

# Boarding House Reform

## Discussion Paper

NSW Interdepartmental Committee  
on Reform of Shared Private Residential Services (IDC)

### CONTENTS

1. OVERVIEW .....	2
2. KEY ISSUES .....	4
3. GOALS AND PRINCIPLES FOR REFORM .....	9
4. OPTIONS FOR REFORM .....	10
a. Definition of Boarding Houses .....	10
b. Registration .....	11
c. Occupancy Rights and Responsibilities.....	11
d. Accommodation and Operational Standards .....	12
e. Service Standards for residents with a disability .....	12
f. Incentives .....	13
g. Improved access to community based support.....	13

# 1. OVERVIEW

Boarding houses (shared private residential services)<sup>1</sup> play an integral role in the provision of low cost, affordable housing, particularly for people who have limited alternative options for securing long term housing, who have a preference for a more structured living environment close to urban amenities, who are transient, or who require a short term arrangement while they transition to longer term accommodation.

Boarding houses in NSW are either licensed or unlicensed with the regulation status determined mainly by the characteristics of residents. As the industry draws its profit from people on low incomes, overall profitability is low, and although the industry contributes to the support of people who are in the main disadvantaged, it attracts few subsidies or incentives.

There are an estimated 455 boarding houses in NSW; the estimate of the number of beds and people living in these premises varies considerably depending on the data collection used: the ABS 2006 Census of Population and Housing put resident numbers at over 6,000. In the same year Supported Accommodation Assistance Program data identified around 5,000 residents.

An estimated 95% of unlicensed boarding houses are located in the Sydney Metropolitan Region and predominantly in inner Sydney local government areas, with around 30% located in the City of Sydney local government area.

The profile of boarding house residents is varied. According to the 2006 ABS Census, residents were mostly unemployed (24% compared with the NSW average of 5.9%), male (72%), earn a weekly income of under \$250 (31%), with 54% born in Australia. Boarding houses cater to a diverse population of people on low incomes and nationally house over one fifth of Australia's homeless<sup>2</sup>.

The NSW Government has made it easier and more viable to build new generation boarding houses that provide self contained boarding house rooms to a wide range of tenants. The NSW Government introduced a new Affordable Rental Housing - State Environmental Planning Policy (SEPP) to help increase the amount and diversity of affordable housing in NSW and address criticisms waged against older style boarding house accommodation.

New generation boarding houses can provide low cost, flexible rental accommodation to a wide range of tenants, particularly single retirees, homeless, working singles, students and young couples. The NSW Government's new affordable rental housing policy encourages the creation of new generation boarding houses that will be subject to minimum planning standards. These premises will be appealing to many in need of low cost housing because they can be flexible, self-contained and well-located.

## Licensed residential centres (LRCs)

Some boarding houses accommodate people with a disability who have low support needs. Where there are more than two (2) people with a disability living in a premise these are licensed by Ageing, Disability and Home Care, Department of Human Services (ADHC) under the *Youth and Community Services Act 1973* (YACS Act).

As at September 2010, 31 LRCs were operating in NSW with capacity to accommodate 687 people. The majority of residents in these facilities have a disability that requires some

---

<sup>1</sup> Boarding houses are buildings that are let in lodgings to provide people with a main place of residence for 3 months or more. They may have shared or private facilities, such as a communal living room, bathroom, kitchen or laundry. They accommodate one or more lodgers, but do not include backpackers' accommodation, funded accommodation support services such as group homes, serviced apartments, seniors' housing or hotel and motel accommodation.

<sup>2</sup> The Australian Bureau of Statistics (ABS) defines residents within boarding accommodation as experiencing 'tertiary homelessness' if they are living without their own bathroom, kitchen, or security of tenure.

support with daily living. The Government already provides support services to these residents, including Home and Community Care services, and day activities which connect residents with the community.

Licensed boarding house capacity has been in sharp decline. Since 1994, 156 licensed boarding houses have closed resulting in the loss of 2,625 places. In broad terms the decline has been due to factors such as:

- increased compliance and operating costs;
- high operation and maintenance costs due to the age of the properties;
- value of the underlying land, making disposal of the asset more profitable than ongoing operation of the business; and
- ageing of owners.

