



# More than board and lodging: the need for boarding house reform

A special report to Parliament under section 31  
of the *Ombudsman Act 1974*

August 2011



NSW Ombudsman

Our logo has two visual graphic elements; the 'blurry square' and the 'magnifying glass' which represents our objectives. As we look at the facts with a magnifying glass, the blurry square becomes sharply defined, and a new colour of clarity is created.

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# Ombudsman's message

This report is about marginalised and vulnerable people living in accommodation that does not afford them adequate protection, support, or rights; and the need for significant reform to address this longstanding and unacceptable situation.

For nine years, my office has highlighted the vulnerability and poor circumstances of people living in licensed boarding houses. The majority of residents have a mental illness or a cognitive impairment, or both; have considerable health problems; and require daily supervision and support. They are typically reliant on income support, and hand over most, or all, of that money to the boarding house operator to pay for their board and lodging.

While there are standards and conditions that licensed boarding house operators are required to meet, our work has identified that these requirements are often not met, and the health, safety and wellbeing of the people living in these facilities suffers as a result. We have repeatedly found critical failings on the part of Ageing, Disability and Home Care (ADHC) to fulfil its responsibilities to monitor licensed boarding houses and ensure their compliance with requirements.

However, the problems are much larger than poor monitoring and enforcement. The current legislation governing licensed boarding houses and the standards expected in such facilities are inadequate to protect already vulnerable residents from harm and violations of their fundamental human rights. People living in unlicensed boarding houses have even fewer safeguards and protections.

Significant reform is required to provide adequate protections and appropriate support, and to uphold the rights of people living in the boarding house sector. At a minimum, our work demonstrates that there is a critical need for legislative change to improve the circumstances of, and outcomes for, people living in licensed boarding houses. In part, this is about improving standards to enable people with disabilities to obtain appropriate support to meet their needs; and delivering greater protections, that are rights-based. This must be accompanied by a rigorous system for ensuring compliance and removing providers that are exploitative or do not meet minimum standards.

My office has made many recommendations over the past nine years aimed at improving the circumstances of people living in licensed boarding houses and progressing the broader reforms. We have received repeated advice from ADHC about its intentions to progress a review of the legislation governing licensed boarding houses, and interagency work to explore options for reform of the boarding house sector. However, almost a decade in, the legislative review has not been completed, and no decisions have been made about the proposed reforms.

The slow pace of work and the lack of practical action to commence necessary reforms are unreasonable given the implications for the individuals living in boarding houses. The need for concerted and sustained cross-government action to achieve real and improved outcomes for people living in licensed and unlicensed boarding houses is overdue.



Bruce Barbour **Ombudsman**



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# 1. Introduction

Boarding houses in NSW are either licensed or unlicensed. Boarding houses that have two or more people with a disability who require supervision or support are required to be licensed under the *Youth and Community Services Act 1973* (YACS Act) and meet certain requirements. The licence conditions and regulations specify the requirements expected of the licensee, licensed manager and staff of the boarding house, and are intended to ensure that the health, safety and welfare of residents are maintained. Boarding houses with such licences are referred to as licensed residential centres or licensed boarding houses.

Licensed boarding houses were brought within the jurisdiction of the NSW Ombudsman in 2002. Over the past nine years, our work in relation to licensed boarding houses has identified significant concerns about:

- the safety, health and welfare of the residents of licensed boarding houses;
- the actions of Ageing, Disability and Home Care (ADHC) to meet its obligations under the YACS Act in relation to licensing and monitoring boarding houses; and
- the adequacy of the licensing conditions and legislative requirements to afford appropriate support for, and protection of, residents.

What is evident from our work is that there are fundamental flaws and inadequacies in the existing legislation and requirements for licensed boarding houses, and that these problems can adversely affect the safety, health, welfare and rights of residents. Concurrently, the capacity of licensed boarding houses is declining, and there are concerns that vulnerable people are entering unlicensed boarding houses, where there are fewer safeguards and no regulations.

Over the nine years, we have highlighted the need for reform of the boarding house sector to deliver the necessary legislative change, improve the circumstances of residents, and broaden the range and quality of accommodation and support options. During that time, various proposals for reform have been put forward by ADHC for consideration by government.

There has recently been further work by an interdepartmental committee to explore options for reform of the broader boarding house sector. Our work demonstrates the pressing need to proceed with this important reform activity, with a focus on greater protections and better conditions for its more vulnerable residents.

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## 2. Boarding houses

There are an estimated 455 boarding houses in NSW, accommodating over 5,000 residents.<sup>1</sup> Of these, 31 are licensed boarding houses, with capacity to accommodate 687 people.

Boarding houses are for-profit businesses. Residents are typically reliant on income support, and pay between 75 and 100 percent of their benefits to the boarding house for accommodation, food, and consumables such as toiletries and cigarettes.

