division 5, Section 23 to include date on which probity check was carried out.

1.6.18  Part 3, Division 5, Section 25 – Fire Safety procedure records

Recommendation 34:

Amend section 25 (a), Part 3, Division 5, Section 25 to read: any emergency evacuation plans prepared for the boarding house including personal evacuation plans for residents with additional needs.

1.6.19  Part 3, Division 6, Section 26 – Additional reportable incidents involving residents
Section 83 of the Boarding House Act 2012 provides broad power under Regulation to prescribe reporting of any incident involving residents (in addition to the death of a resident, the sexual assault or absence of a resident). Given this PWDA strongly advocates that Section 26 of the proposed Regulation be amended to require reporting of as broad a range of incidents as possible to act as a mechanism to improve both the prevention and response to incident of violence, abuse, neglect and exploitation of persons with disability.

PWDA’s Accommodating Violence Report notes a high prevalence of the risk to, and incidence of, domestic violence experienced by people with disability in licensed boarding houses. Numerous reports by the NSW Ombudsman have also highlighted inadequate protections for already vulnerable residents from harm and violations of their fundamental human rights. Even under a new regime of enforceable Regulation, the NSW Government cannot be complacent on this issue.

Ensuring adequate provisions for the protection of people with disability living in licensed boarding houses is long overdue. Learning from situations such as Grand Western Lodge, the Coronial Inquest into 300 Hostel and more recent events at Sunshine Lodge, also subject to a planned coronial review, must be put into practice to ensure appropriate mechanisms are in place for the prevention and response to incidents of violence, abuse, neglect and exploitation of persons with disability.

Recommendation 35:

Amend Section 26 (1) (a), Part 3, Division 6 to read: any offence under the Crimes Act 1900 against:

(i) a resident by a staff member, or

(ii) a staff member by a resident, or

(iii) a resident by another resident, or

(iv) a resident by any other person.

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31 Notification of deaths, sexual assaults and other incidents involving residents of authorised boarding houses
Amend Section 26 (1) (b) a serious accident involving a resident on the premises, or absent from the premises of the boarding house (being an accident that requires the resident to receive medical, dental or hospital treatment.

Amend Section 26 to include a clause (d) in relation to 26 (1) to read: the manager of an authorised boarding house report any incident to a NSW Police officer as soon as is reasonably practicable after becoming aware of the incident concerned.

1.6.20 Part 3, Division 6, Section 29 – reporting changes in circumstances

Recommendation 36:

Amend Section 29 (1), Part 3, Division 6 to read: the authorised operator of an authorised boarding house must report to the Director-General any of the following changes in circumstances no later than 7 days prior to the change.

1.6.21 Schedule 1 – Standards for authorised boarding houses – Part 1, Section 2: Staffing qualifications and skills

Recommendation 37:

Amend Schedule 1, Section 2, Clause (2) to read: Each staff member must be trained in the proper use of the fire fighting equipment of an authorised boarding house and the evacuation procedures, for the boarding house, including person evacuation plans for persons with additional needs.

1.6.22 Schedule 1 – Standards for authorised boarding houses – Part 1 - Staffing, Section 3: Minimum qualifications for managers

PWDA strongly believes there is a demonstrable correlation between the values, knowledge and skills of staff working with people with disability and the person with disability’s direct sense of personal value, their wellbeing and achievement in positive outcomes.

The adequacy and competency of staff skills in licensed boarding houses has been an area of consistently strong criticism for many years. Numerous reports by the NSW Ombudsman, as well as the Coronial Report into 300 Hostel have noted inadequacies in staff supervision levels, lack of staff skills necessary to ensure the safety and proper care of residents as well as allegations of neglect, assault and intimidation by staff to residents. As noted previously, one of the key reasons why participants in Drake’s study believed licensed boarding houses
did not uphold the human rights principles of deinstitutionalisation was the outdated knowledge and skills of managers and proprietors\textsuperscript{33}.

Staffing qualification and experience is a fundamental element of the proposed Regulation and critical to its successful implementation and the resulting quality of life and outcomes for people with disability living in assisted boarding houses. For this reason, the Regulation must ensure that the values, knowledge and skills of staff of assisted boarding houses not only reflect a contemporary understanding of disability or mental health and illness but also expect continuous quality improvement. It must also ensure that measures introduced under Stronger Together reforms for improving the disability service system’s capacity and accountability, to ensure good quality services provided by well-trained staff are equally applied to the shared private residential accommodation sector\textsuperscript{34}.

