

Statutory Review of the Boarding Houses Act 2012

Discussion Paper
August 2019



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INTRODUCTION

Purpose of this Discussion Paper

The introduction of the *Boarding Houses Act 2012* (the Act) represented a major reform to the boarding house sector with its key purpose being to protect the rights of residents living in all boarding houses.

Section 105 of the Act requires that the Act be reviewed five years after its date of assent to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives. This review is now underway, and this Discussion Paper is part of that process.

The purpose of this Discussion Paper is to encourage and facilitate public discussion about the regulation of boarding houses in NSW, and whether the legislation is working as intended.

This paper provides an opportunity for you to express your opinions about the Act. Your feedback will help us ensure the legislation continues to reflect the needs of the community.

In preparing this paper and identifying a range of matters for consideration, the NSW Government has considered comments received from boarding house residents, proprietors¹ and other interested parties since the Act commenced in 2012. We particularly acknowledge the four Evaluation reports on the Act written by the Newtown Neighbourhood Centre (with the Australian Catholic University and Western Sydney University). These reports are publicly available on the Ageing Disability and Home Care website at:

http://www.adhc.nsw.gov.au/sp/delivering_disability_services/boarding_house_program/boarding_house_program_reports_policies_and_guidelines

The issues and options identified in this Discussion Paper are not exhaustive, as they intend to facilitate discussion and do not indicate government policy.

We welcome further comments on any other general matters that are relevant to improving the current regulatory framework established by the Act.

Next steps

Once the consultation period has closed, all comments and submissions will be analysed. A report on the review will be submitted to the Minister for Better Regulation and Innovation, and the Minister for Families, Communities and Disability Services. Section 105 of the Act requires that “a report on the outcome of the review is to be tabled² in each House of Parliament”.

1 Section 4 of the Boarding House Act defines “Proprietor” as follows:
“Proprietor”, in relation to the premises means:

- (a) in the case of premises that are leased – a tenant or sub-tenant who is entitled to immediate possession of the premises, or
 - (b) in any other case the owner of the premises
- This paper uses the term “proprietor” throughout with this meaning.

2 The term “tabled” in this context means that the report has been formally presented to Parliament in either or both chambers, for discussion.

Have your say

We invite you to read this paper and provide comments.

To assist you in making a submission, please visit:

<https://www.fairtrading.nsw.gov.au/consultation-tool>

An online submission form is being developed and will be place well before the closing date. However, this form will not be compulsory and submissions can be in any written format.

You may wish to comment on only one or two matters of personal interest or all the issues raised in this Discussion Paper.

You can make submissions by:

- online feedback at the NSW Government's Have Your Say website:
www.haveyoursay.nsw.gov.au
- online feedback at the NSW Fair Trading website:
www.fairtrading.nsw.gov.au
- email to: boardinghousesreview@finance.nsw.gov.au
- sending submissions to the following address:

Statutory Review of Boarding Houses Act 2012
Policy and Regulation Division, Department of Customer Service
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

Please take careful note of the deadline for submissions: **COB Tuesday 8 October 2019**

Important note: release of submissions

All submissions will be publicly available. If you do not want your personal details or any part of your submission published, please indicate this in your submission together with reasons.

Automatically generated confidentiality statements in emails are not enough. You should also be aware that, even if you state that you do not wish certain information published, there may be legal circumstances that require the NSW Government to release that information (for example, under the requirements of the *Government Information (Public Access) Act 2009*).

EXECUTIVE SUMMARY

The regulatory framework for boarding houses in NSW aims to strike a balance between the interests of occupants and proprietors.

The Act was passed by the NSW Parliament in October 2012. The Act requires that all boarding houses are registered with NSW Fair Trading, and divides registrable boarding houses into two categories:

1. “general boarding houses” - boarding houses accommodating five (5) or more people for “fee or reward”³; and
2. “assisted boarding houses” - boarding houses accommodating two (2) or more “persons with additional needs” for fee or reward. A person has additional needs if he or she requires daily care or support services because of a permanent (or likely to be permanent) condition, such as an aged related frailty, mental illness or other form of disability.

The Act provides for:

- mandatory registration of all “registrable boarding houses” on the Boarding Houses Register administered by NSW Fair Trading - to access the Register please go to the [NSW Fair Trading website](#);
- 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 rights⁴ for all residents of registrable boarding houses; and
- an enhanced scheme for the authorisation and operation of “assisted boarding houses” which was administered by Ageing, Disability and Home Care (ADHC) [the regulation of assisted boarding houses transferred from ADHC to Department of Family and Community Services (FACS) in 2016].

The provisions of the Act relating to the Register of Boarding Houses commenced on 1 January 2013. The parts of the Act relating to the occupancy principles and assisted boarding houses commenced on 1 July 2013.

This Discussion Paper offers an opportunity for the community to directly provide the NSW Government with their feedback on any concerns about the Act in its current form. The paper primarily focuses on:

- the main elements of the Act;
- the reforms introduced by the Act; and
- issues that have been raised by stakeholders in other forums since the Act was introduced.

To assist you in making a submission, throughout the paper there are a number of prompt questions on these issues. You are not limited to these questions, and may raise any other issue or make any other comment you wish to make on the operation of the Act.

³ “Fee and reward” is the term used in Sections 5 and 37 of the Act and therefore used in this paper. Many proprietors and boarding house occupants will use the term(s) “rent” and/or “board and lodging”.

⁴ The Act introduced Occupancy Principles to provide certainty about legal rights and responsibilities, and cover notice periods for rent increases and eviction notices. Occupancy Principles are discussed in more detail on pp. 14-17 of this paper.

BACKGROUND

Boarding houses play an important role in the provision of low-cost, affordable housing, particularly for people who may otherwise struggle to afford private accommodation. Before the Act became law, boarding houses were subject to inconsistent partial regulation through legislation relating to planning, fire safety and public health and safety. In addition to this, boarding houses authorised to accommodate people with a disability who required supervision and support were subject to the *Youth and Community Services Act 1973*.

However, despite these laws being in place, there were concerns that residents, many of whom are vulnerable, were frequently exposed to unacceptable risks in relation to their safety and well-being. These concerns were reflected in reports from the NSW Ombudsman.⁵ A 2011 report from the Ombudsman to the NSW Parliament in relation to assisted boarding houses, refers to allegations of physical and sexual assault, intimidation of residents, lack of support for accessing healthcare, problems relating to food provision and hygiene. The report also found restrictions placed on residents' access to a telephone, contact and communication with family and friends, the community and their own money.⁶

Between 29 June 2009 and 8 August 2010, a period of fourteen months, six people died at an assisted boarding house known as "300 Hostel" in Marrickville, Sydney. In 2012, the New South Wales State Coroner found that poor hygiene, malnutrition, neglect of premises, poor maintenance, failure to keep records, a lack of first aid training for staff, and over-prescription of antipsychotic medication by a local GP contributed to the deaths of the six residents.⁷

In response to these concerns, in 2012 the NSW Government introduced the Act to provide better protections for all boarding house residents.

The Act included:

- a new centralised registration system for NSW boarding houses;
- occupancy principles to govern the relationship between residents and boarding house proprietors;
- improved accommodation standards for smaller boarding houses;
- enhanced powers of entry and associated inspection regimes;
- increased penalties for non-compliance with the regulations; and
- relevant provisions from the *Youth and Community Services Act 1973* and various amendments.

Consultation on the proposed Act was substantial, and over 100 submissions were received on the draft Exposure Bill before it was passed into law. The reforms sought to strike a balance between maintaining the viability of the boarding house sector and the need to provide appropriate protections for some of the most vulnerable people in our community.

