



Youth and Community Services Regulation 2010

Report on responses to Regulatory Impact
Statement

Ageing, Disability and Home Care
Department of Human Services
July 2010



Human Services
Ageing, Disability & Home Care

Document approval

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1 Executive summary

Ageing, Disability and Home Care (ADHC) received 22 responses to a public consultation calling for submissions in response to the Regulatory Impact Statement (RIS) on the proposed Youth and Community Services (YACS) Regulation 2010.

Of the 22 submissions received, there were a comparable number submitted by disability providers, peak bodies, government agencies, the NSW Ombudsman and the Public Guardian. Five of the submissions received were from licensees from the 22 current operators in NSW, one of these was from a peak group for private investors providing residential rental and boarding and lodging establishments, it is unclear how many licensees this represents.

The majority (19) of submissions favoured Option 4 in the RIS, a remake of the existing YACS Regulation 2005 with additional provisions as proposed. The remaining two submissions did not support the inclusion of the additional provisions and expressed overall dissatisfaction with the other provisions in the Regulation on the basis that these imposed undue cost and resource burdens on operators. Future contemporary approaches to industry regulation and protection of residents' rights, and industry sustainability will be further examined through the work being undertaken by the Interdepartmental Committee on Reform of the Shared Private Residential Services Sector (IDC) including incentives for industry operators. The remaining submission did not make specific comment in relation to the Options outlined in the RIS.

Not all submissions from licensees rejected the proposed regulation option.

Many submissions proposed a complete review of the *Youth and Community Services Act 1973* and the development of new legislation specific to Licensed Residential Centres and the need to further protect the rights of vulnerable residents that may be accommodated in boarding houses. This is a key aspect of the work being undertaken by the IDC.

There were a considerable number of submissions that suggested or recommended clarification of terms used in the regulation or a change in wording for some clauses. The level of detail contained in those suggestions, and the various views about interpretation suggest that these issues would be more appropriately dealt with through the development of guidelines and procedures.

A copy of the proposed Youth and Community Services Regulation is provided at **Appendix One**, along with the RIS at **Appendix Two**.

2 Background

Under the *Youth and Community Services Act 1973* (YACS Act) ADHC is responsible for licensing and monitoring of boarding houses that accommodate two or more people with a disability.

There are currently 36 licensed boarding houses, licensed to 22 operators, providing 764 beds across NSW with a concentration in the City of Sydney and inner west areas of Sydney, and the Hunter region.

In May 2010, the NSW Governor approved the amendment of the YACS Regulation 2005. The amendment brought Licence Conditions relating to the care, safety and wellbeing of

occupants, which were potentially *ultra vires*, into the Regulation. This brought certainty to the obligations of boarding house operators and to the power of the Minister for Disability Services to enforce those obligations. The principles of better regulation were addressed in the amended 2005 Regulation, which came into effect on Friday 11 June 2010.

A requirement under the *Subordinate Legislation Act 1989* is that regulations cease and are required to undergo a remake every five years. The *YACS Regulation 2005* is due for a remake by 1 September 2010.

Proposed changes to the Regulation were shaped by criticisms and recommendations contained in reports prepared by the NSW Ombudsman's Office, the Report of Reviewable Deaths in 2004 and 2007, and the report DADHC Monitoring Standards in Boarding Houses (2006 Report to NSW Parliament).

Critical issues identified relating to the enforceability of licence conditions were flagged by the Ombudsman's Office. The Report of Reviewable Deaths in 2007 stipulated *'The continuing issue regarding the enforceability of licence conditions has a significant impact on the ability of DADHC to implement recommendations we make regarding licensed boarding houses, including:*

- *First aid requirements,*
- *Record keeping,*
- *Medication administration (p56).*

The 2006 Report to Parliament concludes in relation to the ultra vires issue 'this is still a key issue adversely impacting on DADHC's capacity to effectively monitor boarding houses. We therefore welcome DADHC's advice to us that it has provided the Government with relevant advice on directions for the Act.'

