Dear Sir/Ma’am,

BOARDING HOUSE REFORM

We act for Adrian Powell and the Grand Western Lodge of Millthorpe. These premises were a Licensed Residential Centre and are moving to being licensed under the Boarding Houses Act 2012.

Whilst the added residency & privacy rights, CTTT appeal process and the licensing of the currently unlicensed sector is to be applauded, our client has significant issues in a number of the proposals.

Attached is a letter from our client in relation to the proposed regulations. There are some concerns about the following:

1. Arbitrary limits on venues and room sizes.
2. Increasing in Costs and capping or substantially reducing income.
3. Perceived bias against non-religious private sector operators by DADHC.
4. Bias against the larger LRC's which now have to reduce the number of their residents.
5. Destruction of the LRC sector generally and the private assets therein.
6. Increased cost to the community from residents outplaced because of boarding house closures.
7. Increased risk of homelessness by reducing the number of available beds.
8. Forcing residents into religious run centres in a supposedly secular society.
9. The bullying powers and resources of the state against the individual.

If your client seeks further input from my client please contact the writer.

Yours faithfully,
Yardy Legal

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Undoubtedly I am a voice of reason in the wilderness but here is my submission, for all the attention that you will pay it.

When, in a short period of time, the State Government is swamped by people needing accommodation as LRC’s close and boarding houses push out those residents with the highest needs, when the Government needs to find $100’s of millions every year to provide alternative accommodation, when the numbers of people on the streets and calling for help from refuges spikes, I want my input on the record.

Once you have destroyed this sector (which the State Government professes to value) you will not get it back. Under the new Act and Regulations there will be no new licensed operators. All the comments and concerns that I expressed in my submission on the draft of this Act still stand and are only reinforced by these two documents. This whole process will be nothing but a disaster for a group of vulnerable people and the Treasury of the State of NSW.

Under this regime, all existing LRC’s (and any unlicensed operator stupid enough to come to the attention of DADHC) are having their viability attacked from all directions.

Step 1. Massively reduce potential income.

An arbitrary limit of 30 residents on any premises has been set with no reference to the physical structure of the premises. Even if the premises had 40 en-suite rooms with 20 sq.M of space, only 30 residents would be allowed. The more insidious limit
is the prohibition on the sharing of rooms, no matter how large they may be. This will reduce numbers even further. A premises with 20 rooms (9 single) and a current capacity of 38 will be reduced to an absolute maximum of 20 residents, nearly a 50% reduction. A premises with 6 large rooms and a current capacity of 10 (2 singles) will now have a maximum capacity of 6 residents. A reduction of 40%.

The restriction on the sharing of rooms will affect the small operators as well as the large. No one misses out on having their income slashed; all get to share the pain.

Is the department seriously advocating that current operators turn their premises into rabbit warrens of partitions to meet the requirements for single rooms? In most cases most rooms will be totally unsuitable for modification and would not gain council approval. Not to mention the impact of this on fire safety.

**Step 2. Massively increase costs**

The “staffing tool” foreshadowed in these documents is still not specified and will undoubtedly increase costs significantly. DADHC is taking it on themselves to set staffing requirements and demanding 24 hour staffing as if LRC’s are nursing homes.

These are PRIVATE BUSINESSES. For staffing levels to be set by bureaucrats with no understanding of the daily operations or the real care needs of the residents is farcical. What funding will be provided to operators for all staff that the department deems necessary above that considered adequate by the licensee. The department is also sticking its nose into the academic requirements of staff, the rostering used and just about anything else. With the coercive powers that DADHC now has, no right to silence, summons to an inquisition, ability to require answers etc, who will the staff be answerable to? The licensee or DADHC?

The introduction of onerous reporting and documentation requirements will add significantly to operational costs. No document or policy has ever guaranteed good care. It simply allows a bureaucrat to tick a box and dig no further. What is absolutely necessary is staff of good will with the best interests of residents as their number one priority.

Enshrining requirements for licensee’s to meet prescriptive standards in relation to medical care; administration of medications etc is forcing licensed operators to become unpaid carers for their residents. They are not just providing affordable, clean accommodation etc. They are meeting all residents’ needs with NO assistance from the State Government.

Sneaky little requirements are buried within the regulations. Things like;

- Special food preferences and menu’s for each resident. Surely a variety of tasty, nutritious, healthy food in healthy servings and in balance is sufficient. Special allowance will always need to be made for special needs, Diabetics, food allergies and intolerances etc., but a proprietor should not be required to cater to individual likes and dislikes. We are not a 4 star hotel at $200 a night.
- Offering residents a choice of medical professional within the Public Health System etc. What is important is competent medical care supplied efficiently. This takes no notice of the shortage of GP’s in rural areas and the fact that many have closed patient rolls.

