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- **ASSISTANCE FOR BOARDING HOUSES IN NSW**
- **GRANTS FOR BOARDING HOUSE FINANCIAL ASSISTANCE PROGRAM**
# Role and powers of local councils

## A. Background

<table>
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<tr>
<th>Relevance</th>
<th>Description</th>
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<tr>
<td><strong>The Boarding Houses Act 2012 (BHA)</strong> was passed in October 2012 as a whole-of-government response to concerns about the rights and safety of people living in boarding houses.</td>
<td>See <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> &gt; Tenants and Homeowners &gt; Boarding houses</td>
</tr>
<tr>
<td>The BHA is jointly administered by the Department of Family and Community Services - Ageing Disability and Home Care (ADHC) and NSW Fair Trading.</td>
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<tr>
<td>The BHA provides councils with new powers to gain access to boarding houses in order to conduct inspections and to ensure the premises comply with the council’s own policies and relevant laws such as the Local Government Act 1993 (LGA) and the Environmental Planning and Assessment Act 1979 (EPAA). This Guide sets out the role and legal powers of councils under the BHA.</td>
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## B. The aim of the Boarding Houses Act

<table>
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<tr>
<th>Relevance</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>1. To establish a framework for registering particular types of boarding houses:</strong></td>
<td>s.3 BHA</td>
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<tr>
<td>• ‘General’ boarding houses: boarding premises accommodating 5 or more fee-paying, unrelated lodgers; and</td>
<td>s.5(2) BHA</td>
</tr>
<tr>
<td>• ‘Assisted’ boarding houses: boarding premises accommodating two or more people who have “additional needs”. See Item G for more information.</td>
<td>ss 36 and 37 BHA</td>
</tr>
<tr>
<td><strong>2. To provide occupancy rights to residents of boarding houses including the right to access the Consumer Trader and Tenancy Tribunal to resolve disputes with their landlord.</strong></td>
<td>BHA – Part 3 &amp; Schedule 1 – Occupancy Principles</td>
</tr>
<tr>
<td><strong>3. To ensure that assisted boarding houses meet certain specified standards.</strong></td>
<td>s.37(1)(a) BHA BHReg Schedule 1 – Standards for assisted boarding houses</td>
</tr>
<tr>
<td><strong>4. To promote the sustainability of boarding houses.</strong></td>
<td>S 3(d) BHA</td>
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</table>
## C. Boarding Houses Register

| Boarding houses that meet the definition of ‘general’ or ‘assisted’ boarding houses under the BHA must register with Fair Trading by 30 June 2013 or within 28 days of commencing operations. | Part 2 of the BHA (ss 7-26)  
| | s.9(1) BHA  
| | s.12 BHA  
| The public, searchable Boarding Houses Register is available on the Fair Trading website. | www.fairtrading.nsw.gov.au  
| Boarding house owners must also lodge an Annual Return (which sets out any changes to the registration details) within 28 days of the 12 month anniversary of the date of their initial registration, and notify Fair Trading NSW within 28 days of the cessation of the premises being used as a boarding house. |  
| Fair Trading will provide information directly to councils about registered boarding houses in their area. Councils should provide the contact details for receiving this information to Fair Trading. | > Tenants and home owners  
| > Boarding houses. |

## D. Initial compliance investigation by council

| The local council must conduct an “initial compliance investigation” of a boarding house within 12 months of its registration being recorded on the Boarding Houses Register, unless the premises had been inspected by the council in the 12 months prior to the date of the registration. | s.16 BHA  
| | s 6 BHA  
| | Division of Local Government, *Circular to Councils 13-02, Boarding Houses Act 2012*,  
| The purpose of the investigation is to check for compliance with planning, building and fire safety requirements, and shared accommodation standards under the *Environmental Planning and Assessment Act 1979*, *Local Government Act 1993*, the *Public Health Act 1991*, and all associated regulations. | A local council’s LEP or DCP will include boarding houses.  
| | Range of sections in the *EPAA* and *EPAReg* including cl 93 and cl 131  
| | Building Code of Australia – fire safety standards for Class IB and Class 3 properties (might be applicable)  
| | Local Government (General) Regulation 1995 – Schedule 2 - Part 1 - Standards for places of shared accommodation  

This may include a consideration of issue such as:

- Permitted use of the property / consent conditions (*EPAA*, council’s LEP & DCP, history of the property)
- Fire safety provisions and structural capacity - need to be appropriate for property’s use as a boarding house (*EPAA*, *EPA Regulation*, Building Code of Australia)
- Light and ventilation (LG Reg)
- Kitchen facilities (LG Reg)
- General cleanliness (LG Reg)
- Furniture and fittings (LG Reg)
- Beds, mattresses, linen, curtains/blinds (LG Reg)
- Vermin (Public Health Reg)
- Minimum room size of 5.5 square metres per person (Public Health Reg)
- Food preparation – if boarding house provides meals and/or is registered as a food business (*Food Act*).
Council should also consider any other legislation relating to boarding houses as appropriate or as required by their own policies.

