

Appendix 3: List of Conditions, Standards and Penalties Relating to Assisted Boarding Houses

The BH Act and BH Regulation impose a range of conditions and set out required standards for Assisted Boarding House licensees, managers and staff. The following table sets out these conditions and any relevant penalties.

Penalties are based on \$110 per penalty unit; penalty notices are 75% of the maximum penalty and set out in Schedule 2 of the *Boarding Houses Regulation 2013*.

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
Registration with NSW Fair Trading				
BH Act s9(5)	Proprietor needs to register the boarding house with NSW Fair Trading - failure to do so is an offence.	Corporation	100	\$8,250
		Individual	50	\$4,125
BH Act s10(1)	Proprietor needs to submit any changes to the original Fair Trading registration details within 28 days of the 'annual return period' (the 12-month anniversary of the registration date).	Corporation	20	\$1,650
		Individual	10	\$825
BH Act s11	Proprietor needs to notify Fair Trading if they cease to operate as a boarding house within 28 days of cessation.	Corporation	20	\$1,650
		Individual	10	\$825
BH Act s16	<p>Premises will be inspected by local council within 12 months of registration to ensure they comply with other relevant laws, including the <i>Local Government Act 1993</i> and the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The council may look at range of issues such as whether the premises</p>		None under BH Act, may be penalties under other laws	

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
	have planning approval from the council to operate as a boarding house, fire safety compliance, vermin, light and ventilation, and possibly compliance with the <i>Food Act 2003</i> .			
Authorisation to operate an Assisted Boarding House				
BH Act s41(1)	Proprietors must seek authorisation from the Director-General to operate an Assisted Boarding House.	Corporation	120 plus 20 per day	\$9,900
		Individual	60 plus 10 per day	\$4,950
BH Act s41(2)	A person must not act as a manager of an Assisted Boarding House unless they are an authorised operator or an approved manager.	Corporation	120 plus 20 per day	\$9,900
		Individual	60 plus 10 per day	\$4,950
BH Act s43(5)	An authorised operator is guilty of an offence if they contravene a condition of the boarding house authorisation. Note: Conditions may be: 1. placed on individual authorisations (licenses or interim permits) 2. exist in the Act - see s59 , s77 and s84 below, or 3. set out in the Regulation.	Corporation	40 plus 10 per day	\$3,300
		Individual	20 plus 5 per day	\$1,650
BH Reg cl11	Conditions specified in Division 4 of Part 3 of the BH Regulation are prescribed as conditions of boarding house authorisations.	Penalty is in s43(5)		
BH Reg cl12	To ensure that accommodation, staffing and services are provided in	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
(1)	accordance with the standards specified in Schedule 1 of the BH Regulation (details of each standard are set out at the end of this table).			
BH Reg cl12(2)	For pre-existing authorised assisted boarding houses, to prepare and comply with a transition plan under BH Regulation Schedule 1 clause 5.	Penalty is in s43(5)		
BH Reg cl13	To notify the Director-General of residents aged under 18 years old within seven days.	Penalty is in s43(5)		
BH Reg cl14	To ensure that additional needs residents are screened before they enter, after an absence of six months, or if they have been a resident of a range of other institutions.	Penalty is in s43(5)		
BH Reg cl15	To provide residents with, and display information relating to fees, services, house rules, compliance notices.	Penalty is in s43(5)		
BH Reg cl16	To develop policies relating to a range of issues including medication, food and nutrition, ethical conduct, complaints processes.	Penalty is in s43(5)		
BH Reg cl17	To provide details of staff positions, duties, hours and rosters to FACS and to notify of changes.	Penalty is in s43(5)		
BH Reg cl18	To notify FACS within three days of issuing an eviction notice against an additional needs resident, or immediately after evicting them, whichever comes first.	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
BH Act s49(4)	A licensee whose licence is cancelled must surrender the licence to the Director-General within 29 days after the licence is cancelled	Individual	20	\$1,650
BH Act s 50(2)	If a licensed boarding house ceases to be used as an assisted boarding house the licensee must surrender the boarding house licence to the Director-General within 28 days after its cessation.	Individual	20	\$1,650
BH Act s53 & BH Reg cl30	A licence or interim permit must be displayed in a conspicuous position in the boarding house.	Corporation	10	\$825
		Individual	5	\$413
BH Act s57(3)	Where an interim permit has been revoked, the interim permit-holder must return the interim permit to the Director General within 28 days.	Corporation	40	\$3,300
		Individual	20	\$1,650
BH Act s58(2)	Where an interim permit is surrendered, the interim permit-holder must return the interim permit to the Director General within 28 days.	Individual	20	\$1,650
BH Act s59 & s60	It is a condition of a boarding house authorisation that where the authorised operator is not an individual, or does not intend to personally act as the manager, they must appoint an ‘approved manager’ – that is a person who has been approved by the Director-General to act as the manager.	Penalty is in s43(5): Corporation	Penalty is in s43(5): 40 plus 10 per day	Penalty is in s43(5): \$3,300
		Individual	20 plus 5 per day	\$1,650
BH Act s43(5)	Operator must not contravene a condition of an authorised boarding house.			