**Recommendation 38:**

Schedule 1, Part 1, Section 3 - Minimum qualifications for managers must be amended to include the recognition of the TAFE Diploma of Disability aimed at workers responsible for coordination and management of agencies delivering services to people with disability.

It must be amended to reflect Stronger Together commitments to improving staff quality including the requirement that staff are trained in and can demonstrate cultural competency.

It must be amended to include a requirement for continuing professional development/continuing education in areas relevant to the providing services and supports to persons with additional needs.

\textsuperscript{1.6.23} **Schedule 1 – Standards for authorised boarding houses, Part 2 – Physical Environment, Division 2 – State of premises and Division 3 – Facilities and equipment.**

PWDA strongly advocates accessibility standards must be applied to assisted boarding house premises as a minimum standard given the definition of person with additional needs under the *Boarding Houses Act 2012* includes persons who may have physical access needs, sensory access needs and/or communication access needs.

\textsuperscript{33}Drake, G (2010) The privatization of the back wards: The accommodation of people with intellectual disability and people with mental illness in licensed boarding houses in Sydney, pg 209

\textsuperscript{34}NSW Department of Family and Community Services, Ageing, Disability and Home Care (2006) Stronger Together; A new direction for disability services in NSW 2006–2016, pg 47.
Meaning of ‘person with additional needs’\textsuperscript{35} includes:

(a) the person has any one or more of the following conditions:

(i) an age related frailty,

(ii) a mental illness within the meaning of the Mental Health Act 2007,

(iii) a disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments, and

(b) the condition is permanent or likely to be permanent, and

(c) the condition results in the need for care or support services (whether or not of an ongoing nature) involving assistance with, or supervision of, daily tasks and personal caresuch as (but not limited to) showering or bathing, the preparation of meals and the management of medication.

Furthermore, the Screening Tool for Entry into a Licensed Boarding House deems eligible persons with physical disability who may ‘mobilise independently without the constant physical support of a carer’ but who may ‘use an aid’ and ‘may require episodic assistance’\textsuperscript{36}.

Given these factors and the clear intention for assisted boarding houses to be a housing option for persons with access requirements, PWDA cannot see any reasonable or justifiable reasons why minimum best practice access standards should not be applied to all assisted boarding houses. Furthermore, the \textit{Disability (Access to Premises - buildings) Standards 2010} should be applied to all newly built assisted boarding houses or any existing assisted boarding houses under taking renovations to ensure compliance with the new Regulation.

The proposed Regulation must also ensure appropriate reference to, and avoid contradiction of, requirements specified under the \textit{NSW Work Health and Safety Act 2011} and its associated Codes of Practice.

\textit{Note:} Recommendations in this section are in addition to those relating to these sections already noted above.

Recommendation 39:

Amendment must be made to the proposed Regulation to incorporate a new section under Division 2 to ensure the application of accessibility standards

\textsuperscript{35}Boarding Houses Act 2012, Division 1, Part 4, Section 36.

\textsuperscript{36}ADHC Screening Tool for Entry to Licensed Residential Centres, pg 12.
and best practice principles for access and safety in and around the premises of an authorised boarding house.

PWDA recommends the following specific amendments with regards to establishing minimum accessibility standards:

Division 2:
Section 9 - Light and ventilation must be amended to include requirements for appropriate and accessible window heights; types of fixtures and fittings to allow operation of ventilation by people with limited mobility, dexterity and reach.

Section 10 - Furniture and fittings must be amended to include requirements for ensuring and appropriate mix of seating for people of all ages and abilities including (but not limited to) low height, arm-rests, back-rests.

Division 3:

Section 14 - Toilets and washing facilities must be amended to include requirements for accessible toilets, bathing and showering including (but not limited to) provision of grab rails, ramps, minimum circulation space.

An additional clause (3) must be added which reads: Where the toilet, bathing or showering facilities are designed for multiple users, all facilities must provide residents with maximum privacy and dignity.

Section 15 - 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.

Part 3, Division 5 – Records 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 bell.

Section 16 – Communal Space must be amended to ensure requirements for adequate entry and accessible circulation within communal space including (but not limited to) minimum widths of accessible paths of travel.
Section 17 - Dining rooms must be amended to include requirements for accessibility including (but not limited to) entry, circulation, wheelchair space, adjustable height tables, choice of seating types.

