

Disability and Domestic Violence in Residential Settings Project

Accommodating Violence

The experience of domestic violence and people with disability living in licensed boarding houses.

September 2010

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- "...prevention is the best protection from abuse."
- ADHC Abuse and Neglect Policy and Procedures, p6 2007

"The Government's commitment to this issue is serious. It is strong and it is ongoing. We want to change the way Government responds to domestic and family violence, to improve the way Government agencies work together, and to make it easier for Government and the non-Government sector to work in partnership together to deliver integrated, effective and innovative services to women and children experiencing violence"

NSW Government Department of Premier and Cabinet Office for Women's Policy,
 Discussion Paper, Dec 2008

Postscript

28 September 2010

In early July 2010 the 'Accommodating Violence' Report (the Report) was completed and submitted to the NSW Office for Women's Policy as per the funding agreement for the Domestic Violence in Residential Settings Project for final approval before publishing. The commentary provided in the Report on regulation and policy frameworks relating to licensed boarding houses was therefore accurate at this time.

Since the finalisation of this Report however, there have been further developments with regard to the NSW Government's regulation of licensed boarding houses following the conclusion of the Regulatory Impact Statement (RIS) consultation process undertaken by the Department of Human Services: Ageing, Disability and Home Care (ADHC) which is outlined in this Report.

The Youth and Community Services Regulation 2010 was remade and came into effect on 1 September 2010. This Regulation contains obligations for boarding house owners that were previously contained in the amended Youth and Community Services Regulation 2005. The 2010 Regulation clarifies the legal obligations that proprietors need to meet in the day to day operations of licensed boarding houses.

People with Disability (PWD) made an extensive submission to the RIS consultation and included a draft version of this Report given the critical issues it raises with regard to the prevention, detection and response to abuse and domestic violence for residents of licensed boarding houses. Overall, our submission welcomed and supported the making of regulations as we see such measures are necessary and essential to ensuring there is no ambiguity in compliance expectations for Licensees and Licensed Managers and for the protection of human rights of people with disability who are residents of licensed boarding houses. However, we also provided detailed feedback on the proposed regulation including recommendations as to how it could be further strengthened to address long standing issues with respect to standards in licensed boarding houses.

We were therefore disappointed with the final remake of the *Youth and Community*Services Regulation 2010 which in our view failed to take full advantage of the opportunity to address a number of key weaknesses including improving standards

and best practice prevention, detection and response to abuse and domestic violence which are highlighted in this Report.

We do however, remain hopeful that the recommendations outlined in this Report will be endorsed by relevant Ministers and government departments, and actively pursued by all stakeholders responsible for detection, prevention and response to domestic violence so as to address the current vulnerability of people with disability in licensed boarding houses.

Executive Summary

This report documents the experience of domestic violence and people with disability, particularly women with disability living in licensed boarding houses. The findings outlined in this report derive from a range of activities, consultations, legislative and policy analysis undertaken in the course of the Disability and Domestic Violence in Residential Settings Project (the DDV project) funded by the NSW Office for Women's Policy for the period June 2009 – July 2010.

The DDV project was based on a hypothesis that women with disability experiencing domestic violence in licensed boarding houses have limited knowledge of rights and options to be free from this form of abuse. Furthermore, significant barriers exist for women with disability, particularly those living in residential settings such as licensed boarding houses, in accessing domestic violence support services.

It is clearly evident from the findings of this report that this hypothesis is proven to be correct, furthermore the experience of domestic violence is a daily lived experience of people with disability living in licensed boarding houses. The situation exists predominately due to failures in legislative frameworks, policy guidelines, administrative procedures, accessibility of services and support. These failures have left people with disability living in licensed boarding houses subject to further vulnerability and abuse.

Significant actions are required to decrease the vulnerability and exposure of people with disability to the ongoing experience of domestic violence in licensed boarding houses. This can only be achieved with the provision of strengthened protection, prevention and response mechanisms and political will for creating change.

The following list of recommendations outline structural interventions that are aimed at addressing the key issues canvassed throughout the report.

Recommendations

Vulnerability of women with disability in licensed boarding houses

Recommendation 1:

The NSW Government adopts the *Crimes (Domestic and Personal Violence) Act* 2007 definition of domestic violence consistently across its policies and policy frameworks so that it is inclusive of residential settings and recognises personal violence between people with a disability who may be co-residents and/or their carers.

Recommendation 2:

ADHC to work collaboratively with the NSW Ombudsman and advocacy organisations to fund and deliver ongoing rights based, gender specific training programs for all residents of licensed boarding houses to build their knowledge and ability to protect themselves and respond to violations of their rights including domestic violence.

Recommendation 3:

ADHC develop materials accessible (plain and Easy English) to residents of licensed boarding houses about:

- a) licence conditions and regulations relevant to licensed boarding houses;
- b) complaint handling principles and guidelines; and
- a) support services available to people with disability including advocacy and domestic violence support.

NSW Government Directions

Recommendation 4

The NSW Department of Premier and Cabinet ensure that all key agencies involved in the NSW Domestic and Family Violence Action Plan deliver consistent and effective responses to all women, including women with disability living in residential

centres such as licensed boarding houses, experiencing or are at risk of domestic violence.

Recommendation 5:

The NSW Government develop and fund an appropriate cross Government strategy for people with disability in licensed boarding houses within future disability and other Government frameworks, including Stronger Together 2, to ensure their human rights are respected, protected and fulfilled along with their peers.

Recommendation 6:

The NSW Government's Interdepartmental Committee on Reform of the Private Residential Service Sector (IDC) immediately provide an action plan on its directions for boarding house reform and the review of the YACS Act.

Recommendation 7:

The NSW Government undertake an evaluation of the Boarding House Reform Program, its objectives and the success of its outcomes for achieving positive systemic reform within the licensed boarding house sector.

Legislative Frameworks

Recommendation 8:

NSW Government to conduct a feasibility study exploring the concept of a Working with Vulnerable Persons check as part of an Adult Protection system in NSW.

Recommendation 9:

- 9.1 The NSW Government use the Regulatory Impact Statement and consultation on the proposed Youth and Community Services Regulation 2010 to its full benefit by:
 - a) using CRPD as a benchmark for contemporary and gender specific standards in all licensed boarding houses in NSW; and
 - b) ensuring licensed boarding house regulation and licence conditions reflect contemporary disability best practice policy and procedures;

- c) the rights of people with disability in licensed boarding houses are given paramount consideration; and
- d) taking into consideration the issues raised in this report to introduce Regulations to ensure the prevention, detection and response to abuse and domestic violence for residents of licensed boarding houses.

Recommendation 10:

The NSW Government urgently finalise the review of the *Youth and Community Services Act 1973* with the outcome being to replace it with legislation to ensure its compliance against obligations under the CRPD and incorporates in full the 'charter of principles' outlined in the Disability Services Act 1993, the 10 Disability Service Standards, and which provides for the independent and rigorous regulation and monitoring of licensed boarding houses.

Recommendation 11:

It is recommended that the *Community Services (Complaints, Reviews and Monitoring) Act* 1993 is reviewed against CRPD to achieve the following:

- a) incorporation of substantial recognition of the human rights of persons with disability, and require human rights standards to be applied in the exercise of all functions and powers under the legislation;
- b) incorporation of the explicit recognition of, and a duty to address, the multiple and aggravated forms of human rights violation and disadvantage that results from the intersectional discrimination (ie the accumulative impact of impairment and disability with another characteristic including racial, cultural or linguistic minority status, indigenous status, gender and age);
- c) provision of personal remedies. These remedies ought to include prerogative remedies such as the power to make a declaration as to the lawfulness of particular conduct, the power to prohibit particular conduct, and the power to order the performance of a particular duty. Remedies ought also to include restitution and damages. The legislation ought also to provide injunctive relief pending the final outcome of a complaint.

Recommendation 12:

That responsibility for the administration of the *Community Services (Complaints, Reviews and Monitoring) Act* 1993 is re-situated in an independent, specialist watchdog agency capable of developing and implementing an activist, human rights oriented approach to its jurisdiction.

Recommendation 13

That the NSW Ombudsman actively promote within the community sector Section 47- Protection of Complainant of Retribution of the *Community Services (Complaints, Reviews and Monitoring) Act* 1993 and that it actively utilises it in cases where complainants experience retribution.

Recommendation 14:

The NSW Police Force and Local Court Magistrates receive gender specific training on disability awareness, disability rights and referral pathways for seeking appropriate alternative accommodation and support for victims and perpetrators of domestic violence.

Recommendation 15:

The NSW Police Force explore the development and implementation of a case management approach to the issuing of AVO's to people with cognitive impairment to ensure they understand the implications and limitations of the AVO.

Domestic Violence Policy and Practice

Recommendation 16:

16.1 ADHC to:

 a) provide or facilitate for funded disability service providers, licensed boarding house operators and staff, access to information and training on the definition of domestic violence, indicators of abuse and violence and best practice response options; support the establishment of gender specific protocols for responding to domestic violence for boarding house residents, including referral pathways between the disability and domestic violence sectors.

16.2 ADHC and non Government service providers review service policies and procedures on abuse and neglect to ensure they reflect best practice response options for domestic violence incidents.

Recommendation 17:

ADHC to ensure the roles of Boarding House Reform Program Case Manager and Licensing Officer are separated and clear protocols are established for the referrals to be made between positions.

Recommendation 18:

AHDC reinstate a centralised licensing and monitoring unit to ensure consistency and enforceability of licence conditions, regulations and all requirements of the YACS Act across regions.

Recommendation 19:

AHDC immediately prioritise the implementation of the NSW Ombudsman's 2006 recommendations outlined in its report entitled on *DADHC Monitoring Standards in Boarding Houses*. A special report to Parliament under s31 of the Ombudsman Act 1974.

Recommendation 20:

The NSW Ombudsman's office prioritise:

- a) the development and implementation of gender specific guidelines for Official Community Visitors responding to abuse and neglect, including domestic violence in residential care settings;
- b) gender specific training for Official Community Visitors s in abuse and neglect, including:
 - indicators of abuse;
 - understanding domestic violence in residential care settings and best practice responses.

Recommendation 21:

The OCV Scheme undertakes regular individual service and sector reviews of all issues identified in licensed boarding houses with the aim of collating gender disaggregated data and of identifying individual and systemic matters:

- a) for referral to the NSW Ombudsman to:
 - promote and assist the development of standards for the delivery of licensed boarding houses; and/or
 - educate service providers, clients, carers and the community generally about those standards; and/or
 - monitor and review the delivery of services and related programs, both generally and in particular cases; and/or
 - make recommendations for improvement in the delivery of licensed boarding houses and for the purpose of promoting the rights and best interests of persons using, or eligible to use such services; and/or
 - cause an inquiry into matters affecting service providers and licensed boarding houses and persons receiving, or eligible to receive services provided by licensed boarding houses; and/or
 - receive, assess, resolve or investigate complaints; and/or
 - review the causes and patterns of complaints and identify ways in which those causes could be removed or minimised; and/or
 - review the situation of a person or group of persons in care living in a licensed boarding house; and/or¹
- b) referral to other relevant services or to other appropriate bodies for the early and speedy resolution of grievances or matters of concern²; and/or
- c) to provide regular advice to the relevant Minister on matters affecting the rights, welfare, interests and conditions of persons living in licensed boarding house and any matters relating to the conduct of such places³; and/or

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¹ Community Services (Complaints, Reviews and Monitoring) Act 1993 Section 11

² Community Services (Complaints, Reviews and Monitoring) Regulation 2004 Section 4

d) to inform the Annual Report provided to the Minister for Disability Services and laid in Parliament each year⁴.

Recommendation 22:

The NSW Treasury provide increased funding to the NSW Ombudsman to ensure its functions required by law as well as those available under its discretionary powers are not limited in any way and can be adequately discharged.

Recommendation 23:

The NSW Police Force consult disability peak bodies to review the subject content and material contained in its Continuing Police Education program during its annual and external review process, so as to ensure the gender specific needs of people with disability are addressed.

Recommendation 24:

The NSW Police Force Code of Practice is updated in its next scheduled review in 2012 to:

- a) include additional referral information about disability advocacy support services and Government agencies, such as ADHC, available to support people with disability experiencing domestic violence within family settings as well as residential service settings;
- b) include additional safeguards and strategies to ensure proactive police responses and approaches are afforded to people with disability involved in domestic violence.
- c) ensure Crime Management Units within Local Area Commands establish partnerships with key disability support services to establish partnerships for victim support and follow-up.

Recommendation 25:

Domestic Violence information support phone services review information content and referral pathways applicable to people with disability including those living in residential settings such as licensed boarding houses.

³ Community Services (Complaints, Reviews and Monitoring) Regulation 2004 Section 4

⁴ Community Services (Complaints, Reviews and Monitoring) Regulation 2004 Section 4

Recommendation 26:

AHDC review the NSW Domestic and Family Violence Action Plan to identify strategies for its implementation for people with disability living in residential settings including licensed boarding houses.

Recommendation 27:

The Inner West DVPASS establish an interagency relationship with an independent disability advocacy services to assist victims with disability to gain full benefits from the DVPASS system.

Recommendation 28:

As part of Stronger Together 2, ADHC provide funding for independent advocacy to specifically work with the Inner West DVPASS, with progressive roll-out of this initiative to other regions in NSW.

Recommendation 29:

28.1 NSW Government Premier and Cabinet partner with the Department of Families Housing Community Services and Indigenous Affairs (FAHCSIA) to explore options for enhancing the Disability Abuse and Neglect Hotline as data collection mechanism for recording and improving response and prevention strategies for all people with disability experiencing domestic violence.

28.2 The Department of Families Housing Community Services and Indigenous Affairs (FAHCSIA) immediately expand the primary target group of the National Disability Abuse and Neglect Hotline to include people with disability living in licensed boarding houses.

28.3 FAHCSIA to alter the categories of abuse under the National Disability Abuse and Neglect Hotline to include 'domestic violence' in its definitions.

Issues unique to supporting residents of licensed boarding houses

Recommendation 30:

ADHC use the introduction of the amended *Youth and Community Services Regulation 2005*, and any future regulation to:

- a) ensure the active monitoring of compliance with licensing requirements relating to the 'Protection of interests of residents' and;
- b) remedy all obstructions with relevant action including prosecutions of the breach and suspension or revocation of the licence;
- c) provide or facilitate training opportunities for Licensees, Licensed Managers and staff of licensed boarding houses to address:
 - human rights of people with disability in line with CRPD;
 - inappropriate attitudes and prejudices towards men and women with disability; and
 - positive and effective complaint handling practices.

Recommendation 31:

- 30.1 ADHC finalise their review the Vacancy Management Guidelines for the Boarding House Relocation to:
- a) ensure victims and/or offenders of domestic violence are prioritised for, and assisted to alternative community-based accommodation and support services, with specific attention being given to the gender related needs of victims and / or offenders; and
- b) these Guidelines are promoted and accessible to all relevant stakeholders to ensure their effective implementation.
- 30.2 ADHC to develop an action plan for the roll out of the \$6 million dollars announced in the 2010 Budget.

Recommendation 32:

ADHC to immediately develop a full range of policies including (but not limited to)
Abuse and Neglect Policy, Managing Client Risk, Decision Making and Choice,
Behaviour Management and Restrictive practices for the licensed boarding house sector.

Recommendation 33:

Service providers and advocates who support residents of licensed boarding houses develop, review and amend policies and procedures for fulfilling their duty of care when responding to incidents of abuse including domestic violence. Such policies should consider issues including:

- a) human rights of people with disability as articulated in accordance with the CRPD risk assessment:
- the disclosure of confidential information under circumstances where that
 personal information may prevent or reduce a serious and imminent threat to
 the life or health of any person (the client or someone else) and the disclosure
 of information to a particular person or agency is likely to reduce that risk;
- c) triggers for referral of domestic violence and abuse to:
 - I. the NSW Police Force;
 - II. ADHC for a regulatory response to a breach of licence conditions;
 - III. ADHC for supports available under the Boarding House Reform Program's two sub programs - Residents Support Program or Relocation Program;
 - IV. other relevant support services or response agencies such as sexual assault services, domestic violence services, counselling and/or independent advocacy support;
- d) the assessment of each situation individually;
- e) maintenance of normal privacy in all other situations and with all other people.

"Silence. Is a crime."

- 'The Disappeared', Kim Elchin 2010

"Silence is the language of complicity
...Speaking out is the language of change" – anon

PART A: INTRODUCTION

Background

People with Disability Australia (PWD) is a national disability rights and advocacy organisation that operates within a human rights framework. Our work addresses the discrimination, marginalisation, poverty and human rights abuses that people with disability experience. We work with all people with disability, with a focus on people with disability who are in vulnerable and marginalised situations, particularly those experiencing abuse and neglect, who are homeless or at risk of becoming homeless and people with disability living on income support.

PWD operates the Boarding House Advocacy Project, which is funded by the NSW Department of Human Services, Ageing, Disability and Homecare (ADHC). This program provides independent individual and group advocacy assistance to people with disability living in licensed boarding houses, licensed under the *Youth and Community Services Act, 1973 (YACS Act)* in NSW. We also regularly undertake systemic advocacy projects relating to licensed boarding houses and the reform of the boarding house sector. The Disability and Domestic Violence Residential Settings Project (DDV project or the Project) was established to further this work of PWD.

Our role in the Boarding House Advocacy Project is to promote and protect residents' legal, consumer and human rights; to ensure that residents have access to health, allied health; specialist disability and community services to support resident participation and decision-making in transition to new living arrangements; and to provide an independent source of information to residents in their interactions with Government agencies and service providers.

The DDV project started from the premise that women with disability experiencing domestic violence in licensed boarding houses have limited knowledge of rights and options to be free from domestic violence. Furthermore, significant barriers exist for women with disability, particularly those living in residential settings such as licensed boarding houses in accessing domestic violence support services.

The objectives of the DDV project were to:

a. increase the knowledge of women with disability living in licensed boarding houses in ADHC Metro South region about domestic and family violence and domestic and family violence support services; and

b. equip the disability and domestic and family violence sector with prevention and best practice responses to domestic and family violence in licensed boarding houses.

The DDV project was funded by the NSW Office for Women's Policy, Department of Premier and Cabinet under its Domestic and Family Violence Grants Program as a 12 month project.

Structure of report

This report provides a snapshot of the situation of domestic violence in licensed boarding houses and the current systemic framework for prevention and response to domestic violence in these settings.

It draws conclusions on the experience of domestic violence by people with disability living in licensed boarding houses in NSW and proposes viable recommendations to all stakeholders who work in the domestic violence, disability and licensed boarding house sectors.

The report is divided in two parts. The first part is a literature review drawing on Australian and international literature on women with disability and domestic violence, disability and accommodation, and violence and abuse within the residential disability and aged-care sectors. The second part includes findings and recommendations based on an analysis of issues related to the prevention, detection and response to people with disability experiencing domestic violence in licensed boarding houses in NSW.

The report has had input from the DDV Project Advisory Group (DDVPAG) which was made up of representatives from organisations involved in the disability and/or domestic violence sectors.

Methodology

This report is a synthesis of the following processes that guided and informed the findings and recommendations.

DDVPAG

The DDV project was guided by the DDVPAG with representatives from the following organisations:

- People with Disability Australia;
- NSW Network of Women with Disability;
- Newtown Neighbourhood Centre Active Linking Initiative program;
- University of NSW Social Policy Research Centre;
- NSW Government, Human Services, Ageing, Disability and Home Care Metro South Region;
- Liverpool Women's Health Centre;
- Homeless Persons' Legal Service Public Interest Advisory Centre;
- NSW Government, NSW Trustee and Guardian, Justice and Attorney General;
- Women's Legal Services NSW Domestic Violence Advocacy Service; and
- Official Community Visitor.

Literature review

The literature review was undertaken by the Australian Domestic Violence Clearinghouse (ADVC) drawing on Australian and international literature on women with disability and domestic violence, disability and accommodation, and violence and abuse within the residential disability and aged-care sectors.

Initial extensive literature searches revealed the total absence of research examining how women with disability experience abuse in licensed boarding houses in NSW. The aims of the review were then altered to:

 undertake a broad examination of the domestic abuse of women with disability, particularly within residential settings;

- undertake an overview and critique of the current state of the licensed boarding house sector in NSW, including a comparison of the regulatory measures governing the licensed boarding house, Government and not-for profit disability residential sectors and their adequacy in preventing and responding to abuse; and
- examine the general barriers to service access faced by women with disability experiencing domestic violence that might be of relevance to the licensed boarding house sector.

Systemic gap analysis

The systemic gap analysis identified legislation, policy and service systems that have relevance to domestic violence prevention, detection in licensed boarding houses in the ADHC Metro South region. The identified framework was then critiqued in terms of its effectiveness in the prevention and detection of domestic violence and in the response to women with disability experiencing domestic violence in licensed boarding houses.

Consultations

Consultations were held with disability, domestic violence and licensed boarding house representatives located in the Sydney inner west area of the AHDC Metro South region. These consultations aimed to gather information on the understanding, incidence and nature of domestic violence in licensed boarding houses, as well as processes that were in place to prevent and respond to these incidents when they occur.

A series of rights based information sessions were also conducted with a group of women with disability living in licensed boarding houses with the aim of increasing their knowledge of domestic violence and support services. These sessions were led by representatives from domestic violence and disability support services located within the women's local area.

Key definitions

Definition of 'domestic violence':

The DDV project recognises that domestic violence is a crime. It also acknowledges the range of relationships a person with disability living in a licensed boarding house may have with co-residents and boarding house staff as examples of the types of 'domestic relationships' outlined in the *Crimes (Domestic and Personal Violence) Act 2007, S 5 (d), (e), (f)*ⁱⁱⁱ. This project therefore recognises personal violence between such parties as a 'domestic violence offence', which is again consistent with the *Crimes (Domestic and Personal Violence) Act 2007, Part 3 S 11*^{iv}.

The DDVPAG explored the context of domestic violence in licensed boarding houses and the following table was formulated and adopted as a platform for understanding domestic violence in licensed boarding houses for this project.

Where domestic violence takes place	What domestic violence involves	Domestic violence occurs between
Domestic Violence can occur internal and/or external to the licensed boarding house premises	Physical violence in the home; fear of, or threat of harm; shoving; hitting; biting; emotional blackmail; verbal abuse; intimidation; financial exploitation/manipulation; withdrawal of activities/ services/families/friends; sexual abuse; aggressive/ attitude/manner; controlling staff; enforcing restrictions; retribution; and misuse of	Persons in an intimate partnership; and/or Co-residents living in the same boarding house; and/or Staff/Carer and resident.
	power.	

Table 1: DDVPAG understanding of domestic violence in licensed boarding houses

Target Group:

Considerable data confirms that domestic violence is predominately a crime committed by men against women. Further, women with physical and cognitive impairments experience higher rates of violence than those without disability. Those with a cognitive impairment are particularly vulnerable⁵.

The literature review (Part B of the report) also comments that men with disability experience abuse at a higher rate than men and women without disability. While the target group for the DDV project was women with disability living in licensed boarding houses, men with disability living in licensed boarding houses also experience domestic violence. This report uses the term 'women with disability' where its specific to the experience of women living in licensed boarding houses and the term 'people with disability' where its relevant to both men and women living in licensed boarding houses.

Convention on the Rights of Persons with Disabilities (CRPD):

Australia has ratified seven of the nine United Nations human rights conventions. Six of the seven, including the: Universal Declaration of Human Rights (UDHR); the Convention Against Torture, Cruel, Degrading and Inhuman Treatment (CAT); and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), implicitly protect the rights of people with disability. Explicit protection of the rights of people with disability is contained within the Convention on the Rights of Persons with Disabilities (CRPD).

Whilst all these instruments are relevant to the protection of human rights for people with disability, the DDV project adopts the CRPD as the principal reference. As the literature review states, the CRPD brings together the fundamental components of other human rights conventions and applies them specifically to people with disability. Importantly the CRPD specifically outlines the rights of women with disability and addresses gender discrimination in a disability context.