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
BH Act s63(4)	An approved manager must comply with the Act, Regulations or any other conditions imposed by the Director-General.	Individual	20 plus 5 per day	\$1,650
BH Act s65(4)	A manager whose manager approval is revoked must surrender the approval to the Director-General within 28 days.	Individual	20	\$1,650
Compliance and enforcement				
BH Act s67(3)	Person who has been issued with an identification card must return it to the Director-General on demand.	Individual	10	\$825
BH Act s68	It is an offence for a person must not hinder or obstruct an enforcement officer, or fail to comply with any requirement made by an enforcement officer.	Corporation	100	- (not listed in Schedule 2)
		Individual	50	- (not listed in schedule 2)
BH Act s73	Person who fails to comply with a requirement made under subdivision 2 (s69-75) is guilty of an offence. This includes: BH Act s70 A notice to provide specified documents to the Director-General. BH Act s71 A notice to attend at a set time and place to answer questions. BH Act s74 However a person is not guilty unless they are warned that failure to comply with the requirement is an offence.	Corporation	40 plus 10 per day	\$3,300
Individual		20 plus 5 per day	\$1,650	

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
BH Act s77(8)	It is a condition of a boarding house authorisation that the operator permit an authorised service provider to enter, and confer with residents.	Penalty is in s43(5): Corporation	Penalty is in s43(5): 40 plus 10 per day	Penalty is in s43(5): \$3,300
BH Act s43(5)	Operator must not contravene a condition of an authorised boarding house.	Individual	20 plus 5 per day	\$1,650
BH Act s77(8)	It is a condition of a manager approval that the manager permit an authorised service provider to enter, and confer with residents.	Individual	Penalty is in s63(4): 20 plus 5 per day	Penalty is in s63(4): \$1,650
BH Act s63	Manager must comply with conditions.			
BH Act s80	A person who fails to comply with a compliance notice is guilty of an offence.	Corporation	40 plus 10 per day	\$3,300
		Individual	20 plus 5 per day	\$1,650
BH Act s82	It is a condition of a boarding house authorisation that the operator keeps records required by Regulation and produces them if required by the Director-General or any other person authorised to request them.	Penalty is in s43(5): Corporation	Penalty is in s43(5): 40 plus 10 per day	Penalty is in s43(5): \$3,300
BH Act s43(5)	Operator must not contravene a condition of an authorised boarding house.	Individual	20 plus 5 per day	\$1,650
Reporting incidents				
BH Act s83(3) BH Reg cl26	A manager who fails to report the following incidents to the Director-General is guilty of an offence: Death of a resident.	Individual	50	\$4,125

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
	<p>Sexual assault or allegation of a sexual assault of a resident.</p> <p>Absence of a resident for more than 24 hours if resident has not informed manager of his or her whereabouts.</p> <p>Other assault or making of allegation of assault of a resident by a staff member, staff member by a resident, or resident by a resident.</p> <p>Serious accident involving a resident on the premises of the boarding house that requires the resident to receive medical, dental or hospital treatment.</p> <p>The making of a complaint about the treatment of a resident involving an allegation of a contravention of the Act, Regs, or of fraud, or of neglect or ill-treatment or some form of compromising of the safety, health or wellbeing of a resident.</p>			
BH Act s83(2)	A manager is guilty of an offence if they fail to report the death or sexual assault or allegation of a sexual assault of a resident to police “as soon as is reasonably practicable after becoming aware of the incident concerned”.	Individual	50	\$4,125
BH Reg cl27(3)	Manager is guilty of an offence if they fail to report the attendance of police at the premises to investigate an incident involving an additional needs resident as soon as reasonably practicable after their attendance.	Individual	10	\$825