Unlicensed boarding houses provide lodging to residents with general needs, and the vast majority are located in the Sydney metropolitan area. Boarding houses contain a diverse population of people on low incomes and include a large proportion of the homeless population.<sup>2</sup>

Boarding houses are required to be licensed if they accommodate two or more people with disabilities who require support. Many licensed boarding house residents require ongoing support and are highly vulnerable due to factors such as their reliance on boarding house staff and other services for assistance with activities of daily living; the presence of mental illness and/or cognitive impairment; poor physical health; and increasing support needs due to ageing.

The number of licensed boarding houses is declining. In 1993, there were 179 licensed boarding houses, providing 3,900 beds. By 2006, this had reduced to 55 licensed facilities, with a total capacity of around 900 beds. In the last five years, the number has further declined.

The 31 licensed boarding houses vary in size from as few as four residents to as many as 60. The facilities are located in the inner-west area of Sydney, and outside the Sydney metropolitan area in the central west, central coast/ hunter and southern highlands regions.

### Legislation

The YACS Act sets out the obligation of licensed boarding house operators to comply with conditions of the licence or permit. The licence conditions stipulate the minimum requirements in 10 broad areas, including those relating to the physical condition and structure of the premises; record keeping; provision and storage of food; staffing suitability; residents' rights, welfare, finances and advocacy; and medication administration, supervision and health.

In 1999, the government received legal advice that conditions other than those that pertain to the number of residents, the physical and structural requirements of the premises and some of the record keeping responsibilities may be *ultra vires*; that is, not legally enforceable.

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1 The NSW Interdepartmental Committee on Reform of Shared Private Residential Services *Boarding House Reform Discussion Paper* (December 2010) states that the estimate of the number of beds and people living in these premises varies considerably depending on the data collection used. The Australian Bureau of Statistics 2006 Census of Population and Housing put resident numbers at over 6,000. In the same year, Supported Accommodation Assistance Program data identified around 5,000 residents.

2 The NSW Interdepartmental Committee on Reform of Shared Private Residential Services *Boarding House Reform Discussion Paper* (December 2010) notes that the Australian Bureau of Statistics defines residents within boarding accommodation as experiencing 'tertiary homelessness' if they are living without their own bathroom, kitchen, or security of tenure.



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Finally in 2010, and after raising our concerns for many years, changes were made to the YACS Regulations that resolved the questions about the enforceability of the licence conditions, and strengthened some of the requirements relating to the health and safety of residents:

- In June 2010, an amendment was made to the YACS Regulation 2005, bringing the licence conditions relating to the care, safety and wellbeing of residents into the Regulation. This meant that all conditions of licence were now legally enforceable by ADHC.
- In September 2010, the YACS Regulation 2010 was enacted, with the inclusion of new requirements relating to medication management and first aid qualifications of staff, and an obligation on boarding house licensees and managers to provide residents with information on support services, advocacy services or other service or information providers.

Under the *Local Government Act 1993* and Local Government (General) Regulation 2005, local councils have certain responsibilities in relation to licensed and unlicensed boarding houses. However, these are limited to fire safety requirements and basic standards relating to the maximum number of boarders and lodgers, and the cleanliness and general amenity of the premises. Councils are not required to maintain records of boarding houses within their area.

### 3. Boarding houses and the role of ADHC

ADHC's role in relation to licensed boarding houses is to issue licences, and to monitor the facilities to ensure compliance with the requirements of the YACS Act, the Regulations, and the conditions of licence. The main aim of monitoring licensed boarding houses is to ensure the health, safety and welfare of residents.

The agency also has lead responsibility for administering and implementing the Boarding House Reform Program. Announced in 1998, the program aims to:

- improve the standard of accommodation and support provided to licensed boarding house residents;
- relocate high need residents to supported accommodation and prevent inappropriate entry to licensed boarding houses; and
- ensure that licensed boarding houses remain viable accommodation options, where safety and affordability satisfy minimum benchmarks.

Initiatives under the Boarding House Reform Program include implementation of a screening tool for entry to licensed boarding houses, and provision of support services for residents. The support services include personal care; primary and secondary health care; advocacy and information; casework; and Active Linking Initiative (ALI) program<sup>3</sup> services.

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3 The ALI program aims to link residents of licensed boarding houses into the community by facilitating community-based activities based on a resident's goals, building individual skills to enhance their independence and integration within the community.

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ADHC directly provides some of the support services, including casework and personal care services.

ADHC also has some responsibilities in relation to people with disabilities in unlicensed boarding houses. These include making provision for the health, safety and proper care of people with disabilities who may be residing in those premises. However, an ADHC officer can only enter or inspect an unlicensed boarding house under the YACS Act for the purpose of:

- ascertaining whether a breach of Part 3 of the Act (licensing) is being committed, under the authority of a warrant, or
- making enquiries after receiving a Licence Application.

