Boarding Houses Regulation 2013

Report on responses to the draft Regulation and Regulatory Impact Statement
Document approval

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Document version control

<table>
<thead>
<tr>
<th>Distribution:</th>
<th>Public</th>
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<td>Document name:</td>
<td><em>Boarding Houses Regulation 2013: Report on responses to the draft Regulation and Regulatory Impact Statement</em></td>
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<tr>
<td>Version:</td>
<td>1.0</td>
</tr>
<tr>
<td>Document status:</td>
<td>Final</td>
</tr>
<tr>
<td>File name:</td>
<td><em>Boarding Houses Regulation 2013: Report on responses to the draft Regulation and Regulatory Impact Statement</em></td>
</tr>
<tr>
<td>Authoring unit:</td>
<td>Law &amp; Justice Directorate</td>
</tr>
<tr>
<td>Date:</td>
<td>31/05/2013</td>
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1 Executive Summary

The key purpose of the *Boarding Houses Act 2012* (the Act) is to protect the rights of residents living in boarding houses in NSW and to promote the sustainability of the boarding house industry.

The Act establishes a legislative framework for the regulation of boarding houses in NSW and divides “registrable boarding houses” into two categories:

- "general boarding houses" - boarding houses accommodating five or more people for fee or reward; and
- "assisted boarding houses" - boarding houses accommodating two or more "persons with additional needs", that is, people who need daily, ongoing care and support as a result of their being aged, having a mental illness or other disability.

The Act provides for:

- mandatory registration of all "registrable boarding houses" on the Boarding House Register, administered by NSW Fair Trading;
- the application of shared accommodation standards under the *Local Government (General) Regulation 2005* to general boarding houses;
- initial compliance investigations of registered boarding houses by local councils;
- the introduction of occupancy rights for boarding house residents; and
- an enhanced scheme for the authorisation and operation of assisted boarding houses which will be administered by the Department of Family and Community Services, Ageing, Disability and Home Care (ADHC). Previously these were known as “licensed residential centres” (LRCs) under the *Youth and Community Services Act 1973*.

The provisions of the Act relating to the Boarding House Register, shared accommodation standards and initial compliance investigations commenced on 1 January 2013. The remainder of the Act, which mainly deals with assisted boarding houses will commence once regulations have been finalised.

In the meantime, the *Youth and Community Services Act 1973* (YCS Act) and the *Youth and Community Services Regulation 2010* (YCS Regulation) continue to apply to assisted boarding houses.

A draft *Boarding Houses Regulation 2013* (the draft Regulation) was released for public consultation with a Regulatory Impact Statement (RIS) on 6 March 2013. Information sessions were subsequently held with boarding house proprietors, boarding house residents and peak representative bodies to inform submissions. Submissions closed on **15 April 2013**.

This report details the outcomes of the consultation process and recommends changes to the draft Regulation before it is finalised.
2 Recommendations

Recommendation 1
That Clause 3 be amended to recognise the appointment of a guardian by the Guardianship Tribunal or the Supreme Court under the Guardianship Act 1987 to make decisions in specific health and welfare areas for a person with additional needs.

Recommendation 2
That clauses 7(1)(b) and 8(a) be amended to include relevant information concerning a “close associate”.

Recommendation 3
That clause 14(2)(c) be amended to include a reference to a general hospital.
That clause 14 (5) be amended to require a re-assessment after a significant deterioration in health.

Recommendation 4
That clause 15 (2) be amended to insert ‘or rental agreement’ after the words ‘occupancy agreement’.
That clauses 15 (2) and (3)(c) be amended to also require information to be provided on “rewards” such as fee reductions in return for undertaking certain work.

Recommendation 5
That clause 18 be amended to require the operator to notify the Director-General within three days of issuing the notice of eviction or immediately upon eviction, whichever occurs first.

Recommendation 6
That clause 20 be amended to include the name and contact details of any authorised guardian and any associated powers, review or expiry dates.
That clause 21(d) be replaced with a clause requiring records of guardianship authorities relating to medical treatment.
That clause 22 be amended to include ‘rental agreements’ within the meaning of Part 3 of the Act.

Recommendation 7
That Standard 5 be amended to require proprietors of pre-existing boarding houses to provide the Director-General with a plan, in a form to be determined by the Director-General, which demonstrates how they will transition to Standards 6 and 7. The transition plan would be provided after the first 12 months of the commencement of the Regulation, and thereafter every 12 months, until the end of the five year transition period.
Recommendation 8
That Standard 7 be amended to ensure that there is a presumption in favour of the resident being provided with a single room, however, the resident can request to share a room with another resident of their choice, with no more than two residents to a room.

Recommendation 9
That Standard 7 be amended to ensure that single bedrooms will be of a minimum size of 7.5 square metres and double shared bedrooms will be a minimum size of 11 square metres.

Recommendation 10
That Standard 11 (2) be amended to require that both heating and cooling to be appropriate for the climate and temperatures.

Recommendation 11
That Standard 15 be reviewed to ensure that it allows for different emergency call systems to be installed provided they enable residents with additional needs be able to contact staff members in the case of an emergency.

Recommendation 12
That Standard 16 be amended to require that there be at least one indoor communal space of a reasonable size for use by residents.

Recommendation 13
That Standard 18 be amended to require assisted boarding houses to retain a private room, regardless of whether the resident has a single room or shares, where residents can receive visitors or see support workers.

Recommendation 14
That Standard 20 be amended to ensure that residents have access to onsite laundry facilities.

Recommendation 15
1. That Standard 27 be amended as follows:
   - Add an additional subclause following 27(1) with words to the effect “The medication storage facilities must be kept locked at all times except when in immediate use”
   - Add an additional subclause following 27(2) with words to the effect “Where food is present in the storage facility, medication must be stored in sealed receptacles apart from the food.”
   - Add an additional subclause following 27(7) with words to the effect “Any medication that is expired or is no longer required for administration must be destroyed in a manner that is not unlikely to constitute a risk to the public, such as through the Return Unwanted Medicines program available at community pharmacies.”

2. That Standard 28 be amended as follows:
- Add an additional subclause following 28(6) consisting of words to the effect "A staff member supervising the administration of medication must hand the medication directly to the resident at the appropriate administration time and the staff member must observe the administration by the resident."

- Add an additional subclause following the added subclause above which consists of words to the effect “Staff administering prescribed medicine must follow any additional instructions for the administration such as ‘swallow whole’”.

- Add an additional subclause following clause 28(7) with words to the effect “A staff member who administers an injection to a resident must be adequately trained to complete this task. This does not preclude a resident self-administering his/her own insulin.”

- Add an additional subclause with words to the effect “If it is practicable to do so, staff should ensure that all prescribed medications be repacked and labelled by a registered pharmacist into individual doses in a dose administration aid such as a blister pack.”

- Clause 28(8)(a) be amended to consist of words to the effect “in the case where there is reason to believe that the resident has maladministered or failed to administer that medication, reasonable steps must be taken to ensure that the health practitioner who prescribed the medication is notified, as well as the mental health crisis of emergency team where applicable, and …”

- Add an additional subclause at the end of the standard of words to the effect “Arrangements must be made for all currently required medications to be available to the resident for administration when the resident is absent from the authorised boarding house. No medication may be repacked by any person other than a registered pharmacist, medical practitioner or nurse practitioner.”

3. That the term “psychotropic medication” as referred to in 28(5) be defined in the Regulation.

**Recommendation 16**

That Standard 30(a)(i) be amended to require immediate steps to be taken to administer emergency first aid if required and then secure treatment if the injury or illness requires urgent medical or dental treatment.

That Standard 30(c) be amended to require that the person responsible be notified as soon as practicable after the operator becomes aware of the health matter.

**Recommendation 17**

That Standard 31 be amended to require that the residents’ cultural, religious and dietary preferences should be taken into account.
3 Background

The NSW Government recognises that the boarding house sector has an important role in providing affordable accommodation, particularly for people who may otherwise struggle to access private accommodation or have difficulty accessing social housing. Together the Act and draft Regulation are intended to improve standards of accommodation and services provided to boarding house residents, in particular, people with additional needs.

Recent reports by the NSW Ombudsman and the State Coroner on boarding houses licensed under the YCS Act have raised significant concerns about the adequacy of standards in licensed boarding houses. In his 2011 report the NSW Ombudsman referred to allegations of physical and sexual assault and intimidation of residents, lack of support in accessing healthcare, problems relating to food provision and hygiene, and restrictions placed on residents’ contact and communication with family and friends.1

In 2012 a coronial inquiry into the deaths of six residents of a licensed boarding house over a 14 month period from June 2009 to August 2010 made findings of inadequate staff training and poor quality and coordination of health care which contributed to the deaths.2 This was the third report in three years by an independent body, all three of which were highly critical of boarding house standards.

3.1 The draft Regulation

The main focus of the draft Regulation is on providing further detail on the authorisation and operation of assisted boarding houses. Standards for general boarding houses are dealt with under section 16 of the Act and include requirements in relation to fire safety and building standards and standards for places of shared accommodation.

Since 1995, improvements to standards governing boarding house accommodation and services for people with disability have been limited.

A 2011 report by Mercury Advisory, which undertook consultations with a range of boarding house stakeholders found broad consensus from advocates and residents that accommodation should be subject to minimum standards to ensure safety, security and cleanliness - with the greatest concerns being about older style facilities.3 Smaller scale facilities were considered more acceptable.

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1 NSW Ombudsman 2011, ‘More than board and lodging: the need for boarding house reform’, A special report to Parliament under clause 31 of the Ombudsman Act 1974, pg. 6-10;
The Report also suggested that reforms to the regulation of licensed boarding houses consider the potential for grandfathering provisions for existing premises.

The draft Regulation seeks to bring standards for assisted boarding houses into line with contemporary standards of accommodation and with Australia’s commitment to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), ratified in 2008.

It includes many of the provisions of the YCS Regulation but with enhancements. It also provides for:

- the introduction of new accommodation standards which would apply to assisted boarding houses established after the commencement of the Act and to existing assisted boarding houses after a five year transitional period, in particular:
  - the requirement for single occupancy rooms (which includes specifications for a minimum room size of 5.5 square metres for each person, consistent with the Public Health Regulation 2012); and
  - the establishment of a maximum resident limit of 30;
- minimum staffing levels, and a process to assess sufficient levels;
- required qualifications and skills of staff;
- enhancements to certain service and facilities standards including a requirement for call bells and telephone access;
- the keeping of a number of additional records;
- the requirement to have procedures for dealing with complaints; and
- an increase in the range of notifiable incidents.