- Making between meal snacks and refreshments available at all times. This is totally impractical. What about those who have weight control issues? Diabetes? Bladder control problems? What about those that suffer from polydipsia and can become very ill if not monitored closely? What about those who are at risk of scalding if given access to boiling kettles? Etc. Additional Tea and Coffee can only be available taking these factors into account.

- Providing a kitchen area in which all residents can prepare meals. How many kitchens do you propose each LRC should have? LRC’s have been set up with commercial kitchens to feed large numbers of people efficiently. They are not suitable for residents to potter around in to make a sandwich. During the day these kitchens are generally very busy places.

The costs of complying with these little niceties will be significant. Surely a meal routine of; Breakfast
Lollies
Morning tea
Lunch
Afternoon tea
Dinner
Supper and fruit available at other times on request, is sufficient.

It is all well a good if you are receiving $100,000 for every resident and up to 75% of their pension. It is totally impractical, unreasonable and unaffordable when care is being provided with no funding from the State Government.

The one thing not contained in the regulations that I expected is a requirement for the retro-fitting of sprinkler systems. It was foreshadowed in the position paper for the draft Bill. Perhaps it is being saved up to be “the straw to break the camel’s back” for any that might hold out.

Step 3. Punitive enforcement and red tape

This Act and Regulations introduce fines for infringements (as defined by DADHC officers) with no effective right of protest or appeal. To fail to pay up, or keep quiet, places the operators licence at risk.

DADHC now has the ability to cancel a licence at any time, for any reason. This is at their discretion and no reason needs to be given. There is also no presumption in favour of the granting of a licence. The hurdles in place and the discretion given to DADHC would seem to make the issuing of licenses unlikely. In view of DADHC’s long running campaign to wipe out the sector and the financial un-viability of an LRC
under the new regime, this is probably a moot point. There are unlikely to be many, if any, applications.

The ability for DADHC to "name and shame" operators with the publication of infringement details is insidious. I am confident that this publication will not show if the infringement is disputed and will not reflect that it is likely to be a trivial, revenue raising action.

Step 4, Removal of residents

DADHC is defining elderly as 60+. This is well outside of community standards. The departments own policy is to encourage the elderly to age in place and stay in their own homes as long as possible. The exception seems to be, except if they have a mental illness.

In my experience the mis-application of the Boarding House Screening Tool is used to justify severely limiting the entry of new residents to LRC's. The most recent data for this is Oct – Dec 2012 where 64 people were assessed and 32 (50%) were found as suitable for boarding house accommodation. I have several questions;

i. How many of the 32 were already resident in boarding houses and simply returning after an absence?
ii. How many are actually in a boarding house after being assessed as suitable?
iii. Of the 32 assessed as not suitable, what is their current residential status? How many are in unlicensed premises, in nursing homes, still in a hospital environment, still living in an unacceptable home environment?

It must be the result in housing that is important, not the result of the assessment. This is only a tool, not an end in itself.

iv. Does a similar tool apply for admission to DADHC operated or funded group homes?

v. What controls are in place to ensure NGO's do not cherry pick potential resident, leaving those with more challenging needs to the LRC sector?

Existing residents of LRC's will continue to be actively encouraged to relocate to "more appropriate" accommodation by DADHC's approved advocacy organisations. Organisations that now have greater rights of access to licensed premises than DADHC's own officers or even the Police.

I suppose that no one should be surprised by this. The new Act and Regulations are just a continuation of the un-stated DADHC policy of closing all LRC's by whatever means possible. The YACS Act 1973 required licensing for any premises providing accommodation for 2 or more "handicapped" persons. The new Boarding House Act 2012 requirements are basically the same. Let's have a look at some statistics;
LRC's – Timeline of decline

<table>
<thead>
<tr>
<th>Year</th>
<th># of LRC's</th>
<th># of beds</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>194</td>
<td>N/A</td>
<td>Anomalous number from DADHC regulatory impact statement 2013</td>
</tr>
<tr>
<td>2011 (March)30</td>
<td>647</td>
<td>DADHC listing – NSW LRC's</td>
<td></td>
</tr>
<tr>
<td>2011 (Aug) 28</td>
<td>599</td>
<td>after removal of GWL residents</td>
<td></td>
</tr>
<tr>
<td>2012 (Dec) 23</td>
<td>526</td>
<td>Regulatory impact statement</td>
<td></td>
</tr>
</tbody>
</table>

The new Regulations require a maximum of 30 residents and no sharing of rooms. If the 5 LRC’s left with more than 30 residents are forced to close there will be 18 left with only 273 residents. This ignores the effect of no shared rooms on smaller LRC’s. It is likely that the new regulations will lead to the closure of most of the remainder.