⁵ Brownridge, D. A. 2006, 'Violence Against Women Post-separation', *Aggression and Violent Behavior*, 11(5), pp.514–530.

Limitations of this report

Due to resource constraints and a lack of agency response to requests for information, this report recognises that there may be programs and policy responses or the experiences of Aboriginal people with a disability and culturally and linguistically diverse people with disability have not been included but may be applicable to prevention, detection and response of domestic violence in licensed boarding houses.

"Women and girls' right to safety is a fundamental human right.

Women and girls also have the right to feel safe. Any form of violence against women and girls will not be tolerated."

- Office for Women's Policy, 2009

PART B: LITERATURE REVIEW

As previously mentioned, Part B of this report was undertaken by the Australian Domestic Violence Clearinghouse (ADVC) and is acknowledged as their work. The literature review was completed May 2010 and reflects the state of issues within the domestic violence, disability and licensed boarding sectors at this time.

The Centre for Gender-Related Violence Studies

The Centre for Gender-Related Violence Studies (CGRVS) was established in 1999. Its original aims were to initiate multi-disciplinary research into the causes and control of gender-related violence, and to promote informed, research-based discussion of policies and practices for reducing its occurrence and mitigating its effects. In 2004-2005 CGRVS decided to better recognise the critical contribution it makes to the outreach and community engagement of The University of New South Wales (UNSW) by prioritising projects that specifically focus on engagement with 'communities', service providers and service users in gender-related violence contexts. The Australian Domestic and Family Violence Clearinghouse is the primary project of the CGRVS.

The Australian Domestic and Family Violence Clearinghouse

The Australian Domestic and Family Violence Clearinghouse (ADFVC) is a national organisation, providing high quality information about domestic and family violence issues and practice. The primary goal of the ADFVC is to prevent domestic and family violence by supporting specialist and generalist service providers, Government agencies, researchers, advocates and activists in their efforts, through the dissemination of information and research, and through facilitating discussion and debate.

Specifically, the ADFVC publishes newsletters and papers on key issues, policy, legislation, training and new initiatives, maintains a library of research and resources, an online database of good practice programs and provides forums for knowledge transfer and debate.

Introduction

Women with disability remain one of the most marginalised groups in Australian society. Largely excluded from other mainstream disability and women's movements, the compounded disadvantage they experience through the intersection of disability and gender render them silent and invisible (Salthouse 2007; Salthouse & Fromhader 2004; WWDA 2007a & 2008). There is a dearth of publicly reported quantitative data on the nature and prevalence of domestic violence and abuse against women with disability in Australia and internationally, and few studies that document the impact of such violence (Cockram 2003; French 2009; Hague et al. 2008; Lievore 2005; Salthouse & Fromhader 2004; Tually et al. 2008; VWDNAIS 2007; WWDA 2007b). However, available research suggests that women with disability are at least twice as likely as women without disability to experience violence and abuse throughout their lives and that women living in institutional and residential settings are particularly susceptible to abuse (French 2009; Lievore 2005; Marsland et al. 2007; Rand et al.2009; WWDA 2007b).

This literature review is a component of PWD's Disability and Domestic Violence Residential Settings Project (the DDV project or the Project), the stated objectives of which are:

- to increase the knowledge of women with disability living in Licensed
 Residential Centres (LRCs) in the Inner-West area of DADHC's Metro South
 Region about domestic violence and support services, and
- to better equip disability and domestic violence services within the same DADHC region with information and skills relating to the prevention of, and best practice responses to, domestic violence against women with disability living in LRCs.

Within the scope of the DDV project, the initial aims of the review were to:

- undertake a detailed examination of the literature relating to women with disability's experiences of domestic violence prior to and during accommodation in LRCs;
- identify issues of disclosure and non-disclosure that might affect the visibility
 of domestic violence as an issue for the LRC sector, and

 identify the barriers women with disability residing in LRCs face in escaping from that abuse and accessing appropriate domestic violence, accommodation and other community services.

However, extensive literature searches revealed the total absence of research examining women with disability's experience of abuse within the LRC sector in NSW. As a result, the aims of the review were altered to:

- undertake a broad examination of the domestic abuse of women with disability, particularly within residential settings;
- undertake an overview and critique of the current state of the LRC sector in NSW, including a comparison of the regulatory measures governing the LRC, Government and not-for profit disability residential sectors and their adequacy in preventing and responding to abuse, and
- examine the general barriers to service access faced by women with disability experiencing domestic violence that might be of relevance to the LRC sector.

An additional aim of the review became to highlight the ongoing absence of meaningful research into domestic violence experienced by Australian women with disability.

Key Findings from the Literature

- The intersection of gender and disability render women with disability one of the most marginalised groups in society.
- Women with disability experience domestic abuse at a higher rate, in more diverse forms, for extended periods of time, and at the hands of a broader range of perpetrators than women without disability.
- Women with disability living in residential and institutional settings are at an even greater risk of abuse. French et al. (2009) cite research findings that people with disability living in residential facilities reported experiencing twenty types of abuse and neglect, including physical, sexual and emotional abuse, abusive behaviour management and failure to provide basic requirements.
- Women with disability who experience abuse within residential settings also face significant barriers in accessing appropriate services and legal redress.
 The social model of disability focuses on structural or systemic barriers, which

include: community attitudes; cultures of silence and bullying within organisations; the failure of key service providers and institutions such as the police and courts to believe disclosures of abuse; and a lack of education for women with disability regarding human rights and sexuality; the ignorance of disability issues of mainstream service providers; and accessibility issues.

- For-profit Licensed Boarding Houses or Licensed Residential Centres emerged as an accommodation alternative for people with disability, particularly those with psychosocial and intellectual disability, as a result of a failure to provide supported accommodation options to people with disability during closures of institutions during the 1970s and 1980s.
- There is no Australian research that examines domestic abuse in LRCs experienced by women with disability. This finding is unsurprising given the dearth of publicly collected and reported data on domestic violence against women with disability more broadly.
- The LRC sector has been in decline in NSW since the mid-1990s, with the current population numbering 810 residents. Residents are predominantly male, socially isolated and experience psychosocial disability, intellectual disability and acquired brain injury.
- Serious concerns regarding the inadequate regulation of LRCs and the failure of the current licensing regime, as articulated in the *Youth and Community Services Act 1973* (*YACS Act*), to protect residents from abuse and exploitation have been documented over the past fifteen years.
- A number of international and domestic instruments protecting the rights of people with disability are in force in Australia, including: the United Nations (UN) Convention on the Rights of Persons with Disability (CPRD); the Disability Services Act 1993 (NSW) (DSA); and the Disability Service Standards. Additional limited oversight and redress are available through anti-discrimination legislation, the NSW Ombudsman and the Official Community Visitors (OCV) program.
- While LRCs fall outside the ambit of the DSA and the Disability Service
 Standards and are, therefore, not required to meet the minimum standards
 outlined therein, the literature highlights significant concern that there is

insufficient monitoring and enforcement of these standards by Ageing, Disability and Home Care (ADHC) throughout the entire disability services sector as well as concern about ADHC's role in monitoring the YACs Act.

The DDV project is designed to address, in small part, the gaps in current disability research outlined above.

Structure of the Review

The current review draws from Australian and international literature on women with disability and domestic violence, disability and accommodation, and violence and abuse within the residential disability and aged-care sectors. It is divided into five sections. Sections one and two provide broad working definitions of terms and an overview of the human rights approach to disability, which frame the current review and the research project. Section three provides a snapshot of the nature and prevalence of domestic violence and abuse against women with disability, with a particular focus on abuse within residential settings. Section four introduces the LRC sector in NSW, providing a brief history of its development and current status, the regulatory framework that governs it, and a critique of its efficacy and the quality of care provided to residents. This section also undertakes a comparison of the LRC sector and the Government and non-Government supported accommodation sectors for people with disability in NSW. Finally, section five examines the compounded barriers faced by women with disability attempting to escape violence, and access appropriate domestic violence and other support services and the criminal justice system. Given the limited scope and time and budget constraints of the current project, the review concludes with a series of expanded resource lists organised under relevant subheadings to assist further reading, information gathering and research.

Section One: Definitions

The Social Model of Disability

The social model of disability views impairment and disability as separate and distinct, with disability being the product of society's attitudes and responses to people with physical, intellectual and other impairments. According to this model, 'society disables people with impairments by its failure to recognise and accommodate difference and through attitudinal, environmental and institutional

barriers it erects towards people with impairments' (WWDA 2007, p. 29). Thus, according to the social model, rather than 'curing' and 'rehabilitating' people with impairments, the focus should be on 'removing disabling barriers in society' (Roth 2007, p.4).

Given the demographics of the target population of interest to the current research, this review is particularly focused on women with psychosocial and intellectual impairments and acquired brain injuries. However, the findings may be relevant to other women with other impairments.

Domestic Violence

Section 562 of the Crimes Act 1900 (NSW) defines domestic violence as, 'a personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship.' A 'domestic relationship' is defined as including long-term co-residents of residential facilities and carers. Personal violence offences can include withholding food and malicious damage to property (Drabsch 2007, pp.23-24).

Within the domestic violence literature, a broad definition of domestic violence is promoted, which focuses on the power dynamic that typifies domestic violence: The ADFVC usually favours a definition of 'domestic violence' adopted by the Commonwealth Partnerships Against Domestic Violence (PADV) program in 1997:

Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women both in relationships and after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. Many forms of domestic violence are against the law. (From Partnerships Against Domestic Violence *Statement of Principles*, agreed by the Australian Heads of Government at the 1997 National Domestic Violence Summit).

Women With Disabilities Australia (WWDA) has defined domestic violence as follows:

Domestic violence is abusive behaviour, which is used by one person in a relationship to gain and maintain control over another person's life. Domestic violence can result in physical, sexual and/or psychological damage, forced social isolation or economic deprivation, or a woman living in fear (2007a, p.30).

Furthermore, the definition accommodates a range of cohabiting and non-cohabiting relationships, including dating relationships, same-sex couples and family members.

Domestic Violence and Women with Disability

Women With Disabilities Australia (WWDA) contends that Australian legal definitions of domestic violence are 'far too narrow to describe the full range of domestic situations in which women with disability live' (2007a 6) and the types of abuse to which they are subjected. Accordingly, some authors argue that domestic violence must be widely defined in order to accommodate the particular life circumstances and experiences of women with disability (Cockram 2003; Powell 2009; Salthouse 2007; Salthouse & Fromhader 2004; WWDA 2007a & 2007b). For example, evidence suggests that within each sub-type of domestic violence, women with disability are susceptible to specific forms of abuse, such as: forced restraint and sedation; forced sterilisation and reproductive control; inappropriate touching in the context of personal care; the withholding and/or destruction of disability related medication and equipment; vilification and disproportionate subjection to sexual assault (Cockram 2003; French 2009; Hague et al. 2008; Murray & Powell 2008; Powers et al. 2009; Salthouse 2007; Salthouse & Fromhader 2004; Saxton 2001; WWDA 2007a & 2007b). In addition, the literature identifies a broader range of relationships within which domestic violence against women with disability occurs, including: formal and informal care relationships; staff to resident and co-resident relationships in institutional and other residential settings; and relationships with health care and other disability service providers (Cockram 2003; Elman 2005; French 2009; Hague et al. 2008; Lievore 2005; Murray & Powell 2008; Powers et al. 2009; Roberto & Teaster 2005; Salthouse 2007; Salthouse & Fromhader 2004; WWDA 2007a & 2007b).

This review concurs with this broad definition of domestic violence in recognition of lived experiences of women with disability and to allow for the examination of

research and literature pertaining to the abuse of women with disability in a variety of residential settings and at the hands of a broad range of perpetrators. Throughout the review the terms 'domestic violence' and 'domestic abuse' are used interchangeably.

Licensed Residential Centres (LRC)

The *YACS Act* defines a licensed boarding house or LRC as any lodgings, boarding house, home or hostel:

- at which two or more handicapped persons reside:
 - subject to the payment of a fee or the giving of some other consideration
 - otherwise than with a person who is a relative of each of those persons, is of or above 18 years and is not a handicapped person
- declared to be a residential centre for handicapped persons by an order in force under section 3A.

Throughout this report the term Licensed Residential Centre or LRC is used.

Unlicensed Boarding Houses and Public Housing

The literature examined highlights the current growth in the unlicensed boarding house sector in NSW and throughout Australia in response to the lack of appropriate crisis and supported accommodation. It also suggests that social housing is a major accommodation alternative for people with psychosocial and intellectual disability, the cohort of primary interest to this research project. While it is clearly beyond the scope of the current literature review to undertake a thorough examination of women's experiences of abuse and violence within these sectors, it is important to acknowledge these major accommodation settings in the context of debates about the adequacy of the regulation of the disability housing sector and the crisis in housing affordability and housing stock currently affecting public and private housing markets in Australia.

Clarification of Terms

Following the social model of disability, this review employs the terms 'people with disability' and 'women with disability', rather than 'handicapped' or 'disabled' people and women. This reflects the social model's person-first approach and emphasis on the social construction of disability.

In addition, while recognising that men with disability experience abuse at a higher rate than men and women without disability, this review accepts that women with disability experience the highest rates of abuse within society at the hands of the greatest number of perpetrators. Furthermore, the purpose of the current review is to examine issues relating to women with disability's experiences of domestic violence in residential settings. However, the limited availability of literature on this subject led to an expansion of the review to include issues relevant to people with disability's experiences of abuse in such settings. As a result, where literature specific to women exists, the term 'women with disability' is used; where literature relevant to the abuse of both men and women with disability is referred to, the term 'people with disability' is used.

Section Two: Human Rights

The social model of disability, defined above, views disability from a human rights perspective (Bleasdale 2006). A human rights approach to disability recognises the existence of individual rights of people with disability such as the rights to life, dignity, health, freedom from abuse and exploitation, and access to housing and other basic necessities. However, it also places significant emphasis on the systemic or structural barriers to the realisation and enjoyment of human rights, such as the lack of appropriate accessible housing for people with disability (Bleasdale 2006; WWDA 2008). Consequently, the international human rights frameworks to which Australia is signatory outlines specific obligations and actions to be taken towards the realisation and protection of individual rights (WWDA 2008). A brief overview of the major international and domestic instruments protecting the rights of people with disability is provided below.

International Human Rights Conventions

Currently Australia is a signatory to seven of the nine United Nations Human Rights Conventions, each of which implicitly protects the rights of people with disability, including the: Universal Declaration of Human Rights (UDHR); Convention Against Torture, Cruel, Degrading and Inhuman Treatment (CAT); Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); and Convention on the Rights of Persons with Disabilities (CRPD).

While French (2009) suggests that all of these instruments must be read and applied to the protection of human rights as a single comprehensive framework, given time and scope restraints, this review will focus on the CPRD, as the principal Convention addressing the rights of people with disability.

Australia ratified the CRPD in July 2008 and it came into force in August 2008 (2009, p.12). The CRPD brings together the fundamental components of other human rights conventions, applies them specifically to people with disability and, for the first time, addresses gender discrimination in a disability context (Salthouse 2007). Key protections provided for by the CRPD of relevance to the current project include the rights to: reasonable accommodation of one's own choosing; freedom from torture and cruel, inhuman or degrading treatment; freedom from exploitation, violence and abuse; physical and mental integrity; equality before the law; and access to public and community life. Article six also requires that States take 'specific positive measures' to ensure that the human rights of women with disability are realised given the 'multiple and aggravated forms of human rights violations' to which they are subjected (UN 2006).

Domestic Human Rights Protections for People with Disability

Several domestic federal and state instruments aimed at protecting the human rights of people with disability and safeguarding them from abuse also exist. The DSA sets out a charter of principles in relation to the rights of people with disability who reside in or access accommodation and care services in NSW. The NSW Government has also drafted the 10 Disability Service Standards, which specifically state the rights of people with disability to be protected from violence, abuse and exploitation within the context of the service relationship. Failure to apply the charter of principles and to comply with the Disability Service Standards should result in loss of funding. However, LRCs fall outside the ambit of this legislative and policy framework and there is significant concern that the principles and standards contained therein are inadequately monitored within the Government-run and funded disability service sector.

In addition, substantial elements of the CRPD and CEDAW have been enacted into NSW law via the *Anti-Discrimination Act 1997 (NSW)* (ADA), which is enforced by the NSW Anti-Discrimination Board (ADB). The ADA renders sexual harassment and

discrimination involving sexual harassment unlawful and also prohibits the victimisation of people seeking to assert their rights under the Act. The Australian Human Rights Commission (AHRC) is able to enforce equivalent Commonwealth legislation, such as the *Disability Discrimination Act 1992* and the *Sex Discrimination Act 1984*, however prior to late 2009, the CRPD was not declared under the *Human Rights and Equal Opportunities Act 1984 (Cth)* (HREOCA), effectively rendering the AHRC unable to receive or pursue complaints that rely exclusively on its provisions (French et al. 2009, p.2). As yet, it is too early to ascertain the impact of its declaration under HREOCA.

However, despite the existence of the CRPD and limited domestic protections of the human rights of people with disability and international recognition that freedom from domestic violence is an undeniable human right, for women with disability it remains 'a right denied' (Salthouse 2007, p.3).

Section Three: Domestic Violence against Women with Disability

This section provides a snapshot of the nature and prevalence of domestic violence against women with disability, with a particular focus on violence against people with disability in residential disability and aged-care settings. The section commences by highlighting the continuing absence of publicly reported data and other relevant research into the issue and the ongoing exclusion of Australian women with disability from key policy processes.

Lack of Data

There is a lack of publicly reported data concerning the abuse of women with disability in Australia and overseas (French 2009; Hague et al. 2008; Lievore 2005; Murray & Powell 2008; Salthouse 2007; Salthouse & Fromhader 2004; Tually et al. 2008; VWDNAIS 2007). For example, in Australia, specific data regarding women with disability was not included in either the *Personal Safety Survey* of 2005 or the *Women's Safety Survey* of 1996 (Salthouse 2007). Murray and Powell (2008) also note that the Australian Bureau of Statistics (ABS) does not seek information regarding the abuse of people living in residential facilities as part of its Survey of Disability, Ageing and Carers and that there is 'no standard data collection that includes the experiences of sexual violence amongst adults with a disability' (2008, p.3).

Exclusion of Women with Disability From the National Policy Arena

People with disability also continue to be excluded from current policy discourses on homelessness and violence against women at the national level. Examples include the federal Government's failure to identify people with disability as a distinct population group affected by homelessness within its 2008 Green Paper on homelessness, *Which Way Home*, and the absence of the representation of women with disability on the National Council on Violence (WWDA 2008). Such exclusions are of particular concern given the established links between domestic violence and homelessness and the Government's self-proclaimed social inclusion agenda. This exclusion was remedied when The Violence Against Women Advisory Group was established in September 2009. This group replaced the National Council and does include a representative from Women with Disabilities Australia.

Nature, Prevalence and Perpetrators

Despite the lack of data cited above, there is a growing body of Australian and international research, which combines extrapolations from general domestic violence data and findings from independent research projects, in an attempt to document the nature and prevalence of domestic violence against women with disability. Whilst it is beyond the scope of this project to present a detailed review of this body of literature, a brief overview of the nature, prevalence and perpetrators of domestic violence is provided below. A resource list at the conclusion of this review provides references to materials, which examine these issues in detail.

Nature

Women with disability experience all of the same forms of domestic violence as nondisabled women, including physical, sexual, emotional and financial violence. However, women with disability are subjected to further forms of violence, which may include but are not limited to:

 physical violence such as: deprivation of food, water or heat; forced restraint, including physical restraint and the inappropriate use of medication; and withholding of disability-related equipment, medication or support and care services

- sexual violence such as: demands for sexual activity in return for assistance;
 inappropriate touching during personal care-giving; reproductive control,
 including forced sterilisation, menstrual suppression and abortion
- emotional violence such as: forced social isolation; denial of disability and threats to withdraw services or inflict other punishments (Cockram 2003; Hague et al. 2008; Powers 2009; Salthouse 2007; Saxton 2001; Smith 2008; WWDA 2007a & 2007b).

Prevalence

Again, the lack of publicly reported data on violence against people with disability makes an accurate estimation of the incidence of domestic violence against women with disability difficult, however, statistics gathered by the United States (US) Department of Justice reveal that people with disability experience violent crime at a rate 1.5 times that of non-disabled people. Women with disability were found to be victimised at a higher rate and more likely to have been victimised by intimate partners and non-intimate relatives than men with disability regardless of disability status (Rand et al. 2009, p. 5). In addition, the literature suggests that:

- Women with disability are more likely than non-disabled women to experience socioeconomic indicators that correlate with an increased risk for domestic violence such as: a lack of education; unemployment and poverty; and a past history of child abuse (Salthouse 2007, p.12)
- Women with disability are at least twice as likely as non-disabled women to be assaulted, raped and abused (WWDA 2008, p.6; Smith 2008)
- Adults with an intellectual disability are 10.7 times more likely to be victims of sexual assault (Murray & Powell 2008, p.3) with an estimated 50% to 90% of women with intellectual disability being sexually assaulted in their lives (French 2009; Lievore 2005; Murray & Powell 2008)
- There is a strong association between institutionalisation and violence, with people with an intellectual disability living in shared residential care or institutional settings particularly vulnerable to abuse and sexual assault (French 2009; Lievore 2005; Marsland et al. 2007; Murray & Powell 2008; Roberto & Teaster 2005; SADA 2007; Smith 2008; WWDA 2007a)

 Women with disability experience all forms of abuse for significantly longer periods of time (Hague et al. 2008; Murray & Powell 2008; Powers 2009; Salthouse 2007; Salthouse & Fromhader 2004; Smith 2008).

Perpetrators

Due to their increased interaction with disability, health and care services and the increased likelihood that they will live in residential settings, women with disability experience domestic violence at the hands of a broad group of perpetrators that can include disability support workers, health care workers, other service providers, personal care attendants, co-residents and staff in residential facilities and family members, as well as intimate partners (Hague et al. 2008; Murray & Powell 2008; Roberto & Teaster 2005; SADA 2007; Salthouse 2007; Saxton 2001; WWDA 2007a & 2007b). The evidence suggests that perpetrators of sexual assaults against women with disability are predominantly known men with male co-residents the most commonly identified perpetrators within residential settings (Elman 2005; Murray & Powell 2008; Roberto & Teaster 2005; SADA 2007). While in the US, Elman (2005, p.4) states that 'the overwhelming majority of perpetrators are male caregivers, a significant proportion of whom are paid service providers who commit their crimes in disability service settings'. Due to the poor scrutiny of potential employees within disability services sectors, staff who perpetrate abuse against elderly and disabled residents, often move between accommodation services with impunity and target residents least likely or able to report the abuse (French 2009; Lievore 2005; Smith 2008).

In summary, WWDA (2008) argues that compared with women without disability, women with disability: are at a significantly higher risk of violence; experience violence that is more diverse in nature, at higher rates, more frequently and at the hands of a greater number of perpetrators; tend to be subjected to violence for significantly longer periods of time; and have considerably fewer pathways to safety or legal redress.

Section Four: Licensed Residential Centres (LRCs)

This section introduces the LRC sector in NSW, providing a brief history of its development and an examination of its current state. Population size and demographic trends, an overview of the active regulatory regime and efforts at

reform, and comparisons to the Government and not-for-profit supported accommodation sectors and social housing are presented. Using this comparison, this section then identifies differences in support and accountability between the various sectors that may leave residents in LRCs vulnerable to an increased risk of abuse.

Development and Regulation

The licensed boarding house or LRC sector in NSW grew out of the process of deinstitutionalisation pursued in Australia from the 1960s to the 1980s. As a result of this process, many residents of large psychiatric facilities and people with intellectual disability moved into private, for-profit boarding houses in the community, which provided accommodation and basic services to people with low-level care requirements (ACG 2003).