The draft Regulation also specifies additional particulars to be notified to the Boarding House Register, permits the publication of information relating to enforcement action taken against a boarding house, and sets out the penalties for offences under the Act and Regulation.

3.2 Regulatory Impact Statement

The RIS analysed the costs and benefits of the draft Regulation and compared them to other options. Four options were identified.

- Option A: maintain the status quo with no changes to existing standards.
- Option B: implement the draft Regulation but have two of the key standards - the 30-resident limit and right to single occupancy rooms - apply only to new assisted boarding houses and not to existing operations.
- Option C (the draft Regulation): implement the draft Regulation but have two of the key standards - the 30-resident limit and residents’ right to single occupancy rooms - apply to existing assisted boarding houses after a five year period.
Option D: implement the draft Regulation with all standards – including the 30-resident limit and right to single occupancy rooms – to be applied to new and existing assisted boarding houses immediately.

The RIS analysis of the options indicated a preference for Option C as this would provide significant benefits to residents of assisted boarding houses by improving privacy and amenity and reduce risks to residents’ safety, welfare and wellbeing while providing a sufficient time period of five years to enable existing operators to plan for and adjust to the new requirements.

The RIS found that the draft Regulation would impose costs on the operators of assisted boarding houses. The most substantial would be:

1. capital costs if they choose to modify their existing premises (e.g. to create more single occupancy rooms), and
2. reduced revenue if the changes mean they can accommodate fewer residents.

This option could result in more existing assisted boarding house operators exiting the industry than might happen if the status quo were retained. If this happens a number of residents could be displaced and need alternative accommodation, which is likely to be provided at relatively high cost to the NSW Government.

Some operators may elect to convert their premises to a general boarding house (since these are not subject to the higher accommodation and service standards) or exit the industry altogether.

The new registration and inspection requirements may also help to identify currently unlicensed boarding houses that should be categorised as assisted boarding houses, but this will depend on effective compliance and enforcement mechanisms.

Some new operators may be attracted to the sector if the new framework is effective in improving the profile of boarding houses in the community and because of the greater certainty it provides around their obligations.

The RIS analysis suggests that operators can remain viable despite the higher costs. Returns to operators are strongly linked to property values (and their growth over time) as well as the revenue generated from boarding house fees.

The Minister for Family and Community Services, in consultation with the Minister for Disability Services, the Minister for Fair Trading and the Minister for Local Government is required to report on the impacts on the boarding house industry within 18 months of the Act’s commencement, including examining the need for further incentives and assistance to support the supply of boarding house accommodation.4

This has the potential to offset the impact of any additional costs incurred by operators as a result of the new standards and support a more sustainable

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sector. Work on incentives and assistance is currently being progressed by Housing NSW.

4 Consultation Process

4.1 Distribution of draft Regulation and RIS

A consultation timeframe and process consistent with the requirements of the Subordinate Legislation Act 1989 and the NSW Government’s Better Regulation Principles was developed. The RIS and draft Regulation were:

- Advertised in the Sydney Morning Herald and Daily Telegraph on 6 March 2013;
- Made available on the ADHC website from 6 March 2013;
- Distributed in hard copy (and by email where available) to proprietors of all boarding houses currently licensed under the YCS Act;
- Distributed by email to key stakeholders including disability peak bodies, all those who provided submissions in relation to the Boarding House Act, NGOs providing services to boarding house residents, and relevant government bodies;
- Advertised in the NSW Government Gazette on 8 March 2013; and
- Advertised on the NSW Fair Trading ‘Have Your Say’ website on 8 March 2013.

The closing date for submissions was 15 April 2013.

ADHC prepared an Easy Read version of the RIS with the assistance of the Information Access Group in Victoria. This document was placed on the ADHC website on 13 March 2013, and was used in consultations with boarding house residents.5

4.2 Consultation with residents

ADHC engaged consultancy firm O’Connell Advisory to conduct consultations with residents of licensed boarding houses about the proposed changes. During March 2013, seven consultation workshops were held, involving 90 residents from all of the currently licensed boarding houses in NSW, as well as from one recently-closed boarding house. The findings from the consultations are discussed below.

The Easy Read RIS was distributed at most resident workshops and residents were encouraged to take copies back to other residents who did not attend.

4.3 Consultation with proprietors

ADHC sought to ensure that proprietors of all currently licensed boarding houses were informed about the draft Regulation and were aware of their right to provide a submission. This process included:

- Mailing proprietors hard copies of the draft Regulation and RIS with a cover letter advising them of upcoming information forums;
- Holding an information forum for all Hunter/Central coast operators in Newcastle on 19 March 2013 – this was attended by owners or managers of four assisted boarding houses;
- Holding an information forum for all Sydney/Southern Highlands operators in Burwood on 26 March 2013 – this was attended by owners and managers of eight assisted boarding houses;
- Meeting on 3 April 2013 with the owners of two licensed boarding houses in the Hunter region; and
- Meeting with the owner of seven licensed boarding houses on 5 April 2013 in the Lithgow region.

4.4 Consultation with disability and advocacy NGOs
ADHC held an information forum for disability and advocacy NGOs on 3 April 2013, which was attended by representatives of eight NGOs, as well as an Official Community Visitor.
ADHC also met with:
- ADHC’s Boarding House Expert Advisory Committee;
- ADHC’s Boarding House Implementation Committee;
- Coalition for Appropriate Supported Accommodation;
- Disability Council of NSW; and
- People with Disabilities Australia.

4.5 Submissions received
ADHC received a total of 33 submissions - 31 written and two verbal - in relation to the draft Regulation and the RIS. A list of submissions is provided in Appendix A.

Submissions were received from:
- Proprietors or representatives of assisted boarding houses: A total of 14 submissions were made by representatives of the owners of individual licensed boarding houses: 11 submissions from current proprietors (10 written submissions and one verbal submission); one submission from the manager of an assisted boarding house and one submission from the operator/lessee of an assisted boarding house;
- Industry bodies – one submission from the Property Owners Association;
- Non-government organisations (NGOs) – A total of 10 submissions were received – 6 from peak/advocacy NGOs and 4 from service provider NGOs;
- Local Councils: 2 submissions were received;
Government bodies: 5 submissions were received (4 written and one verbal); and

Individuals: 2 submissions were received, one from an Official Community Visitor, the other from another interested individual.

All submissions have been placed on the ADHC website with the exception of the following:

- One submission from an NGO which requested confidentiality;
- Letters attached to the submission of a boarding house proprietor as permission to publish had not been explicitly provided by the letter-writers; and
- Figures attached to the submission of a boarding house proprietor at the request of the proprietor.

5 Resident feedback

The consultation with boarding house residents conducted by O’Connell Advisory used the Easy Read RIS and an Easy Read presentation to focus on the main changes proposed to the standards for assisted boarding houses.

Consultations with boarding house residents were conducted on a confidential basis and for this reason, the full report prepared by O’Connell Advisory will not be made publicly available. However an Executive Summary sets out the main findings.⁶

The overall finding from the consultations was that the majority of residents (57 out of the 90 residents consulted) agreed with the proposed maximum resident limit of 30, and single room occupancy to be implemented over five years (Option C).

Fifteen residents did not express any preference in relation to shared/single rooms, or the maximum number of residents.

There was very little support for Option A – ‘Do Nothing’ (2 residents), and limited support for Options B and D (8 residents each).⁷

Whilst there was strong support by residents for the option of having their own room, some residents were happy to remain sharing as they had a good relationship with the person with whom they were sharing. Some residents said they would like a room of their own, but would opt for a shared room if a single room cost them more.

There was strong support for being able to lock the door of their room if they want – although some were concerned about being able to get out quickly in

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⁷ O’Connell Advisory.
the event of an emergency (e.g. a fire). Their main concern was the security of their possessions - one resident advising that it was only through luck that he had not lost any possessions as he was not able to lock the door to his room - but the front door of the assisted boarding house was also unable to be locked. This did not make him feel safe and secure.

A number of residents felt that the proposed minimum size of a bedroom (5.5 square metres) would be too small and should be reconsidered.

There was strong support for the requirement for staff to be on site 24 hours a day, and that there should always be someone on site with first aid training. In some cases residents said they have to call someone off-site if they need assistance, which can be about a 10-15 minute wait, while some residents did not know to call 000 if there was an emergency.

Residents also expressed concern about the implications of the changes on their being able to stay at the boarding house, which they regard as their home.

6 Analysis of comments raised in submissions

6.1 Overview of submissions

Proprietors’ submissions

Every submission from a proprietor argued that the proposed Regulation would increase their costs, increase costs for residents, decrease their income, erode the viability of their business, and lead to many – if not all – of their residents losing their home.

One proprietor summarised these concerns as follows:

All these proposed regulations might appear to be ‘into line with community expectations’ but remember – WE ARE NOT FUNDED, we do not have the financial capacity to facilitate and implement proposed regulations and services unless the client pays for it...You are discriminating against people with a disability who live in an assisted boarding house by not financially supporting the very regulations you want to impose…The NSW Government is implementing a regulation that would disadvantage not only its residents but knowingly set the licensees up to fail. Then using the obvious outcome of failure to further discredit and blame the licensees. This is discrimination: to advocate a two tier system of accommodation for people with a disability – residents who receive no funding and then comparing their accommodation service to those who do receive funding.

Specific concerns for proprietors were:

8 O’Connell Advisory.
9 O’Connell Advisory.
10 L Paterson, Kelvinside Lodge, p. 2.
The limit on the number of residents after five years – three proprietors argued that this would cause many, if not all current residents to lose their home, as the reduction in size would make their businesses unviable and lead to their closure;

The requirement to offer residents single rooms – the majority argued that this was not in the best interests of residents' health or safety; that their residents enjoyed sharing rooms; that it would mean up to half the residents would have to leave; and that it would make their businesses unviable, again likely to lead to closure;

Staffing levels – particularly the proposal that at a minimum there should be sufficient staff present at all times – several proprietors noted that their residents did not require 24 hour care, and also that there were times during the day when many of their residents were absent and the need for staffing during these times was minimal; and

Call bells – particularly the up-front cost of purchasing call bells.

Most proprietors argued for the maintenance of the status quo (Option A), arguing that Options B, C and D would lead to at least some additional costs.\(^{11}\)

Option B was generally preferred over C and D, as it avoided the effect of the 30-resident limit and/or the single room requirement for their premises.