Where the premises are named on the Register as an “assisted boarding house”, ADHC recommends that councils conduct the initial compliance investigations with an ADHC staff member. This is because ADHC is responsible for monitoring assisted boarding houses and ensuring their compliance with additional standards set out in the Boarding Houses Regulation 2013. A joint inspection can save time and reduce disruption to residents of this type of boarding house. Council staff can contact ADHC Assisted Boarding House Compliance Unit on 02 9377 6000 or email boarding.houses@facs.nsw.gov.au

### E. Powers of entry for the initial compliance investigation

<table>
<thead>
<tr>
<th>Relevant law or resources</th>
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<tr>
<td>s 19 BHA</td>
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<td>s 25 BHA</td>
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<td>s.17 BHA</td>
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<tr>
<td>s 20 and s 21 BHA</td>
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<tr>
<td>s 24 BHA and s 730 LGA</td>
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<td>s 18 BHA</td>
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The council must give the proprietor or manager prior written notice of their intention to enter the premises. However immediate entry is permitted if the proprietor or manager consents or entry is required because of serious risks.

Council officers must carry a written authority to enter issued under the Boarding House Act.

A council officer may enter the boarding house premises at any reasonable daytime hour.

Use of reasonable force to gain entry can be authorised by the council and council should inform proprietor or manager if force is used (similar to s 118D and s118E of EPAA).

Council can be liable for compensation for damage caused by a council officer entering premises.

Care must be taken not to damage property during initial compliance investigations.

### F. During the initial compliance investigation

During the initial compliance investigation, the council officer has broad powers to inspect premises and any object on the premises (powers are modelled on s 118B of EPAA).

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<th>Relevant law or resources</th>
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<tr>
<td>s 22 BHA</td>
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### G. Residents “with additional needs”

During the initial compliance investigation or visits to general boarding houses at other times, council officers may notice or become aware of residents who appear frail, or have intellectual or psychiatric disabilities, and who might require, or are being provided with, daily support services from the owner or manager.

In other words, there may be some residents who might fit the definition of having ‘additional needs’ as defined in the BHA. For full definition see s.36 BHA or ADHC Fact Sheet (Appendix 3).

<table>
<thead>
<tr>
<th>Relevant law or resources</th>
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<tr>
<td>s.36 BHA</td>
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FACS Fact Sheet May 2013: Information for Local Councils about Boarding Houses and People With Additional Needs
Council staff do not need to make their own detailed assessment of residents. They just need to alert ADHC of the possible presence of residents with these support needs. ADHC has a detailed factsheet to assist councils in understanding the definition of “persons with additional needs” (see Appendix 3 of this Guide). Councils can contact ADHC Assisted Boarding Houses Compliance Unit on 02 9377 6000 or email boarding.houses@facs.nsw.gov.au.

### H. Recovery of fee for initial compliance investigation

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<th>Relevant law or resources</th>
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<tr>
<td>s 23 BHA</td>
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<td>s 608 LGA</td>
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A council may charge boarding house proprietors a fee under the LGA for the conduct of an initial compliance investigation. The council is encouraged to set fees in consultation with its community.

### I. Powers of entry after initial compliance investigation

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<th>Relevant law or resources</th>
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<tr>
<td>Refer to relevant sections of LGA and EPAA</td>
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Any subsequent entries or inspections that council needs to undertake in relation to the premises can be done in accordance with council’s powers under the LGA and the EPAA.

### J. Boarding houses that are not registered

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<tr>
<th>Relevant law or resources</th>
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</table>

If council is or becomes aware of a property they believe is a boarding house, but it is not listed on the NSW Boarding House Register, it should refer to its own policies in relation to boarding house monitoring and inspections.

Although an unregistered boarding house cannot be accessed by council staff using powers in the BHA set out in D above, the council can contact the manager or proprietor of the boarding house and request consent to enter and inspect. If consent is granted, or entry otherwise lawfully obtained (eg through immediate risk to safety provisions in LGA or EPAA), council officers can assess the premises to determine whether it is a boarding house — see K below.