5 The NSW Ombudsman is an independent watchdog which investigates inquiries and complaints about most public sector and some private sector agencies in NSW.

6 NSW Ombudsman 2011, 'More than board and lodging: the need for boarding house reform', A special report to Parliament under section 31 of the Ombudsman Act 1974, pp. 6-10.

7 State Coroner's Court of NSW, Coronial findings: Batts, Shaneen. Birks, Ian. Hudson, Dorothy. Mackellar, Donald. Ramzan, Mohammed. Takacs, Ilona. Baxter, Veronnicca, 11 May 2012:
<http://www.coroners.justice.nsw.gov.au/Documents/hostel%20findings.pdf>

In passing the Act, the NSW Government was also aware that regulatory protections alone may not be enough to ensure the welfare of vulnerable people in boarding houses. The intention of the proposed registration system was to provide a new source of information on boarding house residents, assist in an examination of residents' needs and help determine whether residents' access to necessary services needed to be improved.

The object of the Act was to establish an appropriate regulatory framework for the delivery of quality services to residents of registrable boarding houses, and to promote and protect the wellbeing of such residents, by:

- providing for a registration system for registrable boarding houses;
- providing for certain occupancy principles to be observed regarding the provision of accommodation to residents of registrable boarding houses and for appropriate mechanisms for the enforcement of those principles;
- providing for the licensing and regulation of assisted boarding houses and their staff (including providing for service and accommodation standards at such boarding houses); and
- promoting the sustainability of, and continuous improvements in, the provision of services at "registrable boarding houses".

Part 4 of the Act is about **Assisted Boarding Houses** and has its own further objectives targeted at the assisted boarding house sector, specifically:

- ensuring that persons with additional needs who reside at certain boarding premises are provided with accommodation and support services of an appropriate standard; and
- enacting provisions for this purpose that are consistent (to the extent that is reasonably practicable) with the purposes and principles expressed in Articles 5, 9, 12, 14, 15, 16, 19, 21, 22, 25, 26 and 28 of the *United Nations Convention on the Rights of Persons with Disabilities* (CRPD).

These provisions seek to protect people with a disability from discrimination, uphold their liberty and privacy, provide access to the highest attainable standard of health care without discrimination, as well as the right to live independently and be included in the community. The fundamental aim of the CRPD is to ensure persons with disabilities are not discriminated against on the basis of their disability, and are given the same rights as other people in the community.

1. Are the objects of the Boarding Houses Act 2012, outlined above, still valid? Why or why not?

Scope of the Boarding Houses Act 2012

The Act applies to two categories of boarding houses:

1. general boarding houses; and
2. assisted boarding houses.

A general boarding house is defined in Section 5 of the Act as a boarding house accommodating five (5) or more residents for fee or reward, which does not fall within a list of exclusions in the Act. A general boarding house must comply with registration and inspection requirements, accommodation standards and occupancy principles.

An assisted boarding house is defined in section 37 of the Act as premises that provide beds for use by two (2) or more persons with additional needs. Assisted boarding houses are also required to be authorised by FACS, and to comply with standards specifically designed to ensure the safety, welfare and wellbeing of residents with additional needs. An assisted boarding house does not include premises (or parts of premises) that receive an exemption from the Secretary of FACS under section 40 of the Act, or any of the premises listed below.

The following premises are listed in sections 5(3) and 37(2) of the Act as **not** being either a general boarding house or an assisted boarding house, and therefore do not fall within the scope of the Act:

- a hotel, motel or bed and breakfast accommodation;
- a backpacker hostel;
- a serviced apartment (i.e. self-contained tourist or visitor accommodation that is regularly cleaned by or on behalf of the proprietor or manager);
- premises that are used to provide accommodation for workers or employees in connection with their work or employment;
- a government school or registered non-government school within the meaning of the *Education Act 1990* or any other premises that are used by an educational body to provide accommodation for its students;
- a private health facility licensed under the *Private Health Facilities Act 2007*;
- a nursing home within the meaning of the *Public Health Act 2010*;
- a mental health facility within the meaning of the *Mental Health Act 2007*;
- a public hospital within the meaning of the *Health Services Act 1997*;
- a residential care facility under the *Aged Care Act 1997* of the Commonwealth operated by an approved provider under that Act;
- a retirement village under the *Retirement Villages Act 1999*;
- premises that are the subject of a site agreement to which the *Residential (Land Lease) Communities Act 2013* applies;
- premises that are the subject of an occupation agreement to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies;
- social housing premises within the meaning of Part 7 of the *Residential Tenancies Act 2010*;
- premises used for refuge or crisis accommodation, or accommodation for persons with additional needs, that is provided by a public authority, council or any other body or organisation and that is wholly or partly funded by the Commonwealth or the State (or an agency of the Commonwealth or the State); and
- premises used for accommodation that is provided by a registered provider⁸ of specialist disability accommodation for the purposes of the *National Disability Insurance Scheme Act 2013*⁹ of the Commonwealth.

The scope of some of the exclusions are clear, as they are covered by other legislation.

8 “Registered Provider” in this context means a disability support provider that has met the National Disability Insurance Scheme (NDIS) requirements for qualifications, approvals, experience, capacity and quality standards to provide a product or service.

9 The NDIS is an Australia-wide scheme to support people with permanent and significant disability which will replace the current disability support system by July 2018. “Specialist disability accommodation” (SDA) is a specific accommodation service type under the NDIS. More information about the NDIS can be found at www.ndis.gov.au, and information specifically about SDA can be found at <https://www.ndis.gov.au/specialist-disability-accommodation.html>

The appropriate scope of the exclusion of premises used for accommodation delivered by a registered provider of specialist disability accommodation (SDA) under the National Disability Insurance Scheme (NDIS) is less clear. It is possible that premises may accommodate two (2) or more people with Supported Independent Living¹⁰ (SIL) packages funded under the NDIS, but *the premises* are not specialist disability accommodation, nor would the clients have SDA in their NDIS Plan.¹¹

In such circumstances, the question arises as to whether the premises where such NDIS clients live should be defined as an assisted boarding house.

2. Are there any types of premises which should be included in or excluded from the Act?

2.1 Should the exclusion that currently applies to specialist disability accommodation for the purposes of the NDIS be extended to other NDIS service types, such as where residents are in receipt of SIL packages?

Other states have different approaches to boarding houses legislation, and examples of approaches in Queensland and Victoria are summarised below.

Queensland regulates residential services providing accommodation, food and personal care services under the *Residential Services (Accreditation) Act 2002*. This Act requires service providers to be registered with the Queensland Office of Fair Trading and has an accreditation system with three tiers based on:

- accommodation only;
- accommodation and meals; and
- accommodation, meals and services.

The level of accreditation depends on the type and level of services offered.

The Victorian *Public Health and Wellbeing Act 2008* requires all “rooming houses” to register with councils. Prior to granting registration, council officers must inspect the premises to ensure they comply with all relevant health, building and planning requirements. Council officers may enter a rooming house at any reasonable hour, without consent or warrant, to monitor compliance with some requirements.

3. What are the benefits of the two tier system in NSW? How does it compare with systems in other jurisdictions? Please provide comments.

¹⁰ Supported Independent Living (SIL) is a service type under the NDIS providing assistance with and/or supervising tasks of daily life to develop the skills of individuals to live as autonomously as possible. More information about SIL can be found at <https://www.ndis.gov.au/providers/sil>

¹¹ People who meet the NDIS access requirements are called participants. An NDIS Plan is a written agreement worked out with the participant, stating their goals and needs, and the reasonable and necessary supports the NDIS will fund for them. Each participant has their own individual plan.