In 1973, the NSW Government passed the *YACS Act*, which introduced a licensing regime to regulate the LRC sector and sets out broad, general conditions relating to: the granting, suspension and revocation of licenses; proprietors' and managers' obligations; the reporting of deaths and absences; and other miscellaneous conditions. No mention is made of residents' rights, welfare or quality of life (NSW Government 1973). In 1993, the NSW Government launched a major inquiry into LRCs, 'in response to allegations of abuse, exploitation and substandard conditions' (Doyle et al. 2003, p.23). The resulting *Report of the Taskforce on Private, 'For Profit' Hostels* recommended that the principles of the DSA be incorporated into a new licensing regime, which would afford greater protection to LRC residents (2003). To date these recommendations have not been implemented.

In line with this recommendation, the LRC licensing regime was tightened in 1995 with the introduction of new, more stringent type 'B' licensing conditions, which address: physical and structural requirements relating to shared bedrooms and other facilities; food preparation and hygiene requirements; record keeping; managers' responsibilities and staffing; residents' rights, welfare, financial affairs, activities and advocacy; and residents' health and the administration and supervision of medication (DADHC n.d.). Condition 6, which outlines conditions relating to residents' rights and welfare requires that managers and staff commit to enhancing

residents' quality of life and prohibits the abuse and neglect of residents and retaliation against anyone who reports suspected abuse (DADHC n.d.).

In 1998, the NSW Government implemented the Boarding House Reform Program (BHRP), which comprised \$66 million to move 310 high needs LRC residents to more appropriate residential disability and aged-care facilities and to improve service provision and access to low- and medium-needs residents through the Active Linking Initiative (ALI) and improved access to Home and Community Care (HACC) services (ACG 2003; Doyle et al. 2003; ALI Review; Ombudsman 2006). A *Boarding House Entry Screening Tool*, administered by Aged Care Assistance Teams (ACAT), was also introduced in 1999 to ensure the appropriateness of new referrals into the LRC sector (ACG 2003; Doyle et al. 2003; Ombudsman 2006).

Concerns Regarding the Monitoring of LRCs

LRC operators and some commentators suggest that, as a result of these reforms, the sector has been in continual decline since the early 1990s and concerns remain regarding the level of care and services provided to residents (ACG 2003; Doyle et al. 2003; French 2009; OCV 2009; Ombudsman 2006). In 2002, the then Department of Ageing Disability and Home Care (DADHC) which is now called Ageing, Disability and Home Care, Department of Human Services, commissioned the Allen Consulting Group (ACG) to undertake a review of the YACS Act and the regulation and viability of the LRC sector in NSW. Whilst its major focus was on competition policy and the identification of appropriate regulatory instruments, the ACG Report recommended the YACS Act be abolished and replaced by new legislation, with the major objective of 'protecting the health, safety and basic freedoms of residents' (2003, p. xi). Specific recommendations included: the introduction of more stringent scrutiny of staff credentials and suitability; the provision of enhanced tenancy rights to residents in the form of Residential Tenancy Agreements; ensured access for external service providers; and the implementation of an accreditation system for larger centres. While these recommendations have not been acted upon, in August 2003, DADHC implemented a new policy, the *Licensed* Residential Centres: Licensing, Monitoring and Closure Policy (LRC Policy), the objectives of which include: the maintenance of residents' health, safety and welfare; the compliance of Licensees to the YACS Act; and increased departmental accountability and transparency (Ombudsman 2006).

In 2006, the NSW Ombudsman initiated his own inquiry into DADHC's implementation of its new policy, which highlighted 'serious concerns with the way boarding houses are licensed and monitored in NSW' (2006 foreword). For example, in the year prior to the Inquiry, only three boarding houses had been subjected to the full complement of routine monitoring visits and one-third had not been the subject of a full service review (Ombudsman 2006). A significant complication for DADHC is that legal advice sought by the Department revealed that many of the new licensing conditions have been deemed ultra vires or legally unenforceable, which compromises its ability to enforce compliance and effectively sanction even the most extreme breaches (Ombudsman 2006). Indeed, the Ombudsman reports that according to the legal advice obtained by DADHC, only the licensing conditions relating to resident numbers, physical and structural requirements and some record keeping responsibilities are enforceable and that 'requirements to minimise financial exploitation, abuse, mistreatment and neglect of residents' is one of the many ultra vires conditions (2006, p.2). Despite this complication, the Ombudsman still expressed significant concerns regarding the implementation of the LRC Policy and DADHCs response to breaches of boarding house conditions. For example, in one region alone, significant and ongoing breaches were reported, including allegations of the sexual assault of female residents at one LRC and complaints of staff shouting at residents at another (2006, pp.9-10). Furthermore, the Ombudsman (2006) found that staff practice in one region was not to monitor *ultra vires* conditions, leaving some residents in particularly vulnerable situations.

Finally, in a recent report commissioned by the Disability Studies and Research Institute and PWD, French et al. (2009, p.117) argue that the combination of an institutional service model and the provision of minimum service quality standards, many of which cannot be enforced under the *YACS Act*, render LRC residents 'particularly vulnerable to abuse, neglect and exploitation' and that the current regulatory regime does not provide adequate protections against such abuse. In addition, the report suggests that there is currently a disincentive for DADHC to adequately monitor and improve standards governing LRCs given that, in the past the imposition of higher standards has led to LRC closures, thus increasing the number of people requiring placements within state-funded facilities. The report calls

for a comprehensive review of the *YACS Act* and the introduction of a 'service user charter of rights' to protect residents from abuse (2009, p.119).

Statistics, Demographics and Life In LRCS

As stated above, the LRC sector has been in decline in NSW since the implementation of licensing reforms in the mid-1990s. According to the ACG (2003), between 1993 and 2003 there was a 65.7% decrease in the number of LRCs operating and a 71% decrease in the number of LRC beds. In 2009, only 49 LRCs remained in NSW, concentrated in the Sydney and Hunter regions, accommodating 810 adults with disability (OCV 2009). It is anticipated that, without significant further reform, the overall decline in the number of LRCs will continue (ACG 2003; OCV 2009). This decline would largely be regarded as positive if alternative, viable alternative accommodation and support options were available.

Findings from a study funded by the South Australian Department of Human Services in 2003, suggest that LRC residents are predominantly older men with long histories of institutional care, who experience a range of disability and often have complex care requirements (Doyle et al. 2003). Resident demographics in NSW appear to be similar with the ACG (2003, p.11) reporting psychiatric disability (65.8%), intellectual disability (21.1%) and alcohol related brain injury (9.7%) as the most common disability and that more than 40% of residents having multiple disability diagnoses (2003, p.10). However, the report also notes a recent increase in the numbers of younger residents without institutional backgrounds as older residents are moved into aged-care facilities (2003).

Most LRC residents rely on the Disability Support Pension (DSP) as their only source of income and pay 75-100% of their benefits to the LRC for board, food and basic care services, including: meals, laundry, shared bedroom, bath and living facilities and assistance with basic personal care, the administration of medicine and financial management (ACG 2003; Doyle et al. 2003). Other experiences common to LRC residents include: a culture of poverty; little or no family support; a low level of education; limited life skills; and long-term institutionalisation (ACG 2003, p.11). Doyle et al. conclude:

People living in Supported Residential Facilities are a highly vulnerable and disadvantaged group who are not receiving care, which meets current policy

standards. On the whole, residents have impaired cognitive ability, little power to choose where or how they live, few supports, receive few services and have greatly reduced ability to protect themselves from exploitation or harm. Lack of income and minimal family support adds to the general impoverishment of their circumstances and lifestyle (2003, p. 7).

Comparison to Alternative Supported Disability Accommodation

The major alternative accommodation option open to people with disability who are unable to live independently in the community or with family is Government run and subsidised residential care facilities, such as group homes or large institutions. Given the high numbers of LRC residents with psychiatric disability, another important accommodation alternative for this group is social housing (Beer & Faulkner 2008). However, it is beyond the scope of this review to undertake a detailed examination of the legal protections afforded to, and particular vulnerabilities to abuse of, women with disability who reside in social housing. Thus, what follows is a brief comparison between the current LRC licensing regime and the legislative framework governing publicly funded residential facilities in the form of the DSA and the 10 Disability Service Standards. Firstly, however, a brief discussion of homelessness and the structural barriers that limit the housing choices of people with disability is provided, given the recognised links between domestic violence, mental illness and homelessness (Beer & Faulkner 2008; Doyle et al. 2003; Murray 2009; Tually et al. 2008; WWDA 2008).

Homelessness and Housing Choice

According to the Federal Government's definition, as articulated in *Which Way Home* (2008), homelessness extends beyond sleeping rough (primary homelessness) to include people who have inadequate access to safe and secure housing, such as those who move frequently or are medium- to long-term residents in boarding houses (WWDA 2008, p. 7). In its response to *Which Way Home*, WWDA highlights that the Government's homelessness strategy makes no mention of people with disability as a 'distinct population group' affected by homelessness and argues that given that people with disability are over-represented in the main factors that lead to homelessness, 'this neglect indicates a lack of understanding about the entrenched social exclusion of people with disability in Australia' (2008, p. 7).

Australian research also highlights the structural factors, which prevent significant numbers of people with disability from accessing appropriate housing, including: the lack of affordable and secure housing that is accessible to people with disability; the exclusion of people with disability from the labour market, which effectively excludes them from the housing market; the discrimination people with disability experience within the public and private rental markets; and the inadequate supply of essential community support services in the wake of deinstitutionalisation (Bleasdale 2006; Roth 2007; Tually 2008; WWDA 2008).

The structural barriers outlined above significantly impact the housing choices of people with disability. Indeed, according to the ACG, the notion that people with disability have 'housing choice' is illusory: 'It is usually inaccurate to say that people "choose" to live in boarding houses; this is usually the only choice next to sleeping on the streets, which is a serious and increasing problem' (2003, p.10). A clear example of the extent to which people with disability are excluded from the housing sector and denied genuine housing choice is their exclusion from Supported Accommodation Assistance Program (SAAP) services, which was highlighted by the 2004 NSW Ombudsman's Inquiry into the program. The Inquiry found that, in possible contravention of anti-discrimination legislation, people with disability and mental ill-health constituted two of the primary groups subjected to global exclusions by SAAP services on the basis of their disability (Ombudsman 2004; WWDA 2008). Given that domestic violence is a recognised cause of homelessness and the high incidence of domestic violence against women with disability, the lack of accessible accommodation and services, the exclusion of people with disability from the services that do exist comprise major barriers to women's abilities to escape violence.

The Disability Services Act 1993 (NSW)

Five-year Commonwealth State/Territory National Disability Agreements (CSTDA) the most recent of which was signed on 1 January 2009, govern the funding and provision of disability services in Australia (French 2009; Roth 2007). According to the CSTDA, State and territory Governments assume responsibility for the provision of accommodation services. In addition, under the terms of the first CSTDA signed in 1991 they are required to enact complementary state legislation and to develop

service standards for the regulation of disability services, equal to or better than the Commonwealth standards outlined in the *Disability Services Act 1986 (Cth)*.

The NSW Government passed the DSA in 1993 and, in the same year, developed and adopted the NSW Disability Service Standards. Disability Service Standard 10 states, 'the agency ensures the legal and human rights of people with a disability are upheld in relation to the prevention of sexual, physical and emotional abuse within the service' (Roth 2007, p.77), and also sets out requirements in relation to the development of appropriate processes for responding to abuse, the inclusion of people with disability in the development and review of such processes and staff training. While, the Disability Standards have policy status only, services must demonstrate compliance with all 10 standards in order to obtain funding (French et al. 2009; Roth 2007).

A charter of principles, which outlines the rights of people with disability, including the right to freedom from abuse, neglect and exploitation, is attached as a schedule to the DSA (French et al. 2009; Roth 2007). In 2005, DADHC implemented a new 'Integrated Monitoring Framework' (IMF) to improve the regulation of Government run and funded disability accommodation services. The IMF includes annual accountability and reporting requirements, service reviews and monitoring and comprehensive onsite assessments (Roth 2007, p.16).

The DSAs Charter of Principles and the Disability Service Standards create a baseline standard of care that all disability accommodation services run or funded by the Government must attain in order to secure ongoing funding, to which LRCs are not subjected. While these minimum standards and the regulatory mechanisms in place to enforce them surpass those imposed on the LRC sector, there is concern amongst some commentators that disincentives to the adequate monitoring of disability services and the sanctioning of those that fail to meet minimum standards remain. For example, French et al. argue, 'regulation of disability services in NSW does not comply with legislated requirements aimed at protecting the human, legal and service user rights of persons with disability, including the right to freedom from abuse, neglect and exploitation' (2009, p.114). Specifically, the authors note the inadequacy of 'self-assessment' in providing 'quality assurance' and highlight the severe conflict of interest that arises in situations where DADHC is both the service

provider/service funder and the assessor. They suggest that such mechanisms create disincentives for finding fault with services that may lead to embarrassment or the demand for significant funding increases from DADHC (2009, p.116).

Section Five: Intersections and Issues - Women With Disability, Domestic Violence and LRCs

Despite the absence of relevant research, there is consensus within the existing literature that women, particularly those with disability, living in mixed-gender crisis and residential settings are at an increased risk of abuse (French 2009; Lievore 2005; Marsland et al. 2007; Murray 2009; Roberto & Teaster 2005; WWDA 2007a). Given the lack of research on LRCs in NSW, this section examines general issues facing women with disability who experience abuse within domestic and residential settings, including the individual, structural and environmental risk indicators of abuse. It also draws on relevant literature to highlight the barriers faced by women with disability who attempt to disclose abuse and access appropriate support services. Where possible, it examines regulatory and practical factors that impede access to support services for women with disability.

Domestic Violence In Residential Disability Settings

While extensive searches uncovered no literature regarding the domestic abuse of women with disability in the LRC sector in NSW, there is a growing body of Australian and international research examining the abuse of women with disability and older women in residential settings. In addition, there is some Australian literature pertaining to homeless women's experiences of violence within mixed-gender crisis accommodation such as unlicensed boarding houses which, although beyond the scope of the current research, is of some relevance and will be briefly mentioned.

Specific to LRCs, French et al. (2009) argue that residents are at a significantly increased risk of abuse at the hands of staff and co-residents as a result of social isolation, inadequate monitoring systems and a lack of tenancy and other rights afforded them. In addition, as mentioned previously, the NSW Ombudsman's 2006 Report into DADHC's monitoring of the LRC sector raised several concerns pertaining to the implementation of the IMF and the Department's failure to ensure

minimum standards of care are being enforced throughout NSW, partly as a result of the *ultra vires* nature or unenforceability of the majority of current licence conditions.

There is also growing concern in relation to the growth of the unlicensed boarding house sector and the susceptibility to abuse of women forced into the sector due to a lack of adequate crisis accommodation (French et al. 2009; Ombudsman 2006; Murray 2009; Tually et. al 2008). Research by Murray (2009) shows that women experience and witness high levels of intimidation, harassment and violence, particularly of a sexual nature, from male co-residents during periods of residence in mixed-gender crisis services and unlicensed rooming houses in Melbourne. Her report argues that the boom in the unlicensed boarding house sector highlights the lack of safe accommodation available to women with and without disability at all points of the service system, creating a significant systemic barrier to escaping domestic violence.

Of greater relevance to the current research is the occurrence of abuse of women with disability within residential care settings. As stated previously, it is widely accepted that living in an institutional setting significantly increases the risk of abuse for people with disability and that such abuse is perpetrated by co-residents and staff, who often target residents least likely or able to report the abuse (French 2009; Lievore 2005; Murray & Powell 2008; WWDA 2007a). Factors that contribute to the increased incidence of abuse against women in residential settings and the ability of perpetrators to commit abuses with impunity include: women's lack of education regarding their rights and sexuality; the imposition of cultures of resident compliance and staff/organisational silence; power disparities between residents and carers; a lack of public scrutiny; and the inappropriate responses of mainstream services to allegations of abuse (Lievore 2005). The remainder of this section will undertake a detailed examination of environmental risk indicators of abuse within residential settings, highlighting their relevance to LRCs where possible.

Environmental Risk Factors for Abuse

Several authors highlight the importance of service cultures and environments in increasing the risk of abuse (French 2009; Lievore 2005; Marsland et al. 2007). Research conducted by Marsland, Oakes & White (2007), suggests that policy responses to adult abuse within residential disability services in the UK are reactive

and that a greater emphasis needs to be placed on abuse prevention. They argue that a key element of effective prevention is the early identification of risk factors and promote a model of abuse that recognises the significance of service cultures and environments in 'increasing vulnerability and enabling abuse' (2007, p.8). The research identified six groups of early indicators that assist in identifying service environments in which residents may be at risk of abuse, which are summarised below (2007, pp.13-16):

- Managers' behaviour, attitudes and decision making, including: failures to take responsibility or respond to issues; inadequate supervision of staff or failure to appropriately manage or support staff; and lack of experience within the disability service sector;
- Staff behaviour and attitudes, including: inadequate knowledge about working and communicating with people with disability; inappropriate use of restraint and inappropriate touching; impatience or intolerance of residents; and viewing resident behaviour as a problem, rather than exploring underlying causes;
- Residents' behaviours, including: changes in residents' emotional state, communication, needs and skills; acts of self-harm or expressions of fear; resident-to-resident bullying; and residents' engaging in sexualised behaviours;
- Isolation, including: the isolation of individual staff and residents; staff defensiveness; and a lack of openness within the service;
- Service design, placement, planning and commissioning, including: failures to provide agreed/appropriate care; the lack of suitable accommodation alternatives for residents; the accommodation of incompatible residents or residents with a history of abusing; and inappropriate service design, which compromises the safety of residents and staff; and
- Fundamental care and the quality of the environment, including: poor hygiene, furnishings and state of repair; limited activities; and a lack of support for residents with special needs or challenging behaviours.

Despite the general lack of literature on LRCs, there is some evidence that the early indicators of abuse identified by Marsland et al. (2007) may be applicable to the LRC sector. For example, French et al. (2009) note the existence of a culture of staff to resident bullying and mistreatment in LRCs. In addition, several authors highlight the extreme levels of social isolation experienced by most people who experience psychiatric disability, including many LRC residents (ACG 2003; Beer & Faulkner 2008; Doyle et al. 2003). LRCs are also largely disconnected from and unsupported by the mainstream disability service sector, as evidenced by DADHC's failures to overhaul the current licensing regime or to adequately implement its LRC Policy or IMF. In addition, there is a wealth of Australian research documenting the lack of adequate accessible housing and support services for people with disability, including crisis accommodation, supported accommodation, private and public rental accommodation and home care and respite services (Murray 2009; Beer & Faulkner 2008; Bleasdale 2006; Cockram 2003; Ombudsman 2004; Roth 2007; Tually et al. 2008; WWDA 2008). Despite these apparent correlations, further research is required to establish a link between the early identification of abuse indicators outlined above and the prevalence of abuse within NSW LRCs.

Barriers to Disclosure and Service Access

As highlighted throughout, barriers to service access facing women with disability abused within residential settings include: the exclusion of women with disability from mainstream society; the cultures of silence fostered within organisations; and the inaccessibility and inappropriate responses by mainstream services, such as the police and criminal justice system to women's disclosures of abuse. The remainder of this section provides an overview of the barriers to disclosing abuse, accessing appropriate services and, ultimately, escaping violence faced by women with disability.

Barriers to Service Access for LRC Residents

There is limited literature pertaining to barriers LRC residents face in accessing external care services. While none of this literature relates specifically to domestic violence services, it is of general relevance and, thus, briefly outlined below. Firstly, French et al. (2009) argue that a key barrier to LRC residents disclosing abuse is the entrenched culture of staff-to-resident bullying present within many LRCs, which render residents fearful of reprisals if they report mistreatment, poor standards or

abuse. Limited tenancy protections, including protection against arbitrary eviction, also contribute to residents' unwillingness to report instances of abuse. In addition, a 2005 report on the *Equity of Access to HACC Services for Residents of Licensed Boarding Houses*, identified five key barriers to LRC residents accessing Home and Community Care (HACC) services, which can be applied to Government and community service providers across the board: a lack of understanding about the LRC environment and residents' eligibility for HACC services; residents' lack of knowledge about HACC services; resource limitations, a lack of expertise in working with LRC residents and inaccurate perceptions of their needs; a lack of accessible information on HACC services and residents' incapacity to identify their own need for HACC services; and service capacity and systems issues (DSARI 2005).

Barriers to Disclosing Abuse and Accessing Appropriate Services for Women with Disability

In addition to the barriers to service access faced by LRC residents outlined above, there is a growing body of research and literature that highlights specific barriers to disclosing and escaping abuse and domestic violence faced by women with disability. Research suggests that most women with disability experiencing violence do not disclose the abuse with one study estimating that between 40 and70% of sexual assaults in Australia are unreported (Murray & Powell 2008). Murray and Powell (2008) argue that women's ability to report is particularly restricted where they are reliant on the perpetrator of the abuse for care and in residential settings, where the decision to report allegations of abuse to the police often resides with staff.

Murray and Powell (2008) also differentiate between individual, organisational and societal barriers to disclosing sexual abuse faced by women with disability. Individual barriers, which are reinforced and perpetuated by organisational and systemic barriers, include: shame and low self-esteem; fear and expectation that reports will not be believed; institutionalisation and an associated resignation to inappropriate treatment such as rough handling; severe lack of power within personal and caregiving relationships; an inability to recognise inappropriate behaviour and abuse due to a lack of education, particularly human rights and sex-education; and a lack of knowledge and information about domestic violence and other services (Cockram 2003; Hague et al. 2008; Lievore 2005; Murray & Powell 2008; Powers et al. 2009;

Salthouse 2007; Salthouse & Fromhader 2004; Saxton et al. 2001; Smith 2008; WWDA 2007a).

The literature also identifies organisational and systemic barriers, which restrict women with disability from disclosing abuse and accessing appropriate services. Firstly, as noted previously, WWDA (2007b) highlights the failure of current legal definitions of domestic violence to adequately reflect the range of domestic situations in which women with disability reside as well as the range of people who perpetrate domestic abuse against them leaving women without recourse to domestic violence services in many instances. French et al.'s (2009) arguments relating to the policy and legislative disincentives for DADHC to pursue allegations of abuse within the LRC and supported accommodation sectors have also been outlined above. The impression created that reports of abuse will not be followed up or sanctioned by the Department may also act as a significant disincentive to disclosing abuse.

Additional organisational and systemic barriers to disclosure and service access identified in the research include: community attitudes, discrimination and stereotypes of women with disability as worthless and as either asexual or highly sexualised; the absence of public scrutiny of residential care services; abusive organisational subcultures and staff failures to report abuse; inadequate organisational and systemic responses to perpetrators of abuse; documented police attitudes that women with disability are promiscuous and make poor witnesses, which results in low numbers of prosecutions; ignorance of disability issues and lack of skills in working with women with disability within mainstream service organisations; and a lack of accessible transport, domestic violence and crisis accommodation services (Cockram 2003; Hague et al. 2008; Lievore 2005; Murray & Powell 2008; Powers et al. 2009; Salthouse 2007; Salthouse & Fromhader 2004; Saxton et al. 2001; Smith 2008; WWDA 2007a).

Alternative Accommodation Models

It is beyond the scope of this review to undertake a comprehensive examination of the full range of research recommendations relating to improving the regulation of publicly funded disability accommodation services and identifying alternative housing models for people with disability within the context of the current crises in the public, private and crisis accommodation sectors in Australia. Thus, what follows is a brief overview of recommendations made in relation to improving the regulation and functioning of LRCs in NSW and a summary of initial findings from a positioning paper by the Australian Housing and Urban Research Institute (AHURI), *Supporting the Housing of People with Complex Needs*, which examines ways forward in providing appropriate housing and care services to people with psychiatric and intellectual disability.