## 4. Issues identified through our work

Our legislative functions relating to licensed boarding houses include handling complaints, conducting investigations and inquiries, reviewing the deaths of residents, and undertaking community education activities. We also administer the Official Community Visitor (OCV) scheme. OCVs are appointed to conduct visits to licensed boarding houses (and other disability accommodation services) and to make recommendations to improve services to residents.

Over the past nine years, we have undertaken considerable work in relation to licensed boarding houses and the people with disabilities living in those facilities. This has included three investigations and an inquiry into ADHC's conduct in licensing and monitoring licensed boarding houses and ensuring their compliance with requirements.

We have also reviewed the deaths of 133 people who lived in licensed boarding houses<sup>4</sup> and produced six reports on our reviewable deaths work.<sup>5</sup> Our reports have included numerous recommendations aimed at reducing risks and improving safeguards for people in licensed boarding houses, and record ADHC's implementation of our recommendations.

Our work, in addition to complaints and information provided by OCVs, has highlighted a range of issues relating to the safety, health and welfare of licensed boarding house residents; and identified recurring problems with ADHC's licensing and monitoring activities. It has also raised serious questions about the adequacy of the existing legislative and policy requirements to deliver adequate support and protection to people living in licensed boarding houses.

It is of particular concern that many of the issues that we have identified in our most recent investigation and review work are consistent with those we initially identified nine years ago.

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<sup>4</sup> The 133 people died between 1 December 2002 and 31 December 2010.

<sup>5</sup> Our sixth report on reviewable disability deaths will be tabled in Parliament this year.

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## 4.1 Licensing and monitoring of boarding houses by ADHC

In 2002, in response to complaints about ADHC's capacity to monitor standards and enforce licence conditions in boarding houses, we initiated an investigation into these issues. Our investigation found that ADHC was either failing or unable to enforce licence conditions primarily due to a lack of clarity regarding whether all licence conditions were enforceable under the YACS Act. We also found that the (then) department's conduct was unreasonable in failing to take prompt action to overcome legal barriers to enforcing the full range of standard licensing conditions through either seeking amendments to the YACS Act or other means.

A key recommendation arising from our investigation was for ADHC to review all licensed boarding houses to ensure that appropriate standards of care were being provided to residents.

At around the same time as this office initiated its 2002 investigation into ADHC's monitoring of licensed boarding houses, ADHC commenced a review of the YACS Act. The review, conducted by the Allen Consulting Group, was initiated for a number of reasons, including questions about the enforceability of the legislation, a decline in the number of licensed boarding houses, and poor standards of accommodation within the industry.

The resulting Allen review report<sup>6</sup> (September 2003) made a range of recommendations for reform of the boarding house sector, including the need to introduce new legislation in place of the YACS Act; a registration and accreditation system for residential service providers; and tenancy rights for residents.

In April 2004, ADHC provided the Minister for Disability Services with an options paper in response to the review findings. At the request of the (then) Minister, the review report was released for public submissions, with a closing date in December 2004. In August 2005, we were advised that ADHC had not progressed the matter due to limited staff and competing priorities.

In the meantime, we continued to receive complaints about the care and treatment of licensed boarding house residents. In these circumstances, we commenced an inquiry to examine ADHC's practice in monitoring licensed boarding houses across NSW and enforcing compliance with licence conditions. In June 2006, we tabled a report in Parliament on the findings of our inquiry.

Our findings included that ADHC was still failing to undertake routine monitoring and appropriate reviews of licensed boarding houses, despite having provided improved policy guidance to staff in relation to their monitoring obligations. We also found that monitoring was variable across ADHC regions. Our inquiry demonstrated that uncertainty over the enforceability of certain licensing conditions continued to adversely affect ADHC's capacity to effectively monitor and enforce the conditions, which, in turn, adversely affected the safety, health and welfare of residents.

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6 Allen Consulting Group (September 2003) report on *Shared Accommodation for People with a Disability – A National Competition Policy Review of the Regulation of Boarding Houses*.

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We also identified issues relating to the investigation of potentially illegal operators – that is, unlicensed boarding houses accommodating two or more residents with a disability. We found problems with ADHC's ability and capacity to assess whether two or more residents are 'handicapped' within the meaning of the YACS Act; and little, if any, liaison between ADHC staff and local councils in relation to the issue of unlicensed premises.

We noted ADHC's advice that it was progressing the review of the YACS Act in order to provide a regulatory and quality approach to the industry. We stated that *'In view of the circumstances of many people who rely on boarding house accommodation, the community needs to be confident that monitoring of any new arrangements proposed by the government is of the highest quality'*, and highlighted the importance of a timely outcome of the review of the YACS Act.

In our recent investigative and review work, we have continued to identify significant problems with ADHC's monitoring and licensing activities in relation to some boarding houses, including serious deficiencies in the agency's actions to promote the welfare of residents and fulfil its responsibilities under the YACS Act. This has included the failure to undertake monitoring activities in accordance with practice requirements, and to enforce the conditions of licence.