REGISTRATION OF BOARDING HOUSES

Part 2 of the Act deals with the registration of boarding houses. Section 12 requires the Commissioner for Fair Trading to keep a Register of Boarding Houses and to ensure the information is kept up to date. The Commissioner may also correct any error in, or omission from, the Register.

Section 9 requires proprietors of registrable boarding houses to register within 28 days of commencing operation. The Register provides a centralised source of information about boarding houses operating in NSW and assists with assessing risk and monitoring trends in the boarding house industry. **Box A** sets out the information that boarding house proprietors are required to provide to the Commissioner under Section 9 of the Act.

Box A

Section 9 of the Act requires that boarding house operators provide the following information to the Commissioner:

- (a) the name, and the residential or business address, of each proprietor of the boarding house,
- (b) the name (if any) and the address of the registrable boarding house,
- (c) whether the boarding house is a general or regulated assisted boarding house,
- (d) whether development consent or approval is required under the *Environmental Planning and Assessment Act 1979* to use the boarding house as boarding premises and, if so, whether such consent or approval has been granted,
- (e) the number of residents of the registrable boarding house,
- (f) the number of residents who are under 18 years of age,
- (g) the name of the manager (if any) of the registrable boarding house,
- (h) the total number of bedrooms provided as sleeping accommodation for the residents,
- (i) such other particulars as may be approved by the Commissioner or prescribed by the regulations.

The *Boarding Houses Regulation 2013* provides that the following additional information is also provided:

- (a) the telephone number and email address, if any, of the manager (if any) of the registrable boarding house,
- (b) the telephone number, email address and website address, if any, of the registrable boarding house,
- (c) the local government area in which the registrable boarding house is located,
- (d) the telephone number and email address, if any, of each proprietor of the registrable boarding house,
- (e) the maximum number of fee-paying residents who can be accommodated in the registrable boarding house,
- (f) the method or methods for calculating charges for fee-paying residents and the fee amounts payable,
- (g) the methods of payment used by fee-paying residents (including cash payments, credit cards, cheques, direct bank debits, money orders, BPay and Australia Post),
- (h) the kinds of services provided to any residents (including accommodation, meals and personal care services),

- (i) whether the registrable boarding house has special provisions for physical access and, if so, the kind of provisions provided,
- (j) the numbers of residents who fit into each of the following categories (to the extent that it is reasonably practicable to ascertain this information):
 - (i) males,
 - (ii) females,
 - (iii) elderly persons (that is, persons 60 years of age or more),
 - (iv) students of tertiary institutions,
 - (v) persons who are mentally ill persons within the meaning of the *Mental Health Act 2007*,
 - (vi) persons who have a disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments,
 - (vii) persons with significant health problems,
 - (viii) persons needing assistance with daily tasks and personal care.

Boarding house proprietors are required to notify NSW Fair Trading of any changes to the information provided under section 9 within 28 days after the end of the “annual return period” for the boarding house. The annual return period will be 12 months from the date the particulars were last provided to the Commissioner.

If premises cease being used as a registrable boarding house, the proprietor must notify the Commissioner of this, and the date it ceased to operate within 28 days of that date.

NSW Fair Trading works closely with councils and provides information directly to councils about registered boarding houses.

Section 14 of the Act specifies that certain information held by the Commissioner is to be published online for public access.

At present, the information that must be published online is:

- the name and address of the boarding house;
- the name, and the residential or business address, of each proprietor of the boarding house;
- whether the boarding house is a general boarding house or an assisted boarding house; and
- the particulars of any enforcement action taken in respect of registrable boarding houses or their proprietors or staff (including any action taken under Part 4 of the Act) that are recorded in the Register.

4. Should anything be changed in, or added to, the list of information provided to the Commissioner?

5. Is the information on the public Register sufficient? Why or why not?

5.1 What other information could be added to, or removed from, the public Register?

Section 11 states that the proprietor of premises that cease to be a registrable boarding house must notify the Commissioner of that cessation and the date on which it occurred within 28 days. Any notification of the closure of a boarding house received from a proprietor and confirmed by council will allow NSW Fair Trading to remove the record from the public Register.

If a proprietor does not notify NSW Fair Trading of the closure of their boarding house, but council can confirm the closure, the boarding house record can be removed from the Register. However, the Act does not specifically allow the Commissioner to remove details of a premises from the Register if NSW Fair Trading becomes aware that a boarding house has ceased to operate but it has not been notified. Although section 12(3) of the Act states that the Commissioner is to ensure information on the Register is up to date, it is not explicit in allowing the Commissioner to remove a registration of a boarding house from the Register.

6. Should the Commissioner have the power to remove the details of a boarding house from the public Register under prescribed circumstances, if it has ceased to be used as a boarding house?

INITIAL COMPLIANCE INVESTIGATIONS AND ONGOING ENFORCEMENT

Local councils have a significant role to play in approving new boarding house developments and enforcing safety and accommodation standards once boarding houses are operational.

In considering development proposals for boarding houses, councils are guided by the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009, as well as their own Local Environmental Plan. In Sydney, some boarding house developments may be approved by Local Planning Panels. Consent authorities try to ensure that boarding house developments not only provide a safe and acceptable standard of accommodation for residents, but are also in keeping with the character of the surrounding neighbourhood, and within reasonable access to services.

Once the development is approved, councils are responsible for ensuring boarding houses comply with the conditions of development consent, as well as undertaking the inspections required by the Act. This includes an initial compliance inspection of each registered boarding house, within 12 months of registration, to determine if it complies with planning, building and fire safety requirements and standards for shared accommodation.

It is up to each council to decide what action will be taken on any breaches that are found during the inspection and this requires a degree of discretion, based on each particular circumstance. Inspectors must balance the need to ensure compliance, with an understanding of the needs of boarding house residents. In many cases, councils prefer to take an educational and guidance role with boarding house operators to achieve compliance, rather than imposing fines, or issuing orders, which could result in residents being rendered homeless. The NSW Ombudsman provides guidance to councils to help them apply sound administrative and decision-making practices in their regulatory role.

After the initial inspection, it is up to each council to determine an appropriate inspection schedule for the registered boarding houses in its area. To do this, they will generally take a risk-based approach, depending on the number of residents in the boarding house, the history of complaints or concerns, or other special circumstances council inspectors may have observed in past inspections. Boarding houses determined as having a high risk of non-compliance may receive more inspections than those operations that are actively working to maintain standards.

At present, councils are not required to notify NSW Fair Trading of any enforcement action they undertake in relation to boarding houses.

Councils also have a role to play where residences are suspected of operating as boarding houses, without development consent, or registration with NSW Fair Trading as a boarding house. It is often challenging to determine the exact nature of these operations and councils need to exercise a degree of discretion when determining the appropriate regulatory approach.

- 7. How could we improve the local regulation of boarding houses?*
- 8. Should councils be required to notify NSW Fair Trading of enforcement action against boarding houses, so that it can be recorded in the Register?*

OCCUPANCY AGREEMENTS AND PRINCIPLES

Part 3 of the Act deals with occupancy agreements and occupancy principles that govern the relationship between the boarding house proprietor and residents.

Section 28 of the Act requires a boarding house proprietor to enter into a written contract with the resident known as an 'occupancy agreement'. This agreement provides the resident with certainty about their legal rights and responsibilities, and also contains notice periods for rent increases and eviction notices. Even if the proprietor does not enter into a written agreement, a resident's rights are still protected and can be enforced.

Section 29 of the Act allows the Commissioner to publish a standard form occupancy agreement for use in boarding houses. A Standard Occupancy Agreement for general boarding houses has been developed and a copy is at **Appendix A**. However, use of this Agreement is not mandatory and proprietors can develop their own agreement if it is consistent with the Act and the occupancy principles.