Many proprietors felt that their premises were of a high standard. While acknowledging that other premises may not be of a similar standard, they argued any measures should not adversely affect the good operators:

> We do understand that there is a need for change in the industry to help residents in some Assisted Boarding Houses with their security and rights. However, our boarding house is already well-scrutinised on a regular basis and time after time, [the premises] has proven up to standards, if not higher.\(^{12}\)

One submission argued that implementing Option B would

> give the opportunity for the industry plus the government to see if the new regulations are a financially viable option without any detrimental effect on residents or proprietors. If anyone does take this business proposal up the industry would change over voluntarily if it was a successful business model.\(^{13}\)

All proprietor submissions argued against Option C: “Options C and D would terminate our business over time.”\(^{14}\) One operator noted that if his business closed down, potentially 60 people could be affected which, based on the figure of approximately $100,000 per annum to support each resident in the Boarding House Relocation Project, would cost Government $6m per annum.\(^{15}\)

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\(^{11}\) See for example L Paterson, Kelvinside Lodge, p 3; W Laruffa, T Sylvester, M Sylvester, Riverview Hostels, p 2; M Barbara, T Marzullo, Smiths Hall.

\(^{12}\) M Barbara, T Marzullo, Smiths Hall, p 2.

\(^{13}\) L Paterson, Kelvinside Lodge, p 3.

\(^{14}\) W Laruffa, T Sylvester, M Sylvester, Riverview Hostels, p 2.

\(^{15}\) Marsdens Law Group for JKPD Catering Pty Ltd, Rosnels, p 2.
NGO submissions

NGO submissions supported the main changes but differed on when they should be implemented. Submissions also made suggestions for further enhancements to the standards.

In summary:

- Option A (status quo) gained no support from NGOs.
- The majority of submissions from NGOs supported Option C, although several suggested that five years is too long. This is further set out in the discussion of standard 5 below.

PWDA argued that Options A, B and C do not comply with the CRPD, and that only Option D is compliant because of its immediate application. PWDA argue that ideally, any regulation should have the effect of immediately closing down all assisted boarding houses, or close them down after 18 months with no new assisted boarding houses being permitted.

Other submissions

The submission from an Official Community Visitor supported Option D (immediate application of all standards):

[The industry needs immediate reform and it is my submission that to allow current facilities to remain unchanged for a period of five years disregards the support needs of this vulnerable group.]

The other individual submission did not favour any of the options put forward in the Regulatory Impact Statement, instead arguing that the document was flawed (“an in-house privileged conceit with inappropriate and unsubstantiated assertions”). This submission argued that a totally different approach to assisted boarding houses was required, in which the landlord and the care function were separated.

6.2 Comments on the draft Boarding Houses Regulation

6.2.1 Part 1 Preliminary

Clause 3 – Definitions

The Public Guardian pointed out that many “people with additional needs” have the Public Guardian appointed but that the draft Regulation does not refer to guardianship issues. He therefore recommended that a definition of guardianship be included in the Regulation.

ADHC notes that the definition of “person responsible” in clause 3 was intended to cover guardians appointed under the Guardianship Act 1987 as suggested by the Public Guardian and needs to be amended.

Recommendation 1

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16 R Armstrong, Official Community Visitor, p 2.
17 Michael Patterson, p 1.
18 Public Guardian, p 2.
That clause 3 be amended to recognise the appointment of a guardian by the Guardianship Tribunal or the Supreme Court under the *Guardianship Act 1987* to make decisions in specific health and welfare areas for a person with additional needs.

6.2.2 Part 2 Registration of Boarding Houses

Clause 4 – Additional particulars to be notified to the Register

This clause sets out a list of particulars that general and assisted boarding house operators are required to provide for the Boarding House Register.

The Public Guardian recommended that particulars to be collected include the number of persons under guardianship.\(^{19}\)

ADHC notes that information about guardianship is already collected in relation to residents of assisted boarding houses as part of the Department’s screening and ongoing assessment of resident needs.

Clause (4)(j) already asks a number of questions relating to whether residents have mental illness, disabilities, significant health problems, or a need for assistance with daily tasks and personal care. The purpose of seeking this information is to flag to ADHC that there may be residents with “additional needs” living in a general boarding house. While guardianship may in some cases be an indicator that a resident has “additional needs”, it is not included in the definition set out in the Act.

In addition, operators of general boarding houses may not know whether a resident is under guardianship orders, and it seems unduly invasive for the boarding house owner to seek that information from current residents in order to complete the registration process.

Clause 5 – Additional information on Register of Boarding Houses

This clause allows particulars of any enforcement action taken in respect of a boarding house to be recorded on the public Register.

One NGO called for enforcement action to be defined as including

\[\text{sanctions prior to legal prosecution, as well as any improvement programs established in conjunction with the enforcement agency to address breaches.} \]

\[\text{We believe this information is essential for current and future residents to guide and inform their decisions on where to live.}^\text{20}\]

Three submissions noted the importance of having a sufficient number of skilled and trained enforcement officers to enforce standards under the Regulation.\(^{21}\)

One proprietor advocated the need for proprietors to be given a fair opportunity to respond to breaches before enforcement action is taken,\(^{22}\)

\(^{19}\) Public Guardian, p 2.

\(^{20}\) People With Disabilities Australia, p 27.

\(^{21}\) National Disability Services, p 2; R Armstrong, Official Community Visitor, p 2; People With Disabilities Australia, pp 11-12.

\(^{22}\) R McLoughlan, Wallerawang, face-to-face consultation 05/04/13.
while another expressed concern that whether over-zealous monitoring could result in “torch lights in people’s faces while they are in bed.”

One local council asked that consideration be given to the length of time that the details of enforcement action remain on the public Register and that provision be made for an appeal process by proprietors wishing to dispute enforcement action. ADHC notes that this is provided for under section 87 of the Act.

Information which demonstrates satisfactory compliance with orders, and the outcomes of prosecutions can be included in the definition of ‘enforcement action’ and therefore on the public Register.

The NSW Ombudsman also recommended that ADHC provide training and other assistance to operators, staff, residents and service providers to enable them to understand the new requirements. This will be undertaken as part of the implementation process.

6.2.3 Part 3 Assisted Boarding Houses

Clause 6 – “Person with additional needs”

It was suggested that the definition in section 36 of the Act and the tool which is used to determine whether a person is a “person with additional needs” be reviewed over time in light of the current reforms to the disability sector.

Preliminary discussions relating to the definition of “person with additional needs” and its alignment with person-centred approaches and the National Disability Insurance Scheme (NDIS) are already underway within FACS.

Clause 7, 8 and 9 – Applications for authorisations and approvals

One submission recommended that clauses 7 and 8 require that information in relation to “close associates” as defined under section 38 of the Act also be provided in applications for authorisations and approvals.

This is supported and is consistent with the intent of the Act.

Recommendation 2

That clauses 7(1)(b) and 8(a) be amended to include relevant information concerning a “close associate”.

Clause 14 – Screening of additional needs residents

One NGO expressed concern that the requirement for a person seeking entry into an assisted boarding house to “voluntarily identity whether he or she has been admitted to a psychiatric hospital, aged care centre or rehabilitation

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23 L Paterson, Kelvinside, p 5.
24 Penrith City Council. P 1.
25 NSW Ombudsman p 2.
27 People With Disabilities Australia, p 29.
centre” may be in breach of Article 22 on the CRPD which guarantees personal respect and dignity.\(^\text{28}\)

This view was shared by a proprietor who commented:

\[
[D]ADHC will need to regularly repeat this assessment to see if residents needs have changed or new residents admitted. … 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 the need for assistance?

Perhaps it would make things easier to have those with a disability wear a little yellow star. Then they would be easy to identify for relocation.\(^\text{29}\)

Another NGO suggested that clause 14(2)(c) be amended so that the screening tool is used where people had previously been admitted to other institutions including general hospitals and correctional facilities.\(^\text{30}\)

Applying the screening tool to people who have had hospital attendance is supported as it relates directly to the health needs of the residents.

The inclusion of correctional facilities as a trigger for screening a person is not supported, as imprisonment does not of itself, without any other form of hospital or psychiatric admission, directly relate to the health needs of the person, which is the issue of concern.

It was also submitted that re-assessment of residents under clause 14(5) should occur only when a resident’s health had \textit{significantly} deteriorated otherwise rescreening every time there is only a slight deterioration in health could be unnecessarily invasive for the resident.\(^\text{31}\) This is supported.

Another submission argued that the length of time for relocating a resident who is re-assessed as no longer eligible for assisted boarding house accommodation be shortened from the proposed one month to two weeks in order to protect the resident from further deterioration.\(^\text{32}\)

ADHC acknowledges that each case will require a different response, and a different amount of time for the resident to be relocated. Where the resident requires urgent health treatment ADHC would seek the person’s admission to a relevant health facility, and where additional daily support is required ADHC would seek to involve additional service providers to assist the resident while alternative accommodation is sourced.

The current screening tool came in for criticism, with one stakeholder claiming that it results in inappropriate placements of people who require night-time medication in premises with no night-time support, requiring residents to take their medication before staff leave at 5pm.\(^\text{33}\)

\(^{28}\) Physical Disability Council of NSW, p 3.

\(^{29}\) A Powell, The Grand Western Lodge, p.7.

\(^{30}\) People With Disabilities Australia, p 30.

\(^{31}\) Disability Council of NSW, consultation 25/03/13

\(^{32}\) R Armstrong, Official Community Visitor, p 3.

\(^{33}\) R Armstrong, Official Community Visitor, p 3.
Three submissions called for a more comprehensive screening and assessment tool. A boarding house manager described the screening tool “a wasted document” and called for its improvement so that it provides

*a more in depth medical and mental profile [of each resident] with input from doctors, nurses, social workers, family and self. This will allow us to assess and evaluate all the facts / information and to make the decision as to whether this person would be suited to our home. It would also assist us to make the transition of settling in to the environment more successful.*

The argument was also put forward for a “multipurpose” assessment which would “identify the more specific support needs of potential residents to ensure that these will be met in any proposed accommodation.”

\[35\] It was also suggested that the screening tool take into account assessment tools used in the health, disability and aged care sectors because it will “stop people having to repeatedly tell their stories.”

Ultimately the screening tool will need to align with NDIS assessment tools, which, when developed, will make assessments for the purpose of the allocation of supports and funding for people with disability.

*These comments will be considered as part of the implementation process for the Act and in the roll-out of the NDIS.*

**Recommendation 3**

<table>
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<th>Recommendation 3</th>
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<td>That clause 14(2)(c) be amended to include a reference to a general hospital.</td>
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<td>That clause 14(5) be amended to require re-assessment only after a significant deterioration in health.</td>
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**Clause 15 – Provision and display of information**

The Tenants’ Union of NSW noted that boarding house operators can provide occupancy agreements or residential tenancy agreements, but that this clause and clause 22 assume the use of an occupancy agreement only.