Consistent with the findings from previous investigations, we have also found multiple issues that continue to adversely impact on the quality of ADHC's monitoring of licence conditions, including: inadequate training of staff; poor documentation and record keeping; inadequate handling of complaints; and an absence of clear lines of staff supervision and reporting.

## **4.2 Safety, health and welfare of licensed boarding house residents**

Despite our significant past activity highlighting the need for action, our work continues to raise serious concerns about the safety, health and wellbeing of licensed boarding house residents. The following case examples are indicative of the range of issues experienced by people living in licensed boarding houses.

### **Safety**

Allegations of assault and intimidation of licensed boarding house residents by staff and other residents have been reported in our investigative and complaint work, including in our most recent work. The allegations have included:

- physical assault and intimidation by staff and other residents;
- sexual assault by staff and other residents; and
- intimidation, bullying and harassment by staff and other residents.

Our work, including our reviews of deaths, has also identified instances where the supervision provided to residents in boarding houses appeared to be inadequate to ensure their safety and proper care.

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## Case example 1

The death of a licensed boarding house resident in 2008 raised questions about living conditions in the facility and the adequacy of monitoring by ADHC. Our review of the man's death found that hospital staff had raised concerns about his hygiene and nutrition during an admission to hospital for pneumonia three months before his death. At that time, hospital staff noted that the man was at high risk of malnutrition and staff had to use a peroxide solution to remove dirt from his skin and nails.

The man was found in his room by a staff member at the boarding house. He had been dead for at least 12 hours and had blood stains on his fingers, head and clothes. There was also evidence of blood stains on the walls and body tissue was found on two exposed nails on the back of the door to the room.

The police officers who attended the scene reported that the man's bedclothes were covered with cobwebs and dust, and faeces and used toilet paper were strewn around the room. There was also several unopened sandwich packages in the room.

At the same time as our review of the man's death, Official Community Visitors complained to us about the failure of the licensed boarding house manager to address concerns they had identified. These included domestic duties not being attended to, smoking by residents indoors, the selling of cigarettes on the premises, broken windows, limited access to bathrooms and the dining room, and unsecured medication left on a shelf in the kitchen.

We met with ADHC to discuss these concerns. They told us about initiatives in place to improve the support provided to residents at the boarding house and to monitor compliance with the licence conditions. They also advised us that they were seeking legal advice in relation to the boarding house operator's ongoing failure to comply with many of the conditions of their licence.

ADHC subsequently told us they received legal advice that they did not have the power to enforce the licence conditions that apply to the health, wellbeing and cleanliness of residents and the facility.<sup>7</sup> They said they were considering their options – including prosecution and/or revocation of the licence – in relation to the licensee's failure to comply with a fire safety order issued by the local council.

As a result of unrelated factors, the boarding house subsequently closed and the residents moved to alternative accommodation.

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<sup>7</sup> This advice pre-dated the amendment to the YACS Regulation 2005 in June 2010 that ensured that all licence conditions were able to be legally enforced by ADHC.

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## Health

### Health care support

The majority of people living in licensed boarding houses have a mental illness that requires ongoing treatment and support. In addition, our reviews of the deaths of people in licensed boarding houses have identified that many residents have considerable physical health concerns, including chronic health problems such as emphysema, ischaemic heart disease, and diabetes; deteriorating health related to ageing; and are at high risk of further health problems as a result of obesity, high blood pressure, and heavy smoking.

While the rates of smoking in the general population are between 17 and 21 percent,<sup>8</sup> our reviews have found that the smoking rate amongst people in licensed boarding houses who died between 2003 and 2009 was almost 70 percent.

Despite considerable health risks that include heavy smoking and obesity, we have rarely seen evidence that licensed boarding house residents are provided with support to reduce or remove associated risk factors. This includes smoking cessation strategies; involvement of dietitians; review of the boarding house menu; or consideration of ways to increase access to physical activities and/or exercise.

Our reviews have also found that, while licensed boarding house residents generally have access to general practitioners, a comprehensive or coordinated approach to meeting their health needs is not always evident. Many residents require support to ensure that GP recommendations are followed-up, health practitioner appointments are made and attended, and emerging health issues or changes in health are identified and investigated. This support is not consistently provided by licensed boarding house staff, and the involvement of Primary and Secondary Health Care services is not always apparent.

Our reviews have highlighted the difference between the health care requirements of licensed boarding houses and those of disability services that are operated or funded by ADHC. Staff of disability accommodation services are required to implement ADHC policies relating to *Health Care, Epilepsy, Client Risk, and Nutrition and Swallowing*, which provide guidance to staff in identifying and managing the health risks of the people they support. The minimum requirements include annual comprehensive health assessments, health care plans, and assessments of health risks, including nutrition and swallowing risks. There are no such requirements in licensed boarding houses, despite many residents having comparable health needs.