Comparative standards can be drawn from WorkCover NSW’s standards for dining room space outlined in its Managing the work environment and facilities: Code of practice\(^{37}\) which states:

*Dining rooms should have 1 m\(^2\) of clear space for each person likely to use the dining room at any one time. The clear space is calculated free of any furniture, fittings or obstructions such as pillars. This means that the size of a dining room for 10 workers should be 10 m\(^2\) plus additional space for dining furniture, appliances and fittings such as sinks.*

Section 18 - Private or quiet rooms must be amended to include necessary accessibility requirements (already stated above).

Amendment is required to this provision to ensure access and use by all additional needs residents not just those who share bedrooms. Provisions must also be added to ensure this room is appropriately furnished for its use.

Section 19 - Food preparation areas must be amended to include to access such as (but not limited to) adjustable height counters, ensuring equipment is within zone of reach, counters which allow wheelchair access.

Amendment is required to ensure provision of suitable cooking and food preparation utensils and tools.

Section 20: Laundry areas must be amended to include to access to ensure washing and drying equipment is within zone of reach, and allows wheelchair access.

Section 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.

The proposed draft Regulation includes no requirement for the provision of a sick room, as is the current standard under the Notice of Licence Conditions\(^{38}\). Should amendments recommended by PWDA above for single bedrooms be made with respect to all residents, then PWDA would not consider the inclusion of this existing requirement necessary. However, whilst the provisions for shared bedrooms remain, the standard minimum of one sick room, convenient


\(^{38}\) Notice of Licence Conditions, 2. Physical, Structural and General Requirements, 2.7
to bathing and toilet facilities MUST be maintained for the use of any additional needs residents who share bedrooms. Given the varying needs of ‘additional needs residents’, their fluctuating general and mental health, ageing population needs, PWDA also considers it reasonable that a ratio of sick rooms to the number of shared bedrooms be implemented.

Recommendation 40:

**Schedule 1 – Standards for authorised boarding houses, Part 2 – Physical Environment, Division 3 – Facilities and equipment** be amended to include a clause for the provision of sick room facilities, convenient to bathing and toilet facilities must be provided.

When considering how to determine whether sick room facilities are adequate and accessible, the manager of the authorised boarding house must consider the size and layout of the premises, the number and composition of persons with additional needs and the number of shared bedroom facilities.

1.6.24 **Schedule 1, Part 3 – Lifestyle, Section 22 – Protection of private property**

Recommendation 41:

Amend Schedule 1, Part 3, Section 22, clause (1) to read: Additional needs residents of an assisted boarding house must be provided with suitable secure storage facilities within their bedroom for their personal property.

1.6.25 **Schedule 1, Part 3 – Lifestyle, Section 24 – Information about available support services**

Recommendation 42:

Amend Schedule 1, Part 3, Section 23, clause (1) to ensure requirements to provide information in accessible formats suitable to the needs of individual residents with additional needs.

Amend to include an additional clause (3) to read: An authorised boarding house must have available for use by additional needs residents an accessible directory or information source which provides contact details for local support services, financial services, legal services, domestic violence and sexual assault services, sexual health services and advocacy services.

1.6.26 **Schedule 1, Part 3 – Lifestyle, Section 25 – Personal relationships**

Recommendation 43:
Amend Schedule 1, Part 3, Section 25, clause (2) to include provision for ensuring the privacy and confidentiality of additional needs residents.

1.6.17 Schedule 1, Part 4 – Health and wellbeing, Division 1 – Medication, Section 27 – Storage of Medication

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). Advice provided to PWDA from NSW Health Medication Management, Pharmaceutical Services Unit, Legal and Regulatory Services Branch is that the Boarding House Regulation, once commenced, will replace PD2005_105, which in turn will be revised into a policy directive for Medication Handling in NSW Health Facilities only. Once this occurs there will be an absence of any other policy guidelines directing medication handling. This advice emphasising the importance of ensuring all necessary and best practice medication handling provisions are captured in the proposed Boarding Houses Regulation.

When comparing PD2005_105 with the proposed Regulation provisions drafted under Part 4 – Health and Wellbeing, Division 1 – Medication, there appear to be gaps. As noted above, PWDA does not believe there should be any diminishing of provisions for assisted boarding houses in comparison with the current requirements. Hence the aim of this Regulation should be to enhance and raise standards for assisted boarding houses which affect the safety, care and protection of persons with disability. We remain concerned that recommendations around best practice in medication handling, distribution and administration which have come from reviews by the NSW Ombudsman following disability death reviews, which were clearly linked to the prevention of the deaths of persons with disability living in licensed boarding houses, have been omitted in the drafting of this proposed Regulation.