9. Are there any provisions of the Standard Occupancy Agreement which could be changed, or are any additional provisions required? (see Appendix A)

10. Do you have any comments on the use of either the Standard Occupancy Agreement, or other occupancy agreements?

Section 30 of the Act provides for a set of occupancy principles that **aim to protect the rights of residents of boarding houses**. These are set out in Schedule 1 of the Act, and are listed in full in **Appendix B**. The principles include, among other things:

- a right to have a written occupancy agreement and be informed of the rent and any house rules prior to moving in;
- that premises are to be reasonably clean, in a reasonable state of repair and reasonably secure;
- a right to quiet enjoyment by the resident;
- that a proprietor must give reasonable written notice before evicting a resident;
- that a resident cannot be 'fined' for a breach of the occupancy agreement or house rules;
- an outline of when and how a resident can be charged for use of utilities;
- rules for how a proprietor is to treat a security deposit or bond; and
- that a proprietor must provide written receipts for money they receive from a resident.

From 1 October 2013, the occupancy principles became part of all occupancy agreements in registrable boarding houses, whether the principles are written in the agreement or not. No term in an occupancy agreement can be inconsistent with the occupancy principles.

11. *How aware are you of the occupancy principles?*
 - 11.1 *Should the occupancy principles be handed separately to each resident upon entering a boarding house or is their inclusion in the Occupancy Agreement sufficient?*
 - 11.2 *Should the occupancy principles be conspicuously displayed on a notice board in a common area in the boarding house?*
12. *Are the occupancy principles useful and appropriate? (see **Appendix B**)
For example, are there any changes which should be made to the principles or any other matters which should be covered?*
13. *Are the occupancy principles being complied with? If not, why not?*
14. *Should any other information be provided to a resident on commencing living in a boarding house? For example, a fact sheet with information about access to outside services, such as dental, Housing NSW, casework psychologists?*
15. *Should any information be provided to operators of boarding houses, for example, a fact sheet outlining their responsibilities?*

Terminations and evictions

The occupancy principles provide that a resident is entitled to know why and how an occupancy may be terminated and how much notice will be given (Principle 9), and must not be evicted without “reasonable” written notice (Principle 10).

The principles do not prescribe any grounds that can justify termination, notice periods for different grounds or define a “reasonable” notice period.

The Standard Occupancy Agreement for general boarding houses provides suggested notice periods for different reasons for termination by both residents and proprietors (see below). If a Standard Occupancy Agreement is signed, then these suggested periods apply unless alternative periods are specified in the third column.

Reason for Termination by PROPRIETOR	Suggested Notice Period examples of reasonable notice periods - this notice period applies if the next column is left blank	Notice to be given under this occupancy agreement (if different)
Violence or threats of violence towards anyone living or working in or visiting the premises	Immediate	Immediate*
Wilfully causing damage to the premises, or using the premises for an illegal purpose	1 day	
Continued and serious breach of this Agreement or the house rules, following a written warning	3 days	
Continued minor breach of this Agreement or the house rules, following a written warning	1 week	
Non-payment of the occupancy fee	2 weeks	
Any other reason, including vacant possession required and “no grounds” termination	4 weeks	

* Immediate termination is likely to be necessary in this situation in order to protect other residents and employees.

Reason for Termination by RESIDENT	Suggested Notice Period examples of reasonable notice periods - this notice period applies if the next column is left blank	Notice to be given under this occupancy agreement (if different)
Serious breach of Agreement by proprietor	1 day	
Minor breach of agreement by proprietor	1 week	
No grounds/Any other reason	1 week	

16. *Are the occupancy principle provisions regarding termination and notice working or are there any changes which should be made?*
17. *Do the suggested notice periods in the Standard Occupancy Agreement constitute “reasonable notice” for terminating an agreement by either a proprietor or a resident? If not, why not?*
18. *Should a proprietor be required to provide a reason for terminating an agreement? Why or why not?*
19. *Do the current provisions provide sufficient security for residents of boarding houses?*

Resolving disputes

A total of 75 complaints about boarding houses were made to NSW Fair Trading during the period January 2014 to April 2019. These were mostly related to resident concerns about eviction, return of bonds, and lack of an occupancy agreement.

Boarding house disputes may relate to the state of the premises, fees and charges, inspections and repairs, access to goods after eviction and notices of eviction. The occupancy principles state that a proprietor and resident should try to resolve disputes using a reasonable dispute resolution process.

If a resident has a dispute with a registrable boarding house proprietor or their agent, and it cannot be resolved informally between the parties, they can make an application to the NSW Civil and Administrative Tribunal (the Tribunal) for a resolution.

The current fee for a boarding house application made to the Tribunal is \$49, but reduced fees are applicable to eligible persons.

Under the Act, the Tribunal can make the following orders:

- an order to stop any action that breaches the occupancy principles;
- an order that requires an action in performance of the occupancy principles;
- an order for compensation;
- an order for payment or part-payment of occupancy fee to the Tribunal until the dispute is resolved; and
- an order that the proprietor enter into a written occupancy agreement.

Orders made by the Tribunal are final and binding, and are legally enforceable.

20. *How aware are you of the dispute resolution mechanisms available for house residents and proprietors?*
21. *How effective and appropriate are the current dispute resolution processes?*
22. *Do you have any other suggestions to encourage the early resolution of boarding house disputes and to reduce the number of boarding house disputes?*

ASSISTED BOARDING HOUSES

Part 4 of the Act deals with the regulation of assisted boarding houses and is consistent with contemporary approaches to regulation. These provisions come under the administration of the Minister for Family and Community Services, this function having been transferred from the Minister for Disability Services in 2016.

The provisions in Part 4 are guided by the articles contained in the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which was ratified in 2008. Section 34 of the Act references those articles relevant to boarding houses and expresses the Government's commitment to the CRPD.

A person with “additional needs”

Box B sets out Section 36 of the Act which defines a person with additional needs.

Box B Section 36 of the BH Act

- (1) For the purposes of this Act, a person is a **person with additional needs** if:
 - (a) the person has any one or more of the following conditions:
 - (i) an age related frailty,
 - (ii) a mental illness within the meaning of the *Mental Health Act 2007*,
 - (iii) a disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments, and
 - (b) the condition is permanent or likely to be permanent, and
 - (c) the condition results in the need for care or support services (whether or not of an ongoing nature) involving assistance with, or supervision of, daily tasks and personal care such as (but not limited to) showering or bathing, the preparation of meals and the management of medication.
- (2) The regulations may make provision for or with respect to matters and circumstances that may be used to establish or as evidence that an individual is a person with additional needs.

A person who is able to manage themselves without support will not be considered a person with additional needs, and it is not the intention of the Act to intervene in the lives of people with a disability who can manage independently.

The Act came before the *Commonwealth National Disability Insurance Scheme Act 2013*.

Box C defines what constitutes a “disability” and “impairment” under the *Commonwealth National Disability Insurance Scheme Act 2013*.

Box C Section 24 of the Commonwealth National Disability Insurance Scheme Act 2013

A person meets the disability requirements (of the Act) if:

- (a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition; and
- (b) the impairment or impairments are, or are likely to be, permanent; and
- (c) the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities:
 - (i) communication;
 - (ii) social interaction;
 - (iii) learning;
 - (iv) mobility;
 - (v) selfcare;
 - (vi) selfmanagement; and
- (d) the impairment or impairments affect the person’s capacity for social and economic participation; and
- (e) the person is likely to require support under the National Disability Insurance Scheme for the person’s lifetime”.

For the purposes of subsection (1), an impairment or impairments that vary in intensity may be permanent, and the person is likely to require support under the National Disability Insurance Scheme for the person’s lifetime, despite the variation.