With respect to LRCs, there have been repeated calls for the repeal of the YACS Act and its replacement with new legislation, which applies the charter of principles and NSW Disability Standards in full and a rigorous regulatory framework, which allows for genuinely independent monitoring of service and the imposition of appropriate sanctions. The ACG (2003) recommended the introduction of the Shared Accommodation for People with a Disability Act, which described a new regulatory regime, the four key elements of which were: a system of registration for all services; a three-tiered accreditation system for larger centres based on size and services provided to ensure that suitable residential services are being provided; the development of a suitability rating for each residential service; and competitively neutral resourcing arrangements. Similarly, French et al. recommend that the YACS Act be amended 'to provide explicit and comprehensive powers for the regulation of the licensed residential sector' (2009, p.10), including the articulation of a 'service users' charter of rights and the designation of an 'independent quality assurance agency' to scrutinise and review LRCs, sanction operators who fail to meet standards and assist with the development of 'quality improvement action plans' and resources and the development and delivery of education and training to service providers and users (2009, pp.10-11).

The AHURI positioning paper attempts to move beyond a best-practice or service-based approach to supporting the housing of people with intellectual and psychiatric disability to include an analysis of the systemic causes and impacts of homelessness, social exclusion and lack of opportunity (Bleasdale 2006). At the outset, it aligns itself with previous research findings that 'establish the need for the separation of housing and support' for people with complex needs (2006, p.2), before providing an overview of current Australian policy approaches to housing and disability. It also identifies Australian research that examines the linkages between housing and support services and barriers faced by people with disability in

accessing appropriate accommodation and support services, disaggregated by disability type as well as other demographic factors, such as gender and ethnicity. It then provides an overview of different approaches to the provision of such services to people with complex needs in New Zealand, Canada, the US and the United Kingdom. Initiatives pursued by these countries include: individualised funding models, whereby service funding is paid directly by Governments to clients who then purchase the care services of their choice; self-determination projects for people with disability, such as the US National Home of Your Own Alliance; and Learning Disability Partnership boards and Supporting People (Housing Associations) in the UK. A more detailed examination of these initiatives, their application and relevance to the Australian disability housing sector and the likelihood they will prevent or reduce domestic violence and abuse against women with disability is warranted.

Section Six: Key Issues for Consideration

This literature review has highlighted the ongoing lack of data relating to domestic violence experienced by women with disability and the total absence of research into the abuse of women residents in Australian and NSW LRCs. Nevertheless, it has drawn on available research and literature to provide an overview of the current state of the LRC sector in NSW and has attempted, where possible, to draw parallels between present conditions in LRCs and abuse experienced by people with disability in Government funded disability residential facilities in Australia and overseas. It has also presented an examination of the key barriers to disclosure and service access for women with disability who experience domestic abuse within residential settings. A number of issues, which warrant further consideration, have emerged from the review process. These include:

Issues Specific to LRCs

Repealing the YACS Act and replacing it with legislation, which incorporates in full the 'charter of principles' outlined in the DSA 1994 and the 10 Disability Service Standards, and which provides for the independent and rigorous regulation and monitoring of LRCs (ACG 2003; French 2009);

- DADHC implementing in full the Ombudsman's (2006) recommendations outlined in its report on monitoring standards in LRCs, which include;
 - Prioritising its contribution to the review of the YACS Act 1973, paying particular attention to the *ultra vires* licence conditions and processes for dealing with 'potentially illegal operators';
 - Providing adequate and appropriate training to licensing and monitoring staff to ensure that monitoring targets are met and implemented consistently across the DADHC regions; and
 - Addressing the many 'performance deficiencies' relating to monitoring LRCs and sanctioning licence breaches identified in the report (Ombudsman 2006).

General Issues

- Broadening the legal definition of domestic violence within State and federal legislation to better reflect the range of domestic situations and potential perpetrators of abuse against women with disability;
- Providing education to women with disability on human rights, sexuality and assertiveness to enable them to better identify and respond to abuse;
- Improving service responses to disclosures of abuse made by women with disability, including: residential service responses; mainstream domestic violence service responses; and police and criminal justice responses;
- Improving accessibility for women with disability to transport, domestic violence and accommodation services;
- Addressing the global exclusions of people with disability and mental health issues from SAAP services identified by the Ombudsman in its 2004 Inquiry into SAAP;
- Pursuing the goal of separating housing and support services for people with complex needs and identifying alternative models of providing housing and support services to women with disability (Bleasdale 2006); and

 Addressing the systemic causes of homelessness for women with disability including the provision of additional, accessible social and community housing in close proximity to accessible transport, community and care services.

References cited throughout this literature review as well as useful resources for the issues discussed, are outlined from page 137.



"the only right that you have is the right that you	know"
 Boarding House Resident 	
"Domestic violence is the daily lived experience of people with	
disability in licensed boarding houses"	
- Disability services sector workshop consultation (DDV Project	t), 7 April 2010

PART C: Findings and Recommendations

The DDV project involved a number of consultations with key stakeholders as well as a legislative, policy and service system analysis to gather information on the understanding of domestic violence in the context of people with disability living in licensed boarding houses. This process also identified what mechanisms and practices were in place within the service system for the prevention, detection and response to domestic violence. The aim of these activities was to critique the effectiveness of these elements and identify strengths and weaknesses in legislative and policy frameworks as well as service systems responses to domestic violence experienced by people with disability living in licensed boarding houses.

Vulnerability of women with disability in licensed boarding houses

Intersectional Discrimination

During a discussion about abuse a resident of licensed boarding house made the following comment, "we don't have a problem with that sort of thing in our boarding house". The woman telling this story had a black eye which she didn't explain⁶.

Women with disability experience "intersectional discrimination". Intersectional discrimination is 'a combination of disability and gender-based discrimination that adds new and separate forms of discrimination to the lives of women and girls with disabilities'. It is a fact that women with disability face greater disadvantage compared to women without disability. Specifically, they have often had fewer opportunities to engage in formal education (primary, secondary and tertiary), experience more unemployment, face more violence and abuse, encounter more poverty, are more isolated, have less access to health care, lower social status, less access to information about education, health care, limited availability of service supports and alternative service options. Rather than thinking of each form independently, the concept of intersectional discrimination recognises that new forms of discrimination are created when two or more types of discrimination combine. For example, a woman who is also a person with disability will face discrimination based on both of these characteristics when seeking education, training and employment.

Stubbs UNDP Pacific Centre, 2009.

⁶ Comments made by a resident of a licensed boarding house during a discussion on domestic violence.
⁷ Stubbs, D and Tawake S (2009). Pacific sisters with disabilities: at the intersection of discrimination / Daniel

The overall effect is a third form of discrimination that transcends the two separately and is often imposed or reinforced without challenge by many decision makers.

An example of intersectional discrimination relevant to this project is a woman with disability from a CALD background who is unable to communicate to any of her peers or service providers without interpreter services. Such services are never provided. Assumptions are made that it is a chronic mental illness that prevents her from communicating and belief that she is also 'just a shy woman'. Alternatively, if she were to express her fears of domestic violence her reliability is questioned on account of her cognitive impairment.

The reason to highlight intersectional discrimination in this report is that we hope its inclusion leads to the correct outcome that requires the introduction of gender specific measures relevant to women with disability to deal with this issue. That is, just employing the same measures for women and men will not work; neither will measures for women necessarily work. The system needs to recognize the specific gender-related measures applicable to the discrimination faced by women with disability.

Understanding domestic violence

What is evident from this project is that within the disability sector the term 'abuse' is commonly used and understood to describe a broad and diverse range of behaviours or actions which cause harm to people with disability. For example, this term is often used when describing sexual or physical assault, domestic violence, emotional and financial abuse and neglect. Regulations⁸ applicable to all licensed boarding houses use the generic term abuse and neglect to describe a wide range of acts including: 'any act against the resident that constitutes a criminal offence under the *Crimes Act 1900*; misconduct that could adversely affect the health, comfort, safety or proper care of the resident; derogatory, obscene or threatening conduct or language against, or towards, the resident; unauthorised use of the resident's property; unapproved or excessive physical or chemical restraint techniques used on the resident; and failure to ensure the resident has adequate food, clothing, shelter, health care and supervision'.

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⁸ Youth and Community Services Regulation 2005 Section 15

The danger with this generic labelling is that gender specific response options to particular categories of 'abuse' and 'neglect', such as domestic violence, can be lost within equally generic policies and procedures.

For those working in funded disability services and licensed boarding houses, domestic violence is also commonly understood in the context of women in intimate personal relationships and therefore relevant only to women, including women with disability, with partners and those living in family settings. This limited understanding fails to recognise the meaning of 'domestic relationship' and 'domestic violence offence' as outlined in sections 5 and 11 of the *Crimes (Domestic and Personal Violence) Act 2007* which explicitly recognises domestic violence can also occur between two persons if the victim:

- 'is living or has lived in the same household as the other person' (such as coresidents); or
- 'is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person', (such as coresidents); or
- 'has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person', (such as staff of licensed boarding houses).

As a key policy reference point, ADHC's definition of domestic violence outlined in its Abuse and Neglects policy also perpetuates this misunderstanding, as it also fails to recognise that domestic violence is broader than personal, intimate relationships. The result is a lack of understanding of how the *Crimes (Domestic and Personal Violence) Act 2007* can be used as a tool to protect people with disability in residential settings such as licensed boarding houses from domestic violence. Or how domestic violence related support services may be used to support people with disability in residential settings.

Domestic violence service providers provided further explanation for the misunderstanding of what constitutes domestic violence, stating that whilst the legislation has a broader meaning of domestic violence, a large majority of domestic violence services are targeted towards women in partner relationships and who have

children. For example, in the Metro South region there are no women's refuges that accept single, childless women, as priority is given to women experiencing domestic violence in intimate partner relationships particularly those with children or through family violence. The failure to acknowledge domestic violence experienced by women with disability in licensed boarding houses and their vulnerability to domestic violence is something that requires urgent attention in the domestic violence sector so that their needs are similarly prioritised.

Recommendation 1:

The NSW Government adopts the *Crimes (Domestic and Personal Violence) Act* 2007 definition of domestic violence consistently across its policies and policy frameworks so that it is inclusive of residential settings and recognises personal violence between people with a disability who may be co-residents and/or their carers.

Rights denied

The CRPD is the most contemporary articulation of human rights for people with disability. Australia was enthusiastic to sign the CRPD and did so on the day it opened for signature on 30 March 2007. It was ratified on 17 July 2008, and it entered into force for Australia on 16 August 2008. Australia was the 30th country in the world, and one of the first western countries to ratify the CRPD⁹.

Australia has also ratified the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW), arguably the most important human rights treaty for women.

In theory, Australia's commitment to these human rights conventions should mean people with disability in Australia, whatever their circumstances, should feel confident that their human rights and fundamental freedoms are guaranteed.

The unfortunate reality is however, that very few people with disability in licensed boarding houses have ever heard of the CRPD or CEDAW and are far from benefiting from their entitlement to have these human rights respected, protected and fulfilled.

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⁹ Australia's signing and ratifying of the CRPD. http://www.disabilityrightsnow.org.au/node/62

PWD challenges the view that people with disability choose to live in licensed boarding houses is usually inaccurate, and this view jeopardises and masks the vulnerability of people with disability living in this situation. Evidence from the literature review suggests that living in a licensed boarding house is often the only choice next to living on the streets, particularly for women escaping domestic violence from other settings. Furthermore, this language of choice also camouflages other motivations "....in reality, the real motivator may be a view that persons with disability are socially inferior, and therefore are not entitled to or are not capable of living an ordinary life in the community" 10.

What is apparent from this Project is that people with disability in licensed boarding houses have little knowledge or capacity to ensure their human rights are met, including seeking self protection from situations of domestic or personal violence. This is not on account of their personal incapacity, but as a result of years of lost opportunity, a lack of support systems and appropriate alternative housing and being institutionalised and disempowered by long term systemic abuse.

Evidence gathered from different stakeholders in the course of the Project demonstrates this fact:

"The Manager says we can leave anytime we want if we complain". Residents are well conditioned to this fact and are silenced. 'I'm ok talking to you, aren't !? Cause I'm not saying anything about this place. I won't get into trouble. I'm just talking to you about my family not anything else 11.

"I think it is just helpful for the women to know that there is someone they can approach if they have a problem at their house. Also just reiterating their rights as they don't think they have any right to speak up"12.

Evidence of the lack of knowledge, expectation and support to residents of licensed boarding houses to realise their human rights has also been documented on other occasions prior to this project and is summed up in the quote below:

¹² Stakeholder involved in DDV Project (May 2010).

¹⁰ People with Disability Australia (2009) Accommodating Human Rights: A Human Rights perspective on Housing and Support, for persons with a disability", p 69.

Comments made by residents of licensed boarding houses during the DDV Project.

Many residents "expressed a lack of power, ability or advocates to achieve their expectations and rights. They wanted support to ensure that expectations were met and that their basic rights were upheld. However, most seemed to hold little expectation that such support would be forthcoming from Government or others, and saw their rights as theoretical rather than realised"¹³.

People with disability in licensed boarding houses have very little access to information or education programs which would assist them to understand their rights, to prevent the violation of these rights or how they can access support for issues of concern generally or more specifically when experiencing domestic violence. Reasons for this include:

- Few opportunities for residents to gain skills in domestic violence prevention, self protection, rights, complaint making, self advocacy, healthy relationships, understanding sexuality.
 - Occasional programs maybe run through the Active Linking Initiative (ALI)^{vi} program but given skills education isn't a focus for the ALI it is often only through incidental opportunities that these issues may be addressed.
- Education programs such as 'Rights at Home' offered by the Ombudsman to residents of licensed boarding houses has ceased to be provided due to resistance and lack of interest by Licensees/Licensed Managers to having this program delivered for their residents.

The Ombudsman informed the Project that this training could be provided on request or as facilitated by Official Community Visitors (OCVs)^{vii} however, this has not led to any further opportunities for the program to be delivered since 2007. Nor is this advertised on the Ombudsman's webpage as a training option available under its 'Training for the community services sector'. We are also unaware of any occasion where the Ombudsman's *The Rights Stuff* workshop has been provided to residents of licensed boarding houses. The Ombudsman does however, continue to provide the OCV mini plain English brochure called 'Solving problems right at home' which promotes

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¹³ Alt Beatty Consulting (2004) *Stakeholder Consultations for review of the Youth and Community Services Act 1973*, p 16).

rights and how to make a complaint via the OCV's visiting licensed boarding houses.

No information currently exists which provides residents of licensed boarding houses with information about the standards applicable to licensed boarding houses, including conditions of licence or regulation requirements of the YACS Act.

Information produced by ADHC about licensed boarding houses, such as that available on its website is aimed at current Licensees or prospective operators only.

AHDC have advised they will consider producing such a resource following the remake of 2010 regulation.

ADHC's Boarding House Complaints Handling Guidelines and Procedures (Oct 2007) is an adjunct to their Licensed Residential Centres Licensing, Monitoring and Closure Policy Manual. This is ADHC's internal operational manual and therefore not intended for parties external to it.

ADHC's generic Feedback and Complaints Handling Principles and Guidelines (May 2005) outlines the principles ADHC uses in the handling of complaints from the public and provides guidelines to assist ADHC employees to respond to complaints received. This includes any complaints about services provided by licensed boarding houses or breaches of licence agreements or conditions. However, this policy is not available in a plain English or Easy English version, which would make this information more accessible to residents living in licensed boarding houses. The only translation option offered is for the translation of this policy into languages other than English through the Translating and Interpreting Service.

Recommendation 2:

ADHC to work collaboratively with the NSW Ombudsman and advocacy organisations to fund and deliver ongoing rights based, gender specific training programs for all residents of licensed boarding houses to build their knowledge and ability to protect themselves and respond to violations of their rights including domestic violence.

Recommendation 3:

ADHC develop materials accessible (plain and Easy English) to residents of licensed boarding houses about:

- a) licence conditions and regulations relevant to licensed boarding houses;
- b) complaint handling principles and guidelines; and
- c) support services available to people with disability including advocacy and domestic violence support.

NSW Government Directions

The NSW Government has a number of key frameworks which set directions for and have an impact on the lives of people with disability generally, domestic violence prevention, detection and response and for people with disability living in licensed boarding houses.

These frameworks reflect the NSW Government's interest and commitment to people with disability and domestic violence. They are important to the DDV project as they reflect the systemic framework in which this project, and the challenges it seeks to overcome.

NSW Domestic and Family Violence Action Plan

On 8 June 2010, the NSW Government released the NSW Domestic and Family Violence Action Plan (the Plan) entitled *Stop the Violence – End the Silence*. This Plan is based on the principle that "domestic and family violence is a whole-of-Government and whole-of-community problem and needs a collaborative, integrated response".

However, the Plan doesn't clearly articulate the full range of domestic violence as cited by the *Crimes (Domestic and Personal Violence) Act 2007*, despite referencing this Act throughout the Plan. The Plan specifically notes the following with regard to the definition and scope of the Plan:

"There are many definitions of domestic violence. This Plan recognises that domestic violence, also referred to as Intimate Partner Violence, is gender-based violence and a violation of human rights. It involves:

'Violent, abusive or intimidating behaviour carried out by an adult against a partner or former partner to control and dominate that person. Domestic violence causes fear, physical and/or psychological harm. It is most often violent, abusive or intimidating behaviour by a man against a woman. Living with domestic violence has a profound effect upon children and young people and may constitute a form of child abuse.

The above definition includes violence in same sex relationships. Domestic violence includes physical abuse; sexual abuse; psychological, emotional and verbal abuse; social abuse; economic abuse; and harassment and stalking. These various forms of abuse often occur simultaneously as a form of systematic abuse with the effect of coercing and controlling a partner. Many forms of domestic violence are offences under the NSW Crimes Act 1900."

Our initial concern with this definition and scope was that the relationships that people with disability have with carers, staff and other residents within licensed boarding houses (or other residential settings) would not be considered central to the Plan. Our concerns were that this would result in people with disability in residential settings being excluded from the five strategic directions and 91 actions directed across Government, non-Government and the private sector.

When we raised these concerns with the NSW Office for Women's Policy, we were advised the following:

'In response to your inquiry, the Action Plan is relevant to all women who experience domestic and family violence. The definition of domestic violence in the Plan is very broad and encompasses all forms of violence and control against women. The Plan focuses heavily on intimate partner violence to reflect the strong evidence which shows that this is the most prevalent from of violence against women. This does not mean that the Plan excludes other forms of violence such as violence against women living in licensed boarding houses.

As noted in the Plan, a critical focus of the Plan is to deliver integrated, coordinated services to the wide range of women and communities experiencing domestic and family violence (including rural and remote, women with disability, victims who have a child with a disability, culturally and linguistically diverse, refugee and Aboriginal communities).

There are also Actions included in the Plan that aim to ensure that relevant service providers receive appropriate education and training in relation to domestic violence and women with a disability, and are aware of the appropriate referral pathways in such instances (See Action 13 and 77^{viii})¹⁴.

Whilst we acknowledge this Plan is only recently released, the findings of this Project clearly suggest the understanding of domestic violence as intimate partner violence is more predominant in domestic violence sector and its response. The clarification provided by the NSW Office for Women's Policy that the Action Plan does not exclude other forms of violence such as violence against women living in licensed boarding houses is an important distinction which must be promoted through the Plan's implementation to ensure women with disability living in licensed boarding houses benefit from its full range of recommendations.

Recommendation 4

The NSW Department of Premier and Cabinet ensure that all key agencies involved in the NSW Domestic and Family Violence Action Plan deliver consistent and effective responses to all women, including women with disability living in residential centres such as licensed boarding houses, experiencing or are at risk of domestic violence.

Stronger Together: A new direction for disability services in NSW 2006 – 2016

In 2006, the NSW Government launched *Stronger Together* a new direction for disability services, which plans to "deliver better value, better access and better

14 Letter from Ms Alexandra Shehadie, Acting Executive Director NSW Government, Premier & Cabinet, Office for Women's Policy dated 15 July 2010

Accommodating Violence – Disability and Domestic Violence in Residential Settings Project

results through a more flexible and innovative system for people with a disability, their families and carers — a system that does not assume one size fits all"¹⁵.

Unfortunately a significant flaw in this plan is that it does not in any way include or address the circumstances of people with disability living in licensed boarding houses.

The Minister's Forward to 'Stronger Together' acknowledges that there are challenges outside the scope of this plan, and names in particular a need to "work towards greater cooperation between Governments and the private sector to resolve issues with boarding houses." Yet there is no alternative public plan which addresses boarding houses, their outdated service standards, practices and flawed legislative base. Nor one addressing how people with disability using licensed boarding houses can be assured "better value, better access and better results through a more flexible and innovative system" and therefore "a system that does not assume one size fits all".

The NSW Government is currently undertaking consultation for the development of the Stronger Together 2 framework. Stronger Together 2 must acknowledge the reform required in this sector so that people with disability in licensed boarding houses are ensured that their human rights are respected, protected and fulfilled along with their peers who are currently addressed by Stronger Together.

Recommendation 5:

The NSW Government develop and fund an appropriate cross Government strategy for people with disability in licensed boarding houses within future disability and other Government frameworks, including Stronger Together 2, to ensure their human rights are respected, protected and fulfilled along with their peers.

Better Together: A new direction to make NSW Government services work better for people with a disability and their families: 2007 – 2011

In 2007, the NSW Government launched *Better Together*, a whole-of-Government plan which provided a new direction to make NSW Government services work better for people with disability and their families for 2007–2011. It had extensive input from

¹⁵ NSW Government (n.d.) *Stronger Together – A new direction of disability services in NSW 2006-2016* Fact Sheet accessed at http://www.dadhc.nsw.gov.au/NR/rdonlyres/93E65784-353B-4E01-8858-303F4B247A76/1970/StrongerTogetherFactSheet.pdf

12 NSW Government agencies, including ADHC and aimed to support the work of the *Stronger Together* in delivering better services for people with disability, their families and carers. While *Stronger Together* aimed to deliver more enhanced increases in specialist disability services, *Better Together* aimed to ensure vital public services such as transport, health, education and housing were better able to meet the needs of people with disability and their families.

However, *Better Together* also fails to make even one reference to boarding houses and improvements to vital public services needed by the people with disability living in these services.

Recommendation 6:

The NSW Government's Interdepartmental Committee on Reform of the Private Residential Service Sector (IDC) immediately provide an action plan on its directions for boarding house reform and the review of the YACS Act.

Boarding House Reform Program

As mentioned in the literature review, in October 1998 the NSW Government announced a \$66 million package of reforms known as the 'Boarding House Reform Program' (BHRP) which aimed to improve the lives of people with disability living in licensed boarding houses. The four broad objectives and outcomes of the BHRP included ¹⁶:

 Improvement of the standards of accommodation and support provided to residents.

To achieve this, a range of programs referred to as 'Resident Support Services' were funded under the *Disability Services Act 1993* (DSA) to provide additional services and supports to people in boarding houses. These services continue to operate today with recurrent funding, and include ADHC Boarding House Reform Case Workers, advocacy support such as the PWD's Boarding House Advocacy Project, primary and secondary health care services and the Active Linking Initiative (ALI) program. Personal care

¹⁶ Allen Consulting Group (2003), *Shared Accommodation for People with a Disability, A national competition policy review of the regulation of boarding houses ACG, Sydney.*

services, community transport and other services funded under the Home and Community Care program are also accessible to residents.

2. The relocation of people with high and complex support needs to funded disability accommodation services.

Funding under the AHDC Relocation Program was initially provided for the relocation of 310 people who were considered to be the most inappropriately placed in licensed boarding houses at the time of the BHRP announcement. ADHC continues to have access to funds which it can draw upon to assist residents to identify alternative accommodation and support services when they are required to relocate from a licensed boarding house due its to the closure or their increased support needs.