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
BH Reg cl28(4)	Manager is guilty of an offence if they fail to report to the Director-General the issuing of a planning on-compliance notice within seven days of the notice being issued.	Individual	10	\$825
BH Reg cl29(3)	<p>An authorised operator who fails to report, within seven days of the change:</p> <ul style="list-style-type: none"> ■ Change in their contact details. ■ Any significant change that may effect the operator’s capacity to operate the boarding house. ■ If a company or unincorporated body, a significant change in the circumstances of a person involved in the control and management of the company/unincorporated body (eg bankruptcy of a director or CEO). ■ Corporation being wound up or other external administration. 	Corporation	20	\$1,650
		Individual	10	\$825
Probity checks				
BH Act s84	It is a condition of the boarding house authorisation that the authorised operator not engage a staff member unless they are satisfied that the they are a suitable person to be involved in the management or operation of the boarding house – this requires	Penalty is in s43(5): Corporation	Penalty is in s43(5): 40 plus 10 per day	Penalty is in s43(5): \$3,300
		Individual	20 plus 5 per day	\$1,650

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
BH Act s43(5)	criminal record checks every three years. Operator must not contravene a condition of an authorised boarding house.			
Schedule 1 - Standards of Assisted Boarding Houses				
BH Reg cl12(1)	It is a condition of a boarding house authorisation that the operator ensures that accommodation, staffing and services are provided in accordance with standards of Schedule 1.	Penalty is in s43(5): Corporation	Penalty is in s43(5): 40 plus 10 per day	Penalty is in s43(5): \$3,300
BH Reg cl12(2)	It is also a condition of boarding house authorisations for pre-existing assisted boarding houses that they comply with standard 5 of Schedule 1.	Individual	20 plus 5 per day	\$1,650
BH Act s43(5)	Operator must not contravene a condition of an authorised boarding house.			
Standard 1:	Boarding house must have sufficient staffing levels.	Penalty is in s43(5)		
Standard 2:	Staff must be over 16, have knowledge and skills, and trained in fire fighting equipment.	Penalty is in s43(5)		
Standard 3	Manager must have certain minimum qualifications.	Penalty is in s43(5)		
Standard 4	Services may be provided by volunteers but they do not count in determining staffing levels.	Penalty is in s43(5)		
Standard 5	Proprietors of pre-existing assisted boarding houses must submit	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
	transition plans outlining steps to comply with standards 6 and 7 below.			
Standard 6	Maximum number of residents is 30 unless otherwise determined by the Director-General.	Penalty is in s43(5)		
Standard 7	The maximum number of residents who can occupy each bedroom is one, unless a resident has requested to share with a particular person in which case the maximum number is two persons per room. Bedrooms must have a floor area of 7.5m ² for a single room, or 11m ² for a double room.	Penalty is in s43(5)		
Standard 8	The premises and all equipment is maintained in a clean, safe and hygienic condition and a reasonable state of repair at all times, and all effort is made to ensure the building and grounds are pest- and vermin-free.	Penalty is in s43(5)		
Standard 9	Adequate light and ventilation must be maintained in the premises.	Penalty is in s43(5)		
Standard 10	Appropriate furniture and fittings must be provided and maintained in a reasonable state of repair.	Penalty is in s43(5)		
Standard 11	All heating, cooling and other electrical equipment must be in safe working order and appropriate for the climate and temperature.	Penalty is in s43(5)		
Standard 12	Each additional needs resident must have an adequate supply of personal	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
	clothing and footwear that is suitable for the climate and temperature, their own toothbrush, toothpaste and soap, and an adequate supply of bath towels and face washers. None of these items can be required to be shared with other people.			
Standard 13	The boarding house must have secure storage facilities for recreation and education supplies, luggage, cleaning materials and outdoor equipment.	Penalty is in s43(5)		
Standard 14	The boarding house must have sufficient clean and safe toilet, hand washing and bathing/showering facilities and a sufficient supply of toilet paper.	Penalty is in s43(5)		
Standard 15	The boarding house must have sufficient functioning call bells for emergencies, at minimum one in every hallway or common area on every floor and in the kitchen and all bathrooms. Call bells must be regularly tested.	Penalty is in s43(5)		
Standard 16	The premises must have at least one appropriately-sized communal living space for the use of residents. This space may only be outside if it is appropriate for the weather or if there is at least one indoor communal living space as well.	Penalty is in s43(5)		
Standard 17	The premises must have a dining room that comfortably seats all residents who are receiving meals.	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
Standard 18	The premises must have a private or quiet room.	Penalty is in s43(5)		
Standard 19	The premises must have a food preparation area for use by additional needs residents that is safe and hygienic and has a stove, microwave, sink, refrigerator, suitable disposal facilities and hot water supply.	Penalty is in s43(5)		