Two submissions suggested that information about “rewards” provided as reductions in room fees, such as where a resident engages in work on behalf of the operator in the kitchen, laundry or garden – be included alongside details about fees.

Several submissions suggested that information be displayed and provided to residents in a format that they can understand, for example Easy English, Braille or audio. *This will be considered as part of the implementation process.*

**Recommendation 4**

\[34\] B Savage, Carinya Lodge Arncliffe, p 5.
\[35\] R Armstrong, Official Community Visitor, p 3.
\[36\] NDS, p 4.
\[37\] Tenants’ Union of NSW, pp1-2.
\[38\] R Armstrong, Official Community Visitor, p 4; People With Disabilities Australia.
\[39\] Disability Council of NSW, consultation 25/03/13; People With Disabilities Australia; R Armstrong, Official Community Visitor, p 4.
That clause 15 (2) be amended to insert ‘or rental agreement’ after the words ‘occupancy agreement’.
That clauses 15 (2) and (3)(c) be amended to also require information to be provided on “rewards” such as fee reductions in return for undertaking certain work.

**Clause 16 – Development of policies**

Clause 16 sets out a list of policies that operators are enquired to have in place. A range of additional policies were suggested in a number of submissions. Possible additional policies included:

- Decision making and consent;
- Person centred planning and services;
- Privacy and dignity;
- Prevention against abuse and violence;
- Behaviour support and restrictive practices;
- Health care;
- Nutrition and swallowing;
- Palliative Care;
- Promoting active and healthy lifestyles including smoking cessation;
- Supporting residents back into the workforce;
- Information and advocacy services;
- Review and referral processes;
- Termination of occupancy;
- Access to legal advice; and
- Probity in employment.

Some of the policies suggested would not be appropriate for a boarding house and/or are beyond the scope of an operator’s responsibilities (e.g. palliative care, supporting residents back into the workforce). Consideration will be given by ADHC to developing additional policies, as appropriate. These suggestions for policies will be considered as part of the implementation process.

The NSW Ombudsman commented that boarding house operators would need considerable assistance in developing their own policies and recommended that ADHC provide policies and procedures which operators could adapt, as well as “training for operators, staff, residents and other relevant service providers (such as Boarding House Reform Program

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41 R Armstrong, Official Community Visitor, p 7.
services) on the standards, requirements and policies. ADHC has already undertaken to do this.

**Clause 18 – Notification of evictions of additional needs residents**

Clause 18 requires operators to notify the Director-General that an additional needs resident is being (or has been) evicted within 7 days after the resident has been issued with an eviction notice or has been evicted, whichever occurs first.

Several submissions raised concerns with this provision, in particular, that it does not require operators to notify the Director-General prior to the eviction occurring. The Tenants’ Union of NSW suggests that operators be required to notify the Director-General within seven days of issuing the eviction notice, or immediately upon eviction, whichever is soonest.

ADHC agrees that operators should be obliged to inform the Director-General promptly after issuing the eviction notice or actually evicting the resident – notification of the Director-General is not onerous. As it is possible that a notice of eviction might only give the resident seven days to leave, ADHC would support a shorter time period of notification within three days of the notice of eviction being issued.

It was also suggested that operators be required or encouraged to seek legal advice from NSW Fair Trading prior to issuing an eviction notice against a resident. ADHC notes that Fair Trading does not offer legal advice, however Law Access NSW can provide legal information to operators’ about their obligations under the Act and referral to a solicitor for ongoing advice.

*The implementation process includes education for proprietors about the occupancy principles in the Boarding House Act 2012 and will encourage proprietors to seek legal advice prior to considering eviction of a resident.*

**Recommendation 5**

That clause 18 be amended to require the operator to notify the Director-General within three days of issuing a notice of eviction, or immediately upon eviction, whichever occurs first.

**Clauses 19-25 – Records to be kept by the operator**

Clauses 19-25 set out the records that the operator is required to keep.

In relation to the 'Additional needs resident personal information register' (clause 20), submissions were made that the following should also be included:

- A description or photo of the resident.

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42 NSW Ombudsman, p 2.
43 People With Disabilities Australia, p 33; NSW Ombudsman, p 3; Physical Disability Council of NSW, p 4; Disability Council of NSW, consultation 25/03/13, Tenants Union of NSW, p 2; R Armstrong, Official Community Visitor, p 4, NSW Ombudsman, p 3.
44 Tenants Union of NSW, p 2.
45 Physical Disability Council of NSW, p 4.
46 People With Disabilities Australia, p 33.
Name and contact details of authorised guardian, a copy of the guardianship order,\textsuperscript{47} and any associated powers, review or expiry dates;\textsuperscript{48}

Copies of any legal authorities which restrict or protect residents from other parties, as set out in Standard 25 under Schedule 1; and\textsuperscript{49}

Details about how the resident would like to receive information – for example, whether they need information to be in Easy English, another language, accessible for sight impairments, and so on.\textsuperscript{50}

In relation to clause 21 regarding health records, the NSW Ombudsman noted that written authorisation is not usually required for emergency treatment,\textsuperscript{51} while several other submissions noted the need for a record to be kept of the resident’s guardian as well as guardianship authorities relating to health care, medication, dental or other medical consent.\textsuperscript{52}

The Tenants’ Union noted in relation to clause 22 that rental agreements (not just occupancy agreements) should also be covered.\textsuperscript{53}

In relation to clause 23, one submission recommended that the date of the probity checks be retained on staff information records.\textsuperscript{54}

One proprietor argued strongly against the need to collect all the information set out in clauses 20 and 21 and this would be a breach of the residents’ rights to privacy.\textsuperscript{55} Others argued that the additional record keeping requirements would be costly and that assisted boarding houses cannot afford to employ additional staff to complete all additional information.\textsuperscript{56} The costs might be shifted onto resident fees:

\textit{This is with the proposed reduction in income and no financial assistance from ADHC for training, stationery, set up costs of medical, personal files and once again clients will need to pay fee for service because money is needed to pay staff to do work.}\textsuperscript{57}

The development of templates and standard forms that may assist proprietors in collating required records and complying with any additional processes will be included as part of the implementation process.

\textit{Recommendation 6}

\textsuperscript{47} Public Guardian, p 2.
\textsuperscript{48} R Armstrong, Official Community Visitor, p 5; People With Disabilities Australia, p 33.
\textsuperscript{49} People With Disabilities Australia, p 33.
\textsuperscript{50} Disability Council of NSW, consultation 25/03/13.
\textsuperscript{51} NSW Ombudsman, p 4.
\textsuperscript{52} Public Guardian, p 2; People With Disabilities Australia p 34; R Armstrong, Official Community Visitor, p 5.
\textsuperscript{53} Tenants’ Union of NSW, pp1-2.
\textsuperscript{54} People With Disabilities Australia, p 34.
\textsuperscript{55} R McCloughlan, Wallerawang, face-to-face consultation 05/04/13.
\textsuperscript{56} Dian and John Haigh, Sunderland St and Tinonee Haven, email 11/04/13; L Paterson, Kelvinside Lodge, p 1.
\textsuperscript{57} L Paterson, Kelvinside Lodge, p 1.
That clause 20 be amended to include the name and contact details of any authorised guardian and any associated powers, review or expiry dates.
That clause 21(d) be replaced with a clause requiring records of guardianship authorities relating to medical treatment.
That clause 22 be amended to include ‘rental agreements’ within the meaning of Part 3 of the Act.

### Clause 25 – Fire safety records

In the consultation with residents, many agreed that evacuation testing should be every six months. Some residents expressed a lack of awareness of what they are meant to do when a fire/smoke alarm goes off.\(^{58}\)

In submissions, one NGO recommended that emergency evacuation plans needed to include personal evacuation plans for additional needs residents.\(^{59}\)

A premises evacuation plan should incorporate actions for supporting people with additional needs to evacuate. Most professionally prepared ones for residential facilities (e.g. nursing homes) include this. A simplified single plan that caters for individuals is considered to be better practice than multiple personalised plans. **Information about developing evacuation plans will be part of the implementation process.**

### 6.2.4 Schedule 1 Standards for authorised boarding houses

#### Standard 1 – Staffing

Draft standard 1 provides that staff levels must be sufficient to cater for the needs of residents, and that this must include at least one staff member present on the premises at all times who “is capable of responding to a first aid emergency expeditiously”. The standard allows for staffing levels to be determined using a “staff needs assessment tool” or as directed by the Director-General.

The joint submission from two proprietors commented:

> We will not and do not have residents who will require 24 hour supervision. Also we do not have accommodation to house a staff member.\(^{60}\)

Another proprietor stated:

> My current staffing arrangements range from having 4 to 5 staff at the premises during the day, with 1 staff member being required at night.

> The proposed new Regulations would require at least 1 staff member to be at the facility at all times which could lead to further increases in staff levels being implemented. This would result in me having to employ further staff to be at the premises which would result in a significant increase in my staff costs.

\(^{58}\) O’Connell Advisory, p. 24.

\(^{59}\) People With Disabilities Australia.

\(^{60}\) Dian and John Haigh, Sunderland St and Tinonee Haven, email 11/04/13.
My current staffing levels are adequate to run the facility effectively, and no increase in staffing levels is required…

I acknowledge that … it provides that the Director-General may determine that my premises does not require an increase in staffing. This does not however provide me with certainty and it would be necessary for me to seek and obtain that approval rather than being required to only change my staff levels if such a change was necessary.61

A proprietor commented:

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.62

Two submissions – one from an NGO and one from the manager of an assisted boarding house – submitted that all staff members should have first aid qualifications.63

One submission argued for a staffing ratio and a tool based on the identified needs of the particular group of residents.64

Staffing ratios were considered in the drafting of the Regulation but an approach based on the assessed needs of residents was considered more flexible, and was therefore adopted. ADHC does not propose to change the standard.

Standard 2 – Staffing qualifications, skills and training

The NSW Ombudsman expressed concern that the draft Regulation does not restrict the employment of people who have engaged in conduct which has posed, and could again pose, a significant risk to residents and recommends that operators be required to carry out appropriate risk assessments in relation to current and potential employees.65

Guidance for operators on ‘probity in employment’ will be considered as part of the implementation process.

The suggestion was also made that at least one staff member on duty should also hold a Mental Health First Aid qualification. This will be considered as part of the implementation process.