AHDC has advised that the "Vacancy Management Guidelines for the Boarding House Relocation Program are currently under view. A high priority for placement in the program is any person in a licensed boarding house who is at risk of abuse or neglect"¹⁷.

3. Prevention of the inappropriate entry to boarding houses of people with high and complex support needs.

A screening process was introduced to ensure only people with moderate to low support needs entered the licensed boarding house system. This screening process remains in place today.

4. For licensed boarding houses to remain viable options where safety and affordability satisfies minimum benchmarks. Legislative reform was anticipated to achieve this.

AHDC's review of the YACS Act has been ongoing since it was first announced in 2002. AHDC's recent advice is "that the work of the IDC will involve a public consultation strategy later in 2010. The broader review of the Youth and Community Services Act has been subsumed into the work of the Interdepartmental Committee"18. However to date, there is no public information available about the IDC's deliberations or what the recommended

have implications for AHDC dated 16th June 2010

Letter to PWD from AHDC providing feedback on draft DDV report and recommendations which refer to or have implications for AHDC dated 16th June 2010
Letter to PWD from AHDC providing feedback on draft DDV report and recommendations which refer to or

directions of reform include as there has been no sector consultation on the issue of legislative reform since 2004.

The impact of issues relating to the regulation of licensed boarding houses is discussed in more detail throughout the report.

Recommendation 7:

The NSW Government undertake an evaluation of the Boarding House Reform Program, its objectives and the success of its outcomes for achieving positive systemic reform within the licensed boarding house sector.

Legislative Frameworks

There are a number of key pieces of legislation relevant to domestic violence and abuse in licensed boarding houses that have been considered in the course of this Project with regard to their strengths and weaknesses for prevention, detection and response to domestic violence. These include:

- amended Youth and Community Services Regulation 2005;
- the Youth and Community Services Act 1973;
- the Community Services (Complaint, Review and Monitoring) Act 1993; and
- the Crimes (Domestic and Personal Violence) Act 2007.

Youth and Community Services Regulation 2005

On 5 May 2010 the Governor of NSW approved amendments to the *Youth and Community Services'* (*YACS*) Regulation 2005. This amended Regulation came into effect on 11 June 2010. It includes many of the requirements relating to resident's accommodation, care, safety, welfare and well-being that were previously outlined as obligations of the Licensee, Licensed Manager and staff of licensed boarding houses via the Licence Conditions attached to each Licence. Given 'some uncertainty as to the scope of the Minister for Ageing and Disability's power to impose conditions on the licence where the conditions did not relate to the licensed premises or the Licensee or Licensed Manager – that is, conditions relating to the care, safety, and well being of residents and the provision of services from the

premises'¹⁹, this Regulation was introduced. These changes aim to clarify the requirements that licensed boarding house operators are legally required to provide.

PWD broadly welcomes the NSW Government's recent changes to the *Youth and Community Services' Regulation 2005* with the introduction of Part 3 Obligations of Licensees. This regulation has brought into force minimum standards that licensed boarding house operators are now legally required to meet. However, we remain concerned that these changes are a band-aid solution with the potential for limited benefit.

PWD hoped that the well documented problems, as outlined in the literature review, regarding the enforceability of licensing requirements relating to the care, welfare, safety and wellbeing of residents - those requirements most relevant to the prevention, detection and response to domestic violence - would be addressed in the Regulation. However, we have reservations about the *Youth and Community Services Regulation 2005* being a clear commitment to legislative change due to the fact it is due to be automatically repealed under the *Subordinate Legislation Act 1989* on 1 September 2010²⁰.

In effect this means that for a 12 week period between 11 June 2010 when the Regulation comes into force, and its scheduled repeal on 1 September 2010, residents of licensed boarding houses will be afforded legislated minimum standards for their care, welfare, safety and wellbeing. The protection this gives people with disability living in licensed boarding houses cannot be underestimated as it is a substantial improvement on requirements of current licence conditions which were considered unenforceable. For this reason alone this action is highly welcomed, but enforceable protection for a 12 week period is clearly inadequate. What measures will be in place past September 2010 is only speculative at this time.

ADHC released a Regulatory Impact Statement (RIS) in relation to the Regulation and committed to a brief 28 day consultation process on June 16, 2010²¹. The RIS proposes to amend the current provisions of the 2005 Regulation to include two additional provisions:

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¹⁹ Regulatory Impact Statement (RIS) (June 2010) Youth and Community Services Regulation 2010, p 3.

²⁰ Youth and Community Services Regulation 2005 Status Information 14 May 2010 as accessed on www.legislation.nsw.gov.au

RIS (June 2010) Youth and Community Services Regulation 2010, p 4.

- a) 'the requirement that one staff member on duty must hold qualifications on the administration of first aid. This amends the existing requirement that Licensees must ensure than one staff member employed must hold qualifications in the administration of first aid; and
- b) requirements regarding the administration of prescribed medications, including the obligation to provide certain prescribed medications to residents in dose administration aid devices (pre-packed blister packs) and the obligation to maintain records of such administrations'22.

Neither of these provision are current requirements of licensed boarding houses.

Our concerns regarding the proposed Regulation and the process are as follows:

- The proposed Regulation is based on minimum standards which were established some 30 years ago when the YACS Act and subsequent licensing regime was introduced in 1979. What was considered a minimum standard in disability residential care practices then falls far short of minimum standards in disability best practice today;
- The proposed Regulation doesn't in anyway reflect the NSW Government's obligations under the CRPD. This includes the NSW Governments obligation to develop laws, policies and programs which promote, protect and fulfil all human rights and fundamental freedoms of people with disability and that these are recognised without any limitations or exceptions;
- Nor does the proposed Regulation reflect best practice standards expected from other disability service providers. This results in an absurd situation where people with disability living in licensed boarding houses are subject to far inferior standards or benchmarks for their care, welfare, safety and wellbeing when in the licensed boarding house and other superior standards when receiving support from ADHC provided or funded services. This has not been addressed or alleviated in anyway;
- The proposed Regulation fails to introduce criminal record checks or probity checks on staff of licensed boarding houses. It also fails to extend to staff the

²² AHDC Regulatory Impact Statement (June 2010) Youth and Community Services Regulation 2010, p 3.

existing requirement of one off criminal record checks which only occur for the Licensee when the licence is first issued, or for the Licensed Manager when they are appointed.

Improving background checking and screening procedures for staff and caregivers coming into contact with vulnerable adults has been well documented²³. As has the relative ease with which perpetrators can move from one place of employment to another when they are discovered or dismissed²⁴. Movement of perpetrators from services for children (which do now have background police checks in a number of jurisdictions) to services for vulnerable adults, including those for persons with cognitive impairment is also well acknowledged²⁵. Concerns relating to criminal record check processes have been highlighted by the NSW Ombudsman in its June 2006 Special Report to Parliament on DADHC's Monitoring Standards in Licensed Boarding Houses.

The Sexual Assault and Disability and Age Care residential settings project (SADA) highlighted that a mechanism similar to the NSW Working with Children Check would be a more effective mechanism as it provides scrutiny of relevant criminal records, relevant Apprehended Violence Orders (AVOs) and relevant employment proceedings. Such mechanisms are necessary to ensure those persons with substantial evidence but no conviction against allegations can be prohibited for working in the disability sector or with vulnerable populations;

- The proposed Regulation fails to provide any tenancy protections;
- The consultation process only allows for the minimum timeframe afforded under the provisions of the Subordinate Legislation Act 1989 which is 28 days.
 PWD believes this does not provide sufficient time for all stakeholders to express their views on the matters addressed in the RIS;
- Of particular concern is how this consultation process incorporate the views of residents of licensed boarding houses, who are the key stakeholder groups

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²³ French, P., Dardel, J., & Price-Kelly, S., Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment, People with Disability Australia, 2009.

²⁴ French et al.

²⁵ French et al.

affected by the matters outlined in the RIS. Whilst copies of this statement have been forwarded to all Licensees, Government agencies and disability organisations involved in licensed boarding houses copies were not provided to each resident. There is no version of the RIS available in plain English or alternative accessible formats which could be used by others to facilitate residents understanding or input into this process. Nor are we aware of any alternative or separate consultation processes being undertaken to ensure the people with disability living in licensed boarding houses have a say within this 28 day timeframe. This is a clear breach of the *Disability Discrimination Act* 1992; and

The RIS provides insufficient consideration to the human rights and best interests of people with disability. It mentions the proposed Regulation being essential as 'many people with disability are vulnerable to abuse'²⁶ but the regulation itself fails to go far enough to ensure the human rights of people with disability, as residents of boarding houses, are given paramount consideration and therefore respected, protected and fulfilled.

Recommendation 8:

NSW Government to conduct a feasibility study exploring the concept of a Working with Vulnerable Persons check as part of an Adult Protection system in NSW.

Recommendation 9:

- 9.1 The NSW Government use the Regulatory Impact Statement and consultation on the proposed Youth and Community Services Regulation 2010 to its full benefit by:
 - a) using CRPD as a benchmark for contemporary and gender specific standards in all licensed boarding houses in NSW;
 - b) ensuring licensed boarding house regulation and licence conditions reflect contemporary disability best practice policy and procedures;
 - c) the rights of people with disability in licensed boarding houses are given paramount consideration; and

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²⁶ AHDC Regulatory Impact Statement (June 2010) *Youth and Community Services Regulation 2010* p 13.

d) taking into consideration the issues raised in this report to introduce Regulations to ensure the prevention, detection and response to abuse and domestic violence for residents of licensed boarding houses.

Youth and Community Services Act 1973

It is still unclear how the proposed Regulation fits within the broader context of the overarching YACS Act review, which was commenced by ADHC in 2002, and the progress of the IDC, which is charged with the reform process have not been made public.

As the principle Act for the licensing and monitoring of conditions and standards in licensed boarding houses, the YACS Act remains highly inadequate in ensuring human rights protection and contemporary quality standards in disability accommodation. Reasons for this include:

- it allows for the licensing of large congregate care institutions with no limitations on size;
- there are no clear staff supervision and resident support ratios;
- staff are not required to undergo any criminal record or probity checks;
- the maximum penalty for any breach of licence conditions or regulations, whether it be failing to display an itemised schedule of fees or using excessive physical or chemical restraint techniques on residents is \$500; and
- residents have no tenancy rights.

As a mechanism for the prevention, detection and response to domestic violence, or abuse more generally, the current legislative protections clearly remain inadequate. PWD believes that this situation leaves people with disability living in licensed boarding houses at foreseeable risk of harm, and the disregard the NSW Government appears to show in addressing its known flaws is indefensible.

Whilst the recent publishing of the amended *Youth and Community Services*Regulation 2005 addresses the enforceability of minimum licence conditions, including those relating to resident safety, abuse and neglect, protection of financial affairs, residents interests and complaint handling, this guarantee to people with

disability living in licensed boarding houses is currently time limited. One is left wondering how an 11 year long review of the YACS Act and the Department's attempts at seeking 'legislative clarification'²⁷ can result in such a limited band-aid solution.

Where the funded disability sector has developed measures such as legislated service standards in 1993 and a proliferation of policies, procedures, best practice guidelines and frameworks for continual quality improvement, the licensed boarding house sector continues to be its mirror opposite.

The 1979 third reading speech made in the NSW Parliament on the introduction of the YACS Act records the following statement and intent of this legislation:

"the handicapped (sic) shall at least be afforded the guarantee of a clear statement of the minimum standards, which must be met by any person who provides accommodation to them".²⁸

The standards, referred to as the licence conditions and subsequently as regulations outlined in the recent amended Regulation, were considered minimum standards when this legislation was introduced in 1979 and were in fact 'drawn from the 1939 *Child Welfare Act*²⁹. Given they have not changed in any substantial way since this time, they cannot be considered contemporary or adequate some 70 years later. In fact, the lack of any potential impact or change as a result of the introduction of the Regulation was the key reason why ADHC did not publicly consult with stakeholders in its decision to put forward this Regulation³⁰.

A further concern is the fact that the NSW Government has introduced regulation that does not reflect obligations under the CRPD. This raises serious concerns about the NSW Government's commitment to ensuring fundamental human rights of people with disability are promoted, protected and fulfilled.

²⁷ 2006 (June) NSW Ombudsman: DADHC: Monitoring Standards in boarding houses. A special report to Parliament under s 31 of the Ombudsman Act 1974.

²⁸ Third Reading speech, *Cognate Child Welfare (Amendment) Bills – 26 September 1979*, p1353.

²⁹ NSW Community Services and Health ITAB and the NSW Ageing and Disability Department (2001) *STAFF HANDBOOK For NSW Licensed Residential Centres*, NSW Community Services and Health Industry Training Advisory Body, p 3.

Licensed Boarding House Operators Fact Sheet May 2010– Changes to Boarding House Regulation. Q. 5. Why wasn't I consulted about these changes? p2.

It can be argued that the for-profit sector has also benefited from a system of regulation which hasn't applied standards which may raise costs in service delivery or impact on their profit margins. The introduction of the Regulation is likely to be opposed by many of the licensed boarding house operators for the reason that the updated wording and clarification of intent does in our view impose greater responsibilities for licensed boarding houses. Any further rising of the 'standards bar' is also likely to result in operators threatening closure, which in the past has had significant influence on the NSW Government.

Recommendation 10:

The NSW Government urgently finalise the review of the *Youth and Community Services Act 1973* with the outcome being to replace it with legislation to ensure its compliance against obligations under the CRPD and incorporates in full the 'charter of principles' outlined in the Disability Services Act 1993, the 10 Disability Service Standards, and which provides for the independent and rigorous regulation and monitoring of licensed boarding houses.

Community Services (Complaint, Review and Monitoring) Act 1993

The NSW Ombudsman is an independent and impartial watchdog accountable to the public through the NSW Parliament. It has capacity for substantial influence through its wide complaint, review and monitoring functions as well as significant compulsory powers conferred to it through the *Ombudsman Act 1974*. It therefore has a significant role to play in ensuring public sector agencies and specific private sector agencies fulfill their functions properly and improve their delivery of services to the public.

The principal legislation for service user complaints about disability services that are provided, funded, or licensed by the NSW Government is the *Community Services* (*Complaints, Reviews and Monitoring*) *Act*, 1993 (CS CRAMA). This legislation was originally administered by an independent Community Services Commission, and is now administered by the NSW Ombudsman.

The effectiveness of the *CS CRAMA* is closely linked to the Ombudsman's key functions and programs. Those most likely to promote sector and agency

improvement and responses for the prevention, detection and response to domestic violence in disability residential settings such as licensed boarding houses include:

- complaint resolution and investigation of unreasonable 'conduct' by ADHC and non-Government services funded, licensed or authorised by the Minister for Disability Services;
- review of the situation of individual or groups of children and young people in care and people with disability in care including those living in licensed boarding houses;
- review of the deaths of certain children and people with disability in care including those living in licensed boarding houses;
- co-ordination of the Official Community Visitor Scheme which oversees the appointment of OCV's to visit children, young people and people with disability living in full time residential care including those living in licensed boarding houses.

There are however, some key weaknesses in this legislation and its application, some of which have also been highlighted in the Report, *Rights Denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment.* These include:

- the lack of leadership by the Ombudsman to ensure that when exercising its functions under CS CRAMA it ensures 'service providers promote and respect the legal and human rights of a person who receives a community service' in accordance with S 3 (2) (c) of the Act;
- the failure of the legislation to explicitly require the Ombudsman to recognise and address the multiple and aggravated forms of human rights violation and disadvantage that results from the intersectional discrimination where there is an accumulative effect of impairment and disability with another characteristic including racial, cultural or linguistic minority status, indigenous status, gender and age³¹;

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³¹ French et al

- the failure of the legislation to provide personal remedies³²; and
- the failure of the legislation to be determinative, instead it is recommendatory. 'In his own annual and other periodic reports, and in the few special purpose reports that the Ombudsman has published, the Ombudsman himself persistently laments that his recommendations are frequently ignored altogether, or are given inadequate attention and priority by relevant agencies'.33

The impact of this limitation was highlighted in an exercise undertaken by PWD in 2009 which involved an extensive analysis of a number of the Ombudsman's publications and reports that made comment on issues in licensed boarding houses. This includes Reviewable Disability Death Annual Reports, Ombudsman Annual Reports, OCV Annual Reports, and any other special reports or investigations undertaken since the Ombudsman has had boarding houses within its jurisdiction.

Despite the number of reports generated since 2002, most of which highlight very serious problems and inadequate safeguards for people with disability living in boarding houses, the pace of progress achieving real change is slow.

PWD's analysis of Disability Reviewable Death Annual Reports and their commentary on deaths of people with disability in licensed boarding houses, showed the following:

- 21 recommendations have been made between the Annual Report of Disability Deaths in 2004 published in November 2005 and the last Annual Report of Disability Deaths in 2007 published in December 2008;
- these 21 recommendations relate to seven key issues which could reduce or prevent the deaths of people with disability in licensed boarding houses including policy guidance & good practice information; screening tool for entry to licensed boarding houses; record keeping in licensed boarding houses; effective discharge planning, first aid requirements of staff in licensed boarding houses; Boarding House Reform Program; and the review of the YACS Act:

³² French et al ³³ French et al

 since the initial Annual report published in 2005, each subsequent years recommendations appear to be revised versions of those made previously.
 This appears to be due agencies slow progress or failure to implement the Ombudsman's earlier recommendations.

When we raised our concerns regarding the low take up of recommendations from the Reviewable Disability Deaths Annual Report with the NSW Ombudsman. He advised the following,

"As it can take some time for recommendations to be implemented, it is our practice to carry over recommendations from year to year, making relevant revisions to ensure their currency. Revisions are often the result of partial recommendation, or the concern being addressed through other developments. In some cases, a recommendation may incorporate new and related issues. A recommendation may also continue as a monitoring mechanism once actions have been taken by an agency. In this context, it is misleading to infer that no action has been taken on the vast majority of our recommendations. Progress, along with lack of progress, is clearly assessed and documented in each report.'34

He further states that PWD's concerns "reflect a misunderstanding of the role of the Ombudsman. The role of the Ombudsman is not to replace the decision making of agencies. It is to assist agencies to be aware of their responsibilities, to act reasonable, and to promote best practice in administration. My role is recommendatory and not determinative."

PWD maintains that its analysis of progress in relation to the implementation and monitoring of the issues in the recommendations remains a serious concern.

June 2009.

35 NSW Ombudsman letter to PWD in response to PWD concerns on the implementation of recommendations and legislative amendments to reporting requirements for reviewable deaths. 25 June 2009.

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³⁴ NSW Ombudsman letter to PWD in response to PWD concerns on the implementation of recommendations and legislative amendments to reporting requirements for reviewable deaths. 25 June 2009

- only one recommendation made to NSW Health has been reported as being completed in full. Although it was noted that NSW Health had completed its component of one other recommendation (in 2005);
- ADHC have not fully completed to the satisfaction of the Ombudsman, any of the recommendations made to it, although its partial completion of one recommendation (in 2006) was noted.

Our analysis of the Ombudsman's 2002 investigation into ADHC's capacity to monitor and enforce licence conditions and its 2006 Special Report to Parliament entitled *DADHC: Monitoring Standards in Boarding Houses* also highlighted little progress by ADHC to address systemic issues raised by these reports or their recommendations.

Consistent themes and issues highlighted by the OCV Annual Report's since 2004 include: inadequate nutrition, including meals; poor hygiene and health care; failure of licensed boarding houses to protect residents from abuse and assault; inadequate environment and facilities; and inadequate protection from financial abuse and exploitation.

PWD believes that these reports individually and collectively not only highlight very serious problems with the way boarding houses are licensed and monitored in NSW, but also the failure of external oversight. The inability to effectively hold AHDC accountable for decisions and actions (including non action) appears to have been largely unsuccessful in creating systemic change and improved outcomes for people with disability living in licensed boarding houses.

One final comment regarding CS CRAMA relates to Section 47 - Protection of Complainant of Retribution^{ix}. This section of CS CRAMA provides penalties for retribution as a result of a person making a complaint. This Project has highlighted retribution as one of the key forms of domestic violence experienced by people with disability living licensed boarding houses. Retribution has been reported to occur for many different reasons including a resident making a complaint. The threat of homelessness towards residents by licensed boarding house operators is one example but one which creates a real fear that prevents disclosure of incidents of abuse. This is a significant piece of legislation for the protection of residents in

licensed boarding houses who make complaints. Despite this, PWD is not aware of any occasion that the NSW Ombudsman has used this legislation to pursue any case of retribution.

Recommendation 11:

It is recommended that the *Community Services (Complaints, Reviews and Monitoring) Act* 1993 is reviewed against CRPD to achieve the following:

- a) incorporation of substantial recognition of the human rights of persons with disability, and require human rights standards to be applied in the exercise of all functions and powers under the legislation;
- b) incorporation of the explicit recognition of, and a duty to address, the multiple and aggravated forms of human rights violation and disadvantage that results from the intersectional discrimination (ie the accumulative impact of impairment and disability with another characteristic including racial, cultural or linguistic minority status, indigenous status, gender and age);
- c) provision of personal remedies. These remedies ought to include prerogative remedies such as the power to make a declaration as to the lawfulness of particular conduct, the power to prohibit particular conduct, and the power to order the performance of a particular duty. Remedies ought also to include restitution and damages. The legislation ought also to provide injunctive relief pending the final outcome of a complaint.

Recommendation 12:

That responsibility for the administration of the *Community Services (Complaints, Reviews and Monitoring) Act* 1993 is re-situated in an independent, specialist watchdog agency capable of developing and implementing an activist, human rights oriented approach to its jurisdiction.

Recommendation 13

That the NSW Ombudsman actively promote within the community sector Section 47- Protection of Complainant of Retribution of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and that it actively utilises it in cases where complainants experience retribution.

Crimes (Domestic and Personal Violence) Act 2007

The strength of the Crimes (Domestic and Personal Violence) Act 2007 is its recognition that domestic violence is a crime. The objects of this Act aim to ensure the safety and protection of all persons who experience or witness domestic violence, the reduction and prevention of violence by one person against another where a domestic relationship exists, and the enactment of provisions consistent with the principles contained in CEDAW³⁶.

It also clearly states that this Act recognises that domestic violence:

- in all its forms, is unacceptable behaviour;
- is predominantly perpetrated by men against women and children;
- occurs in all sectors of the community;
- extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years;
- occurs in traditional and non-traditional settings; and
- is best addressed through a co-ordinated legal and social response of assistance and prevention of violence and, in certain cases, may be the subject of appropriate intervention by the court'37.

Its weakness is in its application particularly for people with disability and those living in residential settings such as licensed boarding houses. None of the stakeholders consulted in the course of this Project reported previous use of the *Crimes (Domestic* and Personal Violence) Act 2007.

Licensed boarding house staff reported occasions where the NSW Police were called to incidents where residents were displaying violence or damaging property within the licensed boarding house but none of these situations triggered the application of the Crimes (Domestic and Personal Violence) Act 2007. Instead, the police issued 'warnings' to residents. One Licensee spoke of calling the NSW Police when a resident had a violent episode that included throwing furniture, causing damage to another resident's property and damage to the licensed boarding house.

 ³⁶ Crime (Domestic and Personal Violence) Act 2007 s.9 (1)
 ³⁷ Crime (Domestic and Personal Violence) Act 2007 s.9 (3)

The staff and other residents were fearful of the resident and his violent outburst. However the NSW Police did not assist as there was no alternative accommodation for the resident.

NSW Police Domestic Violence Liaison Officers (DVLO) reported that the risk of homelessness for victims and perpetrators of domestic violence was a common barrier to situations involving people with disability who relied on specific accommodation and support to meet their disability support needs. They also spoke of magistrates being reluctant to issue protective orders given Section 17 of the *Crimes (Domestic and Personal Violence) Act* * requires them to consider the effect the order might have on the accommodation needs of relevant parties or others indirectly affected by an order which may prohibit or restrict access to a residence.