Standard 20	The boarding house must have laundry arrangements for its general laundering plus on-site laundry facilities that can be used by additional needs residents, and safe, sanitary facilities to store soiled clothes and linen before laundering.	Penalty is in s43(5)		
Standard 21	The premises must have a working telephone that is readily accessible to staff members to contact emergency services, as well as at least one working telephone that can be used by additional needs residents for a reasonable charge.	Penalty is in s43(5)		
Standard 22	Residents must be provided with suitable storage facilities for their personal property. Personal property must not be taken, borrowed or given to another person without permission of the resident. All personal belongings must be returned to a resident if they move out of the boarding house.	Penalty is in s43(5)		
Standard 23	Residents must be given support to either independently manage their financial affairs and bank account or	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
	to arrange assistance to do so (including making an application to the Guardianship Tribunal for a financial management order where necessary.			
Standard 24	Additional needs residents must be given information about support, financial, legal and advocacy services that are available to them and must be supported to access these services if they want to.	Penalty is in s43(5)		
Standard 25	Boarding house staff must assist additional needs residents to maintain relationships with families and friends, receive visitors, make or take telephone calls, and must not obstruct friendships between residents.	Penalty is in s43(5)		
Standard 26	The boarding house must have a balance of indoor and outdoor equipment to meet residents recreational needs.	Penalty is in s43(5)		
Standard 28	<p>Medication held at the Assisted Boarding House on behalf of an additional needs resident must be kept securely in a storage facility that is locked when not in immediate use and only unlocked under the direct supervision of a staff member.</p> <p>Medication must be kept in sealed receptacles away from food, at its appropriate temperature.</p> <p>Medication labels must not be altered.</p> <p>Adequate secure lockable storage</p>	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
	<p>must be available for people with additional needs who administer their own medication.</p> <p>Medication must be disposed of in a safe manner (eg the Return Unwanted Medicines program at community pharmacies) if the resident no longer lives there, it has expired or the medical practitioner treating the person has advised they no longer need it.</p> <p>If the resident leaves the Assisted Boarding House, their medication must be returned to them.</p>			
Standard 29	<p>Medication distributed at the boarding house must be administered by a staff member in accordance with the detailed directions of the person who prescribed it – this advice must be given in writing and kept with the resident’s health records.</p> <p>Non-prescription medication must be distributed in accordance with the product instructions unless otherwise advised by the treating medical practitioner.</p> <p>The staff member must confirm the medication is being provided to the correct resident at the correct dose, in the correct way and at the correct frequency and time – by hand, and observe the resident taking the medication.</p> <p>If the staff member has any concerns they must contact the treating practitioner before administering the medication. They</p>	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
	<p>must also let the treating practitioner know if the resident refuses to take the medication, or if there have been any errors.</p> <p>Medication should be packed and labeled into individual doses in a blister pack by a registered practitioner where possible</p>			
Standard 30	Additional needs residents must be given the opportunity to choose their own health care providers and supported to make appointments and access their services.	Penalty is in s43(5)		
Standard 31	Additional needs residents are assisted with health issues, including emergency first aid when a resident suffers an injury or is ill at the boarding house, seeking urgent medical or dental treatment, and monitoring the resident until they recover. The staff member must also notify the person responsible.	Penalty is in s43(5)		
Standard 32	<p>Additional needs residents who cannot meet their own dietary needs must be provided with adequate and varied healthy meals that take into account their dietary needs, cultural, religious and dietary preferences. Menus must be prepared with consultation with residents and referenced to published dietary guidelines or on the advice of a dietician.</p> <p>Residents must have ready access to drinking water and other beverages at all times.</p>	Penalty is in s43(5)		

BH Act section or BH Reg clause	Relevant provision	Detail	Maximum penalty units	Penalty notice – Schedule 2
Standard 33	Additional needs residents must be made aware of the evacuation procedures of the boarding house and regular evacuation testing must be carried out at a minimum of every six months.	Penalty is in s43(5)		
Standard 34	The premises must have a well stocked and suitably equipped first aid kit that is accessible to residents and staff members and CPR charts must be prominently displayed.	Penalty is in s43(5)		