An *Interdepartmental Committee on the Reform of Shared Private Residential Services* (IDC) was established by the NSW Government in mid 2008 to explore an overarching, centrally administered regulatory framework which would cover accommodation and standards, and occupancy protection, balancing these with financial viability issues to ensure the ongoing availability of board house style accommodation.

The IDC comprised senior representatives from eight NSW government agencies<sup>3</sup> and was tasked with considering:

- the various regulatory regimes applying to the sector and the role of various agencies involved in regulation and/or provision of services to boarding house and private group home residents;
- any gaps in those regulatory regimes that may impact on the health, safety and well being of residents, including occupancy rights and responsibilities;
- the impact of the decline of the licensed sector, both on residents and to Government, and options for stalling that decline; and
- assessing available information on shared private residential services, particularly any gaps and opportunities for enhancement of information such as location and capacity.

**The NSW Government is seeking comment on the options for reform of the boarding house industry and potential solutions to the issues identified by the IDC which have been informed by contemporary research, available data, past reviews and stakeholder and community views given through other recent regulatory renewal processes.**

---

<sup>3</sup> The IDC is chaired by Ageing, Disability and Home Care, Department of Human Services NSW (DHS) and includes representation from Housing NSW (DHS), Department of Health, Department of Planning, Department of Premier and Cabinet including Local Government, NSW Fair Trading, Department of Services, Technology & Administration and Treasury NSW.

## 2. KEY ISSUES

The IDC identified the following issues, and considered options and approaches for addressing those issues, set out in section 4 of this paper. The issues on which IDC considerations focussed were:

### **Issue 1      *The legislative framework for the industry is complex and duplicates some requirements.***

There is no single legislation or government agency with overarching responsibility for the industry. Boarding house operators are required to meet responsibilities against various regulations concerning business aspects such as building requirements, fire safety, health and food standards, and others concerning the rights, health, safety and wellbeing of residents.

Regulations are applied and monitored across a number of NSW Government agencies and local government. They:

- can apply differently depending on the 'class'<sup>4</sup> or age of the building;
- include some common provisions for example in dealing with the physical standards of the premise where provisions exist in both the *Local Government (General) Regulation 2005* and for those that accommodate two or more people with a disability, in the *YACS Regulation 2010*;
- apply to premises established under different initiatives, such as new models including self funded group homes for people with complex support needs and accommodation services established under the Lifetime Care and Support Scheme administered by the Motor Accidents Authority;
- involve various monitoring activities both in respect to the agencies involved and the nature, completeness and focus of the monitoring event; and
- do not cover all aspects of the business, or address the rights of residents universally.

*For example:*

*Fire safety regulations vary depending on the classification of the building and the year of construction with only premises constructed or redeveloped after 1989 requiring an Annual Fire Safety Statement, and site inspections against these statements can only be undertaken depending on the classification.*

*Standards for Places of Shared Accommodation under the Local Government (General) Regulation 2005 concerning number of residents, adequacy of light and ventilation, kitchen facilities, general cleanliness and so on do not apply to class 1b premises.*

---

<sup>4</sup> In summary- Class 1b- small boarding houses/hostels/guest houses etc with not more than 12 persons ordinarily residing; Class 3- larger resident buildings including boarding houses, guest houses, hostels etc.

**Issue 2*****Occupancy rights and responsibilities are not defined or in place and create uncertainty for residents and operators.***

Boarding accommodation houses over one fifth of Australia's homeless<sup>5</sup>. Residents of boarding houses are considered homeless because they have no rights in respect to the accommodation that they live in, and rely on shared facilities such as bathrooms and kitchen facilities.

Occasionally there may be common law contracts in place but there is no obligation in NSW for any formal agreement to be made. Where contracts exist, most are inadequate and do not provide for basic rights to residents, including, for example, receipts for rent paid.

The lack of clarity around rights and responsibilities of both boarding house residents and operators leads often to disputes and commonly eviction if unresolved. There is no common mechanism for dispute resolution as exists for tenants of mainstream rental accommodation covered by the residential tenancies legislation.

The lack of a firm arrangement may suit some residents who wish to come and go freely between premises, others with a desire for some form of assurance do not have the means to achieve that. Operators may also desire some guarantee over rental income.

While maintaining the flexibility of the accommodation which is fundamental to the nature of this industry, there is a case for an appropriate level of occupancy protection and reciprocal responsibilities.