The only reported use of the *Crimes (Domestic and Personal Violence) Act 2007* was from one licensed boarding house staff member who spoke of seeking an Apprehended Violence Order (AVO) on an intruder known to another staff member, who had threatened her. However, this was for her own protection and not for that of the residents.

According to Section 49 *Crimes (Domestic and Personal Violence) Act 2007*, NSW Police must apply for an AVO on behalf of the victim when they suspect or believe that a domestic offence has recently been, or is being committed, or is imminent or likely to be committed unless they believe that the victim intends to make a complaint or there is a good reason not to. How this Section 49 of the *Crimes (Domestic and Personal Violence) Act* 2007 may be used by the NSW Police needs further exploration in the case of people living in licensed boarding houses.

Our consultation with the Intellectual Disability Rights Service (IDRS) revealed that the application of AVOs is not always effective in dealing with cases of domestic violence that had occurred between residents in group home settings. The experience of IDRS was that some people with cognitive impairment may not have the capacity to follow up with the order, thus breaking the AVO becomes inevitable. This can lead to repeated breaches of the AVO conditions and escalate more extreme criminal justice consequences.

The report, *Disabled justice : the barriers to justice for persons with disability in Queensland* discusses the over representation of people with disability as victims of crime, as suspects, defendants and offenders in the criminal justice system due to structural and systemic issues. People with disability are exposed more to crime and to allegations that they have committed a crime because of a deeply held prejudice towards impairment and disability within our community, as well as the lack of support structures and appropriate prevention strategies. The lack of support given to people with disability when issued with an AVO, thus leading to further breaches, is a systemic failing that needs structural intervention.

Recommendation 14:

The NSW Police Force and Local Court Magistrates receive gender specific training on disability awareness, disability rights and referral pathways for seeking appropriate alternative accommodation and support for victims and perpetrators of domestic violence.

Recommendation 15:

The NSW Police Force explore the development and implementation of a case management approach to the issuing of AVO's to people with cognitive impairment to ensure they understand the implications and limitations of the AVO.

Domestic Violence Policy and Practice

The following section aims to present the key findings relating to policy frameworks and practice responses to domestic violence by a number of key agencies or stakeholder groups who are involved in supporting people with disability living in licensed boarding houses. The information is informed by the project's analysis of polices and procedures with regard to strengths and weaknesses for prevention, detection and response to domestic violence, and consultations held with various stakeholders. The agencies or stakeholder groups reviewed include:

- Staff of Licensed Boarding Houses;
- Non Government services funded to provide support to residents of licensed boarding houses such as the Active Linking Initiative (ALI);

³⁸ Queensland Advocacy Incorporated (2007) Disabled Justice – The barriers for persons with disability in Queensland. Phillip French Disability Studies and Research Institute.

- NSW Ombudsman and Official Community Visitor Scheme;
- Domestic Violence Services including specific programs such as the Domestic Violence Proactive Support Service (DVPASS) and Domestic Violence Hotline; and
- NSW Police.

Licensed Boarding Houses - Policy and Response to Domestic Violence

Regulation and policy frameworks

The Project's analysis of the effectiveness of legislation, and policies and service system supports for the prevention, detection and response to domestic violence for people with disability in licensed boarding houses identified a significant number of barriers and weaknesses in licensing requirements, policy and procedures for licensed boarding houses including:

- licensed boarding houses are not funded disability services and are therefore not obliged to comply with requirements of the *Disability Services Act 1993 (DSA)*, disability service standards or many of ADHC's policies. This includes ADHC's Abuse and Neglect Policy, which is targeted to ADHC operated or funded non-Government services (NGO) only. Instead licensed boarding houses only need to meet the requirements of the YACS Act, licence conditions and new regulations, none of which reflect DSA standards and practice or the human rights contained in CRPD. Furthermore, ADHC have not developed a guiding policy or procedure for licensed boarding house operators in lieu of their exception from its Abuse and Neglect Policy.
- Whilst the Regulation clarifies the intention of previous licence conditions
 relating to the care, safety, welfare and well-being of residents, they remain
 limited and inadequate with regard to prevention and response to abuse,
 including domestic violence.
 - The primary reason for this is that they fail to require the Licensee or Licensed Manager to do anything further than report abuse and neglect incidents to ADHC. The licence regulations also fail to acknowledge that abuse can occur between co-residents and/or others or provide direction on how this should be responded to. With respect to the licence regulation relating to alleged sexual

assault, it is limited to requiring the Licensee/Licensed Manager to report the incident to ADHC and again nothing further. Whilst some Licensees/Licensed Managers may go beyond this and report the incident to the NSW Police or a sexual assault service they are not obligated to do so. This is inconsistent with recommended best practice when supporting a victim of sexual assault.

- Whilst the proposed Regulation goes further than the previous licence conditions in that they now require the Licensee and Licensed Manager to:
 - assist residents in accessing any health services^{xi} that the resident reasonably wishes to access; and
 - assist, and not obstruct residents who reasonably wish to access any support services, advocacy services or other service or information providers (such as legal service providers and disability rights and support organisations);

both these regulations place the onus on the resident to initiate and express their 'reasonable wish' to access such services. This is highly problematic on account of people with disability's experience of intersectional discrimination and licensed boarding house residents general lack of awareness of rights, expectation and knowledge of service/support options.

- To date ADHC have not produced plain English or Easy English information for licensed boarding house residents about what it means to live in a licensed boarding house regulated by ADHC, what the licence conditions/regulations mean or how they can raise concerns or complaints about the quality of accommodation, care and support received in the licensed boarding house.
- There are no specific staffing competencies or probity checks required of staff
 of licensed boarding houses, other than the Licensee and Licensed Manager
 (at the time the licence is issued or upon appointment of the Licensed
 Manager) by the current licence conditions or newly introduced regulation.
- No policy, procedure or guideline currently exists to provide guidance to the Licensees/Licensed Managers or staff of licensed boarding houses on the meaning and application of licence conditions/regulations generally, or on

specific issues of best practice, care or support such as domestic violence, abuse and neglect.

In 2001, the then Ageing and Disability Department produced a publication known as *'Sample Staff Handbook. Providing Quality Services for People with Disabilities*. This was an 'optional' guide to understanding legislation, standards and best practice approaches in licensed boarding houses. Its current status and use by the licensed boarding house sector as a whole is unknown^{xii}.

ADHC's website currently references four policies under a heading 'good practice in LRC's'³⁹ but does not include the Sample Staff Handbook or ADHC's Abuse and Neglect Policy. Nor does it provide any information for the licensed sector on how it is supposed to interpret or use the policies that are listed (all of which are targeted to ADHC operated or funded services). It is not clear whether ADHC has an expectation that the policies on the website should be used by the Licensed Sector to guide their practice and compliance to relevant licence conditions/regulations.

- Licensees, Licensed Managers and staff of boarding houses rarely (if ever) receive training or service development on the meaning and application of licence conditions or on specific issues of best practice, care or support.
 - ADHC continues to provide its own staff within accommodation and community participation services access to training including a two-day training program on Sexuality and Responding to Sexual Assault. However NGO staff of comparable services and licensed boarding house staff are not 'eligible' or offered alternative staff training opportunities.
 - Whilst funding arrangements with NGO's may place the onus on them to train their own staff, the only training requirement placed on a boarding house Licensee or Licensed Manager via the licence conditions is to provide training to staff in the proper use of fire fighting equipment.
- If a person with disability living in licensed boarding houses is a victim of a domestic violence incident they will be afforded different responses depending

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³⁹ ADHC website accessed on May 13 2010: http://www.dadhc.nsw.gov.au/dadhc/Doing+business+with+us/Licensed+Residential+Centres.htm

on who they tell or who witnesses the event. This is due to inconsistent policy standards between the licensed boarding houses and any Government or NGO services and a lack of clarity in procedural guidelines.

Response to domestic violence

The response to a victim of domestic violence who lives in a licensed boarding house will be shaped by all the factors mentioned above and it is likely to be ad hoc at best.

From our consultations with staff of licensed boarding houses in the AHDC Metro South region, six out of the seven did not believe domestic violence occurred at all or very often in their premises. Only one person indicated that domestic violence was a significant issue but one that is "covered up and never acted upon". However when staff of licensed boarding houses were asked about what they had done to prevent domestic violence being an issue, and what they had or would do in response to a domestic violence incident, they reported a range of diverse strategies:

Prevention strategies described by Licensees, Licensed Managers and / or staff included:

- imposing "very strict rules", such as no borrowing or lending of money or cigarettes, no alcohol, drinking or drugs on the premises;
- showing 'TLC' and respect to residents, keeping them busy with outings and activities, allowing them freedom to come and go;
- having strict rules preventing women residents from entering the all male accommodation section, enforcing a culture of no swearing and respect amongst residents, and all visitors to the premises having to notify staff of their presence on site;
- the Licensee implementing a thorough screening process before a resident moved in and then having a 2-4 week trial.

Response strategies described by Licensees, Licensed Managers and / or staff included:

giving the resident two weeks notice and they would be out on the streets;

- calling the Mental Health boarding house team as they are trained in psychiatry;
- contacting ADHC;
- dealing with it themselves (as threatening behaviour or swearing);
- referral to the Crisis Mental Health Team: this was mentioned on three
 occasions, firstly in relation to incidents of physical and sexual violence
 because the Crisis Mental Health Team was a 24 hr service; secondly in
 relation to serious cases only via the psychiatrist who would make a referral to
 the Crisis Mental Health Team; and thirdly as a last resort when the police did
 not assist due to no alternative accommodation being available;
- telling 'troublemakers' to leave;
- contacting ADHC when they want to relocate a person because their issues/needs don't fit the boarding house;
- contacting Concord Hospital's mental health unit.

ADHC policy and response to domestic violence in licensed boarding houses

Policy and Procedures for ADHC and funded Non Government Services
ADHC's Abuse and Neglect policy has significant relevance to disability services
supporting residents of licensed boarding houses and their response to incidents of
domestic violence. Based on our analysis of the ADHC Abuse and Neglect Policy, if
a person with disability living in a licensed boarding house is a victim of a domestic
violence incident and seeks the support of an ADHC officer or person employed by
an NGO, this is the principle policy applicable. The reason for this is that it is
targeted to:

- all services whether they are provided by ADHC or a funded NGO;
- 'all paid and unpaid workers in ADHC operated or funded non-Government services who have contact with adult people with disability'xiii;
- any client, who is an adult person with a disability who lives or participates in a ADHC operated or funded non-Government service. This in our view includes the BHRP funded services (including ADHC BHRP Caseworkers,

advocacy support services, the ALI program, personal care services, primary and secondary health services).

Our analysis of this policy and feedback from our consultations suggests there are a number of issues which influence the effectiveness of this policy in guiding Government and funded services' response to domestic violence. These include:

- The ADHC policy clearly identifies domestic violence under the generic label of 'abuse' yet it does not reference any relevant legislative frameworks such as the *Crimes (Domestic and Personal Violence) Act 2007*, best practice procedures or referral points for responding to domestic violence. It simply states 'a report of domestic violence..... must be reported to a manager as soon as possible and **may** be reported to the NSW Police" (our emphasis).
- The generic labelling of domestic violence experienced by people with disability as 'abuse' also appears to justify and trigger a different response than if it were seen as a crime. For example, it is common for exemptions to be made to circumstances of abuse of people with disability, particularly those living in residential care settings. This in turn generates a behaviour management or programmatic response, which generates a level of acceptance and normalisation of abuse within residential settings. A couple of licensed boarding house operators highlighted this practice when seeking assistance to deal with violent incidents occurring in licensed boarding houses.

ADHC's Abuse and Neglect Policy reinforces this practice as it states: 'a report to the NSW Police about an assault may **not** (ADHC's emphasis) be required if any of the following conditions exist:

- an incident that would usually be classed as assault [referenced elsewhere in policy as sexual and physical assault, domestic violence, emotional, financial and systems abuse], is caused by a person with an intellectual disability who lacks understanding of the behaviour; and
- physical contacts occurring between clients (e.g. pushing or striking)
 that are appropriate for resolution using behaviour management
 strategies, and are reported internally'.

During our consultations, funded disability service providers stated a greater confidence in how they may respond to an incident involving sexual assault as each service is required to have policies and procedures for responding to abuse and neglect as a condition of their funding. However, many services model their policy and procedures on ADHC's Abuse and Neglect Policy, which as noted above has a number of inadequacies.

Where domestic violence consisted of intimidation, threats, withdrawal of activities/services, emotional blackmail, verbal abuse, financial exploitation or manipulation, controlling staff, retribution or misuse of power, which were all examples of domestic violence during the course of this Project, funded disability service providers felt less clear about how to respond.

Whilst funded disability service providers could cite many examples and incidents of these kinds of domestic violence and abuse, no-one reported an occasion where such incidents were referred to the police or a domestic violence service. Similarly, whilst the domestic violence services were aware of the high incidence of abuse and violence common to women with disability, none could refer to an instance where they were required to respond to and support a person with disability in a licensed boarding house.

Disability service providers were aware that mechanisms such as AVOs could be sought to protect victims from further harm but had not considered this as an avenue for people with disability living in licensed boarding houses.

The disability service providers identified a clear need for:

- information and training on the definition of domestic violence, how to identify indicators of abuse and best practice response options;
- the establishment of protocols for responding to domestic violence for boarding house residents, including referral pathways between the disability and domestic violence sectors;
- review of service policies and procedures on abuse and neglect to ensure they reflect best practice response options for domestic violence incidents.

There was also a consensus in consultations that the experience of domestic violence in licensed boarding houses was also a significant issue for men with disability, but domestic violence support services for men are very limited.

Recommendation 16:

16.1 ADHC to:

- a) provide or facilitate for funded disability service providers, licensed boarding house operators and staff, access to information and training on the definition of domestic violence, indicators of abuse and violence and best practice response options;
- support the establishment of gender specific protocols for responding to domestic violence for boarding house residents, including referral pathways between the disability and domestic violence sectors.

16.2 ADHC and non Government service providers review service policies and procedures on abuse and neglect to ensure they reflect best practice response options for domestic violence incidents.

Response by ADHC to domestic violence

In consultations with ADHC during this project it became clear that there was an inconsistent understanding of whether the Abuse and Neglect policy applies in the case of a person with disability living in a licensed boarding house. The inconsistency is focused on the following:

- many ADHC officers interpret this policy as being relevant only to ADHC operated or funded accommodation services; and
- an arbitrary distinction between ADHC officers employed under a funded program, such as the BHRP caseworkers to whom the policy maybe relevant, and ADHC officers employed as licensing officers, whose primary role is the regulation of licensed boarding houses (who are not obliged to comply with the Abuse and Neglect Policy).

The problem of the policy only applying to certain positions is further compounded by the fact that in the ADHC Metro South region, the same officer undertakes the dual role of caseworker and licensing officer. This appears to be contrary to the practice in other ADHC regions where the roles are distinct and carried by two separate officers. The BHRP Caseworker position description also states that BHRP Caseworkers should liaise with licensing staff regarding licence compliance matters, suggesting that these are discrete roles⁴⁰.

The recent ALI Evaluation Report makes the following note on barriers to effective partnerships which also highlights this issue:

"according to DADHC caseworkers, DADHC's regulatory and licensing functions mean that some LRC managers view DADHC officers with cynicism and suspicion. This may occur particularly where the caseworker's role includes both casework with residents and licensing and monitoring the LRC"41.

To our knowledge:

- ADHC staff responsible for the licensing and monitoring of boarding houses do not have written guidelines on the meaning and interpretation of licence conditions. Therefore, in practice different staff undertaking these functions can have different compliance expectations and measures;
- ADHC staff responsible for licensing and monitoring of licence conditions continue to operate from the 2003 version of the *Licensed Residential Centres* Licensing, Monitoring and Closure Policy, which has been the subject of Ombudsman criticism and numerous recommendations since 2005, including its need to be reviewed and updated.

The 2003 version of the Licensed Residential Centres Licensing, Monitoring and Closure Policy guides ADHC officers in operational procedures for implementing the requirements of the YACS Act only. As a result, it lacks any procedure on how ADHC staff should respond to issues of resident care and support including responding to abuse and neglect issues.

AHDC have advised "the 2003 Policy manual remains currently under review and includes a number of updates. The remake of the 2010 Regulation will affect the Manual in a number of ways. It is therefore planned that the Manual

⁴¹ Social Policy Research Centre Active Linking Initiative (ALI) Evaluation Final Report (2010, p 34)

⁴⁰ DADHC Boarding House Reform Program Position Description Clerk Grade 7/8 July 2008

will be finalisd to coincide with the September 2010 Regulation and the revocation of any obsolete Licence conditions to occur later this year."⁴²

Recommendation 17:

ADHC to ensure the roles of Boarding House Reform Program Case Manager and Licensing Officer are separated and clear protocols are established for the referrals to be made between positions.

Licensing and Monitoring of Licensed Boarding houses

The quality of services and facilities provided by licensed boarding houses are only as good as the monitoring and compliance enforcement undertaken by ADHC.

PWD is frequently frustrated by the limited approaches taken by ADHC licensing staff in bringing Licensees and Licensed Managers to account on issues which we believe are breaches of licence conditions, and more recently Regulations. We also consider there to be inconsistent variation in the approaches taken by different regions which is often exacerbated by turnover of licensing staff in some regions.

Concerns that licence conditions across regions were being differently monitored and enforced has been subject to two NSW Ombudsman investigations since 2002. In its 2006 Special Report to Parliament the NSW Ombudsman highlighted 'serious problems with the way boarding houses are licensed and monitored in NSW', stating that 'some of these problems relate to a failure by particular regions within DADHC to properly carry out their monitoring responsibilities. However, even where monitoring has occurred in accordance with DADHC's requirements, we have found limitations in the monitoring system because of uncertainty as to whether certain standards can be legally enforced'⁴³.

ADHC's response to the NSW Ombudsman's Special Report was an acknowledgement that there was 'scope to improve the Department's monitoring of licensed boarding houses' and indicated that it would address this by:

• 'progressing the review of the *Youth and Community Services Act* in order to provide an approach to regulatory and quality aspects for this industry'. It also

⁴³NSW Ombudsman (2006) DADHC Monitoring Standards in Boarding Houses. A special report to Parliament under s31 of the Ombudsman Act 1974. NSW Ombudsman Sydney.

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⁴² Letter to PWD from AHDC providing feedback on draft DDV report and recommendations which refer to or have implications for AHDC dated 16th June 2010

advised the Ombudsman (in May 2006) that 'the Department would soon complete the review of the Act' (reference). Unfortunately this action remains incomplete;

- providing 'casework services to provide residents of Licensed Residential
 Centres with personal care planning, support with community integration and
 assistance to access equipment and other services'. This item was actioned
 with the introduction of the BHRP caseworker positions;
- 'scheduling training sessions for all regional staff with direct involvement in the Licensed Residential Centre monitoring process commencing April 2006'.
 PWD understands this occurs with less frequency that when this commitment was given in 2006; and
- 'updating the Department's policy manual'. This manual remains incomplete some 4 years later.

Given that the majority of actions stated above remain incomplete, but remain essential to improving the quality and effectiveness of ADHC's licensing and monitoring within licensed boarding houses, PWD strongly recommends that these actions by prioritised to coincide with the introduction of this proposed regulation.

Furthermore, given the uncertainty of certain licence conditions being enforceable has now been resolved with the amendment of the *Youth and Community Services Regulation 2005* and the proposed Regulation, it is more important than ever for ADHC staff to have clarity and certainty in undertaking their licensing and monitoring functions. It is for this reason that the development of policy and guidelines for licensed boarding houses as outlined in 3.1 is essential.

One further option for ADHC which may mitigate some of the continuing issues relating to the inconsistency and enforceability of licence requirements would be to reinstate a centralised licensing and monitoring unit. This option would assist to overcome many of the continuing issues of regional inconsistency as well as ensure better support for AHDC staff when dealing with boarding house Licensees and managers who challenged ADHC's power to enforce licence conditions and Regulations.

Recommendation 18:

AHDC reinstate a centralised licensing and monitoring unit to ensure consistency and enforceability of licence conditions, regulations and all requirements of the YACS Act across regions.

Recommendation 19:

AHDC immediately prioritise the implementation of the NSW Ombudsman's 2006 recommendations outlined in its report entitled on *DADHC Monitoring Standards in Boarding Houses*. A special report to Parliament under s31 of the Ombudsman Act 1974.

NSW Ombudsman's influence on responses to domestic violence

Given the focus of this project we have tailored our analysis of the NSW Ombudsman to the roles and functions we believe have the most direct link to promoting improvements in sector and agency responses to the prevention, detection and response to domestic violence. For this reason we have focused on the OCV Scheme and the Ombudsman's Special Reports to Parliament on Policing Domestic Violence in NSW⁴⁴.

OCV response to domestic violence in licensed boarding houses

It is important to note that whilst the NSW Ombudsman has a general oversight and co-ordination role in relation to OCVs, and may determine priorities for the services to be inspected by them⁴⁵, OCVs have complete independence from the NSW Ombudsman. As statutory appointees of the Ministers for Community Services and Disability Services, under CS (CRAMA)⁴⁶ they are invested with powers as individuals to undertake their key functions.

Part 2, s 8 of CS CRAMA outlines the functions of OCVs to include the inspection of visitable services, conferring alone with any person who is resident or employed at a visitable service, and the provision of advice to the relevant Minister, service provider and Ombudsman about any matters relating to the services provided by the visitable services.

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⁴⁴ NSW Ombudsman 1999 Policing in NSW A special report to Parliament under s31 of the Ombudsmans Act, NSW Ombudsman Sydney

⁴⁵ Community Services (Complaints, Reviews and Monitoring) Act 1993 s 9 – Co-ordination of Official Community Visitors

⁴⁶ NSW Ombudsman (2003) Community Visitor Fact Sheet No. 1 – Official Community Visitors

Further functions are prescribed under the *Community Services (Complaints, Reviews and Monitoring) Regulation* 2004 (NSW). Notably, these additional functions include encouraging the promotion of the legal and human rights of persons using visitable services such as licensed boarding houses, including promoting the right to complain, providing persons using visitable services with information about advocacy services that may be available to help them, and facilitating, 'wherever it is reasonable and practicable to do so,' the early and speedy resolution of grievances or matters of concern affecting persons using visitable services.

In our analysis of how well equipped OCVs may be with regard to exercising their functions in the context of prevention, detection and response to domestic violence in licensed boarding houses we found a number of anomalies. These include:

• Guidelines around reporting assault, or abuse generally: The Ombudsman's publication A Voice for people in Care – Answering your question about the Official Community Visitor Scheme' states that it requires OCVs to report all concerns about an assault or abuse of a resident in care and that a Visitor may refer other serious or urgent issues to the Ombudsman for assessment as a complaint or for the conducting of a review. However for reasons related to their independence as statutory appointees, the Ombudsman's Office can only provide guidelines to OCVs as to how they may undertake their functions, it cannot require an OCV to undertake any specific response or practice⁴⁷.

During consultation with the NSW Ombudsman's office it was clarified that there is no specific policy providing guidance to OCVs in their response to abuse generally or more specifically domestic violence in residential settings. However, they are *encouraged* to report instances of abuse to the NSW Ombudsman's office for assistance in seeking resolution and/or as a complaint matter.

Opportunity for training:
 Whilst persons appointed to the OCV role must have 'appropriate knowledge

and expertise in matters relating to community services in which they would

⁴⁷ NSW Ombudsman 2004 A Voice for People in Care, NSW Ombudsman Sydney.

be most involved'48, there remains a recognition that training is a key priority of the NSW Ombudsman's office in its administration of the Scheme.

The last formal training undertaken by OCVs in recognising and responding to abuse and neglect issues identified in residential care services was in 2006-07. Hence, any persons appointed since this time including the latest intake of thirteen people appointed in January 2009 have not had the opportunity to undertake this important training.