In trying to identify that a property is a boarding house that must be registered under the BHA, councils can gather circumstantial evidence which will be allowed in court proceedings relating to orders and penalties for a failure to register.

Evidence might include ‘Rooms to let’ ads in the papers or online, the layout of the premises, signs at the premises, numbers of beds, evidence about the numbers/types of residents entering and leaving the premises.

If satisfied that a property is a boarding house that should be registered under the BHA 2012, then the council should inform the owner of their legal requirement to register. They may wish to do this by providing a fact-sheet and Registration Form from Fair Trading NSW.

Fact-sheet and Registration Form available from www.fairtrading.nsw.gov.au > Tenants and Homeowners > Boarding houses
The council also has powers to issue a penalty notice for the failure to register – see L below.

K. What is the difference between a boarding house and other types of properties? How do I know the BHA applies?

Sometimes it is not easy to tell the difference between a general residential property and a small boarding house. Larger boarding houses are usually easier to identify, however some might be excluded from the BHA.

If council staff cannot gain entry to the property, they can still gather circumstantial evidence showing that the premises are “boarding premises” and that they fit in the definition of a ‘general’ or ‘assisted’ boarding house – as set out in J above.

If the council comes across what they suspect might be an unregistered boarding house, the following steps might help in its identification:

1. Check with Fair Trading NSW whether the boarding house has been registered by phoning 13 32 20.
2. If there is no registration, council should determine whether the premises are “boarding premises” – this is the same definition of “boarding house” in the standard LEP instrument:
   - Premises need to include at least one boarder/lodger.
   - Residential tenancy arrangements are covered by the Residential Tenancies Act 2010 not the BHA.
   - Indicators of a boarder/lodger arrangement include an onsite caretaker; cleaning or other services provided by the owner or caretaker; shared kitchen, bathroom and/or laundry; furnished rooms that are routinely locked by the residents.
   - An example of a residential tenancy arrangement is a block of self-contained studio apartments, with no onsite caretaker or concierge, and no services being provided.
   - Share houses where residents have either a written tenancy agreement with the owner, or a written tenancy agreement with a head-tenant may be covered by either the BHA or the Residential Tenancies Act. Further investigation may be required.
3. If satisfied the premises are “boarding premises,” the council may be able to apply its own policies / LEP as some of these apply to all boarding houses, not merely those required to be registered under the BHA.
4. To determine whether the BHA applies and the property should be registered, the council needs to assess whether the property meets the definition of an assisted boarding house or a general boarding house.

Relevant law or resources

s 100 BHA
s 4 BHA - definition of “boarding premises”
How a boarder or lodger is defined: www.legalanswers.sl.nsw.gov.au/guides/tenants_rights_manual/marginal_rental/what_is_boarder.html
5. If the premises appear to house 2 or more persons with additional needs (see G above), it might be an 'assisted boarding house', unless it is excluded from the BHA, for example:
   - Group homes funded by state or federal governments to accommodate people with disabilities
   - Nursing homes, social housing, short-term refuge or crisis accommodation, hospitals, etc.

Councils can contact ADHC Assisted Boarding House Compliance Unit to assist in determining whether particular premises are “assisted boarding houses”, 02 9377 6000 or email boarding.houses@facs.nsw.gov.au.

6. If the premises do not appear to be an assisted boarding house, council can investigate whether the premises meet the definition of a “general boarding house”:
   - Boarding premises providing beds for 5 or more unrelated (non-family) residents for a fee or reward
   - Exemptions include backpackers hostels, pubs and hotels, student accommodation owned by a university, short-term refuges.

If council staff are not sure whether a particular property is covered by the BHA, they should view the Fair Trading NSW website for further information, or contact Fair Trading on 13 32 20.

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**L. Orders, penalties and court action**

The BHA 2012 gives councils the ability to issue orders for penalty notices for a breach of Part 2 of the BHA (see C above), most importantly, a failure to register the premises with Fair Trading.

The power to issue a penalty notice is in addition to existing powers that councils have in relation to boarding houses under the LGA, EPAA, and other relevant laws.

Councils can issue a penalty notice through usual council / SDRO processes:
   - Failure to register: $8,250 if the proprietor is a company, or $4,125 for an individual
   - Failure to update Register through Annual Return: $1,650 for companies, $825 for an individual
   - Failure to notify Fair Trading of ceasing to use the premises as a boarding house: $1,650 for companies, $825 for an individual.

Councils can also commence court proceedings in the Local Court or the Land and Environment Court to prosecute or restrain a breach. Court action must take place within 12 months of the offence.