Legislation to address the rights of boarding house residents and other 'marginal renters' is now in place in most Australian jurisdictions. The Tenant's Union of NSW<sup>6</sup> considers that the most useful model is the establishment of 'occupancy agreements' such as those in place in the ACT. That model:

- covers all residential rental contracts which are outside residential tenancies legislation;
- bases agreements on basic 'principles' which allow for flexibility in how they are applied depending on the type of accommodation;
- is sufficiently simple and straightforward to allow for flexibility and does not oblige residents to enter into complex contracts which may be difficult to understand or constrain them into long term arrangements which are not suitable; and
- provides for a dispute resolution mechanism using existing tribunals.

---

<sup>5</sup> The Australian Bureau of Statistics (ABS) defines residents within boarding accommodation as experiencing 'tertiary homelessness' if they are living without their own bathroom, kitchen, or security of tenure.

<sup>6</sup> Discussion Paper prepared for Marginal Rental Roundtable held 19 November 2010.

Many residents of boarding houses experience some level of community or social isolation. They may be unemployed, have few or no family connections, mental health problems or addiction. Linking boarding house residents to social and community opportunities in their local area, such as sport, music or artistic activities, or giving opportunities for unemployed boarding house residents to develop skills that might support future employment opportunities, for example, through volunteering, would have a broad community as well as individual benefit.

The non-government sector through neighbourhood centres, homelessness services and other community based activities, whether funded or unfunded by levels of government, already provide some opportunities to support residents in connecting with their neighbourhoods and in accessing a range of skill development opportunities. Exploring further roles for the non-government sector to target boarding house residents and operators, as well as improving opportunities to raise awareness of existing community activities could address some of these issues.

Social inclusion and other support services are already provided to residents of licensed boarding houses where the majority of residents are people with a disability. These services are delivered under the Boarding House Reform Program which focuses on improving the standard of accommodation and the support services available to residents with a disability living in LRCs. The program includes:

- relocating residents with high support needs from licensed boarding houses to alternate community-based accommodation and support services;
- screening for entry to licensed boarding houses to ensure people with high support needs are directed to more appropriate accommodation that meets their needs;
- support services for residents who need some assistance with daily living such as personal care services, community integration, primary and secondary health care services and advocacy services;
- casework services to manage planning, coordination, monitoring and review of the delivery of services and supports to residents across a range of agencies; and
- the maintenance of a *Closure Protocol* setting out procedures for the relocation of residents with a disability in the event of a closure. The parties to the Closure Protocol are ADHC, NSW Health and Housing NSW.

The IDC options include an ongoing focus on the particular needs of people with a disability living in LRCs who have specific support needs in comparison to the broader population of boarding house industry residents.

#### **Issue 4      *Opportunities for attracting new operators to the industry and expanding supply.***

Boarding houses are an important part of the affordable housing system in NSW. There are a range of boarding house types that cater to a diverse population of people on low incomes, and may provide a range of formal and informal support services. A substantial reduction in support in this type of accommodation can result in some people moving into a secondary or even primary homelessness situation.

Research indicates that many long term homeless people do move between different types of accommodation, including refuges or crisis accommodation.

While there are limitations in the data, and the number of boarding houses reported is likely to be an underestimate, between 1996 and 2006, the number of boarding houses recorded by the Australian Bureau of Statistics (ABS) declined from 635 to 465 (26% reduction).

The decline in the licensed residential centre industry has been more pronounced. Between 1998 and September 2010, the number of licensed boarding houses declined from 107 to 31 (71% reduction). Over the same period, the number of available beds declined from approximately 1823 to 687 (62% reduction).

Further evidence of decline is demonstrated by approvals for land tax exemptions (which are available as an incentive to boarding house operators) which declined by 17% over the ten year period, to 2009.

Research undertaken by Housing NSW indicates that key reasons which cause owners and managers of boarding houses to cease business operations include:

- operation and maintenance costs due largely to the age of the capital stock and increasing costs associated with public liability, health and safety requirements;
- resident and business management complexities;
- business revenue potential particularly due to rising land values and the resulting opportunities for more financially lucrative uses; and
- variations in and the complexity of state and local government requirements and regulations.

In practice, smaller operations of boarding houses with less than 10 units or facing large maintenance costs are under pressure to convert to more profitable land uses which offer higher returns, such as residential flat buildings.