In addition to health care support, our work has also noted problems relating to food provision and hygiene. Concerns about the quality of the meals provided in licensed boarding houses and hygiene in the facilities have been raised by OCVs, and have also been identified through our complaints and investigative work over the past nine years. The concerns have primarily related to unhygienic food preparation and storage, the provision of inadequate and unhealthy meals, and lack of resident access to basic foodstuffs such as milk and bread.

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<sup>8</sup> The Cancer Council of NSW and NCOSS *Lifting the Burden: Tobacco Control and Social Equity Strategy July 2006 to June 2011*

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## Medication administration and risks

Through our reports on reviewable deaths, we have consistently raised concerns about medication administration requirements and practice in licensed boarding houses, and the risks faced by residents in this regard.

The prevalence of residents with mental illness means that many people in licensed boarding houses are prescribed psychotropic medications (such as antipsychotics and antidepressants) – major medications that require monitoring and review.

Our reviews have found instances where residents experienced adverse events related to their medication, including admission to hospital due to the side effects of antipsychotic medication and drug interactions; ingestion of psychotropic medications prescribed for another resident; or death as a result of antipsychotic medication toxicity.

### Case example 2

A 60-year-old woman who lived in a licensed boarding house died in 2009 from Olanzapine toxicity. She was prescribed two antipsychotic medications, including Olanzapine, to treat schizophrenia. She also had chronic obstructive pulmonary disease, was a heavy smoker, and was underweight.

She was noted to decline some interventions, including women's health screening and involvement in ALI services. There was no indication that the cause of her underweight status was explored.

Monitoring of the woman's mental health and prescription of the antipsychotic medications was undertaken by her GP, who she saw on a fortnightly basis. She last saw a psychiatrist four years before her death.

The available records indicate that on the morning of the day before her death, the woman was unable to stand up from a sitting position, and required the assistance of another resident. Her roommate last saw her alive at 8:30pm, sleeping on her bed. She was found deceased at 7am the next morning by a Home Care worker.

We sought expert forensic medical advice on how the antipsychotic medication reached fatal levels. We were advised that it could not be stated on the available information whether the woman's toxic levels of Olanzapine were caused by taking excessive amounts of the drug on multiple occasions, or by taking a large single dose – in the region of 500mg (25 or more 20mg tablets).

We also obtained expert advice from a psychiatrist. We were advised that the woman should have been seen at least annually by a community mental health team with expertise in long-term care of people with schizophrenia. We were also told that her low body weight should have been a prompt for review of the woman's dose of antipsychotic medications.

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We have found problems with the administration and storage of medication in licensed boarding houses, including instances of major medications reportedly being administered outside of the times prescribed, and being left on a bedside table in a shared bedroom.

Prior to the introduction of the new YACS Regulation in September 2010, licensed boarding house staff were only required to record the administration of *prn* (as needed) medication, such as asthma medication given at the time of an asthma attack. Boarding house staff did not have to keep a record of medications administered on a regular basis, such as antipsychotic medication given twice a day. We repeatedly raised concerns about the adequacy of these requirements, given the prescription of major medications for many boarding house residents. Under the new Regulation, staff are now required to maintain records relating to all medication administration.

However, we note that medication administration problems and adverse events have occurred despite licensed boarding house staff having been required to comply with NSW Health guidelines relating to medication handling since 1997.<sup>9</sup> The guidelines specify that medication is to be kept in a secure place, inaccessible to other residents; that medication is to be handed directly to the resident at the appropriate administration time; and that staff are to observe ingestion of the medication by the resident.

## Rights and freedoms

Issues relating to limitations placed on, and violation of, the rights and freedoms of residents in licensed boarding houses have featured in our complaint and investigative work, and in issues reported by OCVs.

This has included restrictions placed by boarding house staff on residents' access to the telephone; contact and communication with family and friends; access to the community; and access to their own money. In some boarding houses, issues have also included residents' lack of access to space where they can meet privately with family, friends, and advocacy and other support services.

A concern identified through complaints to our office, and also reported by OCVs, is the exiting or eviction of residents from licensed boarding houses. Residents of these facilities do not have tenancy or occupancy rights, and there are no requirements on licensed boarding houses to ensure that decisions relating to exiting are fair, that residents have alternative accommodation to go to, or that ADHC is informed of the decision. The continued accommodation of residents in licensed boarding houses is highly dependent on the will of the licensed manager.

Our complaints work has identified instances where residents with schizophrenia have been exited from the boarding house without their prescribed medications, with family only notified after the fact, and ADHC not informed.

The absence of occupancy rights for residents of licensed and unlicensed boarding houses heightens their vulnerability, with the potential to be evicted with little or no notice, and no recourse to tenancy dispute resolution options. In addition, the lack of occupancy rights for licensed boarding house residents highlights some of the existing problems and inconsistencies in the YACS Act.