Given the overlap in the two definitions, the question arises whether a person who meets the disability requirements in the *National Disability Insurance Scheme Act* is also therefore a person with “additional needs” as defined in the Act.

Unauthorised assisted boarding houses

Under Section 41 of the Act, it is an offence for a person to operate an assisted boarding house without proper authorisation. This means that general boarding houses which accommodate people with additional needs are at risk of prosecution under the Act. Various reports make reference to a number of people with a disability living in general boarding houses, particularly people with a mental illness.¹² Whether they meet the threshold of having “additional needs” as currently defined by the Act, and the number of people involved, is unknown.

In some cases, even when it is apparent that a general boarding house is accommodating people with a disability, it is often difficult to assess whether those residents meet the threshold of having “additional needs” as defined by the Act. This is sometimes particularly the case of a person with irregular but recurring mental illness (refer to **Box B** on page 18 for the definition of person with “additional needs”), who may be independent much of the time, but require intensive support at other times.

Officers in FACS have worked with a number of proprietors of general boarding houses who have rented rooms to people who appear independent, only for it to later become apparent that the person may need support or supervision in a number of living activities, such as managing their medication and/or attending health and medication reviews. In all such cases to date, proprietors of general boarding houses who have accommodated people with “additional needs” have not wished to apply to become an authorised assisted boarding house. Generally, the reason for this is they would not be able to meet the requirements of an authorised assisted boarding house without extensive changes to their business model. If there are two people with “additional needs” accommodated at a general boarding house, and the proprietor does not intend to apply for a licence to operate an assisted boarding house, this means the person or persons with “additional needs” have to be found alternative accommodation where they can be legally accommodated.

It is also the case that some general boarding houses are of poor standard in terms of cleanliness and maintenance, and are an environment where a vulnerable person would be at risk of abuse, neglect and exploitation.

24. Should the present two-tiered system of “assisted” and “general” boarding houses remain unchanged, and only “assisted boarding houses”, as presently defined, be allowed to accommodate a person with “additional needs” under the legislation? Why or why not?

¹² See for instance the reports by Newtown Neighbourhood Centre on the Evaluation of the Boarding Houses Act published at: http://www.adhc.nsw.gov.au/sp/delivering_disability_services/boarding_house_program/boarding_house_program_reports_policies_and_guidelines

25. *If you think that some general boarding houses should be allowed by FACS to accommodate some people with “additional needs” provided certain safeguards are met, what should these standards and safeguards entail?*

Some suggestions follow:

25.1 *Should the general boarding house be allowed to accommodate a person with “additional needs” but only if the person has a package” of supports such as under the NDIS, or provided by NSW Health?*

25.2 *If the general boarding house is allowed to accommodate people with subject to certain requirements, such as:*

25.2.1 *free and unhindered access to the premises for service providers and boarding house enforcement officers;*

25.2.2 *provision of single rooms to persons with additional needs;*

25.2.3 *safe and well maintained physical environment as assessed by FACS and local government;*

25.2.4 *provision of meals; and*

25.2.5 *proprietor and/or staff of general boarding houses to have probity checks?*

25.3 *What other safeguards, if any, would be needed, and why?*

Applications for authorisations for assisted boarding houses

It is an offence under the Act for premises to operate as an assisted boarding house unless they have been authorised to do so by FACS. An authorisation may only be granted to an applicant that is considered to be suitable to be involved in the management or operation of a boarding house, and has the financial capacity to operate one. An applicant may be “a natural person, a corporation or a body politic”¹³ and may only specify one licensee.

This means that where two people want to operate an assisted boarding house, only one of them can apply to be the licensee. If those two people form a corporation or company, the company directors may apply for a licence with the company as licensee.

26. *What is the impact of specifying that only one person can be the applicant to be the licensee?*

26.1 *Should corporations and companies be excluded, given that a company can be purchased and sold, in order to prevent a buyer of a company which holds a licence of an assisted boarding house circumvent the requirement to apply for a licence?*

¹³ Section 44 (2)(a) of the Act

Surrender of licence

Section 50 of the Act allows for a licensee to voluntarily surrender the licence. The surrender of a licence under this section takes effect 28 days after the licence is returned to the Director-General,¹⁴ unless the Director-General serves the licensee with a notice specifying an earlier date for the surrender to take effect, or the licence is sooner cancelled or otherwise ceases to be in force. In practice, the 28 day period can create difficulty where a number of residents with a disability are at risk of homelessness and need to be found alternate accommodation by the end of the 28 day period.

Since 2013, five (5) licensees have surrendered their licences, and while no resident has become homeless as a result, each closure has caused a significant degree of difficulty in securing appropriate accommodation and support within the 28 day period.

27. Is 28 days adequate time for a licensee to give notice of closure and to allow for alternative accommodation for the residents to be secured?

Enforcement officers

Enforcement officers are employees of FACS whose role it is to investigate and enforce compliance issues.

Enforcement officers are able to enter an authorised assisted boarding house without consent or without a warrant to make inquiries and ensure the premises comply with relevant conditions, and can do that with the assistance of others, such as a police officer or a medical practitioner. The Act also specifies circumstances in which a search warrant is required to enter premises which are suspected of being an assisted boarding house without authorisation.

In relation to authorised assisted boarding houses, enforcement officers have the power to request the provision of documents and information, and to require answers to questions. Obstruction of an enforcement officer or failure to comply with a request to produce documents or information or answer questions is an offence. When exercising these powers, enforcement officers are required to warn the person that failure to comply is an offence.

In practical terms, the requirement for a person to provide documents or answer questions, and the warning to be given on those occasions, can be a complex issue.

Box D sets out Section 74 of the Act relating to requirements to provide documents or information or answer questions.

¹⁴ "Director-General" is the term used throughout the Act. The head of a NSW Government Department is now known as the "Secretary" which has the same meaning as "Director-General".

Box D Section 74 of the BH Act

- (1) **Warning to be given on each occasion**
A person is not guilty of an offence of failing to comply with a requirement under this Subdivision to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse**
A person is not excused from a requirement under this Subdivision to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made**
However, any information provided or answer given by a natural person in compliance with a requirement under this Subdivision is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against this Subdivision or section 95) if:
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Documents admissible**
Any document provided by a person in compliance with a requirement under this Subdivision is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.
- (5) **Further information**
Further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Subdivision is not inadmissible on the ground:
 - (a) that the document or information had to be provided or the answer had to be given, or
 - (b) that the document or information provided or answer given might incriminate the person.

28. When a person is asked to answer questions, should the warning be simplified to state that the person must be advised that:

- (a) they have the right not to answer the question or produce documents only if they believe such answers or documents will be self-incriminating; and*
- (b) if they do choose to say anything, anything they do say may be noted; and*
- (c) if they say anything which is self-incriminating, it may be used against them in future legal or administrative proceedings?*

Authorised service providers

Authorised service providers are those persons who have written documentation¹⁵ stating the “person”, i.e. a specific individual, is authorised. Section 77 of the Act allows authorised service providers such as support, legal, financial or advocacy services to enter premises, with at least 24 hours’ notice but without the operator’s consent or a warrant, in order to talk to residents about the services they can provide. Before entering the premises, an authorised service provider must identify himself or herself to the manager or anyone else in charge and must show his or her authorisation for inspection on demand when exercising his or her functions under this section.

Because the wording of Section 77, “authorised service provider”, specifies “**a person**”, the authorisation could not name a specific non-government organisation (NGO), such as one where a resident had chosen to deliver NDIS services. Instead, it would have to name a specific individual employed by that NGO. This means that if that named person leaves their position, the authorisation needs to be rescinded, and as new staff are recruited, a new authorisation for that person would need to be issued.