Recommendation 20:

The NSW Ombudsman's office prioritise:

- a) the development and implementation of gender specific guidelines for Official Community Visitors responding to abuse and neglect, including domestic violence in residential care settings;
- b) gender specific training for Official Community Visitors s in abuse and neglect, including:
 - indicators of abuse;
 - understanding domestic violence in residential care settings and best practice responses.

Effectiveness of OCV Scheme to make systemic change

Our analysis of the data outlined in last year's OCV Annual Report showed that in 2008-2009 licensed boarding houses scored the:

- highest number of issues identified per service outlet; and
- highest percentage of issues unable to be resolved;

despite having the smallest number of service outlets when compared to the other service types visited by OCVs⁴⁹.

Over a three year period the average number of issues identified and percentage of issues unable to be resolved has also increased each year even though the total number of licensed boarding houses and residents has been decreasing. 50

⁴⁹ NSW Ombudsman Annual Report 2008-2009 (2009) pg 13.

⁴⁸ NSW Ombudsman 2004 A Voice for People in Care, NSW Ombudsman Sydney

The Annual Report does not provide information on the nature of these unresolved issues, however given the consistency in the key theme issues raised by OCVs over the past six years there is a strong suggestion that these issues most likely relate to:

- inadequate environment and facilities to ensure privacy and dignity; and
- failure of licensed boarding houses to protect residents from abuse and neglect^{xiv}.

Both of these key issues have clear links to prevention and incidence of domestic violence.

Further analysis of last years OCV Annual Report shows that:

- less than one percent of all the issues raised by OCV's were handled as complaint matters by the NSW Ombudsman despite 20% of issues identified being unable to be resolved;
- no OCV issues have triggered a review or investigation by the NSW Ombudsman.

These trends raise concerns over the effectiveness of the OCV Scheme to create systemic change, and the lack of action taken outside of the OCV Scheme by the NSW Ombudsman under its general powers.

We note that a new data classification system and reporting mechanism for OCVs is due to be finalised and introduced this year. This new system aims to provide a more robust mechanism for OCVs reporting and seeking responses to issues of safety and quality of care in visitable services, and may address some of the issues raised above. However, we note that this system will be aligned with the Disability Service Standards, ADHC's Integrated Monitoring Framework and the Out-of-Home-Care Standards⁵¹ none of which are currently applicable to licensed boarding houses. PWD remains concerned that the identification of issues in licensed boarding houses, their reporting, response and long term resolution will continue to fall behind that of other visitable services.

 $^{^{50}}$ NSW Ombudsman Annual Report 2008-2009 (2009) pg 13. 51 NSW Ombudsman (2009) *NSW Ombudsman Annual Report 2008-2009* pg 29.

Recommendation 21:

The OCV Scheme undertakes regular individual service and sector reviews of all issues identified in licensed boarding houses with the aim of collating gender disaggregated data and of identifying individual and systemic matters:

- a) for referral to the NSW Ombudsman to:
 - promote and assist the development of standards for the delivery of licensed boarding houses; and/or
 - educate service providers, clients, carers and the community generally about those standards; and/or
 - monitor and review the delivery of services and related programs, both generally and in particular cases; and/or
 - make recommendations for improvement in the delivery of licensed boarding houses and for the purpose of promoting the rights and best interests of persons using, or eligible to use such services; and/or
 - cause an inquiry into matters affecting service providers and licensed boarding houses and persons receiving, or eligible to receive services provided by licensed boarding houses; and/or
 - receive, assess, resolve or investigate complaints; and/or
 - review the causes and patterns of complaints and identify ways in which those causes could be removed or minimised; and/or
 - review the situation of a person or group of persons in care living in a licensed boarding house; and/or⁵²
- b) referral to other relevant services or to other appropriate bodies for the early and speedy resolution of grievances or matters of concern⁵³; and/or
- c) to provide regular advice to the relevant Minister on matters affecting the rights, welfare, interests and conditions of persons living in licensed boarding house and any matters relating to the conduct of such places⁵⁴; and/or

Community Services (Complaints, Reviews and Monitoring) Regulation 2004 Section 4

⁵² Community Services (Complaints, Reviews and Monitoring) Act 1993 Section 11

⁵⁴ Community Services (Complaints, Reviews and Monitoring) Regulation 2004 Section 4

d) to inform the Annual Report provided to the Minister for Disability Services and laid in Parliament each year⁵⁵.

Impact of funding limitations

The NSW Ombudsman Annual Report for 2008-2009 notes the following effect as a result of more than 1.4 million dollars of budget cuts over the past seven years:

'financial pressures will continue to impact on future budgets, meaning we will have less staff while the complexity and extent of our workload continues to increase...... When pressure is put on our budget it is our discretionary work that despite its importance – is the first to suffer. This is particularly disappointing because it achieves extremely positive results for people who often have no alternative. 56

The OCV Annual Report 2008-2009 also makes note of resource impacts stating that people with disability, children and young people who are residents of 293 visitable services had no access to a Visitor during 2008–2009, due to insufficient funds and OCVs to visit all services at the minimum visiting rate⁵⁷. Funding limitations to the OCV Scheme places an OCV's functions at risk of being tokenistic at best.

OCVs can offer a unique independent monitoring mechanism to people living in licensed boarding houses, and as such, are an important mechanism for the prevention, detection and response to domestic violence. In order to encourage disclosure of complaints and concerns however, OCVs require sufficient time and number of visits to build relationships with residents as well as sufficient time to promote the resolution of issues of concern.

Recommendation 22:

The NSW Treasury provide increased funding to the NSW Ombudsman to ensure its functions required by law as well as those available under its discretionary powers are not limited in any way and can be adequately discharged.

⁵⁷ Official Community Visitor Annual Report 2008-2009 (2009) pg 33.

Community Services (Complaints, Reviews and Monitoring) Regulation 2004 Section 4
 NSW Ombudsman Annual Report 2008-2009 (2009) pg 2-3.

Influence on NSW Police Force Practice through Special Reports to Parliament
The NSW Ombudsman also provides important oversight to NSW Police Force
practice and has produced several special reports to Parliament on Policing
Domestic Violence. The aim is to canvass possible ways in which NSW Police
Force may be able to better utilise its limited resources, and continue to improve its
service delivery in the domestic violence area⁵⁸.

Both the 1999 and 2006 Special Reports to Parliament on policing domestic violence identified the same issues of concern in policing of domestic violence and victims with disability, including:

- inadequate provision of victim support, not providing the involved parties with adequate information or expressing inappropriate attitudes towards the victim of the domestic violence incident. This is further compounded when the person has disability;
- delays in initial response to domestic violence incidents which may result in adverse consequences for people with disability as, they traditionally already have problems accessing suitable services; and
- disability awareness and attitudinal training is required to address inappropriate attitudes and prejudice in relation to domestic violence and adequate victim support to victims with disability.

This Project's consultations with key stakeholders also identified the same issues and barriers when considering domestic violence response to people with disability living in licensed boarding houses.

Whilst the NSW Ombudsman's reports make a series of recommendations, only one specifically addresses 'minority target groups', such as people with disability. This recommendation relates to the NSW Police Force reviewing the strategy, the adequacy and appropriateness of training content, to address issues relating to victims from marginalised sectors of the community and their needs and to ensure appropriate community representatives endorse content relating to victims from marginalised sectors of the community.

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⁵⁸ NSW Ombudsman (1999) *Policing of Domestic Violence in NSW. A special report to Parliament under s. 31 of the Ombudsman Act.* NSW Government Publication.

This recommendation was supported by the NSW Police Force who committed to undertaking annual reviews of subject content and material in all subjects of the Continuing Police Education program as to currency and best practice. Every 3 years a full external review is completed on each subject.

Recommendation 23:

The NSW Police Force consult disability peak bodies to review the subject content and material contained in its Continuing Police Education program during its annual and external review process, so as to ensure the gender specific needs of people with disability are addressed.

NSW Police Force – Policy and response to domestic violence in licensed boarding houses

NSW Police Force Code of Practice to Domestic and Family Violence

The NSW Police Force Code of Practice outlines how police officers will respond to reports of domestic and family violence. It has a number of strengths in its guiding principles and proactive policing response, including aims to establish linkages with local service providers to prevent and reduce incidents of domestic violence. It promotes a pro-victim support response and states that police "will ensure appropriate protective measures are taken to keep victims safe and prevent further violence against them"⁵⁹.

It recognises the diversity of the community and individuals and states "police must consider understanding and recognition of these differences when responding to victims of domestic violence, perpetrators of this crime and families affected" ⁶⁰. It also makes specific reference to people with intellectual disability, recognising the need to engage support persons as soon as possible and the need to facilitate support and referral for offenders and victims with intellectual disability.

Establishment of Crime Management Units (CMUs) to lead the response to domestic and family violence through the Domestic Violence Liaison Officers (DVLOs) allows for a more focused and specialist response. This specialist role also provides specialist support to other police by providing vital linkages with community issues

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NSW Police Force (2009) Code of Practice. NSW Police Force response to Domestic and Family Violence
 NSW Police Force (2009) Code of Practice. NSW Police Force response to Domestic and Family Violence Pg
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and concerns, information and intelligence, while forming partnerships for victim support and follow-up.

The Code of Practice also outlines key referral points relevant to supporting some victims with disability such as the Criminal Justice Support Network for people with intellectual disability and could be further strengthened with the inclusion of referral information about other disability advocacy support services and Government agencies such as ADHC.

One final point is the special consideration the Code of Practice gives to the handling of young offenders and safeguards that must be taken to ensure that the young offender is accommodated appropriately⁶¹. Whilst this strategy is welcomed, alternative accommodation and support options for victims and offenders with disability are also equally important. Currently, the lack of alternative accommodation and support needed when considering the use of an AVO and impact of excluding or removing offenders with disability or staff involved in the operation of the licensed boarding houses, who may be perpetrators, is a significant barrier to reducing offender behaviour, managing repeated incidents, and ensuring justice for victims with disability. The inclusion of such strategies for people with disability, particularly those reliant on support and accommodation would greatly enhance the effectiveness of domestic violence prevention and response to them.

Recommendation 24:

The NSW Police Force Code of Practice is updated in its next scheduled review in 2012 to:

- a) include additional referral information about disability advocacy support services and Government agencies, such as ADHC, available to support people with disability experiencing domestic violence within family settings as well as residential service settings;
- b) include additional safeguards and strategies to ensure proactive police responses and approaches are afforded to people with disability involved in domestic violence.

⁶¹ NSW Police Force (2009) Code of Practice. NSW Police Force response to Domestic and Family Violence, p11.

c) ensure Crime Management Units within Local Area Commands establish partnerships with key disability support services to establish partnerships for victim support and follow-up.

NSW Police Force practice in responding to domestic violence in licensed boarding houses

As a policy document, the NSW Police Force Code of Practice provides a solid foundation for police response to domestic violence. However our consultations would suggest that police practice and response to domestic violence in licensed boarding houses is limited. Whilst further research and consultation needs to be done to fully explore and understand police officers' interaction with the licensed boarding house sector and people with disability living in them, this project was able to draw the following preliminary conclusions:

- few referrals reach the police regarding domestic violence incidents of people with disability in licensed boarding houses;
- on the few occasions referrals were made, police issued 'warnings' to residents rather than triggered AVO's, referral to the DV PASS (spell out as first time mentioned) or other victim support options;
- a common barrier linked to Police response to situations involving people with disability, whether they be victims or perpetrators, is their reliance on specific accommodation and support to meet disability support needs, therefore limiting the range of options considered;
- police lack an understanding of support and advocacy options available to people with disability to ensure consistency and continuity needed in victim follow-up processes, or support necessary for perpetrators with disability in their interaction with the criminal justice system;
- no information sharing, local programs or protocols exist between the NSW Police Force, the disability and licensed boarding house sectors;
- whilst DVLO's may have specialist skills and understanding of domestic violence and issues affecting key target groups like people with disability, it is the general duty police who lack disability awareness who respond to domestic violence call outs.

Domestic violence services - practice and response to people with disability in licensed boarding houses

Domestic violence services recognised the breadth of the 'domestic relationship' definition but were hampered by the fact that their service structures typically targeted women in partner relationships experiencing domestic violence.

There was also a consensus in consultations that the experience of domestic violence in licensed boarding houses was equally an issue for men with disability. However, domestic violence support services are mostly geared towards women, and specific support services for men are very limited to non-existent.

Domestic violence services felt that responding to victims living in residential settings was made all the more difficult on account of the lack of alternative accommodation and support options. Such services were considered essential to keeping a victim safe. Some expressed a lack of confidence in ADHC to respond with the necessary alternative accommodation and support services, others did not know what referral options where available for advocacy, criminal justice support or case management.

Part of consultation for Project involved calls to various domestic violence support lines to 'test' these key referral points for their effectiveness in responding to issues relating to people with disability in residential settings such as licensed boarding houses⁶². This exercise provided evidence that these key referral points:

- also lacked disability awareness training;
- understanding of the unique circumstances, barriers and supports required by men and women with disability experiencing domestic violence in residential settings, including the difference between a funded disability service and a licensed boarding house;
- only offered referrals that 'should' or 'might' be able to provide further information and assistance:
- a complete absence of information regarding ADHC, the key Government agency in NSW responsible for disability services;
- operate within their own sector's silo.

⁶² NSW Human Services Community Services (DoCS) Domestic Violence Line; National Domestic Violence and Sexual Assault Line; Men's Referral Service.

Domestic violence service providers and Police Domestic Violence Liaison Officers spoke of the negative experience legal and court processes can have on a victim and expressed a lack of confidence in the legal system as an avenue to seek redress. Barriers highlighted included people with disability being viewed as unreliable witnesses and magistrates being reluctant to issue protective orders because s17 of the *Crimes (Domestic and Personal Violence) Act* *v* requires them to consider the effect the order might have on the accommodation needs of relevant parties or others indirectly affected by an order prohibiting or restricting access to a residence. These issues would be relevant in all cases which involved a person with disability and a co-resident, or person with disability and staff member, such as a Licensee or Licensed Manager who holds the licence or responsibilities for the conduct of the boarding house.

Recommendation 25:

Domestic Violence information support phone services review information content and referral pathways applicable to people with disability including those living in residential settings such as licensed boarding houses.

Recommendation 26:

AHDC review the NSW Domestic and Family Violence Action Plan to identify strategies for its implementation for people with disability living in residential settings including licensed boarding houses.

Domestic Violence Pro-Active Support Pass (DVPASS)

DVPASS Project is an innovative initiative which aims to provide planned early intervention inter-agency support to victims of domestic violence with the aim to:

- increase the number of women who receive early intervention support and information:
- increase the number of referrals to support services;
- increase referrals to external agencies to provide support for ongoing legal and social issues; and
- reduce the number of repeat events per victim of domestic violence.

Under this system the Police issue a 'pass' to the victim (whether or not charges are laid) and make a referral to the DV PASS co-coordinator who follows up the victim by phone to offer support and further referrals for supports. This initiative is set up with the recognition that 'no one agency can address the full range of problems and effects created, and only through collaboration of Government and non-Government agencies can issues be tackled'⁶³.

A number of barriers exist for women with disability living in licensed boarding houses who may want to make use of DVPASS. A simple but significant barrier is the lack of access to privacy and phones within a licensed boarding house. In many cases phones for residents' use are not available or they are located in the office which requires the resident to seek permission to use the phone. Within the DDV project target area a local Neighbourhood Centre has been responsible for installing and paying the ongoing costs of a phone within three licensed boarding houses. Without this, residents would not have access to, or receive, external communication. Records of phone usage indicate that there are not a lot of outgoing calls, as for some residents "the fear of being caught talking to someone else, and the consequences would be too much, and others may not have the skill or know how to make such calls". 64 Where a phone does exist, they are typically located in the staff office or in a public area such as hallways offering the individual no privacy or options for confidentiality.

The DVPASS Coordinator acts as an information relay between service support options and the victim. However another significant barrier for women with disability is the fact that follow-through on the DVPASS coordinators referrals is left largely up to the individual. People with disability in licensed boarding houses typically have very few means to follow through with referrals unassisted. They are often limited in their self advocacy skills, may lack access to transport and have limited, or no financial resources. An independent, adequately funded advocacy referral system as an adjunct to the DV PASS system is necessary for people with disability, if the aims of this initiative are to benefit them equally.

⁶³ 23 December 2009 Central Metropolitan Region Domestic Violence Sponsor, Superintendent Gavin quoted in Inner West Independent http://www.altmedia.net.au/new-program-to-combat-domestic-and-family-violence/14616
⁶⁴ Connell L 2010 DDV Consultation.

Recommendation 27:

The Inner West DVPASS establish an interagency relationship with an independent disability advocacy services to assist victims with disability to gain full benefits from the DVPASS system.

Recommendation 28:

As part of Stronger Together 2, ADHC provide funding for independent advocacy to specifically work with the Inner West DVPASS, with progressive roll-out of this initiative to other regions in NSW.

National Disability Abuse and Neglect Hotline

The Commonwealth has set up the National Disability Abuse and Neglect Hotline, an Australia-wide telephone hotline for reporting abuse and neglect of people with disability using Government funded services. Its primary target group are persons with disability who use Commonwealth, State or Territory provided or funded disability services. Notifications of abuse and neglect are referred to relevant complaint bodies for their resolution. Importantly the National Disability Abuse and Neglect Hotline may also link notifiers, and the persons subject to notification, to other sources of support, including independent individual advocacy support so they may actively participate in the resolution of their issues. The Hotline also undertakes education and training for disability service providers aimed at abuse and neglect prevention. A significant gap in the National Disability Abuse and Neglect Hotline's capacity is the exclusion of licensed boarding houses as a service type reportable as they are not a funded disability service. What this means is that the one key mechanism established by the Commonwealth Government for abuse and neglect response and prevention is not available to residents of licensed boarding houses. Nor are licensed boarding houses, proprietors, staff or residents able to benefit from the targeted education and training on abuse and neglect prevention and response offered the by the National Disability Abuse and Neglect Hotline.

Another limitation of the National Disability Abuse and Neglect Hotline in relation to detection, prevention and response to domestic violence is its categories of abuse and neglect. Whilst the categories include physical, sexual, psychological, legal and civil abuse, restraint and restrictive practices, and financial abuse, as well as the withholding of care and support which exposes an individual to harm, these

definitions lack a domestic violence context. Despite all these forms of abuse falling under the umbrella of 'domestic violence', the lack of domestic violence context is another example of how the danger of generic labelling can severely limit specific response options. Also, without defining domestic violence limits data collection opportunities for the creation of an evidence base for systemic change. It could be argued that the reason that intimate partner violence is considered the most prevalent form of violence against women is due to effective data collection methods relating to this form of violence. Without effective data collection methods around abuse neglect and domestic violence for people with disability in residential settings we will never understand its true level incidence and prevalence.

It can be concluded that the Hotline fails as a mechanism in preventing, detecting and responding to domestic violence in licensed boarding houses.

Recommendation 29:

28.1 NSW Government Premier and Cabinet partner with the Department of Families Housing Community Services and Indigenous Affairs (FAHCSIA) to explore options for enhancing the Disability Abuse and Neglect Hotline as data collection mechanism for recording and improving response and prevention strategies for all people with disability experiencing domestic violence.

28.2 The Department of Families Housing Community Services and Indigenous Affairs (FAHCSIA) immediately expand the primary target group of the National Disability Abuse and Neglect Hotline to include people with disability living in licensed boarding houses.

28.3 FAHCSIA to alter the categories of abuse under the National Disability Abuse and Neglect Hotline to include 'domestic violence' in its definitions.

Issues unique to supporting residents of licensed boarding houses

Domestic violence is often described as being veiled by a wall of silence. This description is equally fitting for the experiences of people with disability living in licensed boarding houses. The DDV Project has attempted to lift this veil. Not only has it shed a new light on what continues to be a group of people our community that live in one of the most marginalised and disempowered settings but also exposes their alarming situation of frequent and ongoing domestic violence.

What is a clear finding of this project is the fact that disability service providers working in the licensed boarding house sector feel disenfranchised and paralysed by the inertia of an ineffective regulatory, monitoring, policy and practice framework.

We strongly believe the limited response to domestic violence in licensed boarding houses is not due to disability service providers or domestic violence support workers being indifferent to the needs of women and men with disability living in boarding houses, but rather reflects how powerless they are within this ineffective framework.

Our consultations with service providers identified a number of reasons for this:

- Retribution to residents and service providers if complaints are pursued.
 This includes (but is not limited to):
 - the threat of, or actual homelessness as a consequence of making a complaint, or a residents seeking self determination. This is due to the fact that people with disability in licensed boarding houses have no tenancy rights or effective protection in instances of retribution;
 - blocking or withdrawal of services to residents by the Licensee, Licensed Manager or boarding house staff which affects all clients not just the victim if any party challenges them about their service. Service providers feel as though they have no avenues available to address this issue other than to 'tread lightly' as there is a lack of enforceability of licence conditions and regulations relating to external services and their access to licensed boarding houses.

The recent review of the ALI Program highlighted this significant dynamic between licensed boarding houses and services funded to support their residents, stating that:

"ALI providers emphasised they needed to have good relationships with the boarding house manager and staff in order for ALI to be effective. If ALI had a bad relationship, the boarding house could simply say that no residents wanted to participate in ALI. In this sense, ALI is reliant on the goodwill of the boarding house manager to permit

residents to participate. As one ALI provider explained, ALI workers at one boarding house were not able to walk around the house and talk with residents independently. Rather, when the ALI worker arrived at the front door, the manager provided the worker with a list of residents who could go out for the day. Attempts by ALI to change this practice have not been successful. At other boarding houses, ALI workers have more opportunity to engage with clients at their place of residence." ⁶⁵

We believe that such practices are well known to ADHC and that ADHC licensing officers and case workers have also directly experienced these types of practices. Whilst ADHC has a compliance relationship with both licensed boarding houses as its regulation body, and funded services, such as ALI, through funding contacts, it is not clear what AHDC is doing to address the culture and history of the boarding house staff's 'ownership' over residents or their obstruction of external services to which residents have the right to access. Nor is it clear how AHDC it supports funded service providers to ensure that they are able to deliver the services they are funded to provide, and ensure the rights of people with disability are respected, protected and fulfilled.

As in the ALI Evaluation Report, service providers consulted during the DDV Project also stated they felt compelled to comply with the staff of licensed boarding houses who behaved in restrictive ways and were therefore less able to raise concerns on behalf of residents around issues of domestic violence and abuse for fear of their service being blocked or withdrawn.

The obstruction by Licensees, Licensed Managers and licensed boarding house staff to external services and AHDC reluctance to enforce relevant licence regulations has also been experienced by PWD's Boarding House Project in its attempts to deliver advocacy services to people with disability in licensed boarding houses.

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⁶⁵ Edwards, R. & Fisher, K. (2010) *Active Linking Initiative (ALI) Evaluation Final Report.* Social Policy Research Centre, University of New South Wales. SPRC Report 1/10, p 33

Recommendation 30:

ADHC use the introduction of the amended Youth and Community Services Regulation 2005, and any future regulation to:

- a) ensure the active monitoring of compliance with licensing requirements relating to the 'Protection of interests of residents' and;
- b) remedy all obstructions with relevant action including prosecutions of the breach and suspension or revocation of the licence;
- c) provide or facilitate training opportunities for Licensees, Licensed Managers and staff of licensed boarding houses to address:
 - human rights of people with disability in line with CRPD;
 - inappropriate attitudes and prejudices towards men and women with disability; and
 - positive and effective complaint handling practices.

Lack of relocation pathways and options for alternative accommodation.

This was an issue that was highlighted by both disability and domestic violence services as being relevant to people with disability regardless of whether they were the victims or perpetrators of domestic violence. Lack of alternative accommodation and support services is reported as a significant barrier to ensuring the safety of the victim as well as their options for redress.