The NSW Government has in place several assistance arrangements or incentives to improve the profitability of boarding houses as a business. These include:

- **Affordable Rental Housing State Environment Planning Policy (SEPP)** which has been developed to help increase the amount and diversity of affordable housing in NSW. The SEPP uses a range of measures to facilitate development of new affordable rental housing, including boarding houses, to meet different housing needs. Consent authorities cannot refuse a boarding house development if certain minimum standards are met (floor space ratio, building height, landscaped area, solar access, private open space, parking and accommodation size). In addition, additional floor space ratio bonuses are provided to improve viability in areas zoned for flats.
- **Boarding House Financial Assistance Program** provides grants to boarding house operators to help existing or new boarding houses to undertake essential fire safety works. In November 2010, Housing NSW expanded this program to provide financial assistance to promote the construction of new affordable boarding house rooms.

- **Land Tax Exemptions** – where land is used and occupied primarily as a boarding house, an exemption from land tax or a reduction in the land value is available.
- **Local Government Rate Concessions**- boarding houses are charged a residential rate which is lower than a commercial rate.

There is anecdotal evidence that the use of incentives, such as land tax exemptions or the financial assistance program, is not universal due to complexities with the application process, and limited awareness about the incentives available.

### 3. GOALS AND PRINCIPLES FOR REFORM

A new approach to the boarding house sector is needed to address the current issues affecting residents, operators and the impact on the broader NSW community. The key goals of any reform of this industry should be:

1. To improve the viability of the sector.
2. To ensure that the rights of residents are protected.
3. To maintain supports to residents with a disability including those affected by closures, and to improve access to social inclusion programs by other vulnerable residents.
4. To streamline the legislation and regulation applying to boarding houses, reduce duplication and the burden on business owners.
5. To address the gaps identified in the current legislative framework regarding the protection of residents, including occupancy rights.
6. Create a regulatory framework for the industry that is:
  - **Flexible:** able to be adapted to suit individual circumstances and personal preferences as well as a broad range of boarding house accommodation types
  - **Outcomes focused:** oriented to achieving optimum outcomes for residents and owners/operators
  - **Cost Effective:** balancing the cost for owners/operators and Government with reasonable standards to ensure positive outcomes for residents.

## 4. OPTIONS FOR REFORM

The NSW Government considers boarding houses to be an important and legitimate form of affordable housing.

The IDC has explored a range of options for reform of the industry with a focus on improved experiences for residents, and increasing the supply of quality boarding house accommodation.

These options have been informed by a series of reviews undertaken over the past decade or more in NSW and nationally, by reforms in other jurisdictions, and by the expressed views of residents, advocates, operators and support service providers, as well as the range of agencies involved in current regulation activities.

The options for reform considered by the IDC necessarily range across the full regulatory continuum from introducing complete and comprehensive new legislation for the boarding house industry with either a system of accreditation or registration through to a 'no change' option.

Possible solutions considered by the IDC include:

1. **An accreditation regime** for the sector based on the model in place in Queensland. Queensland regulates residential services providing accommodation, food and personal care services under a single legislation. The Act requires service providers to be registered with the Office of Fair Trading and to meet the requirements of a three-tier accreditation system based on:
  - a. accommodation only;
  - b. accommodation and meals; and
  - c. accommodation, meals and services.

The level of accreditation depends on the type and level of services offered; **or**

2. **A consistent regulatory framework** (in the form of new legislation) for the whole of the Boarding House sector setting out standards with which operators would be required to comply. Registration would be mandatory for all boarding houses; **or**
3. **A consistent regulatory framework** requiring operators to comply with standards relating to the type of services they provide but with optional registration for those boarding houses that provide accommodation or accommodation and meals only. Registration would be mandatory for those boarding houses providing services to one or more vulnerable residents. Registration would be encouraged for other operators through incentives such as reduced monitoring arrangements.
4. **Retaining the current regulatory environment** and establishing a governance arrangement across NSW Government agencies to share information and to jointly manage risks and issues as they arise.

In developing these options, the IDC considered a broad range of elements that the various options might comprise including:

### a. Definition of Boarding Houses

It is proposed that a universal definition of a boarding house be introduced, and this could be adopted from the Affordable Rental Housing State Environmental Planning Policy (SEPP).