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<sup>9</sup> Licensed boarding houses are required to comply with NSW Health guidelines on *Medication Handling in Community-Based Residential Services in NSW* (January 1997).



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While there is a gatekeeper for entry to licensed boarding houses, in the form of a screening tool assessment conducted by Home Care, there is no such check or contact with residents at the point of exiting. Consequently, there are no safeguards to prevent a person who has been evicted from a licensed boarding house from entering an unlicensed facility, where there are inadequate protections; or from becoming homeless.

## Access to services and support

Our work has highlighted problems with the access of some people in licensed boarding houses to necessary services and support, including Boarding House Reform Program services, advocates, and other community services. This has included residents with high, and increasing, support needs.

While the Boarding House Reform Program provides services and support to licensed boarding house residents, our work indicates that not all boarding house operators accept the provision of the services, including personal care and casework services. In practice, residents' access to these services can be highly dependent on the day-to-day agreement of the licensed manager.

Our work has identified instances where:

- residents have had limited access to advocacy services due to factors including advocates not being permitted entry to the boarding house; residents having restricted access to the telephone; and the boarding house not having a private space in which residents can meet with advocates;
- residents have had limited access to ALI services due to factors such as boarding house operators preventing the attendance of residents based on their perceived behaviour;<sup>10</sup> and
- residents have required the assistance of support services, including casework and personal care services under the Boarding House Reform Program, but the support has not been provided.

### Case example 3

Our reviews of the deaths of two people at a licensed boarding house in 2009 raised questions about the support needs of some licensed boarding house residents, and the adequacy of their access to necessary services.

Both residents were over 80 years of age and had chronic schizophrenia. The local Aged Care Assessment Team had assessed both individuals each year for the previous three years and had approved them for high level residential aged care. One of the residents had dementia and Parkinson's disease, and was unable to sign the aged care assessments due to problems with communication and comprehension. Both residents were assessed as requiring assistance with all or most activities of daily living, including self care, communication, health care, and mobility.

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10 This issue was also noted in the Social Policy Research Centre's *Active Linking Initiative (ALI) Evaluation* report (June 2009), which noted that 'Some concerns regarding the licensed boarding house sector were raised during the evaluation. In particular the way some boarding house managers use the withdrawal of ALI. Adequate legislation and implementation is required to safeguard against practices that breach residents' rights; together with monitoring and review of the LRC sector by DADHC.'

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The aged care team assessed that both residents required the assistance of formal support services in addition to the informal support they received from boarding house staff. However, we found that neither resident received formal support services, such as those provided under the Boarding House Reform Program. In addition, there was no indication that any action had been taken to ascertain the capacity of the resident with dementia to make his own decisions or provide informed consent to treatment and services.

Our review noted that the licensed manager had declined the provision of case management and personal care services provided under the Boarding House Reform Program for all residents of the facility.

Our reviews have identified other residents of licensed boarding houses who had high support needs, and who did not appear to receive adequate support within the facility to meet those needs. This has included individuals who had high and increasing support needs due to ageing or progression of cancer who were assessed as requiring additional services to assist with mobility, personal care, or pain management, who did not receive this support.

In some cases, this was due to the licensed boarding house operator declining the services or refusing entry to the facility. In others, while the need for additional support was identified, there did not appear to be anyone who took responsibility for following up.

One of the objectives of the Boarding House Reform Program is to prevent the inappropriate entry to licensed boarding houses of people with high support needs. The screening tool for entry to licensed boarding houses should be applied by the Home Care Referral and Assessment Centre to all prospective entrants, as well as existing residents whose physical or mental health significantly deteriorates; people who are admitted to hospital and have reduced functioning; and residents who are absent from the boarding house for two months.

Through our reviewable deaths work, we have raised concerns about the application of the screening tool – including the tool not being applied following a significant hospital admission and deterioration in health, and the assessment not accurately reflecting the person's support needs.

Even where the screening tool is effectively applied, we note that there is nothing to prevent a person who has been screened out of entering a licensed boarding house from subsequently entering an unlicensed boarding house. The Home Care assessors are not required to take on the responsibility of finding alternative accommodation for individuals that have been screened and found to be unsuitable for entry to licensed boarding houses, and there is no formal screening process for entry to unlicensed facilities.

As a result, the situation currently exists in which the system that has been established to ensure that people with high support needs are not placed at risk in licensed boarding houses – where there are some safeguards – can effectively result in those individuals being placed at greater risk in unlicensed and unregulated facilities.