Recommendation 44:

PWDA recommends a thorough review of the provisions proposed in this draft Regulation to ensure accuracy against best practice requirements as determined by NSW Health and the NSW Ombudsman’s practice recommendations for licensed boarding houses.

Gaps identified in PWDA’s comparison of these provisions note the following amendments will be required to the proposed Regulation.

Amend Schedule 1, Part 4, Division 1, Section 27 with an additional clause
which reads: The medication storage facilities must be kept locked at all times except when in immediate use.

Amend clause (3) to include words: must be kept separate from food such that food cannot be affected.

Amend clause (5) to include words: and must not be accessible to any other resident.

Amend section 28 with:

- an additional clause (9) which reads: The medication should be handed directly to the resident at the appropriate administration time and staff should observe ingestion by the resident. All tablets and capsules should be swallowed whole unless the pharmacist advises otherwise.

- an additional clause (10) which establishes provisions for management, storage and administration of medication when a resident goes on an outing. Section 4.5 of the NSW Health PD2005_105 sets out best practice in this regard.

- an additional clause (11) which reads: injections may only be administered by a medical practitioner or a registered nurse. This does not preclude a resident self-administering their own insulin.

The NSW Health PD2005_105 as well as the current YACS Regulation 2010 also note best practice requirements with regard to medication compliance aids which does not appear in the proposed Regulation. PWDA notes that the inclusion of clause 4 (a) of Section 11 of the current YACS Regulation 2010 came from a recommendation by the NSW Ombudsman and is noted as a positive action by ADHC in the NSW Ombudsman’s Report of Reviewable Deaths in 2008 and 2009 – Volume 2: Deaths of people with disabilities in care issued in September 2011. This provision must be added back into the proposed 2013 Regulation.

An additional clause (11) which reads: any prescription medication of a resident:
(a) must, if it is practicable to do so, be separated by a registered pharmacist into individual doses in a blister pack and be clearly marked so as to identify the resident.

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1.6.28 Schedule 1, Part 4 – Health and Wellbeing, Division 2 – Health Monitoring, Section 30 – Assistance with health issues

Recommendation 45:

Amend Schedule 1, Part 4, Division 2, Section 30 (a) to read: in the case where an additional needs resident suffers an injury or illness (including mental health or dental) while on the premises of the boarding house:

(i) if the injury or illness requires urgent medical or dental treatment – immediate steps must be taken to administer emergency first aid, if required and secure treatment.

1.6.29 Schedule 1, Part 4 – Health and Wellbeing, Division 3 – Food and Nutrition, Section 31 – Food and nutrition

Recommendation 46:

Amend Schedule 1, part 4, Division 3, clause (1) to read: Each additional needs resident of an authorised boarding house must be provided with meals that take into account their health and dietary needs, cultural, religious or personal preferences...

1.6.30 Schedule 1, Part 4 – Health and Wellbeing, Division 4 – Safety

PWDA is highly alarmed that the proposed Regulation has been written with inadequate regard to the prevention of violence and abuse of persons with additional needs, and that the minimal provisions incorporated into the Regulation relating to violence and abuse are limited to response only. With the exception of the brief reference to Article 16 of the CRPD in the Objects of the Boarding Houses Act 2012, both the Act and the proposed Regulation are inadequately prepared with regard to violence prevention. In this respect these proposed legislative measures also fail to respect commitments made in both National and State plans to reduce violence against women and their children.

Women living in boarding houses are especially vulnerable to gender-based violence on account of being marginally represented in the overall population living in the boarding house sector. Women with disability are doubly

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40 ADHC (2012) Licensed Boarding House Client Profile April – June 2012, notes women as being representative of 20% of the total boarding house population; Australian Bureau of Statistics (2011), Position Paper - ABS Review of Counting the Homeless Methodology, Aug 2011, notes women as being representative of 25% of people staying on boarding houses, sourced at:
disadvantaged due to an intersection of violence which reflects both gender based and disability based violence. A growing body of both anecdotal and objective evidences indicates women living in mixed-gender residential settings are at an increased risk of abuse. The concluding comments of the UN Nations Committee on the Convention for the Elimination of Discrimination against Women (CEDAW) made a particular point to highlight its concern about the high levels of violence experienced by women, particularly those living in institutions or supported accommodation. Recommending that Australian Governments address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation.41

Evidence also demonstrates that it is very difficult to detect, investigate and prosecute violence particularly when perpetrated in closed settings. Significant barriers exist in accessing appropriate services and legal redress. Reasons for these shortcomings include structural or systemic barriers such as community attitudes; cultures of silence and bullying within organisations; the failure of key service providers and institutions such as the police and courts to believe disclosures of abuse; a lack of education for women with disability regarding human rights and sexuality; the ignorance of disability issues of mainstream service providers; and accessibility issues42.