The Law and Justice Directorate of ADHC instructed Parliamentary Counsel's Office (PCO) to prepare a draft Regulation for public consultation, and Law and Justice Directorate prepared a RIS in relation to this. The Regulation for remake reflected the changes recently proclaimed in May 2010 and was circulated to key stakeholders on 16 June 2010.

The RIS proposed to remake the current provisions, the amended 2005 Regulation. In addition to remaking the current provisions, the RIS outlines the possible incorporation of additional provisions in the 2010 Regulation, namely additional requirements in relation to first aid and the administration of prescribed medications.

The RIS outlined the objectives of the proposed 2010 Regulation, considered a range of options by which the objectives may be met, and the costs and benefits of each. As part of this process, the RIS also considered the Government's Better Regulation Principles.

3 Consultation process

All known stakeholders, and the community at large had the opportunity to express their views on the matters addressed in the RIS.

3.1 Methodology

The RIS and proposed 2010 Regulation were advertised in the Sydney Morning Herald and in the Government Gazette, and distributed to the public for consultation on 16 June 2010. These documents were also sent directly to over 70 key stakeholders, including licensees, peak organisations, advocacy groups and government agencies as listed at **Appendix Three**. Additional copies of the RIS and proposed 2010 Regulation were also available from ADHC's website with the closing date for submissions being 13 July 2010.

This timeframe and process are in keeping with the requirements under the *Subordinate Legislation Act 1989* and the Better Regulation Principles.

ADHC Regional staff were briefed on the proposed changes and equipped with information to aid communication with boarding house operators, residents and their families.

ADHC engaged an independent consultant to develop a consistent and transparent methodology for analysing submissions. A template was developed and utilised to document each individual submission, general comments on the proposed Regulation and RIS and detailed suggestions relating to the proposed options and specific clauses.

A matrix was then used to capture the key points and suggested amendments raised in each of the submissions. This matrix clearly identified the number of respondents and the profile of who had commented on the RIS and the proposed 2010 Regulation. This method allowed ADHC to document all suggested changes to the proposed regulation /RIS in an objective manner.

3.2 Submissions received

ADHC received 22 submissions on the proposed 2010 Regulation and Regulatory Impact Statement.

The respondents were categorised into the following groups:

Table 1: Profile of respondents

Category	Number of respondents
1. Current licensee	5
2. Disability service provider	3
3. NSW Government agency	2
4. Public Authority	2
5. Individual	1
6. Peak	3
7. Advocacy organisations	3
8. Residents	1
9. Other	2

The category of 'Current Licensee' consisted of three individual licensees, the Property Owner's Association of NSW Inc (POA NSW), who responded on behalf of their members' in the licensed boarding house sector. A solicitor responded on behalf of two licensees.

4 Summary and analysis of comments raised in submissions

4.1 Overview of submissions

Of the options proposed in the RIS, submissions overwhelmingly favoured Option 4, a remake of the existing YACS Regulation 2005 with additional provisions intended to further ensure that residents' health and safety are protected. That is, 10 respondents made specific reference to their support of the additional provisions, and 9 provided general comments stating their support of the proposed regulation. While 2 submissions from licensees raised concerns about the financial burden that would result from the adoption of the additional provisions proposed under Option 4, the remaining 3 submissions from licensees made no mention of the provisions.

It is important to note that most submissions that provided in principle support of Option 4 advocated the inclusion of supplementary provisions relating to residents' wellbeing and rights that were not proposed in the RIS.

The main arguments raised by submissions for supplementary provisions not proposed in the RIS related to:

- Australia's obligations as a state party to the Convention on the Rights of Persons with Disabilities
- the belief that the YACS Regulation 2005 is based on minimum standards dating to the introduction of the YACS Act 1973 and subsequent licensing regime, which are no longer contemporary, and that minimum disability standards have since improved.

While ADHC has applied a rigorous and transparent methodology to the analysis and recording of all recommendations made in the submissions received, many issues raised would be more suitably addressed through other forums.

Clause 32 of the *YACS Act 1973* details the scope of the regulations that may be made for or with respect to any matter in the Act. Therefore, certain recommendations contained in the submissions – namely those for the provision of further detail and/or clarification of the provisions of the Regulation – would be best addressed in a policy and procedures document to accompany the Regulation.

