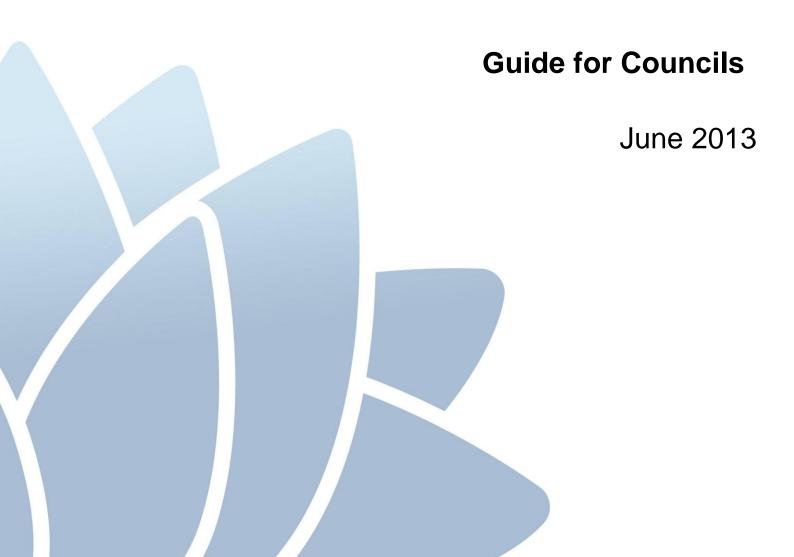


Boarding Houses Act 2012





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INFORMATION FOR LOCAL COUNCILS ABOUT BOARDING HOUSES AND PEOPLE WITH ADDITIONAL NEEDS

OTHER FACT SHEETS AVAILABLE:

- ASSISTANCE FOR BOARDING HOUSES IN NSW
- GRANTS FOR BOARDING HOUSE FINANCIAL ASSISTANCE PROGRAM



Role and powers of local councils

A. Background	Relevant law or resources
The Boarding Houses Act 2012 (BHA) was passed in October 2012 as a whole-of-government response to concerns about the rights and safety of people living in boarding houses. Part 2 of the BHA commenced on 1 January 2013. It provides for the	See www.fairtrading.nsw.gov.au > Tenants and Homeowners > Boarding houses
registration of certain types of boarding houses by 30 June 2013. The remainder of the BHA will commence once Regulations commence, likely to be July 2013.	
The BHA is jointly administered by the Department of Family and Community Services - Ageing Disability and Home Care (ADHC) and NSW Fair Trading.	Division of Local Government, Circular to Councils 13-02, Boarding Houses Act 2012.
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).	www.dlg.nsw.gov.au/dlg/dlgh ome/documents/Circulars/13 -02.pdf
This Guide sets out the role and legal powers of councils under the BHA.	

B.	The aim of the <i>Boarding Houses Act</i>	Relevant law or resources
1.	To establish a framework for registering particular types of boarding houses:	s.3 BHA
	 'General' boarding houses: boarding premises accommodating 5 or more fee-paying, unrelated lodgers; and 	s.5(2) BHA
	 'Assisted' boarding houses: boarding premises accommodating two or more people who have "additional needs". See Item G for more information. 	ss 36 and 37 BHA
2.	To provide occupancy rights to residents of boarding houses	BHA – Part 3 & Schedule 1 –
	including the right to access the Consumer Trader and Tenancy Tribunal to resolve disputes with their landlord.	Occupancy Principles
3.	To ensure that assisted boarding houses meet certain	s.37(1)(a) BHA
	specified standards.	BHReg Schedule 1 – Standards for assisted boarding houses
4.	To promote the sustainability of boarding houses.	S 3(d) BHA



C. Boarding Houses Register	Relevant law or resources
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.	http://parkspr.fairtrading.nsw. gov.au/BoardingHouse.aspx
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.	www.fairtrading.nsw.gov.auTenants and home ownersBoarding houses.
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.	