In the latest NSW Budget announcement the NSW Minister for Disability Services announced \$6 million for the relocation of residents of licensed boarding houses. However it is currently unclear how AHDC plans to use these funds or the processes by which residents can access such funding for their relocation to alternative accommodation and support services. Clarity around this is imperative to the issues raised in this report to ensuring persons at risk as who are victims of domestic violence are assisted to alternative accommodation.

Recommendation 31:

30.1 ADHC finalise their review the Vacancy Management Guidelines for the Boarding House Relocation to:

- a) ensure victims and/or offenders of domestic violence are prioritised for, and assisted to alternative community-based accommodation and support services, with specific attention being given to the gender related needs of victims and / or offenders; and
- b) these Guidelines are promoted and accessible to all relevant stakeholders to ensure ensure their effective implementation.
- 30.2 ADHC to develop an action plan for the roll out of the \$6 million dollars announced in the 2010 Budget.

Ineffective legislation and unenforceable licence conditions

During this Project, disability service providers cited the YACS Act and the limited enforceability of licence conditions as key reasons why any concerns, or evidence of, breaches of licence conditions relating to the health, comfort, safety and proper care of persons with disability or boarding house staff suitability to meet the needs of residents could not be pursued.

With the recent amendment to the *Youth and Community Services Act Regulation* 2005, as mentioned previously, this is no longer a barrier to ensuring the rights of people with disability as residents of licensed boarding houses are upheld. It is imperative however that ADHC immediately establish a strong monitoring presence and compliance expectation of these regulations so the people with disability in licensed boarding houses are afforded their human rights and adequate service provision. AHDC must be prepared to use the full extent of the YACS Act including the prosecution of the Licensee and Licensed Manager where necessary. Similarly it must be prepared to deal with the consequence of this action should it lead to the closure of the licensed premises. The additional cost this may lead to should never be used to justify inaction.

Hiatus in legislative and policy reform

PWD is also concerned that licensed boarding houses continue to operate in a vacuum of policy improvement which is reason for the limited improvement in standards in licensed boarding houses in recent years. We strongly believe any benefits arising from the implementation of the NSW Government's BHRP have now been neutralised by twelve years of legislative and policy hiatus.

Whilst this reform program brought significant service enhancements to the licensed sector, this was done by funding external service agencies to address gaps in the licensed sector's services rather than changing or upgrading requirements of licensed boarding houses. Since this time, licensed boarding houses remain excluded from new directions in disability services in NSW including the NSW Government's Stronger Together – A new direction for disability services in NSW 2006 – 2016; and Better Together - A new direction to make NSW Government services work better for people with a disability and their families: 2007 – 2011.

The NSW Government should be embarrassed by its pace of reform in relation to this sector and the vulnerability it has left people with disability exposed to. The reform of the licensed boarding house sector must be prioritised by the NSW Government to address the long term neglect of the housing and support needs of people with disability residing in licensed boarding houses (see Recommendation 9).

Recommendation 32:

ADHC to immediately develop a full range of policies including (but not limited to) Abuse and Neglect Policy, Managing Client Risk, Decision Making and Choice, Behaviour Management and Restrictive practices for the licensed boarding house sector.

Varying interpretations of duty of care and best interest approach to supporting people with disability.

What has become evident over the course of this project is the challenge for disability and domestic violence support workers alike to balance a person's right to choice and privacy and the service/workers' responsibilities under their duty of care, when faced with knowledge of a domestic violence incident.

In consultations with disability service providers working with licensed boarding houses they described their typical response to a disclosure of domestic violence by a boarding house resident as one which respected the person's choice to decide whether to take action or not. In all domestic violence examples cited by those consulted during this project however, the person chose not to pursue the matter by either seeking legal redress or accessing support options. The service providers therefore believed that they had met their obligations and their 'hands were tied' in taking any further action as this would breach the person's right to privacy choice

and confidentiality. This is despite the fact that service providers may disclose confidential information under circumstances where that personal information may prevent or reduce a serious and imminent threat to the life or health of any person (the client or someone else) and the disclosure of information to a particular person or agency is likely to reduce that risk.^{xvi}

The problem with this response by service providers to domestic violence incidents in licensed boarding houses, is that they remain unreported and invisible as both a crime and an area requiring a response. This invisibility not only ensures that systemic gaps and failures remain unaddressed but may also result in further personal cost to the individual and or others living in this shared residential setting.

It also raises questions as to whether service providers have fulfilled their duty of care to both the individual client and/or any other clients/persons who may, as in the case of licensed boarding houses, live in the same residential setting.

When a person becomes a victim of a further act of domestic violence the knowledge of the first incident and/or the circumstances of the person's living arrangements, including the nature of the supports they receive in this setting, leaves a service provider at risk of negligence for failing to take precautions.

Especially if:

- (a) the risk was foreseeable (they knew about it, or ought to have known about it), and
- (b) the risk was not insignificant, and
- (c) a reasonable person in their position would have taken precautions⁶⁶.

A further overlay is the legislative requirements stipulated by s316 of the NSW Crimes Act 1900 which states it is an offence to fail, without a reasonable excuse, to give information to the police that would help them to arrest, prosecute or convict someone guilty of a serious crime.

Whilst the Crimes Act is rarely used to prosecute workers in the community sector in NSW who fail to report, in most situations workers believe they have a 'reasonable excuse' for not reporting - the need to protect client confidentiality so that they can continue working with the person to achieve positive outcomes. The majority of

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⁶⁶ NSW *Civil Liability Act 2002*: 5B General principles (paraphrased). Duty of care in NSW youth & welfare services - YAPA Fact Sheet.

service providers consulted in the course of this project do not fall into professions exempt from this section of the Crimes Act^{xvii}.

One final issue for consideration is how the issue of 'choice' can be used to justify certain situations for people with disability on the basis that the right to personal autonomy overrides all other considerations. The real facts underlying these situations very rarely reflect such claims. The following section uses the CRPD as the framework to understand 'duty of care' and 'best interest' decision-making.

In most situations of this type, persons with disability have been, or continue to be, obliged to remain in abusive environments in order to receive essential support services. Yet Governments could just as readily provide these support services in alternative settings in the community, and indeed, as we have noted, Article 19 - Living independently and being included in the community of the CRPD makes it clear that they have a fundamental obligation to do so. Service providers and advocates must challenge these situations, and not to do so, results in the suppression and degradation of autonomy and personality, and is, in fact, the ultimate opposite of personal autonomy.

Such suppression of autonomy and personality of the individual is offensive to human dignity which is the ultimate source of all human rights, which might also be conceptualised as the end goal of all human rights. Consequently, all human rights must be interpreted and applied in a way that respects, protects and fulfils human dignity.

Such tensions and conflicts must be resolved in a way that ensures the respect, protection and fulfilment of human dignity. Even in those situations where persons with disability seek to remain in abusive environments, it means that Governments, service providers and advocates are under a clear obligation to protect and preserve human dignity. To do otherwise would degrade the dignity of all persons with disability, and our society as a whole, by creating or preserving social institutions that perpetuate a belief in the social inferiority of persons with disability.

Such patterns of behaviour and belief may create delicate and painful challenges to be resolved. But experience overwhelmingly demonstrates that they can be resolved with startling benefits not only for persons with disability, but for all stakeholders, and the community as a whole⁶⁷.

The DDV project has highlighted the need for disability services and advocates to review their policies and procedures for fulfilling their duty of care against the CRPD to ensure the protection and fulfillment of human dignity and all other human rights. The primary reasons for this are:

- the very high incidence of domestic violence in licensed boarding houses;
- little to no referrals being made to police regarding domestic violence incidents of people with disability in licensed boarding houses;
- little to no referrals to ADHC, domestic violence or other support services for redress or support for people with disability experiencing domestic violence in licensed boarding houses; and
- residents 'choice' is negatively impacted by many factors including but not limited to:
 - a lack of tenancy rights;
 - limited alternative appropriate accommodation or support services for victims or perpetrators with disability;
 - refuges not taking single women, or those with particular disability support needs;
 - fear and intimidation common to the power imbalance between
 residents and staff, particularly where staff are alleged perpetrators;
 - a lack of knowledge of rights and how to seek support;
 - limited independent advocacy support;
 - risk of closure of the boarding house which will affect more than the initial victim;
 - personal experience of long term systems failure.

⁶⁷ PWD Accommodating Human Rights. A human rights perspective on housing, and housing support, for people with disability.

Recommendation 33:

Service providers and advocates who support residents of licensed boarding houses develop, review and amend policies and procedures for fulfilling their duty of care when responding to incidents of abuse including domestic violence. Such policies should consider issues including:

- a) human rights of people with disability as articulated in accordance with the CRPD risk assessment:
- b) the disclosure of confidential information under circumstances where that personal information may prevent or reduce a serious and imminent threat to the life or health of any person (the client or someone else) and the disclosure of information to a particular person or agency is likely to reduce that risk;
- c) triggers for referral of domestic violence and abuse to:
 - I. the NSW Police Force:
 - II. ADHC for a regulatory response to a breach of licence conditions;
 - III. ADHC for supports available under the Boarding House Reform Program's two sub programs - Residents Support Program xviii or Relocation Program^{xix};
 - IV. other relevant support services or response agencies such as sexual assault services, domestic violence services, counselling and/or independent advocacy support;
- d) the assessment of each situation individually;
- e) maintenance of normal privacy in all other situations and with all other people.

Recommendation 34:

ADHC to provide or facilitate access for training for service providers working in the licensed boarding houses sector on duty of care.

Concluding Comments

At the conclusion of the Project, PWD hopes that the critical issues raised in this report are taken seriously by all stakeholders responsible for detection, prevention and response to domestic violence of people with disability living in licensed boarding houses. PWD is committed to pursing these important issues and will continue to advocate for the rights of people with disability living in licensed boarding houses.

Abbreviations

ACG Allen Consulting Group

ADA Anti-Discrimination Act 1977 (NSW)

ADB Anti-Discrimination Board (NSW)

ADFVC Australian Domestic and Family Violence Clearinghouse

ADHC Ageing, Disability and Home Care (NSW)

AHRC Australian Human Rights Commission

ALI Active Linking Initiative

AVO Apprehended Violence Order

BHRP Boarding House Reform Project

CEDAW Convention on the Elimination of all forms of Discrimination Against Women

CGRVS Centre for Gender-Related Violence Studies (UNSW)

CRPD Convention on the Rights of People with Disability

CS CRAMA Community Services (Complaints Review and Monitoring) Act 1993

CSTDA Commonwealth State/Territory Disability Agreement

DADHC Department of Ageing, Disability and Home Care (NSW)

DDV Disability and Domestic Violence Project, also referred to as the Project

DDVPAG Disability and Domestic Violence Project Advisory Group

DSA Disability Services Act (NSW)

DSARI Disability Studies and Research Institute

DSP Disability Support Pension

DVLO NSW Police Domestic Violence Liaison Officer

DVPASS Domestic Violence Pro-Active Support Pass

HACC Home and Community Care

IMF Integrated Monitoring Framework

LRC Licensed Residential Centre (Licensed Boarding House)

OCV Official Community Visitors

PWD People with Disability Australia

Supported Accommodation Assistance Program SAAP

UN **United Nations**

The University of New South Wales UNSW

US **United States**

WWDA Women With Disability Australia

Youth and Community Services Act 1973 (NSW) YACS Act

Glossary of Terms

AHDC Metro South region

The DDV project focused on the Sydney inner west area of this region.

Boarding House Caseworker

According the AHDC Boarding House Caseworker job description, this role is to provide individual case management and local service delivery coordination to improve outcomes for residents of Licensed Residential Centres (Licensed Boarding Houses).

Boarding House Licensee

According to the Youth and Community Services Act 1973 Section 3, Licensee is defined as 'the person to whom a licence has been granted'.

Boarding House operator

Term used interchangeably with Licensee and Licensed Manager.

Boarding House Licensed Manager

According to the Youth and Community Services Act 1973 Section 13 (1) (c), Licensed Manager is defined as 'the person who is authorised by the licence to have conduct of a residential centre for handicapped persons at those premises'.

Funded service programs

All AHDC operated and funded services.

Handicapped person

According to the Youth and Community Services Act 1973 Section 3, handicapped person is defined as 'a person who is senile, temporarily or permanently incapacitated for work, mentally ill, intellectually handicapped, physically handicapped, sensorily handicapped, chronically ill, of advanced age or suffering from any medical condition prescribed by the regulations, or any combination of those disabilities, and who requires supervision or social habilitation'.

Licensed boarding house (term used interchangeably with Licensed **Residential Centre**)

According to Youth and Community Services Act 1973 Section 3, residential centre for handicapped persons means 'any premises comprising, or of the nature of,

lodgings or a boarding house, home or hostel:

- (a) at which 2 or more handicapped persons reside:
 - (i) subject to the payment of a fee or the giving of some other consideration, and (ii) otherwise than with a person who is a relative of each of those persons, is of or above the age of 18 years and is not a handicapped person; or
- (b) declared to be a residential centre for handicapped person by an order in force under section 3A'.

References

The following reference list cites sources dated 2000 to 2010 consulted and cited in the process of undertaking the literature review. Sources directly cited in the text are marked by a double asterisk (**). Resources have been listed in alphabetical order under key subheadings for ease of reference.

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Useful Links

Australian Centre for the Study of Sexual Assault website (Sexual Assault and Disability Issues Bibliography): http://www.aifs.gov.au/acssa/research/disability.html

Australian Domestic and Family Violence Clearinghouse:

http://www.austdvclearinghouse.unsw.edu.au/

Australian Housing and Urban Research Institute (Care and Support Services Research Projects):

http://www.ahuri.edu.au/themes/care support services/researchprojects5.html

SADA Project: http://www.sadaproject.org.au

SADA Project (Sexual Assault and Disability Issues Bibliography):

http://www.aifs.gov.au/acssa/research/disability.html

People with Disability Australia Inc: http://www.pwd.org.au

Women with Disability Australia: http://www.wwda.org.au

Women with Disability Australia (Violence, Abuse, Sexual Assault Information and Referral Directory Contents): http://www.wwda.org.au/portviol.htm

Australian Domestic and Family Violence Clearinghouse for UNSW Global Pty Limited

Endnotes

- iii Crimes (Domestic and Personal Violence) Act 2007, Section 5 Meaning of "domestic relationship" For the purposes of this Act, a person has a "domestic relationship" with another person if the person: (a) is or has been married to the other person, or
- (b) has or has had a de facto relationship, within the meaning of the Property (Relationships) Act 1984 , with the other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household as the other person, or
- (e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the Crimes (Administration of Sentences) Act 1999 or a detention centre within the meaning of the Children (Detention Centres) Act 1987), or
- (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
- (g) is or has been a relative of the other person, or
- (h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

- ^v ADHC Abuse and Neglect Policy (2007, p 25) defines domestic violence as violence, abuse and intimidation perpetrated by one person against another in a personal, intimate relationship. It is a partnership violence that includes violence perpetrated when couples are separated or divorced. Domestic violence occurs between two people where one has power over the other causing fear, physical and/or psychological harm".
- vi The ALI program is a program funded under the BHRP Residents Support Program which aims to link people who live in licensed boarding houses into the community to enhance their independence and integration into the community. ADHC funds a range of NGO's to deliver these services in NSW.
- vii Official Community Visitors are people appointed by the Minister for Disability Service to visit, consult with children, young people and people with disability living in residential care settings that are funded, licensed and/or authorised by ADHC, with the purpose to promote the legal and human rights of residents, consider matters raised by residents, provide information and assistance with advocacy, help resolve any grievances and concerns the residents may have, and inform the Minister and the Ombudsman on matters that affect the conditions of people in care. (NSW Ombudsman Annual Report 2008-2009)

ADHC BHRP Resident Support Program funds ADHC boarding house caseworkers, Advocacy support, Active Linking Initiative services, primary and secondary health care, personal care, community transport.

ADHC BHRP Relocation Program supports residents to relocate into alternative accommodation options due to increased support needs or the closure of a Licensed Residential Centre, through the development and coordination of transition plans to ensure residents are provided with appropriate accommodation options to meet their needs.

iv Meaning of 'domestic violence offence' means a 'personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship' Part 3 Section 11 Crimes (Domestic and Personal Violence) Act 2007.

viii The 'NSW Domestic and Family Violence Action Plan Stop the Violence – End the Silence' (pgs 35 & 61) notes the following:

Priority 2: Preventing the escalation and reoccurrence of domestic and family violence			
How will we do it? 13. a) Incorporate issues for women with a disability and victims who have a child with a disability into a risk management framework (CARAM). b) Incorporate issues for women with a disability and victims who have a child with a disability into mainstream	Lead agency NSW Health	Partner agencies Human Services (ADHC)	When Short-term
training. Priority 3: Organisational char	nae		
77. Embed into Human Services (ADHC) staff training, a component on domestic violence and women with a disability, and appropriate referral pathways.	Human Services	DJAG	Short to long term

^{ix} COMMUNITY SERVICES (COMPLAINTS, REVIEWS AND MONITORING) ACT 1993 - SECT 47 Protection of complainant against retribution

- (1) A person who takes or threatens to take detrimental action against another person because that other person or any other person:
- (a) makes, or proposes to make, a complaint to a service provider, an Official Community Visitor or the Ombudsman, or
- (b) brings, or proposes to bring, proceedings before the Tribunal, or
- (c) provides, or proposes to provide, information, documents or evidence to an Official Community Visitor, the Ombudsman or the Tribunal,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) It is a defence to a prosecution for an offence under this section if it is proved:
- (a) that the action referred to in subsection (1) on which the prosecution was based was taken or proposed in bad faith, or
- (b) that any material allegation was known by the person making it to be false.
- (3) In this section, "detrimental action" means action causing, comprising or involving any of the following:
- (a) injury, damage or loss,
- (b) intimidation or harassment,
- (c) discrimination, disadvantage or adverse treatment in relation to employment,
- (d) dismissal from, or prejudice in, employment,
- (e) prejudice in the provision of a community service,

(f) disciplinary proceedings.

- * Crimes (Domestic and Personal Violence) Act s17 outlines matters to be considered by the court stating: '(1) In deciding whether or not to make an apprehended domestic violence order, the court must consider the safety and protection of the protected person and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order. (2) Without limiting subsection (1), in deciding whether or not to make an apprehended domestic violence order, the court is to consider: (a) in the case of an order that would prohibit or restrict access to the defendant's residence--the effects and consequences on the safety and protection of the protected person and any children living or ordinarily living at the residence if an order prohibiting or restricting access to the residence is not made, and (b) any hardship that may be caused by making or not making the order, particularly to the protected person and any children, and (c) the accommodation needs of all relevant parties, in particular the protected person and any children, and (d) any other relevant matter.
- (3) When making an apprehended domestic violence order, the court is to ensure that the order imposes only those prohibitions and restrictions on the defendant that, in the opinion of the court, are necessary for the safety and protection of the protected person, and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order, and the protected person's property.
- (4) If an application is made for an apprehended domestic violence order that prohibits or restricts access by the defendant to any premises or place and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court is to give reasons for that decision.'
- 'i 'Health service' is defined as any medical, hospital, ambulance, paramedical, community health or environmental health service or any other service (including any service of a prescribed class or description) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons S 4 *Health Administration Act 1982*, Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010 Schedule 1, Part 3 Obligations of Licensees, Section 14 Safety and Health.
- Ageing and Disability Department (ADD was ADHC's name prior to being known as DADHC), developed and published the 'Providing Quantity Services for People with Disabilities. A Sample Staff Handbook in 2001. This Staff Handbook was a "resource to enable Licensed Residential Centre operators in NSW and their staff to more fully provide a service tailored to the needs of residents with a disability". It provided a summary of legislation and standards relevant to working with people with disabilities; an outline of policies that can be used by Licensed Residential Centre staff to understand a best practice approach to their work; suggested procedures that can be used to ensure quality service provision; proforma sheets which can be used on a daily basis by staff to assist in the smooth running of a facility whilst supporting the rights of people with disabilities; and covered covers 20 specific areas of best practice which are clustered into 10 easy to understand functional areas closely mirroring the Disability Service Standards. Implementation of this resource is optional but highly recommended as it promoted quality service provision for people with disability who live in residential centres in line with current national practice principles.
- xiii ADHC Abuse and Neglect policy and procedure (May 2007, p 4/6) defines client as 'a person with a disability who lies or participates in a DADHC operated of funded non-Government service' and target group for this policy as 'all paid and unpaid workers in DADHC operated and funded non-Government services who have contact with adult people with disability'.

- xiv OCV Annual Reports from 2004 to 2009: 2004-2005 notes 28% of major issues raised by OCV's related to inadequate environment and facilities eg lack of privacy; 2005-2006 notes 28% of major issue raised as relating to failure of licensed boarding houses to protect residents from abuse and assault; 2006-2007 notes 16% of major issues raised relating to failure of licensed premises to protect residents from abuse and assault, usually by other residents, inadequate safety and behaviour management systems and procedures and poorly trained and supervised staff; 2007-2008 notes key issues as congregate living model of boarding houses presents challenges in meeting needs of respect, privacy and dignity; residents lack awareness of rights or even an expectation of leading a better, more fulfilled life.
- ^{xv} Crimes (Domestic and Personal Violence) Act s17 outlines matters to be considered by the court stating:
- '(1) In deciding whether or not to make an apprehended domestic violence order, the court must consider the safety and protection of the protected person and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order.
- (2) Without limiting subsection (1), in deciding whether or not to make an apprehended domestic violence order, the court is to consider:
 - (a) in the case of an order that would prohibit or restrict access to the defendant's residence-the effects and consequences on the safety and protection of the protected person and any
 children living or ordinarily living at the residence if an order prohibiting or restricting access to
 the residence is not made, and
 - (b) any hardship that may be caused by making or not making the order, particularly to the protected person and any children, and
 - (c) the accommodation needs of all relevant parties, in particular the protected person and any children, and
 - (d) any other relevant matter.
- (3) When making an apprehended domestic violence order, the court is to ensure that the order imposes only those prohibitions and restrictions on the defendant that, in the opinion of the court, are necessary for the safety and protection of the protected person, and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order, and the protected person's property.
- (4) If an application is made for an apprehended domestic violence order that prohibits or restricts access by the defendant to any premises or place and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court is to give reasons for that decision.' *Note:* Act also provides provisions for personal violence orders in the circumstances that none of the persons for whose protection the order would be made has or has had a domestic relationship with the person against whom it is sought. This may also be of use in circumstances when people with disability living in boarding houses/residential setting are victims of violence outside the domestic setting.
- xvi A 'serious' threat must reflect significant danger, and could include a potentially life threatening situation or one that might reasonably result in other serious injury or illness. A threat is 'imminent' if it is about to occur, or may result in harm within days or weeks. Privacy and Confidentiality in youth and welfare agencies in NSW YAPA Fact Sheet. www.yapa.org.au/youthwork/facts/privacy.php

xvii Crimes (General) Regulation 2005 under the Crimes Act 1900, Section 6 Concealment of offences by certain persons. For the purposes of section 316 (4) of the Act, the following people practising professions, callings or vocations are prescribed: (a) a legal practitioner, (b) a medical practitioner, (c) a psychologist, (d) a nurse, (e) a social worker, including: (i) a support worker for victims of crime, and (ii) a counsellor who treats persons for emotional or psychological conditions suffered by them, (f) a member of the clergy of any church or religious denomination, (g) a researcher for professional or academic purposes, (h) if the serious indictable offence referred to in section 316 (1) of the Act is an offence under section 60E of the Act, a school teacher, including a principal of a school.

^{xviii} ADHC BHRP Resident Support Program funds ADHC boarding house caseworkers, Advocacy support, Active Linking Initiative services, primary and secondary health care, personal care, community transport.

xix ADHC BHRP Relocation Program supports residents to relocate into alternative accommodation options due to increased support needs or the closure of a Licensed Residential Centre, through the development and coordination of transition plans to ensure residents are provided with appropriate accommodation options to meet their needs.