In practical terms, this makes the issuing of written documentation authorising a service provider under Section 77 cumbersome and time consuming.

29. Is the current requirement that one person be specified as an “authorised service provider” adequate? Should the definition of “authorised service provider” be broadened to include any employees of a named organisation providing services to an assisted boarding house?

Young persons with additional needs

Sections 85 and 86 of the Act provide for the removal of young persons with additional needs from unauthorised boarding houses and for FACS to be compensated for removal and other expenses where the department has had to move a person with additional needs from an unauthorised boarding house.

The issue of children and young people being residents of authorised assisted boarding houses is discussed later in this paper.

¹⁵ Section 77 of the Act refers to “an instrument in writing”.

BOARDING HOUSES REGULATION 2013

The Regulation came into effect in July 2013 and includes many of the same provisions for assisted boarding houses as those in the *Youth and Community Services Regulation 2010* it replaced.

- It also provides for the introduction of new accommodation standards for assisted boarding houses, in particular:
- the establishment of a limit of 30 residents; and
- single occupancy rooms, or, if a resident requests shared occupation of a bedroom with a particular resident of his or her choice - 2 residents.

The Regulation required that premises licensed under the *Youth and Community Services Act 1973* comply with the two main enhanced accommodation standards by 1 July 2018.

These standards applied immediately to any new assisted boarding house.

The remainder of the Regulation applied immediately to currently licensed and to new assisted boarding houses, with specific new requirements in the following areas:

- keeping of additional records and the detail of those records;
- the qualifications and skills of staff;
- clarity about the minimum level of staffing required at all times, and a more rigorous method for ensuring sufficient staffing levels are maintained;
- requirements for staff to undergo criminal record checks;
- requirements for call bells in (at a minimum) all bathrooms, kitchens, and a hallway or common area on every floor; and
- an increase in the range of incidents which the assisted boarding house manager is required to report to FACS.

Limit of 30 residents and single room occupancy

Research has consistently found that residents of larger residential centres experience isolation and have poorer social outcomes than those living in smaller residences.¹⁶ Restricting the number of residents living at an assisted boarding house to a maximum of 30 aims to avoid the potential sense of institutionalisation that can occur in larger boarding houses. Research has also shown that this improves residents' notions of community citizenship, and leads to greater participation and integration in society.¹⁷

30. Is the maximum number of 30 residents appropriate? Why or why not?

¹⁶ See for example, NSW Audit Office 1997, Performance audit report: large residential centres for people with a disability in NSW, and NSW Ombudsman 2010, 'People with disabilities and the closure of residential centres', A special report to Parliament under section 31 of the Ombudsman Act 1974, p. 1.

¹⁷ Drake, Gabrielle M. 2010. The privatisation of the back wards: The accommodation of people with intellectual disability and people with mental illness in licensed boarding houses in Sydney, School of Occupational Therapy and Social Work Curtin University, p. 139.

The requirement for single room occupancy is aimed at improving living standards for residents. It is consistent with Article 22, 'Respect for Privacy' and Article 28, 'Adequate standard of living and social protection' of the *Convention on the Rights of Persons with Disabilities* (CRPD).

Box E sets out the single room occupancy requirements as they are contained in Schedule 1 Clause 7 of the Regulation.

Box E Schedule 1 Clause 7 of the BH Regulation

7. Sleeping arrangements

- 1) The maximum number of residents that may occupy the same bedroom in an authorised boarding house is:
 - (a) one resident, or
 - (b) if a resident requests shared occupation of a bedroom with a particular resident of his or her choice - 2 residents.
- 2) The floor area of a bedroom that is occupied by one resident only must not be less than 7.5 square metres.
- 3) The floor area of a bedroom that is occupied by 2 residents must not be less than 11 square metres.
- 4) Each bedroom must be capable of being locked to ensure the privacy of the occupants.
- 5) Any master key that would enable a bedroom to be unlocked by someone other than an occupant of the bedroom must be kept in a secure place by the manager of the authorised boarding house.

In addition, an authorised boarding house must have a private or quiet room that is made available for use by any additional needs residents to enable them to receive visitors in private. In practice, where every resident has a single room, the requirement for an additional private room has not been rigidly enforced, as it has been considered that the resident's right to privacy has been addressed.

31. Are the current arrangements adequate in meeting privacy needs of residents? For example:

31.1 Where two residents have decided to share a bedroom, should it be enforced that an additional room not less than 7.5 square metres be set aside for the exclusive use of those two residents only?

32. Is the current requirement of 11 square metres adequate for a room that two residents choose to share?

33. Should there be a minimum size for the private or quiet room? If yes, what should this be?

Communal space

An authorised boarding house must have at least one communal living space available for use by residents. The size is not specified other than “that (it) is of an appropriate size and space for residents to socialise.”

The Regulation also states that a communal living space may be located outside, but only if the space is (or is made) appropriate for the climate and temperature, and there is at least one indoor communal living space of a size appropriate for the number of residents.

34. Should a minimum size for a communal living space be specified? Why or why not? If yes, should this be based on the number of residents accommodated e.g. a specified number of square metres per resident?

Young residents in assisted boarding houses

The Act requires that FACS be notified if a person under 18 years of age becomes a resident of the authorised boarding house.

There are currently no residents under 18 years old in an authorised assisted boarding house, nor have any residents under 18 years old been referred for assessment with the Boarding House Screening Tool since collection of statistics began in 2010.

The demographics of the assisted boarding house sector illustrate that the majority of residents are male, have a psychiatric disability, and are middle aged.

35. Are the current provisions of the Act in relation to young persons adequate? Why or why not?

Screening Tool for actual or proposed additional needs residents

The Screening Tool for entry to assisted boarding houses was introduced in 1999 to prevent inappropriate placement of residents with high and complex needs in assisted boarding houses, as it was considered that they did not have the capacity to provide for those needs.

Assisted boarding house operators are not permitted to admit new clients without a screening confirming that the person is eligible.

While the Screening Tool has been periodically reviewed and amended, notably in 2009, the actual concept or purpose has not changed since its introduction in 1999.

The current Screening Tool has a number of criteria which would make a person ineligible to live in an assisted boarding house, such as:

- need for assistance with personal care;
- need for assistance with toileting;
- recent attempts at self-harm or attempts to harm others;
- need for assistance with eating meals (e.g. requires feeding);
- at risk of choking;
- unable to mobilise independently;

- unable to recognise their own health needs or communicate their needs;
- unable to maintain acceptable behaviour in the community; and
- severe or frequent sleep disturbances or has a medical condition which sometimes requires active supervision during the night.

36. Is the current purpose of the Screening Tool still valid?

36.1 If an assisted boarding house resident, actual or proposed, has a package of supports which meets their needs, should he or she be considered eligible to live in an assisted boarding house regardless of their level of need? (For instance, if a person needed daily personal care but he or she had an NDIS package where he or she could purchase those supports, could this be delivered in an assisted boarding house?)

Abuse and neglect

The current Regulation does not define abuse or neglect. Where FACS officers have had a concern that a resident has been abused, they have reported issues to the police, and/or relied on other areas of the Regulation such as staffing suitability.

37. Are the current provisions of the Act adequate in relation to abuse and neglect?

Protection of financial affairs

Box F outlines Clause 23 of Schedule 1 of the Regulation, which deals with protecting the financial affairs of assisted boarding house residents.