In 20 years the number of LRC’s will have declined by 161 (or 176) and the number accommodated declined by 3700 (95%). These numbers lead to only one conclusion, DADHC’s policy has been to close down licensed premises.

Only 8 of the current 28 LRC’s are in the Sydney metro area. Only 3 are in Marrickville. Marrickville council estimates 400+ unlicensed boarding houses in their area alone. (ABC news report 2012). Your own Regulatory Impact Statement would indicate AT LEAST 750 unlicensed premises, on the basis of land tax exemptions alone.

What has DADHC done under the YACS act over the last 35 years to find and licence these premises? – NOTHING. This Regulatory Impact Statement admits that there are currently no enforcement officers and you have no information about unlicensed premises. DADHC had the same obligations, and largely the same powers, to require licensing of premises before this new Act and Regulation. Why should anyone expect that they will meet their obligations now?

We shouldn’t. Already in this Regulatory Impact Statement DADHC is laying the ground work to argue for insufficient resources to do the job. The point is raised repeatedly that currently unlicensed operators will choose to go underground and avoid detection and licensing under the new regulations. How does this new regime help anyone if it just forces the worst operators further underground and those residents at the most risk are even more in danger?

The problem with any regulatory or statutory attempt to impose onerously restrictive conditions is that it only ever affects those that attempt to do the right thing. They are regulated out of existence while the worst operators continue to flout the law and place their residents at risk. Those that run rat infested and urine soaked boarding
houses are not people of good will or with any concern for anyone but themselves. Why would they not simply ignore the Act and Regulations as they have done successfully for 35 years?

What does DADHC and the State Government think will happen under the new Act and Regulations? This is my prediction after nearly 30 years in the sector.

1. All existing LRC's will be out of business well inside the 5 year grace period. This will occur no matter how well they have cared for their residents needs in the past. They will simply be financially unviable.

There will be over 500 people looking for places in Government funded care. On your own figures in the Regulatory Impact Statement this will cost $50 million + a year, every year.

At the end of 2009 there were approximately 6000 people in DADHC funded or operated Group Homes or Residential Centres. With LRC’s closing this is probably costing the State Treasury something like $3/4 billion dollars per year, every year and is only going to increase.

If the LRC sector still had the nearly 4000 beds it represented in 1993 this would be saving the State Government about $400 million per year.

2. Any existing unlicensed boarding house operator will be faced with the following options;

a. Keep a low profile and keep well away from DADHC. This strategy has worked well under the old Act. With no enforcement officers they are unlikely to be found. How will this benefit their residents in any way? It will not. They will still live in totally uninspected premises that meet no minimum standards and will have zero access to support services.

b. Evict any resident that may cause them to be classified as an Assisted Boarding House under the Act. None of the draconian requirements will apply and the business might survive as a General Boarding House. Where will these vulnerable people go? How many are there? No one knows. What will this cost the State Government? How is the resident's security of tenure improved by this? Anyone that needs extra support will be denied access to accommodation under these rules. How does this meet their need for security and shelter? Surely it is only encouraging discrimination against those with a disability.

c. Do the right thing, as all existing LRC's did under the old Act, and apply for a licence. The operator will need to hope that he gets through all of the DADHC hoops and is granted a licence. The risk is that he will be shut down anyway and his existing residents relocated. He will also have to pray that he is not fined into penury for not being licensed in the past. In the unlikely event that he gains a licence there is no way that an Assisted Boarding House will remain viable under the inspection/control of DADHC. Sooner or later his residents will need to
find a new home with the attendant dislocation, disruption of their lives and the inevitable cost to the State Treasury.

The key to all of this is - How is the need for additional assistance assessed and by whom? This is crucial to the distinction between a General and Assisted Boarding House

Option 1. Assessment made by boarding house operator. This will be acceptable to no one as they will not be trusted and they might not have the skills, or incentive, to make an accurate assessment. The pressure under the new regime is to evict those in need of assistance or to deny that any residents are in need of assistance.

Option 2. DADHC will need to vet every boarding house resident, even if their accommodation provider denies that they need assistance, just to be sure.