The Affordable Rental Housing SEPP definition could be used:

*Boarding house means a building:*

- *that is wholly or partly let in lodgings, and*
- *that provides lodgers with a principal place of residence for 3 months or more, and*
- *that may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- *that has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers, but does not include backpackers' accommodation, a group home, a serviced apartment, seniors' housing or hotel and motel accommodation.*

This definition aligns with the provisions for existing land tax exemptions administered by the Office of State Revenue (OSR).

**The IDC's preferred option is for a consistent regulatory framework in the form of new legislation.**

### **b. Registration**

A registration system would require boarding houses to supply information to a single agency about key aspects of their operations. This would assist in assessing the risks individual boarding houses might be exposed to so that inspection and audit resources could be appropriately directed to ensure standards are being met.

An online registration system could be developed to reduce the administrative burden on operators and could include:

- an annual statement of compliance with relevant standards and requirements;
- description/classification of the level of service being provided (i.e. accommodation only or accommodation and services);
- improved information on the profile of the premises (number of beds, residents and so on).

There would be a requirement to be registered, if appropriate, and an associated penalty for failing to be registered.

**The IDC's preferred option is for a differential registration system for boarding houses that takes into account the differing needs of clients.**

### **c. Occupancy Rights and Responsibilities**

There are several options available for establishing occupancy rights and responsibilities for boarding house residents, from prescriptive models encompassing formal written agreements such as a residential tenancy style agreement, to more flexible models such as a principles-based approach to occupancy rights.

Different models impose different requirements and costs on both boarding house owners and occupants. It is important to consider these impacts in developing any approach to improving occupancy rights in this area, and to strike a balance between offering protection to occupants and supporting the future viability of the accommodation sector.

The ACT has a principles-based approach to occupancy rights and responsibilities for people living in boarding houses and could be readily applied in NSW.

**The IDC's preferred option is to introduce a legislative requirement for a principles based approach to occupancy rights and responsibilities for all boarding houses.**

#### **d. Accommodation and Operational Standards**

Standards could be introduced for all boarding houses for matters such as accommodation and boarding house operations, for example, fire safety, power of entry and food safety and standards for those providing meals.

Such an approach would reduce the current complexities and streamline regulation by incorporating the many components of existing legislation into one new piece of legislation. It may be expedient to keep some components in existing legislation, however they will be referenced in the new piece of legislation for ease of use.

Standards would cover all boarding houses regardless of the services they provide and who lives there, such as:

- maximum number of boarders and lodgers
- fire safety requirements
- light and ventilation
- kitchen facilities
- general cleanliness of the premises, including bathrooms
- furniture and fittings
- adequate number of beds, mattresses, pillows, clean supply of blankets, blinds / curtains or similar devices
- adequate storage space in bedrooms and common areas
- record keeping requirements, for example receipts for tariffs and fees charged
- arrangements for establishing and managing tenancy agreements
- complaints handling systems
- residents rights to privacy and confidentiality, freedom from abuse and neglect and relevant reporting requirements
- resident rights to service providers and advocates
- power of entry for monitoring purposes.

**The IDC's preferred approach is to have accommodation and operational standards for all boarding houses contained in one key piece of legislation specific to boarding houses where this is appropriate and feasible.**

#### **e. Service Standards for residents with a disability**

Business owners providing an accommodation service to vulnerable residents would have to comply with Service Standards at the premises which could include requirements similar to those already in place under the *Youth and Community Services Regulation 2010*:

- staffing requirements, including employment probity checking, basic qualifications such as first aid, minimum on site staffing numbers
- financial management
- record keeping requirements related to resident support and health
- laundry and domestic assistance at the premises
- requirements related to the quality of meals, the physical environment and so on
- screening processes to ensure residents are not inappropriately placed in boarding houses.

**The IDC's preferred option is to have service standards for proprietors providing accommodation services to vulnerable residents.**

**f. Incentives**

Despite existing government support for boarding house operators, the industry faces challenges which are contributing to a decline in boarding houses.

Improving access to these incentives or making operators more aware of what is available and providing assistance to access these benefits is one approach that should be pursued.

**The IDC's preferred option is to have appropriate incentives to assist boarding house proprietors to remain viable.**

**g. Improved access to community based support**

Encouraging a greater engagement from the non-government sector to support residents of boarding houses should be pursued. Many local non-government providers already have a role in providing locally based services that boarding houses residents would benefit from. Improving awareness of those services is one approach that could be pursued.

**The IDC's preferred option is to have greater engagement from the non-government sector in providing services to boarding house residents.**