Box F Clause 23 of Schedule 1 of the BH Regulation

23 Protection of financial affairs of additional needs residents

- (1) Each additional needs resident of an authorised boarding house must be given support so that the resident has the opportunity to independently operate his or her bank account and manage his or her financial affairs.
- (2) In the event that an additional needs resident is unable to operate his or her bank account or manage his or her financial affairs, the resident must be given support in arranging for such assistance as is required to operate the account or manage the affairs (including support in making an application to the (NSW) Civil and Administrative Tribunal for a financial management order where necessary).

A proprietor's obligation to provide receipts is covered under occupancy agreements (Part 3 of the Act) and not under Part 4 of the Act or the Regulation.

If a proprietor does not issue a receipt, or a receipt is disputed, this can only be addressed as a dispute under the occupancy principles, not a breach of the Regulation.

38. Should there be a clause in the Regulation which states that in a boarding house which is authorised to accommodate a person with additional needs, a receipt for any money received from, or on behalf of that person, must be issued to the person and a copy of all such receipts kept? This includes details of the purpose of the receipt of money or payment.

38.1 Should there be a clause in the Regulation which specifically covers financial exploitation? If yes, given many residents of assisted boarding houses have difficulty managing their finances, how would “exploitation” be defined and differentiated from “assistance”?

38.2 If yes to 38.1, should the clause also cover the management and delivery of the resident’s NDIS Plan?

Records

A number of records are specified in the Regulation that must be maintained by the licensee of an assisted boarding house and available for inspection by a FACS boarding house enforcement officer.

These records do not include occupancy agreements or NDIS Service Agreements.

39. Are the current provisions of the Act in relation to record keeping adequate? Should the records required to be kept by an assisted boarding house, and which are therefore available for inspection by a FACS boarding house

- a) enforcement officer, be expanded to include:*
- b) Occupancy Agreements?*
- c) NDIS Plans and NDIS Service Agreements?*
- d) Payments to a service provider under the NDIS Plan?*
- e) any other record or document?*

Why or why not?

ANY OTHER COMMENTS

The issues and options identified in this Discussion Paper are not exhaustive. They are included to facilitate discussion and do not indicate government policy.

You are not confined to the questions listed in this paper and may raise any other issue or make any other comment you wish to make on the operation of the Act.

This could include, for example whether the term 'boarding house' is still appropriate, and consideration of alternatives. You may also wish to consider what kinds of duty of care processes boarding house operators have in place to respond to additional needs of residents, for example during episodes of mental illness.

Further comments on any other general matters relevant to improving the current regulatory framework for the boarding house sector are welcome.

Appendix A



STANDARD OCCUPANCY AGREEMENT

For general boarding houses under the *Boarding Houses Act 2012*

Between	Proprietor	
	Resident	

For	Room	Address

The resident's room is:

unfurnished furnished (if furnished, an inventory can be attached)

Other areas of the premises which are available for use by the resident:

Kitchen/s Bathroom/s Common room Laundry

Other _____

Term of Contract

Commencement Date	Term of agreement (if any)	Occupancy Fee	To be paid
		\$ per week/month/year	

Proprietor's Contact Details:

AGREEMENT TERMS

1. Condition of the Premises (refer to occupancy principle 1 – see Annexure 1)

The proprietor agrees to provide and maintain the premises so that they are in a reasonable state of repair, are reasonably clean and reasonably secure.

2. House Rules (refer to occupancy principle 2)

The resident agrees to comply with the House Rules of the boarding house, which are listed on the attached "Statement of House Rules." House rules may not be inconsistent with the Occupancy Principles stated in Annexure 1, and are not enforceable if they are inconsistent.

3. No Penalties (refer to occupancy principle 3)

The resident is not required to pay a penalty for a breach of this Occupancy Agreement or the House Rules.

4. Quiet Enjoyment (refer to occupancy principle 4)

The proprietor agrees to take all reasonable steps to enable the resident's quiet enjoyment of the premises.

5. Inspections and Access (refer to occupancy principle 5)

The proprietor may inspect boarding house common areas at any reasonable time. Repairs, cleaning and maintenance of common areas can be carried out at reasonable times.

The proprietor may only enter the resident's room, at a reasonable time, with reasonable notice and on reasonable grounds. Agreed access and notice periods are set out below. If the third column is left blank, the suggested notice periods set out in the second column will apply.

Reason For Access	Suggested Notice Period examples of reasonable notice periods - this notice period applies if the next column is left blank	Notice to be given under this occupancy agreement (if different)
In an emergency, or to carry out emergency repairs or inspections	Immediate access	Immediate access*
To clean the premises	24 hours	
To carry out repairs	24 hours	
To show the room to a prospective resident	24 hours	
To carry out inspections	48 hours	

* Immediate access is likely to be necessary in this situation for safety reasons.

6. Notice of Fee Increase (refer to occupancy principle 6)

The resident is entitled to 4 weeks written notice of any increase in the occupancy fee.

7. Utility Charges (refer to occupancy principle 7)

The proprietor may charge an additional amount for utilities if the resident is made aware of this on signing this agreement. Details of the charge, including how the charge will be calculated, are included in Annexure 2, and Annexure 2 must signed and dated by the resident and the proprietor.

Charges for utilities must be based on the cost to the proprietor of providing the utility and a reasonable measure or estimate of the resident's use of that utility.

8. Security Deposit (refer to occupancy principle 8)

A security deposit of \$_____ is payable to the proprietor, this amount being no more than the sum of two (2) weeks occupancy fee. The security deposit is payable on the day the agreement is signed or on the following day. The security deposit will be repaid to the resident (or the resident's authorised representative) within 14 days after the end of this agreement, less any amount necessary to cover:

- a) the reasonable cost of repairs to the boarding house or goods within the boarding house, as a result of damage (other than fair wear or tear) caused by the resident or their guest;
- b) any occupancy fee or other charges owing and payable under this Agreement or the Boarding Houses Act;
- c) the reasonable cost of cleaning any part of the premises occupied by the resident and not left reasonably clean by the resident, having regard to the condition of that part of the premises at the commencement of the occupancy; and
- d) the reasonable cost of replacing locks or other security devices altered, removed or added by the resident without the consent of the proprietor.

9. Dispute Resolution (refer to occupancy principle 11)

The proprietor and the resident agree to use their best endeavours to informally resolve any disputes between them through reasonable discussion and negotiation. Either party may apply to the NSW Civil and Administrative Tribunal (NCAT) to resolve a dispute about the Occupancy Principles (see Annexure 1).

10. Written Receipts (refer to occupancy principle 12)

The proprietor agrees to provide the resident with a written receipt for all money paid to the proprietor, including money paid for occupancy fees, a security deposit and for any utility charges. The receipt should be provided within a reasonable time period after the payment is received.

11. Termination (refer to occupancy principles 9 and 10)

The resident is entitled to know why and how this Occupancy Agreement may be terminated, and how much notice will be given before termination. The resident may not be evicted without reasonable written notice from the proprietor.

This Agreement can also be terminated by the resident by written notice given to the proprietor. Agreed reasons for termination and notice periods are set out below. If the third column is left blank, the suggested notice periods set out in the second column will apply.

Reason For Termination by Proprietor	Suggested Notice Period examples of reasonable notice periods - this notice period applies if the next column is left blank	Notice to be given under this occupancy agreement (if different)
Violence or threats of violence towards anyone living or working in or visiting the premises	Immediate	Immediate*
Wilfully causing damage to the premises, or using the premises for an illegal purpose	1 day	
Continued and serious breach of this Agreement or the house rules, following a written warning	3 days	
Continued minor breach of this Agreement or the house rules, following a written warning	1 week	
Non-payment of the occupancy fee	2 weeks	
Any other reason, including vacant possession required and "no grounds" termination	4 weeks	

12. Use of the Premises

The resident agrees not to wilfully or negligently cause damage to the premises or to use the premises for an illegal purpose and to respect other residents' rights to quiet enjoyment of the premises.