Standard 3 – Minimum qualification for managers

This standard specifies qualifications and skills for managers. One submission called for minimum qualifications for managers to be the TAFE Diploma of Disability, as well as requirements for cultural competency and ongoing professional development.66

61 Marsdens Law Group for JKPD Catering Pty Ltd, Rosnels, p 2.
63 B Savage, Carinya Lodge Arncliffe, p 5.
64 R Armstrong, Official Community Visitor, p 6.
65 NSW Ombudsman, p 3.
66 People With Disabilities Australia, p 37.
Another submission suggested that the Government and licensees together provide opportunities for continuing professional development to any staff without tertiary qualifications.\(^{67}\)

*The provision of guidance to boarding house staff on person-centred and individualised approaches to supporting residents will be considered as part of the implementation process.*

**Standard 5 – Pre-existing assisted boarding houses**

This draft standard specifies that standards 6 and 7, which impose a maximum resident limit and requires single room occupancies, apply immediately to assisted boarding houses authorised after the commencement of the Act, while assisted boarding houses existing at the date of commencement have five years to comply.

Proprietors’ submissions did not generally comment on the length of the transition period, rather they argued that these two standards should not apply to existing assisted boarding houses at all.

Two NGOs argued that there should no transition period for existing assisted boarding houses.\(^{68}\)

Most NGOs supported the concept of a transition period while arguing for different timeframes.\(^{69}\) Two NGOs suggested a two-stage transition period, for example, reducing numbers to 30 residents in the first five years, and then reducing them further over the next five years.\(^{70}\)

Two NGOs proposed that throughout the transition period, operators be required to report on their plans for complying with standards 6 and 7.\(^{71}\)

Another submission argued that the NSW Government should work with individual operators on transition plans to see them progressively adapt to the new standards as this would avoid a “mass exodus” in five years time:

> I submit that a more appropriate way to introduce new regulations would be by way of an individual transition plan developed between the owners and the legislation monitors for each facility. Agreement to a transition plan would seek the commitment of owners to begin change for the benefit of residents immediately, with a consequence of failure to achieve progress according to the agreed plan would lead to termination of the licence to operate.\(^{72}\)

It is proposed that the transition period of five years in Standard 5 be retained.

ADHC will work with the operators of pre-existing assisted boarding houses during the transition period to develop plans to meet the new standards.

**Recommendation 7**
That Standard 5 be amended to require proprietors of pre-existing boarding houses to provide the Director-General with a plan, in a form to be determined by the Director-General, which demonstrates how they will transition to Standards 6 and 7. The transition plan would be due after the first 12 months of the commencement of the Regulation, and thereafter every 12 months, until the end of the five year transition period.

**Standard 6 – Maximum number of residents set at 30**

This standard sets a limit of 30 on the number of residents permitted in each assisted boarding house.

The RIS put forward a number of reasons for requiring a maximum resident limit, including the geographical isolation and segregation of residents living in large institutions; the fact that larger facilities tend to have highly structured routines resulting in reduced opportunities for residents to participate in everyday activities; and the greater risk that abuse and neglect of residents can go undetected.

The RIS proposed 30 residents as a limit and invited comments about the most appropriate limit.

*Submissions against any limit on the number of residents*

Six submissions argued that there should either be no limit or a limit greater than 30 residents. Four were from proprietors/operators of three individual premises currently licensed for more than 30 residents, the other two were from a proprietor and a manager of an assisted boarding house with less than 30 residents.

One proprietor queried:

> Where has this number [30] come from? We can comfortably accommodate 34 residents with our current licence and have the capacity to comfortably and efficiently accommodate at least another 4 residents if we could extend our licence. Why is there a need to limit occupancy when there is space and facilities to accommodate more residents in our well-run house?

Another operator of premises licensed for more than 30 residents stated:

> This new proposed Regulation coupled with the proposed increase in staffing levels means that not only will there be increased costs for my facility, there will also be decreased revenue which threatens the viability of the facility.

> … I would encourage the Government to either:

> increase the maximum number of residents able to reside at a facility; and /or

> provide clearer details as to how a facility owner would go about applying for special conditions [allowing more than 30 residents] to be noted on their license by the Director-General.

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73 W Laruffa, T Sylvester, M Sylvester, Riverview Hostels, p 2; Marsdens Law Group for JKPDC Catering Pty Ltd, Rosnels, p 2; G Boom, Kenrio Pty Ltd, Rosnels, p 1; M Barbara, and T Marzullo, Smiths Hall, p 1.

74 B Savage, Carinya Lodge Arncliffe, p 2; C Baker, Carinya Arncliffe and Carinya Marrickville, p 19.

75 M Barbara, and T Marzullo, Smiths Hall, p 1.

76 Marsdens Law Group for JKPDC Catering Pty Ltd, Rosnels, p 2.
It should be noted that section 47 of the Act enables the conditions of an authorisation to be varied and/or for exemptions to be granted in relation to premises or specific conditions.

Submissions in favour of a 30 resident limit

The majority of residents consulted considered that the maximum resident limit of 30 was about right. As one resident commented:

“No more than 30 people in one building and no land - that’s fair enough.”

Two submissions from NGOs supported 30 residents as an appropriate limit. Two other NGOs supported the limit of 30 as a transitional step to a limit of 20 after a further five years.

Submissions for less than 30 residents

Almost all NGO submissions argued for a resident limit of less than 30 on the basis that large-scale congregated accommodation for people with disabilities is outmoded, unsafe, and provides a much poorer quality of life for residents when compared with community based, smaller, home-like accommodation options. Arguments were put forward for a limit of six, fourteen, and twenty residents.

An Official Community Visitor made the following comments:

In the assisted boarding house facilities I currently visit I find that the support services for residents where there are less than 15 have, in general, better outcomes. I have reported fewer issues associated with abuse (client on client) and neglect where resident numbers have been less than 15 and overnight support is provided. I have also observed that interpersonal relationships between resident and resident and facility staff and resident are more positive in facilities where there are less than 20 residents. In addition I have noticed that where a person moves from a large (more than 20 persons) assisted boarding house into a smaller one (less than 15 persons) and have their own bedroom, a more homelike environment exists, positive relationships develop, self esteem increases and a stability in accommodation occurs.

Two submissions noted that only four individual assisted boarding houses are currently licensed for over 30 residents. Of the remaining assisted boarding houses, all would experience a reduction in overall resident numbers if the requirement in Standard 7 for single occupancy rooms is implemented – all are likely to have less than 20 residents once Standard 7 took effect. These

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77 O’Connell Advisory, p.17.
78 CASA, p 1; People With Disabilities Australia, p 6.
79 Tenants Union of NSW, p 2; Newtown Neighbourhood Centre, p 1.
81 Uniting Care Children Young People and Families, p 3; People With Disabilities Australia, p 13.
82 R Armstrong, Official Community Visitor, p 6.
83 Disability Council of NSW, consultation, 25/03/13; Tenants’ Union of NSW, p 2.
84 R Armstrong, Official Community Visitor, p 6.
two submissions therefore argued that implementing a limit of 20 residents would not in practice make much difference to the vast majority of the existing assisted boarding houses.\textsuperscript{85}

A further submission suggested that a lower limit be adopted, but that it relate only to the number of persons with additional needs. This would allow the boarding house to accommodate residents who do not have additional needs.\textsuperscript{86}

**ADHC recommendation in relation to the maximum number**

Limits on resident numbers are crucial to reducing the potential institutionalisation of assisted boarding houses.

Research by Drake on the nature and effect of institutionalisation provides useful discussion about what constitutes an institution\textsuperscript{87}. Referring to the National Disability Agreement 2008-2011 Minimum Data Set (MDS) definition of an institution she notes that:

- 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.\textsuperscript{88} (AIHW 2009, 178).

Although Drake does not make this point, the definition of institution used in the Minimum Data Set relates specifically to government-funded disability accommodation which usually accommodate high-needs residents in a fully-staffed environment. This is a different accommodation model to privately-owned assisted boarding houses, from which high-needs residents are currently screened out.

Drake notes further, that the definition of “institutional” has always been contested, with

- some people arguing that institutions are a frame of reference, attitudes and values and practices which can be present in community living, while others define an institution more concretely as an establishment in which more than 30 people lived, of whom at least 80% were mentally or physically disabled.\textsuperscript{89}

It is proposed that the maximum resident limit of 30 in Standard 6 be retained as it provides an appropriate threshold for determining the maximum number of residents that should be accommodated at an assisted boarding house.

\textsuperscript{85} People With Disabilities Australia, p 15; R Armstrong, Official Community Visitor, p 6.
\textsuperscript{86} Disability Council of NSW, consultation, 25/03/13.
\textsuperscript{87} People With Disabilities Australia, pp 13-14.
The limit of 30 residents should be reviewed towards the end of the transition period, taking into account any further research on the impact of resident numbers on the safety, welfare and wellbeing of the residents.

**Standard 7 – Sleeping arrangements**

Draft Standard 7 specifies that only one person can occupy each bedroom, except where two residents who know each other request a shared bedroom. Rooms should also be capable of being locked.

The RIS explained that the reason for such a requirement is to minimise risks to the personal safety of residents, increase their privacy, allow residents to personalise their room, and allow them to keep their belongings safe.

**Residents’ consultation**

The Report into the consultation with residents found the following:

*The majority of the residents consulted shared a room with some instances where a resident shared with three other people. There were some people who were very comfortable sharing with another person. Those residents usually got on very well. Comments included: “I like the company”.*

*One group of residents consulted were not interested in having a room of their own. However, there were a significant number of residents who were interested in having a room of their own. “I think it’s a good idea – if I want to be on my own I have somewhere to go to.”*

*A large number of those residents who expressed interest in a room of their own were sensitive to cost. They indicated that they would prefer to remain sharing rather than pay more to have a room of their own.*

… Overall, there was strong agreement for residents with special needs to have the option of a room of their own, with 2 people able to share if they both wanted to do so. 90

**Submissions in favour of retaining shared accommodation**

The majority of proprietors’ submissions91 argued for the retention of shared rooms.