Maximum penalties that can be imposed by the court for a failure to register are $11,000 for a company and $5,500 for an individual.
During court action, where the council is alleging that a proprietor has failed to register a boarding house, it can bring in circumstantial evidence to show that the premises are a boarding house (see J above).

Where a council has undertaken enforcement action, it should provide this information to Fair Trading for inclusion on the Boarding Houses Register.

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<thead>
<tr>
<th>M. Orders that are likely to make residents homeless</th>
<th>Relevant law or resources</th>
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<tr>
<td>When councils are considering making orders under the BHA, or other relevant laws, some provisions of the EPAA and LGA require them to consider if an order will or is likely to have the effect of making a resident homeless. If it is likely to make a resident homeless then Council must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality. If the person is not able to arrange satisfactory alternative accommodation in the locality, the Council must provide the person with:</td>
<td>s 131A LGA</td>
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<tr>
<td>• information as to the availability of satisfactory alternative accommodation in the locality, and</td>
<td></td>
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<tr>
<td>• any other assistance that the Council considers appropriate.</td>
<td>Housing assistance:</td>
</tr>
<tr>
<td>Information on housing assistance that may be available to the resident can be found through Housing Pathways providers which includes Housing NSW offices and participating community housing providers listed at</td>
<td><a href="http://www.housingpathways.nsw.gov.au/Ways+we+can+Help/">www.housingpathways.nsw.gov.au/Ways+we+can+Help/</a></td>
</tr>
<tr>
<td>If the resident is facing immediate homelessness, council staff can provide them with the contact details of the Housing Contact Centre 1300 HOUSING (1300 468 746) or the After Hours Temporary Accommodation Line 1800 152 152.</td>
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<table>
<thead>
<tr>
<th>N. Grants available to assist proprietors to comply with council fire safety orders</th>
<th>Relevant law or resources</th>
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<tbody>
<tr>
<td>The Department of Family and Community Services - Housing NSW Boarding House Financial Assistance Program provides grants to help owners and operators of boarding houses undertake essential fire safety works. These grants improve fire safety for boarding house residents, can help boarding houses to continue to provide long-term, low cost housing and mitigate the potential impact of Council orders that may have the effect of making a resident homeless. Fire safety grants can be used to cover the cost of essential fire safety works specified on a council's fire order for a premise of up to $50,000.</td>
<td>Fire safety grants:</td>
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<td>Fire safety grants:</td>
<td><a href="http://www.housing.nsw.gov.au/Centre+For+Affordable+Housing+For+developers+of+affordable+housing+Boarding+houses+-+Fire+safety+upgrade+grants/">www.housing.nsw.gov.au/Centre+For+Affordable+Housing+For+developers+of+affordable+housing+Boarding+houses+-+Fire+safety+upgrade+grants/</a></td>
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</table>
This includes items such as automatic sprinkler systems, smoke detectors, emergency lighting, fire-rated construction, solid core doors and fire extinguishers. Councils may wish to tell proprietors about the potential availability of support for fire safety works.

### O. Land tax exemptions for boarding house proprietors

<table>
<thead>
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<th>Relevant law or resources</th>
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<tr>
<td>The Office of State Revenue offers land tax exemptions for boarding houses that meet certain criteria including rental/tariff levels that are below a certain level. Councils may wish to tell proprietors about the potential availability of a land tax exemption and refer them to the OSR website.</td>
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### P. Further information

<table>
<thead>
<tr>
<th>Relevant law or resources</th>
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<tbody>
<tr>
<td>This Guide for Councils and other information referred to in this Guide is available from the Fair Trading NSW website. ADHC Assisted Boarding House Compliance Unit can assist in determining whether particular premises are “assisted boarding houses”, phone 02 9377 6000 or email <a href="mailto:boarding.houses@facs.nsw.gov.au">boarding.houses@facs.nsw.gov.au</a>.</td>
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Fact Sheets

Information for Local Councils about Boarding Houses and People With Additional Needs

ADHC Fact Sheet Information for Local Councils about Boarding Houses and People With Additional Needs has been prepared to provide Councils with information to assist them to identify people with additional needs who are living in boarding houses. A copy of the Fact Sheet is attached. Additional copies of the Fact Sheet are available from ADHC by emailing your request to: boarding.houses@facs.nsw.gov.au

OTHER FACT SHEETS

Assistance for Boarding Houses in NSW

Housing NSW Fact Sheet Assistance for Boarding Houses in NSW has been prepared to provide boarding house proprietors with an overview of financial incentives provided to their industry by the NSW Government. This Fact Sheet is available from the NSW Housing website at: www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Fact+Sheets.