Not just this. DADHC will need to regularly repeat this assessment to see if residents needs have changed or new residents are admitted. How will this be achieved? How will this be staffed and funded? What are the political and social implications of what will effectively need to become the Boarding House Gestapo? How do you expect existing residents that do not need assistance to react? What about the reaction of those residents that dispute their need for assistance?

Perhaps it would make things easier to have those with a disability wear a little yellow star. They would then be easy to identify for relocation.

Either way, no Boarding House operator will be able to escape the intrusion of DADHC into their business. Talk about “Big Brother!”.

This Regulatory Impact Statement (pg 21) makes it clear that the department has the attitude towards displaced LRC residents that “it is for their own good, even if they don’t like it. I quote “In addition, there are likely to be emotional and psychological costs to residents from being displaced, particularly those residents who have lived in the premises for a long time and have limited social support”. This totally downplays the impact on their lives and is unbelievably paternalistic.

Who wrote this Regulatory impact statement? The quality of this document is risible and makes unsupported or inaccurate statements as fact. The so called financial analysis is of no value at all.

A few examples.

Pg 5, para 2.

There are NOT currently two types of boarding house in NSW, there are four.

1. LRC’s,
2. General Boarding Houses
3. Boarding houses that always should have been licensed under the YACS act but whom DADHC has done nothing about for 35 years. DADHC has NO enforcement officers and has no idea of the size of this group or how many vulnerable people are involved. How can this department be allowed
to continually excuse its total impotence over decades simply by claiming lack of resources or power.

4. Exempt operations. This legislation exempts a large number of accommodation providers from these new requirements. Why?

Pg6, para 2

While the death of 6 residents over 14 months at the 300 Hostel is a worrying event, how can DADHC absolve itself of any responsibility. This facility was an LRC and was under regular inspection by DADHC officers. What were the inspectors doing if hygiene and nutrition standards had reach such a poor level? How many deaths are necessary before the warning bells start to ring? Three? Four? The answer is obviously six. Maybe the need for government action that this highlights is simply for DADHC to stop making excuses and do their job properly.

Pg 11, para 2

This is the same issue again. Reviews and analysis over decades concluded that enforcement was necessary to protect the rights of residents. The only thing that DADHC has done is drive LRC’s out of business and totally ignored the unlicensed sector. Why will it be any different under the new Act and regulations?

Pg 17, para 4 & 5

This talks about increased staffing needs, the need for 24 hour on-site care and about the use of the “staffing needs assessment tool” under the new regulations. No where in any document are any details provided of his tool.

Pg 25, para 1 & 2; Benefits to NSW Government in improving the viability of the assisted boarding house sector.

I can not allow this absolute load of pure rubbish to pass with no comment. It makes very important predictions with NO basis in fact.

Paragraph one suggests that DADHC is providing PR services for the sector. The reality is that no matter what the profile or reputation of the sector, there will be no new operators where;

- Government regulation restricts potential income and occupancy rates.
- The granting of licenses is so much at the whim of the department.
- There is no security in relation to the retention of a licence.
- DADHC has the power to set staffing levels, demand 24 hour staffing and impose onerous reporting requirements.
- DADHC has the ability to impose penalties for any and all trivial infringement perceived by its officers with no right of appeal or protest.
- DADHC can create new regulations and requirements effectively at their whim.

I will quote the second paragraph in full.
"An improvement in accommodation and service standards of the assisted boarding house sector will have benefits for the NSW Government. Where those standards are low, the Government must provide ever increasing additional support services to residents in the boarding houses. There is also an increased likelihood that residents will be forced to use acute services such as hospital emergency departments and in-patient mental health services, this would result in greater costs to government than the provision of lower level support services in the community."

My experience over nearly 30 years and particularly over the last 18 months would be that this statement is absolutely untrue. DADHC is paying the new carers of my former residents an average of $100,000 per person. My residents are also paying up to 75% of their pensions to their carers. This still does not cover all their needs and they still need to pay for medications, clothes, comforts etc.

Even with this level of financial support I confidently assert that these people have been forced to use acute services such as hospital emergency and in-patient mental health services at a MUCH HIGHER rate than they did while residents of an LRC.

Does DADHC have any statistics to support this claim? If it can not be supported it should be withdrawn. Perhaps DADHC would like to look at the rate at which my former residents have needed emergency department, and particularly in-patient mental health services, over the last 12 or 18 months.

What about the cost to the Taxpayer of those ex-LRC residents who are or will end up in nursing homes, simply because they are not suitable for a Group Home and DADHC has nothing else to offer them? Nursing home beds are a scarce resource. Even if they are funded by the Commonwealth it is the people of NSW who are suffering.