Two proprietors did not put forward arguments relating to shared rooms: one whose property is all single occupancy, and one whose properties do contain shared rooms but have some vacancies.92

A family that owns two assisted boarding houses, both with shared rooms, argued several benefits of room sharing for residents:

*Room sharing assists new residents “break the ice” with the residents. It serves to help new residents feel comfortable within the house and assists them to become familiar and “fit in” to the routine of the house…. [We] believe that room sharing actually increases the safety of a resident in relation to health/personal/psychological issues, as there is always a person close at hand to watch out for them. There are many residents… who have indicated*

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90 O’Connell Advisory, p 18.
91 See for example M Barbaro and T Marzullo, Smiths Hall, pp1-2; W Laruffa, T Sylvester, M Sylvester, Riverview Hostels, p 2; L Paterson, Kelvinside Lodge, p2; J Baker and J Baker, Carinya Marrickville, p 1; C Baker, Carinya Marrickville and Carinya Arncliffe, p 19; B Savage, Carinya Lodge Arncliffe, p 5.
92 R McLoughlan, Wallerawang, face-to-face consultation 05/04/13.
to us that they would be disappointed if they were put into a room by themselves, especially those who have been sharing for many years… An economic benefit arising from shared accommodation is that residents who have attained employment tend to encourage their room-mates to attempt to find employment also… 93

They also put forward:

*It is not possible to reconfigure any of these rooms in this existing house to create more single rooms, without having to evict at least 10 potentially displaced persons. Dual occupancy in rooms has been operational within this boarding house for many years now.* 94

Similarly, another proprietor argued

*Our residents enjoy the social aspect of having a room-mate even if they may not know them at the beginning of their stay with us. We believe that many of our residents would be severely mentally compromised if forced to live/sleep in a single room because they initially didn’t ‘know’ the person they were to share with. Many, because of their mental state, would not come out of their rooms, and those with certain mental illnesses would deteriorate under these conditions. It is NOT in the best interest of our residents to separate them into single rooms.* 95

This proprietor said that he had taken a survey of his residents and that “they definitely prefer to share a room with one other person.” 96 He noted that the two single rooms at his premises had been vacant for three months, because “everyone that has come through has preferred and requested a twin room.” 97

The manager of an assisted boarding house had also surveyed her residents:

*Our residents voted 18 out of 20 to continue living in shared rooms with words such as – I feel “safe”, “secure”, I “trust” my roommate, he/she is my “friend”, I “don’t want to be on my own.” You will create an environment ideal for smoking, drinking alcohol, using drugs or even committing suicide, in these single rooms.* 98

The manager, along with several proprietors, argued forcefully against rooms being able to be locked, citing a fear that residents will lock themselves in, as well as fire safety concerns, particularly if residents started smoking in their rooms behind locked doors. 99

One proprietor also noted that there were currently no locks on doors and therefore this would represent an additional cost of approximately $200 per door, an additional one-off cost of around $10,000 for their operation. 100

Some proprietors submitted that requiring single occupancy rooms would have a massive impact on the viability of their business:

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95 M Barbara, and T Marzullo, Smiths Hall, p 1.
96 M Barbara, and T Marzullo, Smiths Hall, p 1.
97 M Barbara, and T Marzullo, Smiths Hall, p 1.
98 B Savage, Carinya Lodge Arncliffe, p 2.
99 J Baker and J Baker, Carinya Lodge Marrickville, p 2; B Savage, Carinya Lodge Arncliffe, p 3;
100 W Laruffa, T Sylvester, M Sylvester, Riverview Hostels, confidential costings provided to ADHC.
The business at Carinya Marrickville is our livelihood. The income that we receive from the business does not go into a “savings account”. It is spent on our living expenses. We are both elderly and need this income. It covers our Health costs, the soaring costs of general living in Sydney. Our costs to run the boarding house each year are huge.101

Submissions against shared accommodation

The majority of NGO submissions expressed support for single bedrooms and opposition to shared accommodation in assisted boarding houses.102 One submission referred to research showing that shared sleeping quarters in licensed boarding houses has a negative impact on people’s sense of self, sense of physical integrity, safety and self-determination.103 Another submission put it this way:

To require a resident to share a room with a stranger is not acceptable in civilised society. There is no possibility of privacy or security of possessions. In most Assisted Boarding Houses today, 70-90% of residents have mental illness, often schizophrenia. One of the characteristics of people with schizophrenia is that they need personal space even more than those in the general population.104

Several NGOs argued that sharing should still be permitted where requested by spouses or de facto partners.105 However another submission argued that even residents in a relationship should be entitled to each have their own room.106 The experience of this NGO working with residents relocating from licensed boarding houses into other accommodation has been that those who are in a relationship expressed a wish “to have their own room so they could get away when they needed”107 for example when they experienced episodes of ill-health.

One NGO submitted that there should be safeguards to protect occupants from abuse “behind closed doors.”108

Submissions relating to making the choice to share a room

Most submissions from NGOs expressed concerns about the capacity of residents to make a genuine choice to share a room. Several NGO submissions noted that shared rooms were charged at a lower tariff than single rooms and that residents were likely to request the cheaper form of accommodation, that is, shared rooms.109

102 Tenants Union of NSW p 3, Uniting Care Children Young People and Families, p 3; People With Disabilities Australia pp 15-18, CASA p 1, Homelessness NSW p 5; Newtown Neighbourhood Centre, p 1.
103 G Drake, The privatisation of the back wards: the accommodation of people with intellectual disability and people with mental illness in licensed boarding houses, referred to in People With Disabilities Australia, p 16.
104 CASA, p 1.
105 CASA, p 1, Homelessness NSW p 5, Tenants’ Union of NSW p 3.
106 People With Disabilities Australia, pp 15-16.
107 People With Disabilities Australia, p 16.
108 Newtown Neighbourhood Centre, p 1.
Most proprietors base their room tariffs on the Office of State Revenue (OSR) Guidelines for land tax exemptions. The OSR grants a land tax exemption for a boarding house that offers “full board and lodging” (meals and accommodation such as that provided by assisted boarding houses) where the majority of rooms have a tariff of no more than $332 per week for single accommodation or $552 per week for shared accommodation. If two people are in shared accommodation, each could therefore be charged a maximum of $276 per week, compared to $332 per week for a single room – a difference of over $60, a significant saving for people on government benefits.

Two NGO submissions called for the introduction of a cap on fees.

Some submissions expressed concern that proprietors of assisted boarding houses would put pressure on residents to “choose” to continue sharing a room.

One NGO suggested:

In order to ensure that such a decision were fully-informed and freely made, it seems imperative that residents be provided with the services of an independent advocate. Extra funding may need to be available so that this service can be provided.

Another submission said:

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

The proprietors of two assisted boarding houses with shared rooms suggested that the preference of a resident for a shared room could be determined by asking them or their family (if any) “if they are comfortable with the current accommodation arrangement.” Case workers and on-site managers should also be asked whether “they believe shared accommodation is appropriate for the resident and whether they have any issues living in a shared room.”

NSW Health view, from a mental health recovery framework perspective is that:

Preference for a shared room should be in keeping with the residents’ recovery goals … Where possible and where consent has been provided by the resident concerned, the decision relating to the resident’s preference should be made in conjunction with the resident’s mental health case-coordinator an/or NGO/agency support worker and their families/carers. Issues such as lifestyle preferences, risks to both occupants, living skills, 

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111 CASA, p 2, Homelessness NSW p4.
112 R Armstrong, Official Community Visitor, p 6; People With Disabilities Australia, p 16.
113 CASA, p 1.
114 R Armstrong, Official Community Visitor, p 6.
115 Carinya Lodge Arncliffe and Carinya Lodge Marrickville, p 19.
ADHC proposes to retain Standard 7, with some changes to reflect the residents consultation whereby many residents wished to have the choice to continue sharing provided they could choose their room-mate.

As part of the implementation process, guidance will be provided to proprietors to ensure that residents are made aware of their right to a single room, but that they can choose to share with another person. In allocating a room the proprietor should consult with the resident’s family/guardian, mental health or other case-worker.

**Recommendation 8**

That Standard 7 be amended to ensure that there is a presumption in favour of the resident being provided with a single room, however, the resident can request to share a room with another resident of their choice, with no more than two residents to a room.

### Submissions in relation to the size of the room

The notes in the Draft Regulation, and the Regulatory Impact Statement, propose that the minimum size for single rooms be reduced from 7.5 square metres - as is currently required in the ‘A’ and ‘B’ licenses - to 5.5 square metres, in line with the minimum size set out in the standards for places of shared accommodation under the Local Government (General) Regulation 2005 - Schedule 2, which, in turn, is based on clause 46 of the Public Health Regulation 2012.

Resident consultations on room size were complicated by a misunderstanding during the workshops of what 5.5 square metres would look like, and by the fact that very few residents were in single rooms and were used to the larger size of a shared room.  

Nine NGO submissions argued that there was no case for reducing the size of rooms and that the current requirement of 7.5 square metres be maintained.

The proprietors of two assisted boarding houses expressed support for the 7.5 square metre size, another proprietor argued in favour of the reduction in size to 5.5 square metres as it meant they could divide existing shared rooms, while the rest of the submissions from proprietors were silent on the issue.

NSW Health comments that:

> Sufficient personal space allows for the person to both take responsibility and ownership regarding the care and use of that space and also provides a place

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116 NSW Health, at p.3.  
117 O’Connell Advisory, p 19.  
118 Uniting Care Children Young People and Families; R Armstrong, Official Community Visitor, p 6; Anonymous, email dated 9/04/13; CASA; People With Disabilities Australia; Lithgow Information and Neighbourhood Centre; Homelessness NSW; NDS, p 5.  
120 J Murray, Fernlea Hostel, p 2.
in which a person can enjoy peace and quiet, individual activities and self-care/time out during times of stress. It is recommended that 7.5 square metres per person and 11 square metres per dual occupancy be the standard.\textsuperscript{121}

It is proposed that the reference in Standard 7 to room size be set at 7.5 square metres.

The effect of this provision on the operation of individual assisted boarding houses, as well as the effect of any increases in tariffs on individual residents, will be monitored during the transition period.

Concerns about rooms being locked, or about safety behind closed doors, will be addressed during the implementation process and appropriate policies and procedures developed in consultation with operators.

**Recommendation 9**

That Standard 7 be amended to ensure that single bedrooms will be of a minimum size of 7.5 square metres and double shared bedrooms will be a minimum size of 11 square metres.

**Standard 10 – Furniture and fittings**

One submission argued that residents should have the right to lockable bedside cabinets, and be able to bring their own furniture where that is possible.\textsuperscript{122}

Standard 22 which relates to protection of personal property addresses this issue.

**Standard 11 – Cleanliness, maintenance and repairs**

Two submissions argued that the standard in the clause 11(2) include cooling as well as heating.\textsuperscript{123}

**Recommendation 10**

Standard 11 (2) be amended to require that both heating and cooling to be appropriate for the climate and temperatures.

**Standard 15 – Call bells**

There was overall support from residents for having a call bell in place, as residents could see the benefit of having a system that would allow residents to access help when needed.