Grants for Boarding House Financial Assistance Program - Fire safety

Housing NSW Fact Sheet Grants for Boarding House Financial Assistance Program - Fire safety has been prepared to provide boarding house proprietors with information on funding provided by the NSW Government to assist them to undertake essential fire safety works specified on a council’s fire order for a boarding house. This Fact Sheet is available from the NSW Housing website at: www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Fact+Sheets.
Information for Local Council Officers about Boarding Houses and People with Additional Needs

Boarding Houses Act 2012

Under the Boarding Houses Act 2012, some types of boarding houses in NSW must be registered with NSW Fair Trading. Council must undertake an initial inspection of a boarding house within 12 months of their registration, to assess compliance with the Local Government Act 1993, the Environmental Planning and Assessment Act 1979 and other relevant laws (section 16). The Boarding Houses Act 2012 also introduces occupancy rights for boarding house residents and sets out an enhanced scheme for the authorisation and operation of “assisted boarding houses” (previously known as “licensed residential centres” under the Youth and Community Services Act 1973). Responsibility for the authorisation and monitoring of assisted boarding houses is with the Department of Family and Community Services - Ageing, Disability and Home Care (ADHC).

Assisted Boarding Houses

Section 37 of the Boarding Houses Act 2012 defines an assisted boarding house as:

- “boarding premises” - boarding or rooming houses which may have shared facilities and services and which provide a principal place of residence to boarders (see section 4), that
- “provide beds for a fee or reward”, and that are
- “for use by 2 or more residents who are persons with additional needs” - defined as a person who requires support to undertake daily care and living tasks (such as showering, taking medication or cooking) as a result of a permanent (or likely to be permanent) mental illness, aged related frailty or other form of disability - intellectual, psychiatric, sensory, or physical (see section 36).

The Boarding Houses Act 2012 makes it an offence to operate an assisted boarding house without authorisation, and sets out penalties for both proprietors and managers of unauthorised assisted boarding houses.

Council’s role in relation to assisted boarding houses

Council officers are required to conduct an initial compliance inspection of registered assisted boarding houses. As ADHC also has monitoring responsibilities in relation to authorised assisted boarding houses, ADHC encourages council officers to conduct their initial compliance inspections with an ADHC staff member.

During the course of inspecting a general boarding house, council officers may become aware of people with additional needs. Indicators might include:

- communication or mobility difficulties (eg difficulty managing stairs, unsteady gait, use of walking aides, confused conversation, difficulty understanding or making themselves understood, inappropriate speech or behaviour);
• self-care difficulties (eg poor personal hygiene, severe obesity or emaciation, incontinence);
• significant or untreated health needs (eg wounds, breathing difficulties, bed-ridden); and/or
• living in domestic squalor (eg hoarding, human or food waste, unsanitary environment).

It is important to note that these are not necessarily disability indicators or characteristics of people with a disability, but may indicate the presence of people with additional needs who may require support.

Some premises that would usually be defined as an assisted boarding house are exempted from the Act through section 37(2). These include nursing homes, mental health facilities, aged care facilities, retirement villages, social housing, and group homes for people with disabilities funded by the government.

Responding to boarding houses with people with additional needs

Where council officers come across residents with urgent mental or physical health issues, they should follow existing council policies for responding to critical situations.

Where there is no existing policy, Ageing, Disability and Home Care (ADHC) suggests councils take the following steps:

• Step One – In the case of an emergency, refer the matter to relevant emergency services or supports (e.g. ambulance, council management)
• Step Two – Refer the matter to ADHC’s Assisted Boarding House Team at boarding.houses@facs.nsw.gov.au or on (02) 9377 6000.

ADHC officers will visit the property to assess any residents who appear to require support and take follow-up action that may be required.

Council officers are not required to collect evidence that may be used to establish whether the premises are operating as an assisted boarding house. Council officers are merely asked to contact ADHC if they believe premises may have residents who are in need of support and assistance.

Key ADHC Messages

ADHC is committed to supporting and improving the wellbeing of people with a disability living in boarding houses in NSW.

ADHC maintains primary responsibility in responding to boarding houses accommodating people with additional needs without authorisation.

ADHC will apply person-centred practice when working with boarding house residents, which means supporting residents to make informed choices about their service and accommodation options.

Further Information

If you would like further information about boarding houses please contact ADHC’s Boarding House Team on 9377 6000 or email boarding.houses@facs.nsw.gov.au

www.adhc.nsw.gov.au