Lastly I would like to address the financial analysis contained in this document. Who ever performed this has ignored several important points about asset values.

1. The value of commercial premises is largely dependant on its income generating potential. As Most LRC’s have been specifically configured to this purpose and DADHC has taken steps to limit potential income, the new regulations have likely reduced the asset value of all LRC’s.
2. The asset value of a property is only of relevance to its owner when he comes to realise that value. The new regulations have probably both reduced the realisable value and made the asset harder to realise. Some LRC’s will become effective white elephants.
3. What is important to the owner of an asset is the $ value of an asset. Reducing the asset value to improve the capital rate of return is a mathematical slight of hand. The owner banks $’s not %’s.

The treatment of expenses seems to have been carried out to minimise the future costs and lead to at least a slight profit. As general expenses like wages, utilities and government charges have been increasing at a much higher rate than pensions, this analysis is flawed. Even in what appears to be a best case hypothetical a positive return in year 6 would appear to me to be highly unlikely. With no information on the
"staffing tool" how can the assumption of no change in wages be justified. Proprietors are already facing a 33% increase in superannuation contributions to at least 12% in this period. The "analysis" is worthless.

The obvious question has to be asked. How can a for-profit business continue to be viable with restrictions on occupancy (and thus income) and with increasing costs? To then expect this private business to meet standards equal to or even greater than funded services is nonsensical. DADHC funded NGO's are receiving an average of $100,000 per person, plus most of the resident's pension, but are supposedly not-for-profit. Has anyone investigated why they need such large amounts of money? Is it a significantly higher level of care for residents or is it red tape, inefficiency and excessive levels of management? How much of this government money is actually going directly to supporting the residents? How much goes to inflated salaries and company cars? Is this an employment scheme for able-bodied support workers?

Are LRC's being driven out of business because of poor standards or is it because they provide an alternative and efficient model of care that makes the DADHC funded or managed alternative appear profligate?

Where is the social justice in this whole process? The streets of NSW have an ever increasing population of the homeless. A VERY LARGE proportion of who suffer a mental illness. One group receives a State Government subsidy of $100,000 per year yet those on the streets, who must be in the greatest danger, receive nothing.

IF the Government wipes out the only legal accommodation alternative, so that only the streets, illegally unlicensed boarding houses or Government funded group homes are the only options, surely any person in need of care can DEMAND the same treatment as those already receiving support. This could be argued on the basis of anti-discrimination laws or against the same UN standards being used to justify these changes. You are digging a massive hole for yourselves and the Taxpayers of NSW.

Of course it is important that vulnerable people receive good and safe accommodation but when was the decision made that this has to be achieved by providing a select group with direct government subsidy of around $120,000 PA. This is made up of State funding through DADHC placements and then the value of the Commonwealth disability support or aged pension. This is twice the level of average weekly earnings.

In conclusion, this Regulatory Impact Statement states the objectives of Government action as being;

1. Reduced risks to boarding house residents. – Dependant on enforcement the new regime will have no real impact in reducing risks to boarding house residents or will expose them to greater risks due to the dislocation they will suffer or the risk of homelessness that they will face.

2. Simplify compliance for councils and boarding house operators. How will this simplify things for council? It is a new responsibility. By its nature this will only complicate compliance for all boarding house operators, including general boarding houses.
3. Improve amenity for residents of properties surrounding boarding houses, and improve public perception and acceptance of boarding houses. Surely the amenity of neighbours is a planning and building control issue of no concern to DADHC. Is DADHC seriously claiming to be interested in the acceptance of boarding houses? What about the regular public outcry when a new group home is proposed, particularly one housing people with a mental illness.

4. Maintain the viability and sustainability of the boarding house sector. This whole process is designed to destroy the viability of this sector and assisted boarding houses have no future. The lie to this is shown by it being the number 4 objective, after what the neighbours think.

This whole misguided process reminds me of the tragedy of the implementation of the Richmond Report. Policy changes made by people of supposed good intent that only lead to misery for a large number of vulnerable and needy people who deserved better. Are we condemned to relive our past mistakes because changes are based on ideologies and not the reality of the needs of the people that will be affected?

It is high time that those making decisions started to listen to those who, from long experience of working at a grass roots level, know what is going on and needed, instead of those that think they know. Decision makers need to listen to reality, not just accept what they are told by those with a vested interest in change.

My final comment. This is an utter disaster for a vulnerable group of people that deserve better from those in Government, and particularly those in the public service, that profess to care about them.

Yours faithfully
Adrian Powell

Grand Western Lodge
11/04/13