D. Initial compliance investigation by council	Relevant law or resources
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
The purpose of the investigation is to check for compliance with planning, building and fire safety requirements, and shared accommodation standards under the <i>Environmental Planning and Assessment Act 1979, Local Government Act 1993,</i> the <i>Public Health Act 1991</i> , and all associated regulations. Councils are encouraged to develop their own policies and program for boarding house inspections.	s 6 BHA Division of Local Government, Circular to Councils 13-02, Boarding Houses Act 2012, www.dlg.nsw.gov.au/dlg/dlgh ome/documents/Circulars/13 -02.pdf
 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) 	A local council's LEP or DCP will include boarding houses.
 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) 	Range of sections in the EPAA and EPAReg including cl 93 and cl 131
 Light and ventilation (LG Reg) Kitchen facilities (LG Reg) General cleanliness (LG Reg) Furniture and fittings (LG Reg) 	Building Code of Australia – fire safety standards for Class IB and Class 3 properties (might be applicable)
 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 (<i>Food Act</i>). 	Local Government (General) Regulation 1995 – Schedule 2 - Part 1 - Standards for places of shared accommodation Public Health Regulation 2012 – cl 45 vermin, cl 46 minimum room size



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	Relevant law or resources
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.	s 19 BHA
Council officers must carry a written authority to enter issued under the <i>Boarding House Act</i> .	s 25 BHA
A council officer may enter the boarding house premises at any reasonable daytime hour.	s.17 BHA
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 <i>EPAA</i>).	s 20 and s 21 BHA
Council can be liable for compensation for damage caused by a council officer entering premises.	s 24 BHA and s 730 LGA
Care must be taken not to damage property during initial compliance investigations.	s 18 BHA

F. During the initial compliance investigation	Relevant law or resources
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 <i>EPAA</i>).	s 22 BHA

G. Residents "with additional needs"	Relevant law or resources
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	s.36 BHA FACS Fact Sheet May 2013: Information for Local Councils about Boarding
definition of having 'additional needs' as defined in the BHA. For full definition see s.36 BHA or ADHC Fact Sheet (Appendix 3).	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	Relevant law or resources
A council may charge boarding house proprietors a fee under the LGA for the conduct of an initial compliance investigation.	s 23 BHA s 608 LGA
The council is encouraged to set fees in consultation with its community.	www.dlg.nsw.gov.au/dlg/dlgh ome/documents/Circulars/13 -02.pdf

I. Powers of entry after initial compliance investigation	Relevant law or resources
Any subsequent entries or inspections that council needs to undertake in relation to the premises can be done in accordant with council's powers under the LGA and the EPAA.	

Relevant law or resources J. Boarding houses that are not registered Division of Local If council is or becomes aware of a property they believe is a Government, Circular to boarding house, but it is not listed on the NSW Boarding House Councils 13-02, Boarding Register, it should refer to its own policies in relation to boarding Houses Act 2012. house monitoring and inspections. www.dlg.nsw.gov.au/dlg/dlgh ome/documents/Circulars/13 Although an unregistered boarding house cannot be accessed by -02.pdf 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 s 100 BHA 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. Fact-sheet and Registration If satisfied that a property is a boarding house that should be Form available from registered under the BHA 2012, then the council should inform the www.fairtrading.nsw.gov.au owner of their legal requirement to register. They may wish to do this > Tenants and Homeowners by providing a fact-sheet and Registration Form from Fair Trading > Boarding houses NSW.