*We have some very elderly people at home … I think it’s a good idea to have it.* \textsuperscript{124}

Several submissions strongly supported the inclusion of a requirement for call bells, as they would improve the safety and security of residents.\textsuperscript{125}

\textsuperscript{121} NSW Health, at p.2.

\textsuperscript{122} R Armstrong, Official Community Visitor, p 7.

\textsuperscript{123} Homelessness NSW, p 5, Tenants Union of NSW, p 3.

\textsuperscript{124} O’Connell Advisory, p.19.
Two submissions contended that call bells should be “positioned within the common zone of reach” and include “tactile elements / contrast and signage to facilitate recognition and activation”, that residents and staff be trained in using and responding to call bells and that records be kept on the activation of and response to every use of the call bells.  

Another NGO argued that some form of emergency alarm system should be in every room, to ensure safety and guard against abuse if rooms are individually lockable.

Several proprietors expressed concerns about the cost, with estimations of costs at $300 per room or $15,000 per building. Proprietors argued that the type of call bell system should be flexible and based on ensuring that the resident can contact staff in an emergency, such as a ‘vita call’ system or a phone with a programmed one-touch number that goes immediately to the on-duty staff member.

**Recommendation 11**

That Standard 15 be reviewed to ensure that it allows for different emergency call systems to be installed provided they enable residents with additional needs be able to contact staff members in the case of an emergency.

**Standard 16 – Communal space**

This standard specifies that there must be at least “one communal living space for the use of residents that is of an appropriate size and space for residents to socialise” which may be located outside.

Three submissions argue that this standard is a significant dilution of the requirement under the YCS Regulation for indoor recreation space of at least 3 square metres per resident. One NGO states:

*Given that communal recreation spaces encourage the engagement of residents in activity and participation, we believe that the proposed regulations could have significant impacts on the mental health and well-being, activity and independence of residents.*

Clause 16 takes into account proposed standards for sleeping arrangements which will provide residents with private space in which they can socialise.

Another submission argued that having only an external communal space is insufficient, and that

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125 NSW Ombudsman, p 1; Homelessness NSW p 4.
126 People With Disabilities Australia; R Armstrong, Official Community Visitor, p 7.
127 Newtown Neighbourhood Centre, p 1.
129 W Laruffa, T Sylvester, M Sylvester, Riverview Hostels, confidential costings provided to ADHC.
131 R McLoughlan, Wallerawang, consultation 05/04/2013.
132 Uniting Care Children Young People and Families, p 2; People With Disabilities Australia, pp 22-23; R Armstrong, Official Community Visitor, p 7.
133 Uniting Care Children Young People and Families, p 2.
at least one internal communal space, apart from the dining room, be required to be provided and furnished with a television, radio, books, games and sofas."134

**Recommendation 12**

That Standard 16 be amended to require that there be at least one indoor communal space of a reasonable size for use by residents.

**Standard 18 – Private or quiet rooms**

Four submissions called for the maintenance of a quiet or private room in assisted boarding houses even where all rooms are single occupancy, so that residents can see visitors or support workers.135 As one submission put it, “the majority of the population does not receive visitors in their bedrooms.”136

Another NGO also called for the reinstatement of sick rooms, as required under the previous Regulations and licence conditions, during the transitional period where shared rooms continue to exist.137 The Act enables licence conditions to be tailored to suit different premises.

**Recommendation 13**

That Standard 18 be amended to require assisted boarding houses to retain a private room, regardless of whether the resident has a single room or shares, where residents can receive visitors or see support workers.

**Standard 19 – Food preparation area**

Standard 19 specifies that additional needs residents should have access to an area that includes a stove, microwave, sink, refrigerator, suitable disposal facilities and hot water supply and is both safe and hygienic for food preparation and storage.

Residents thought this was a good idea. Residents from a number of assisted boarding houses wanted to be able to get a cup of tea or coffee when they wanted to.138

Several submissions were also very supportive of this standard.139 Three submissions also recommended that the kitchen be suitably equipped.140 However one proprietor argued:

> Our insurance will not cover us for open access to the kitchen and its potential hazards by all residents. Our residents are served 6 meals a day – breakfast, morning tea, lunch, afternoon tea, dinner and supper. Tea and

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134 Tenants Union of NSW, p 3.
135 Tenants Union of NSW, Homelessness NSW, p 5, People With Disabilities Australia p 40; R Armstrong, Official Community Visitor, p 7.
136 Homelessness NSW, p 5.
137 People With Disabilities Australia, p 41.
139 CASA, People With Disabilities Australia, Homelessness NSW p 4.
140 R Armstrong, Official Community Visitor, p 7; Tenants Union of NSW, p 3; People With Disabilities Australia p 40.
drinking water is always at their disposal. Our residents do not need space to prepare their own food, all meals are already included in the board and lodgings they pay fortnightly. This would be another unnecessary expense for us, not to mention the safety and hygiene issues it would raise for all residents.¹⁴¹

Another manager advised that it was too dangerous to allow residents to access a commercial-type kitchen to prepare meals, or have access to a stove. However she noted that her residents had requested “a small kitchenette with a fridge, microwave and urn to use and tables and chairs.”¹⁴² This manager advised that she would be prepared to trial and educate the residents on using the kitchenette appliances, but that she still had concerns “with microwave fires and hot water burns.”¹⁴³

**Standard 20 - Laundry**

Five submissions argued that on-site laundries should continue to be required as being able to do ones’ own laundry is essential to resident’s sense of independence.¹⁴⁴

**Recommendation 14**

That Standard 20 be amended to ensure that residents have access to onsite laundry facilities.

**Standard 21 – Telephone**

All residents consulted agreed that they should be able to use a telephone when they wanted to.¹⁴⁵

**Standard 24 – Information about support services**

One NGO noted that information about support services should be provided on an ongoing basis and not just on initial entry into the premises.¹⁴⁶

Another submission expressed concern that ADHC-funded support services were spending money inappropriately and should be reviewed.¹⁴⁷

ADHC notes that the Department conducts regular reviews of funded support services as part of its usual processes, and ensures that information about available support services are available at the premises.

**Standard 26 – Additional reportable incidents**

Another submission notes that the clause does not require the manager to report assaults involving residents to a police officer, and proposes that it be changed to require such reports as soon as is reasonably practicable.¹⁴⁸

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¹⁴¹ M Barbara, and T Marzullo, Smiths Hall, p 1.
¹⁴² B Savage, Carinya Lodge Arncliffe, p 4.
¹⁴³ B Savage, Carinya Lodge Arncliffe, p 4.
¹⁴⁴ Homelessness NSW p 5; People With Disabilities Australia p 24; Uniting Care Children Young People and Families, p 2; Tenants Union of NSW, p 2; R Armstrong, Official Community Visitor, p 7.
¹⁴⁵ O’Connell Advisory, p. 20.
¹⁴⁶ Newtown Neighbourhood Centre, p 2.
¹⁴⁷ B Savage, Carinya Lodge Arncliffe, p 4.
¹⁴⁸ R Armstrong, Official Community Visitor, p 5.
would require an amendment to the Act, which could be considered as part of the ongoing review of its operation.

**Standards 27 and 28 – Medication**

There were several comments suggesting the text of these two standards should be altered.

One NGO recommended that clause 27(7), which deals with the return of stored medication to a resident when they leave, be amended to insert the words “or returned to prescribing health professional”, and that clause 28(8), which deals with the failure of or maladministration of medication by a resident be amended to include notification of the mental health crisis or emergency team. This submission urged that the Regulation require administration of medication to be carried out by a trained staff member.  

PWDA have suggested that the two standards be amended to more closely follow 2005 guidelines into medication handling issued by NSW Health. After seeking advice with NSW Health, ADHC recommends changes to these two standards in the Regulation, which will also be supported by policies concerning the administration of medication as required in clause 16.

**Recommendation 15**

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149 Newtown Neighbourhood Centre, p 2.
1. That Standard 27 be amended as follows:
- Add an additional subclause following 27(1) with words to the effect “The medication storage facilities must be kept locked at all times except when in immediate use”
- Add an additional subclause following 27(2) with words to the effect “Where food is present in the storage facility, medication must be stored in sealed receptacles apart from the food.”
- Add an additional subclause following 27(7) with words to the effect “Any medication that is expired or is no longer required for administration must be destroyed in a manner that is not unlikely to constitute a risk to the public, such as through the Return Unwanted Medicines program available at community pharmacies.”

2. That Standard 28 be amended as follows:
- Add an additional subclause following 28(6) with words to the effect “A staff member supervising the administration of medication must hand the medication directly to the resident at the appropriate administration time and the staff member must observe the administration by the resident.”
- Add an additional subclause following the added subclause above which consists of words to the effect “Staff administering prescribed medicine must follow any additional instructions for the administration such as ‘swallow whole’”.
- Add an additional subclause following clause 28(7) with words to the effect “A staff member who administers an injection to a resident must be adequately trained to complete this task. This does not preclude a resident self-administering his/her own insulin.”
- Add an additional subclause with words to the effect “If it is practicable to do so, staff should ensure that all prescribed medications be repacked and labelled by a registered pharmacist into individual doses in a dose administration aid such as a blister pack.”
- Clause 28(8)(a) be amended to consist of words to the effect “in the case where there is reason to believe that the resident has maladministered or failed to administer that medication, reasonable steps must be taken to ensure that the health practitioner who prescribed the medication is notified, as well as the mental health crisis of emergency team where applicable, and …”
- Add an additional subclause at the end of the standard of words to the effect “Arrangements must be made for all currently required medications to be available to the resident for administration when the resident is absent from the authorised boarding house. No medication may be repacked by any person other than a registered pharmacist, medical practitioner or nurse practitioner.”

3. That the term “psychotropic medication” as referred to in 28(5) be defined in the Regulation.

Standard 30 – Assistance with health issues

One submission recommended amendments to ensure the resident is provided with first aid where necessary.151 Another argued that the operator should be required to notify the “person responsible” for the guardian of health issues within a specified time period, for example 12 or 24 hours.152

Recommendation 16

That Standard 30(a)(i) be amended to require immediate steps to be taken to administer emergency first aid if required and then secure treatment if the injury or illness requires urgent medical or dental treatment.

That Standard 30(c) be amended to require that the person responsible be notified as soon as practicable after the operator becomes aware of the health matter.

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151 People With Disabilities Australia, p 44.
152 Newtown Neighbourhood Centre, p 2.
**Standard 31 – Food and nutrition**

Standard 31 requires that additional needs residents be provided with meals that take into account their health and dietary needs and preferences, have variety and be in accordance with dietary guidelines or advice from a nutritionist. In addition, residents are to have access to drinking water and other beverages and refreshments.