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### 4.3 Our recommendations

Over the nine years, we have made a range of recommendations to ADHC and NSW Health aimed at improving the safeguards for licensed boarding house residents and addressing the critical and systemic issues we have identified. They have included recommendations to:

- improve the accuracy and reliability of the screening tool assessments for entry;
- improve the access of residents to Primary and Secondary Health Care and other health services;
- provide good practice guidance to boarding house operators and staff on health care and risk management;
- improve the record keeping of boarding house operators and ADHC staff and compliance with requirements;
- strengthen and enforce medication administration and first aid requirements;
- improve the hospital discharge planning process for residents of licensed boarding houses;
- improve the licensing, monitoring and enforcement activities of ADHC licensing staff and compliance with legislative and policy requirements;
- seek appropriate legislative amendments to resolve the problems with the YACS Act, including the longstanding lack of clarity regarding the legal enforceability of certain licence conditions; and
- progress the review of the YACS Act as a matter of priority.

There has been progress in a number of these areas, including resolution of the *ultra vires* question regarding licence conditions; improved medication administration and first aid requirements; revision of the screening tool; and evaluation of Primary and Secondary Health Care services. However, progress has been very slow, and we have made recommendations on the same issues for many years before noting action.

Importantly, our recommendations have been made in the context of ADHC's repeated advice to us that a review of the YACS Act was underway and would be progressed, and information provided to us by ADHC in 2004 and 2008 about work to explore options for reform of the broader boarding house sector. After almost a decade, the review of the YACS Act has not been completed and no decisions have been made about the proposed reforms. Given the impact on the health, safety and welfare of people in licensed boarding houses, continued delays are unacceptable.

While this report highlights the problems we have identified, and continue to see, in relation to licensed boarding houses, it is important to recognise that our work has also noted good practice on the part of some proprietors in providing support to residents. However, the welfare of vulnerable boarding house residents should not be dependent on the goodwill and favour of individual proprietors. Instead, it should be guaranteed through a robust regulatory and monitoring framework.

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## 5. Reform initiatives and outcomes

The issues that we continue to identify in relation to licensed boarding houses point to a range of ongoing problems with the current application and enforcement of the existing legislative and policy requirements. Significantly, this includes instances of licensed boarding house proprietors failing to meet the requirements, and ADHC not taking adequate action to monitor and enforce them.

What is also evident is that the existing legislation and requirements are inadequate to deliver sufficient and appropriate support and protection to residents of both licensed and unlicensed boarding houses. There is a need for review and reform of the broader boarding house sector in order to remedy the existing limitations of the YACS Act, and to develop and implement an improved accommodation, support and regulatory framework.

The recent changes to the YACS Regulations to address the longstanding *ultra vires* question regarding the conditions of licence under the Act, and to introduce additional medication and first aid requirements, are welcome. However, while this action is important, the changes have not resolved the broader problems with the legislation.

For example, even with the medication and first aid additions, the YACS Act and associated requirements do not afford adequate protection, uphold the rights, or have sufficient focus on the quality of service provision required to meet the health, safety and wellbeing of residents. The standards in place for people with disabilities living in licensed boarding houses are markedly below those in place for people with comparable support needs living in funded disability services, and do not have regard to the United Nations Convention on the Rights of Persons with Disabilities.

As noted, licensed boarding houses are only one part of a broader boarding house sector, and the number of licensed facilities continues to decline. Notably, the YACS Act does not apply to people with disabilities living in unlicensed boarding houses. While the safeguards for people with disabilities living in licensed boarding houses are problematic for the reasons we have outlined, there are almost no safeguards for people living in unlicensed boarding houses. Evidence which shows that some licensed boarding houses are relinquishing their licences to become unlicensed boarding houses is of great concern.

In light of the high numbers of people with significant vulnerabilities and challenges in need of accommodation, there is an urgent need for cross-government attention to be directed to developing and implementing an improved accommodation, support and regulatory framework for the boarding house – or shared private residential services – sector.

Given the existing problems, we appreciate that there may be a view that all boarding houses should close, or that they should not accommodate people with disabilities. In our view, the focus should be on improving the regulatory arrangements, safeguards and quality of service provision in boarding houses, rather than closure or prohibition.

We consider that there is a need to expand the available accommodation and support options to provide real choice for individuals, and that this choice may legitimately include private shared accommodation. However, significant reform of the YACS Act and the broader boarding house sector is required to ensure that the options available enable choice and provide a decent quality service.

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The YACS Act has been under review since 2002. Many of the reasons that initially prompted review of the YACS Act – including a decline in the number of licensed boarding houses and poor standards of accommodation within the industry – remain relevant today. The 2003 Allen review report made recommendations for reform of the boarding house sector, but there were no actions or outcomes from this work following consultation with stakeholders on the proposed options.

In 2008, an Interdepartmental Committee on Reform of the Shared Private Residential Services Sector was formed to progress a whole-of-government approach to reform of the broader boarding house sector.<sup>11</sup>

In December 2010, the Committee put forward a high-level options paper to government, noting that a new approach to the boarding house sector is needed to address the current issues<sup>12</sup> affecting residents, operators, and the impact on the broader NSW community.