NOTE: Any term of this Agreement is not enforceable if it is inconsistent with the Occupancy Principles set out in Schedule 1 of the Boarding Houses Act 2012. The Occupancy Principles are attached at Annexure 1.

Proprietor	Resident
Signed:	Signed:
Date:	Date:

OPTIONAL INFORMATION

The resident may provide contact details to be used in an emergency

Personal Contact:	Phone:
Emergency Contact Person:	Name:
	Relationship:
	Phone:
	Address:

ANNEXURE 1

Occupancy principles

NB: These principles are contained in Schedule 1 of the Boarding Houses Act 2012 and apply to residents of NSW boarding houses which are covered by this Act.

1. State of premises

A resident is entitled to live in premises that are:

- a) reasonably clean, and
- b) in a reasonable state of repair, and
- c) reasonably secure.

2. Rules of registrable boarding house

A resident is entitled to know the rules of the registrable boarding house before moving into the boarding house.

3 Penalties for breaches of agreement or house rules prohibited

A resident may not be required to pay a penalty for a breach of the occupancy agreement or the rules of the registrable boarding house.

4 Quiet enjoyment of premises

A resident is entitled to quiet enjoyment of the premises.

5 Inspections and repairs

A proprietor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes.

6 Notice of increase of occupancy fee

A resident is entitled to 4 weeks written notice before the proprietor increases the occupancy fee.

7 Utility charges

- 1) The proprietor is entitled to charge a resident an additional amount for the use of a utility if:
 - a) the resident has been notified before or at the time of entering the occupancy agreement of the use of utilities in respect of which the resident will be charged, and
 - b) the amount charged is based on the cost to the proprietor of providing the utility and a reasonable measure or estimate of the resident's use of that utility.
- 2) A utility for the purposes of this clause is each of the following:
 - a) the supply of electricity,
 - b) the supply of gas,
 - c) the supply of oil,

- d) the supply of water,
- e) the supply of any other service prescribed by the regulations.

8 Payment of security deposits

- 1) The proprietor may require and receive a security deposit from the resident or the resident's authorised representative only if:
 - a) the amount of the deposit does not exceed 2 weeks of occupancy fee under the occupancy agreement, and
 - b) the amount is payable on or after the day on which the resident (or the resident's authorised representative) enters the agreement.
- 2) Within 14 days after the end of the occupancy agreement, the proprietor must repay to the resident (or the resident's authorised representative) the amount of the security deposit less the amount necessary to cover the following:
 - a) the reasonable cost of repairs to, or the restoration of, the registrable boarding house or goods within the premises of the boarding house, as a result of damage (other than fair wear and tear) caused by the resident or an invitee of the resident,
 - b) any occupation fees or other charges owing and payable under the occupancy agreement or this Act,
 - c) the reasonable cost of cleaning any part of the premises occupied by the resident not left reasonably clean by the resident, having regard to the condition of that part of the premises at the commencement of the occupancy,
 - d) the reasonable cost of replacing locks or other security devices altered, removed or added by the resident without the consent of the proprietor,
 - e) any other amounts prescribed by the regulations.

- 3) The proprietor may retain the whole of the security deposit after the end of the occupancy agreement if the costs, fees or charges referred to in subclause (2) (a)–(e) are equal to, or exceed, the amount of the security deposit.
- 4) In this clause:

security deposit means an amount of money (however described) paid or payable by the resident of a registrable boarding house or another person as security against:

 - a) any failure by the resident to comply with the terms of an occupancy agreement, or
 - b) any damage to the boarding house caused by the resident or an invitee of the resident, or
 - c) any other matter or thing prescribed by the regulations.

9 Information about occupancy termination

A resident is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction.

10 Notice of eviction

- 1) A resident must not be evicted without reasonable written notice.
- 2) In determining what is reasonable notice, the proprietor may take into account the safety of other residents, the proprietor and the manager of the registrable boarding house.
- 3) Subclause (2) does not limit the circumstances that are relevant to the determination of what is reasonable notice.

11 Use of alternative dispute resolution

A proprietor and resident should try to resolve disputes using reasonable dispute resolution processes.

12 Provision of written receipts

A resident must be given a written receipt for any money paid to the proprietor or a person on behalf of the proprietor.

ANNEXURE 2

SCHEDULE OF ADDITIONAL CHARGES

Item	Amount	When due to be paid	How calculated

NOTE:

- This schedule is only for use if there are fees or charges in addition to the occupancy fee.
- This schedule forms part of the Occupancy Agreement when signed and dated by both parties.
- A receipt is to be provided to the resident for all payments of additional fees or charges made by the resident, within a reasonable time after the payment is received.
- Charges for utilities must comply with Occupancy Principle 7.

Proprietor	Resident
Signed:	Signed:
Date:	Date:

Appendix B



OCCUPANCY PRINCIPLES

Boarding Houses Act 2012 Schedule 1 Occupancy principles

(Section 30 (1))

1 State of premises

A resident is entitled to live in premises that are:

- a) reasonably clean, and
- b) in a reasonable state of repair, and
- c) reasonably secure.

2 Rules of registrable boarding house

A resident is entitled to know the rules of the registrable boarding house before moving into the boarding house.

3 Penalties for breaches of agreement or house rules prohibited

A resident may not be required to pay a penalty for a breach of the occupancy agreement or the rules of the registrable boarding house.

4 Quiet enjoyment of premises

A resident is entitled to quiet enjoyment of the premises.

5 Inspections and repairs

A proprietor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes.

6 Notice of increase of occupancy fee

A resident is entitled to 4 weeks written notice before the proprietor increases the occupancy fee.

7 Utility charges

- 1) The proprietor is entitled to charge a resident an additional amount for the use of a utility if:
 - a) the resident has been notified before or at the time of entering the occupancy agreement of the use of utilities in respect of which the resident will be charged, and
 - b) the amount charged is based on the cost to the proprietor of providing the utility and a reasonable measure or estimate of the resident's use of that utility.
- 2) A utility for the purposes of this clause is each of the following:
 - a) the supply of electricity,
 - b) the supply of gas,
 - c) the supply of oil,
 - d) the supply of water,
 - e) the supply of any other service prescribed by the regulations.

8 Payment of security deposits

- 1) The proprietor may require and receive a security deposit from the resident or the resident's authorised representative only if:
 - a) the amount of the deposit does not exceed 2 weeks of occupancy fee under the occupancy agreement, and
 - b) the amount is payable on or after the day on which the resident (or the resident's authorised representative) enters the agreement.
- 2) Within 14 days after the end of the occupancy agreement, the proprietor must repay to the resident (or the resident's authorised representative) the amount of the security deposit less the amount necessary to cover the following:
 - a) the reasonable cost of repairs to, or the restoration of, the registrable boarding house or goods within the premises of the boarding house, as a result of damage (other than fair wear and tear) caused by the resident or an invitee of the resident,
 - b) any occupation fees or other charges owing and payable under the occupancy agreement or this Act,
 - c) the reasonable cost of cleaning any part of the premises occupied by the resident not left reasonably clean by the resident, having regard to the condition of that part of the premises at

- the commencement of the occupancy,
 - d) the reasonable cost of replacing locks or other security devices altered, removed or added by the resident without the consent of the proprietor,
 - e) any other amounts prescribed by the regulations.
- 3) The proprietor may retain the whole of the security deposit after the end of the occupancy agreement if the costs, fees or charges referred to in subclause (2) (a)–(e) are equal to, or exceed, the amount of the security deposit.
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- security deposit means an amount of money (however described) paid or payable by the resident of a registrable boarding house or another person as security against:
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