Food was a significant issue for residents. Comments included:

- **Same old thing. Sometimes it’s macaroni cheese, once a week there’s quiche.**
- **If it's the same old same old then you start buying takeaway - and then you start being asked why are you putting on weight?**
- **Especially healthier food.**
- **Should be able to eat fruit.**

A proprietor expressed strong objections to Standard 31:

- **Sneaky little requirements are buried within the regulation. Things like Special food preferences and menus for each resident. Surely a variety of tasty, nutritious, healthy food in healthy servings and in balance is sufficient. Special allowances will always need to be made for special needs, Diabetics … 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. …Surely a meal routine of; Breakfast Lollies Morning tea Lunch Afternoon tea Dinner Supper and fruit available at other times on request, is sufficient.**

The NSW Ombudsman expressed support for improved food standards.

Two submissions recommended that dietary needs take into account cultural, religious or personal preferences.

One NGO, while supportive of the requirements, warned that “close monitoring and unscheduled inspections at food preparation and meal times by ADHC staff will still be necessary.” They also supported the requirement that residents have ready access to drinking water, beverages and refreshments, stating that “the days of locked kitchens in [a]ssisted boarding houses should be over.”

A proprietor however commented that this proposal was “highly impractical”:

- **Many of our clients suffer with compulsive disorders and do not know their limitations as far as consuming “free” food. Others will hoard the food and most likely forget about it and the food deteriorates. Keeping the supplies up would take a marathon effort.**

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153 O’Connell Advisory, p. 23.
155 NSW Ombudsman, p 1.
156 Disability Council of NSW, consultation 25/03/13; People With Disabilities Australia, p 44.
157 CASA, p 2.
158 CASA, p 2.
159 Dian and John Haigh, Sunderland St and Tinonee Haven, email 11/04/13.
Another proprietor identified problems with making available snacks or drinks outside of mealtimes including adverse reactions to "caffeine, acid and saccharine" caused by psychotropic drugs, and having high kilojoule snack food available.

An NGO had the following comment to make about the right to access refreshments outside of meal times as well as the food preparation area:

I would add a toaster, bread, margarine and spreads and suggest that a jug is the best way to ensure there is hot water. Tea and coffee, possible decaffeinated, since this is less likely to affect regular psychotropic medications, sugar and biscuits should be provided.

In discussions with boarding house operators, I have been appalled at the opposition to providing this most basic amenity. Horror stories are told of the potential for residents to scald themselves if using an electric jug. How, if tea, coffee and biscuits were provided, residents would gorge themselves. If allowed in the kitchen, they would poke fingers in food being prepared.

To my mind, this kind of thinking is the result of running boarding houses like mini-institutions. Residents are kept in a state of dependency. They are not given opportunities to develop any independence or living skills or to grow in responsibility.

...[F]ollowing the closure of Lyndhurst, in Leichardt [a former licensed boarding house]... residents were taken for respite and assessment to [a church-run] facility. Within 48 hours, there was dramatic change in demeanor and skill development. Former residents were happily making cups of tea and coffee and asking to help with cooking and wanting to learn to use the washing machine.

It is imperative that this change in requirements remain in place and that boarding house operators are assisted to change their mindsets.”

**Recommendation 17**

That Standard 31 be amended to require that the residents’ cultural, religious and personal dietary preferences should also be taken into account.

### 6.2.5 Schedule 2 Penalty notices

One proprietor argued against trenchant enforcement action and penalties:

*Higher penalty fees will only take away income needed to rectify ... breaches. Our income is from board and lodging fees. After everything is paid, money goes to upkeep, repairs, replacement. Fines will only be detrimental to residents.*

### 6.2.6 Other matters

**Occupancy agreement for residents of assisted boarding houses**

The NSW Ombudsman notes that although section 30(3) of Act allows for a regulation establishing guidelines for compliance with the occupancy principles, the draft Regulation does not include such guidelines and recommends that guidelines be developed, and that they include an Easy

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160 CASA, p 3.
161 L Paterson, Kelvinside Lodge, p 5.
English version “to improve accessibility for residents and boarding house staff.”

The Consumer, Trader and Tenancy Tribunal (CTTT) notes that the Regulation does not make use of a standard occupancy agreement mandatory. The CTTT expressed concern that this may encourage parties to draft different occupancy agreements resulting in uncertainty as to the rights of each party during dispute resolution.

NSW Fair Trading is responsible for providing guidance in relation to occupancy agreements and is in the process of finalising a standard form occupancy agreement.

_The development of a standard form occupancy agreement for residents of assisted boarding houses, including an Easy English version, is being considered as part of the implementation process._

_It is not currently considered necessary to make a standard form mandatory, however this can be reviewed once the Act is commenced._

6.3 Issues relating to the boarding house industry more broadly

Several submissions related not so much to the effect of the Regulation, but more broadly other issues relevant to the boarding house industry.

One proprietor submitted that the costs of running an assisted boarding house are “huge” and that the income they receive from the boarding house is their livelihood. Their major expenses included:

- Land tax (this owner did not seek land tax exemption);
- Insurance for workers compensation and public liability;
- Council rates;
- Maintenance and upkeep; and
- Fire and security protection.

Another proprietor requested that:

… _we be provided with significant funding in order to comply with the immediate changes that you required such as the roll out costs of on call buttons, enrolled nurse and additional administration staffing._

The Property Owners Association noted that insurance costs - particularly stamp duties and fire safety levies – are a particular problem for boarding house operators. It also contended that the draft regulations impose “excessive legislative and regulatory provisions” and are likely to have a significant impact on the assisted boarding house market and possibly the general boarding house market, on the ongoing housing supply crisis in

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162 NSW Ombudsman, p 2.
163 CTTT, p 1.
165 Laruffa et al, Riverview Hostels, p 2.
Sydney, “and thereby will act as an impediment to economic growth in NSW.”166

A submission from an individual also argued that the Regulations would further reduce the sustainability of the assisted boarding house sector and that closures would result in residents losing their homes, and having to move into government-owned accommodation. This submission argued that rather than allowing businesses to close, then returning “residents of boarding houses to the care of the state”, the NSW government should “purchase the property or guarantee a mortgage” and engage charities or non-profits to operate the business. 167

National Disability Services suggested that the government develop a range of practical supports to assist proprietors through the transition. It provides as an example the Industry Development Fund which NDS manages and which offers “business related supports” and “professional development opportunities” to support the disability service sector during the disability reform agenda.168

Housing NSW is researching and preparing a paper on incentives and assistance for the boarding house industry which may also consider some of these ideas.

166 Property Owners’ Association, p 4.
167 Michael Patterson, p 2.
168 NDS, p 7.
## Appendix A: List of submissions

* Verbal submission

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<thead>
<tr>
<th>Organisation / Company</th>
<th>Name</th>
<th>Categorisation</th>
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<tbody>
<tr>
<td>Roz Armstrong</td>
<td>Roz Armstrong (Official Community Visitor)</td>
<td>Individual</td>
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<td></td>
<td>Michael Patterson</td>
<td>Individual</td>
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<tr>
<td>[Confidentiality requested]</td>
<td>NGO – service provider</td>
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<td>Anti Discrimination Board</td>
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<td>Government body</td>
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<td>Carinya Lodge Arncliffe</td>
<td>Bev Savage</td>
<td>Proprietor - Manager</td>
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<tr>
<td>Carinya Lodge Arncliffe / C&amp;A Baker Trust</td>
<td>Craig Baker</td>
<td>Proprietor</td>
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<tr>
<td>(Joint submission) Carinya Lodge Arncliffe / C&amp;A Baker Family Trust &amp; Carinya Lodge Marrickville / Rommit Pty Ltd</td>
<td>Craig Baker</td>
<td>Proprietor</td>
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<tr>
<td>Carinya Lodge Marrickville / Rommit Pty Ltd</td>
<td>Jacqueline Baker OAM and John Baker</td>
<td>Proprietor</td>
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<td>Coalition for Appropriate Supported Accommodation for People with Disabilities (CASA)</td>
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<td>Consumer Trader Tenancy Tribunal</td>
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<td>Lillian Paterson</td>
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<td>National Disability Services</td>
<td>Scott Holz</td>
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<td>Newtown Neighbourhood Centre</td>
<td>Paul Adabie</td>
<td>NGO – service provider</td>
</tr>
<tr>
<td>Ombudsman NSW</td>
<td>Bruce Barbour and Steve Kinmond</td>
<td>Government body</td>
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<tr>
<td>Penrith Council</td>
<td>Jessie Soster</td>
<td>Local council</td>
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<tr>
<td>People with Disabilities Australia</td>
<td>Matthew Bowden</td>
<td>NGO – peak/advocacy body</td>
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<td>Physical Disability Council of NSW</td>
<td>Jordana Goodman</td>
<td>NGO – peak/advocacy body</td>
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<td>Property Owner’s Association</td>
<td>Peter Dormia</td>
<td>Industry body</td>
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<td>Public Guardian</td>
<td>Graeme Smith</td>
<td>Government body</td>
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<tr>
<td>Riverview Hostels</td>
<td>Wilma Laruffa and Tania Sylvester</td>
<td>Proprietor</td>
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<tr>
<td>Rosnel Guest House / JKPD Catering</td>
<td>Marsdens Legal on behalf of John Douglas Phillis, JKPD Catering</td>
<td>Proprietor - Lessee</td>
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<tr>
<td>Rosnel Guest House / Kenrio Pty Ltd</td>
<td>Greg Boom</td>
<td>Proprietor</td>
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<tr>
<td>Smiths Hall Guesthouse / Hand2mouse Pty Ltd</td>
<td>Mario Barbara and Terri Marzullo</td>
<td>Proprietor</td>
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<tr>
<td>(Joint submission) Sunderland Street &amp; Tinonee Haven</td>
<td>Dian Haigh and John Haigh</td>
<td>Proprietor</td>
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<tr>
<td>Tenants’ Union of NSW</td>
<td>Chris Martin</td>
<td>NGO – peak/advocacy body</td>
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<tr>
<td>Uniting Care Children, Young People and Families</td>
<td>Romola Hollywood</td>
<td>NGO – service provider</td>
</tr>
<tr>
<td>* Wallerawang</td>
<td>Robert McLoughlan</td>
<td>Proprietor</td>
</tr>
<tr>
<td>Willoughby Council</td>
<td>Michael Lee-Joe</td>
<td>Local council</td>
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