The options for reform considered by the Committee range from introducing new and comprehensive legislation for the boarding house sector with either a system of accreditation or registration, through to a 'no change' option. The paper indicates that the Committee's preferred option is to have:

- a consistent regulatory framework in the form of new legislation;
- a differential registration system for boarding houses that takes into account the differing needs of clients;
- the introduction of a legislative requirement for a principles based approach to occupancy rights and responsibilities for all boarding houses;
- accommodation and operational standards for all boarding houses contained in one key piece of legislation specific to boarding houses where this is appropriate and feasible;
- service standards for proprietors providing accommodation services to vulnerable residents;
- appropriate incentives to assist boarding house proprietors to remain viable; and
- greater engagement from the non-government sector in providing services to boarding house residents.

The proposed reforms of the broader boarding house sector have the potential to address many of the issues and concerns we have outlined in this report. In this regard, it is critical for there to be a greater level of consistency between the standard of care provided by funded disability services and the care provided by boarding houses for those residents with a disability who require supervision or support.

Following the introduction of these necessary changes to the sector, there must also be a rigorous system for ensuring that boarding house operators are meeting the standards and legislative requirements, and greater safeguards to support compliance.

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11 The Interdepartmental Committee is chaired by ADHC and includes Housing NSW; NSW Health; The Treasury; NSW Fair Trading; the Department of Planning and Infrastructure; the Department of Finances and Services; and the Department of Premier and Cabinet, including Local Government.

12 The key issues outlined in the Interdepartmental Committee paper include the complex and inconsistent legislative framework; the gaps in the current legislative framework relating to the protection of residents, including occupancy rights; the need for support services for vulnerable residents; and sector sustainability and viability issues.

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## 6. The need for outcomes

In December 2010, Cabinet asked the Interdepartmental Committee to undertake targeted consultations with key stakeholders to test the options, with a view to developing a direction for reform of the sector by 30 June 2011 for consideration by government. In 2011, ADHC engaged a consultant to undertake the stakeholder consultations.<sup>13</sup>

We understand that, in June, the Committee submitted a report to government relating to the consultations. Recent public information from ADHC indicates that information from the consultations will be used to begin reform and streamlining of the boarding house industry.

On 20 June 2011, the Premier stated in NSW Parliament that draft boarding house legislation brought forward by (now) Minister Dominello in November 2010<sup>14</sup> would go to a parliamentary committee. The terms of reference of the inquiry are not yet available.

Minister Dominello's draft bill arose from concerns about an increase in the number of illegal boarding houses accommodating students. However, the scope of the draft bill's provisions relate to the broader boarding house sector. When introducing this proposed legislation, Minister Dominello noted that the current laws governing the operation of boarding houses in NSW are inadequate, and emphasised the need for better protection of residents. The draft bill proposes a system that includes registration of all boarding houses in NSW and criminal penalties for operators who expose vulnerable residents to appreciable danger or harm.

We welcome the move towards boarding house reform. The recent legislative amendments concerning licensed boarding houses and the work of the Interdepartmental Committee are important and promising developments.

However, the progress of work in this area has been very slow, despite prior opportunities to undertake legislative and regulatory reform, and numerous recommendations by this office. While the changes to the YACS Regulations are positive, they took place 11 years after ADHC first received legal advice that the licence conditions that related to the health, safety and welfare of residents may not be enforceable.

Our work clearly illustrates the longstanding and ongoing issues experienced by people living in licensed boarding houses, including human rights violations, and inadequate support and protections to safeguard their safety, health and welfare. This situation will not change without significant reform, including legislative change, higher standards, and a more rigorous monitoring and enforcement system.

At a minimum, we consider that action must be taken to address the existing inadequacies of the YACS Act and to improve the circumstances of licensed boarding house residents. However, there are compelling reasons to undertake broader reform of the boarding house sector to bring better protections and regulation. That there are such fundamental and systemic problems in licensed boarding houses, where there are requirements, monitoring, some safeguards and provision of support services, raises serious questions about the circumstances and welfare of people living in unlicensed boarding houses.

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<sup>13</sup> Consultation was undertaken with boarding house residents and proprietors, the Boarding House Expert Advisory Group, advocates, providers of support services, councils, and other stakeholders, including our office.

<sup>14</sup> The *Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010* was introduced by (now) Minister Dominello on 26 November 2010.

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Effective reform of the sector will depend on a cross-agency and partnership approach, and the establishment of the Interdepartmental Committee is important in this regard. ADHC is currently the lead agency for the Committee, however broader reform of the sector is a cross-government responsibility and this needs to be reflected in the work as we move forward.

While the Interdepartmental Committee has submitted a report to government, following consultations with stakeholders on the options for reform of the boarding house sector, we are keenly aware that prior opportunities to undertake this important work have not been realised. It is essential that, this time, broad ranging reform is achieved to deliver real and improved outcomes for people living in licensed and unlicensed boarding houses.