The council also has powers to issue a penalty notice for the failure to register – see L below.

	e difference between a boarding house and other operties? How do I know the BHA applies?	Relevant law or resources
residential prop	s not easy to tell the difference between a general perty and a small boarding house. Larger boarding ually easier to identify, however some might be the BHA.	
circumstantial of premises" and	cannot gain entry to the property, they can still gather evidence showing that the premises are "boarding that they fit in the definition of a 'general' or 'assisted' e – as set out in J above.	s 100 BHA
	omes across what they suspect might be an parding house, the following steps might help in its	
	with Fair Trading NSW whether the boarding house en registered by phoning 13 32 20.	
If there the predefinition	is no registration, council should determine whether mises are "boarding premises" – this is the same on of "boarding house" in the standard LEP	s 4 BHA - definition of "boarding premises" Tenants Union of NSW,
instrum •	ent: Premises need to include at least one boarder/lodger.	Tenants Rights Manual, updated 2013.
•	Residential tenancy arrangements are covered by the Residential Tenancies Act 2010 not the BHA.	How a boarder or lodger is
	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.	defined: www.legalanswers.sl.nsw.go v.au/guides/tenants_rights_ manual/marginal_rental/what _is_boarder.html
	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.	Who is covered by the Residential Tenancies Act: www.legalanswers.sl.nsw.go v.au/guides/tenants_rights_manual/starting_tenancy/agr
	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 <i>Residential Tenancies Act</i> . Further investigation may be required.	eement.html
may be apply to	ded the premises are "boarding premises," the council able to apply its own policies / LEP as some of these all boarding houses, not merely those required to be ded under the BHA.	
should the prop	brmine whether the <i>BHA</i> applies and the property be registered, the council needs to assess whether perty meets the definition of an assisted boarding for a general boarding house.	



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:

s 36 & 37 BHA

- 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. s 5 BHA

L. Orders, penalties and court action	Relevant law or resources
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.	s 9 BHA
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.	s 10 BHA s 11 BHA
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 	s.97, 98 and s 99 BHA
 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. 	s.97, 98 and s 99 BHA
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).	s 100 BHA
Where a council has undertaken enforcement action, it should provide this information to Fair Trading for inclusion on the Boarding Houses Register.	s 13 BHA

M. Orders that are likely to make residents homeless	Relevant law or resources
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.	s 131A LGA s 121G EPAA
If the person is not able to arrange satisfactory alternative accommodation in the locality, the Council must provide the person with:	
 information as to the availability of satisfactory alternative accommodation in the locality, and 	
any other assistance that the Council considers appropriate.	
Information on housing assistance that may be available to the resident can be found through <i>Housing Pathways</i> providers which includes Housing NSW offices and participating community housing	Housing assistance: www.housingpathways.nsw. gov.au/Ways+we+can+Help/
providers listed at www.housingpathways.nsw.gov.au/Ways+we+can+Help/	After Hours Temporary Accommodation:
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.	www.housing.nsw.gov.au/N R/rdonlyres/71476559-494D- 45EE-9537- 18A2EE516CF5/0/DoHTemp oraryAccommodationLine.pd f

N. Grants available to assist proprietors to comply with council fire safety orders	Relevant law or resources
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.	Fire safety grants: www.housing.nsw.gov.au/Ce ntre+For+Affordable+Housin g/For+developers+of+afforda ble+housing/Boarding+hous e+- +Fire+safety+upgrade+grant s/



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	Relevant law or resources
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.	Land tax exemption: www.osr.nsw.gov.au/taxes/la nd/exemptions/other/#Boardi nghouses

P. Further information	Relevant law or resources
This Guide for Councils and other information referred to in this Guide is available from the Fair Trading NSW website.	www,fairtrading.nsw.gov.au > Tenants and homeowners > Boarding houses
ADHC Assisted Boarding House Compliance Unit can assist in determining whether particular premises are "assisted boarding houses", phone 02 9377 6000 or email boarding.houses@facs.nsw.gov.au .	> Boarding houses



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: <a href="https://www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Fact+

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.

AHDC 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



NSW Department of Finance & Services

NSW Fair Trading PO Box 972 Parramatta NSW 2124 T: 02 9895 0111

F: 02 9895 0222 TTY: 1300 723 404

www.fairtrading.nsw.gov.au

NSW Department of Family & Community Services

Ageing Disability & Home Care Level 5, 83 Clarence Street Sydney NSW 2000 T: 02 9377 6000

Speak and Listen: 1300 555 727

TTY: 02 9377 6167 www.adhc.nsw.gov.au