For many people with disability their risk to violence and abuse is also strongly linked to their reliance upon housing and support to meet their basic needs. Due to the relative absence of other options, and the acute unmet demand for housing and support, persons with disability have long been, and continue to be, obliged to remain in abusive service environments because it is the only way they can receive essential support.

Clearly this Regulation is an opportunity for the NSW Government to recognise this issue, its commitments under reform strategies for reducing violence against women as well as the recommendation by the United Nations, and take positive action on a more comprehensive approach and introduce measures which aim to eliminate all forms of violence against women.

PWDA also recognises that men living in licensed boarding houses are also disproportionately disadvantaged and more likely to experience violence and

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abuse than their non-disabled peers. For this reason, additional measures must be introduced to ensure the global benefit of violence prevention for all residents of assisted boarding houses.

**Recommendation 47:**

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.

Appropriate penalties must be included for any manager of an authorised boarding house who contravenes this clause.

It is also noted that the provisions under the current *YACS Regulation 2010* relating dealing with complaints has also been omitted from the proposed Regulation. Ensuring provisions for record keeping and reporting of complaints to the Director-General are not sufficient on their own to provide adequate standards for complaint handling procedures and the protection for persons with additional needs when making a complaint. The current provisions of Part 2 Obligations of Licensees and Managers, Section 16 Procedure for dealing with a complaint must be added to the proposed Regulation.
Recommendation 48:

Amendment must be made to Schedule 1, Division 4 – Safety to include an additional clause on complaints which reads:

(1) Any complaint received relating to the provision of services at the authorised boarding house must be dealt with fairly, promptly and confidentially.

(2) A person making a complaint must not suffer any retribution as a result of making the complaint (such as discharge from the premises or restricted access to the premises or a resident).

Appropriate penalties must be included for any manager of an authorised boarding house who contravenes this clause.

The remaining recommendations in this section are drawn from PWDA’s Accommodating Violence Report, which made a series of specific recommendations aimed at seeking improved mechanisms for the prevention of, and response to, violence against people with disability living in licensed boarding houses. They continue to have relevance and are reiterated below.

Recommendation 49:

The NSW Government take active steps to ensure the new NSW Domestic and Family Violence Framework currently being developed to reform the approach to domestic violence in NSW take special consideration of the situation of people living in boarding houses and persons with additional needs in assisted boarding houses.

Recommendation 50:

The NSW Government:

a) provide or facilitate access to information and training on for all staff involved in the provision of services and supports to residents of registrable boarding houses on:

i) indicators of abuse and violence, including domestic violence and best practice response options;

ii) human rights of people with disability under the UN CRPD;

iii) disability awareness and values training to address inappropriate attitudes and prejudices towards men and women with disability; and

iv) positive and effective complaint handling practices.
b) establish gender specific protocols for responding to violence (including domestic violence) for boarding house residents, including referral pathways between the disability and domestic violence sectors.

Recommendation 51:

ADHC review its service policies and procedures on abuse and neglect to ensure they reflect best practice response options for domestic violence incidents.

Independent safeguards outside of this legislation must also be considered in the process of formulating and implementing this proposed Regulation to ensure their ongoing legal application to the assisted boarding houses. The role of the NSW Ombudsman under the Ombudsman Act 1973 and Community Services (Complaints, Review and Monitoring) Act 1993 are two such legislative frameworks. The functions undertaken by the NSW Ombudsman including its administration of the Official Community Visitor Scheme (OCV) and statutory appointees of the Minister for Disability Services and the Minister for Community Services in promoting the best interests of children, young people and people with disability and the conduct of services including licensed boarding houses, must continue to operate and not be limited in any way. Such safeguard mechanisms are often impacted on by financial and funding limitations, which in turn limit their full mandated powers and effectiveness.

Recommendation 52:

The NSW Government provide increased funding to the NSW Ombudsman to ensure its functions required by law as well as those available under its discretionary powers are not limited in any way and can be adequately discharged.

This final recommendation concludes PWDA’s comments on the Draft Boarding Houses Regulation 2013 and its associate Regulatory Impact Statement.

Any questions in relation to this submission please contact People with Disability Australia on 02 9370 3100.