Furthermore, issues raised that relate broadly to a review or complete repeal of the *YACS Act 1973*, or the need to further protect the rights of vulnerable residents that may be accommodated in boarding houses, may be addressed by a wider cross-agency project of NSW boarding house sector reform.

A list of key issues raised by each respondent group is available at **Appendix Four**, followed by a complete list of all issues raised at **Appendix Five**.

4.2 Comments relating to consultation

A total of seven submissions across stakeholder groups were critical about the consultation process undertaken by ADHC in respect of the proposed Regulation. Five of these related specifically to the lack of active consultation with the residents of licensed residential centres.

The consultation approach undertaken for this Regulation complied with Section 5 of the *Subordinate Legislation Act 1989*, specifically the preparation of a Regulatory Impact Statement (RIS), advertising and consultation by submission on the proposed Regulation. Key stakeholders were directly informed and encouraged to submit. This included peak and advocacy organisations that are funded by ADHC specifically for the purpose of providing a voice and representing and promoting the interests of residents of licensed boarding house residents.

One of the submissions received through this process included direct input from residents in two boarding houses, with submission facilitated by an Active Linking Initiative (ALI) service provider.

4.3 Comments relating to the Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010

Two submissions requested independent legal advice to confirm the legality of the *Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010* that was approved by the Governor in May 2010. These submissions also commented that formerly *ultra vires* licence conditions cannot be remedied by the amended Regulation.

This position is rejected – the process undertaken to make that amended Regulation occurred through the required NSW parliamentary processes, including thorough advice from the Parliamentary Counsel's Office.

4.4 Comments relating to the additional provisions proposed in Option 4

Clause 11: Medication

Overall, the majority of submissions supported the addition of two new provisions into Clause 11, while 2 respondents made specific reference to their objection to these provisions.

The proposed wording of the first of these provisions, as stated in the RIS, reads:

“The administration of prescription medication to a resident is to be reviewed at least once every 3 months by the relevant health practitioner”.

Opposition to this provision related to the fact that medical professionals set the time frame for appointments with boarding house residents, and that this is not enforceable by licensees. ADHC accepts this view that it is up to the medical practitioner to decide on the frequency of medical reviews.

Further opposition was raised in regard to the second provision that any prescription medication be administered to the resident in a blister pack and a record of that administration be retained. The provision states:

“Subject to the other requirements, of this clause, any prescription medication of a resident:

- (a) must, if it is practicable to do so, be separated by a registered pharmacist into individual doses in a blister pack and be clearly marked so as to identify the resident, and
- (b) must be administered directly to the resident and a record of that administration be retained”.

One submission considered that this provision was unnecessary given that many licensed residential centres already used blister packs or dosage boxes in administering prescription medication to residents. Another submission objected on the grounds that keeping records of the administration of medication in blister packs resulted in the ‘dispensing’ of medication, and would therefore impose increased public liability insurance costs.

Administering medication from a blister pack does not constitute ‘dispensing’ as dispensing can only be carried out by pharmacists. A change in the provision of medication to residents from the forms currently employed by licensees to blister packs would not compromise the definition of ‘administer’.

Clause 12(7): Health and Safety

Generally, there was support for the proposed amendment to Clause 12(7) of the Regulation across respondent groups. Namely, two disability providers, four government agencies, one individual and three other respondents supported the inclusion of the provision. The provision states:

“There must be a suitable and fully stocked first aid kit at the licensed premises and at least one member of the staff on duty must hold qualifications (of a type approved by the chief executive) in the administration of first aid”.

One submission from an industry peak representing the views of licensees opposed the inclusion on the basis that it would impose a significant cost burden. Specifically, the submission noted that the holding of first aid certification by boarding house staff under one commonly used industry award would require hourly pay increases.

ADHC cannot confirm the exact calculations put forth in the submission that raises this issue, as this would be based on individual employment arrangements for operators. However, under the Hospitality Award enforced in January 2010 which applies to boarding establishment, there is a provision at clause 21(2)(b) relating specifically to a first aid allowance:

“An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from the St. John Ambulance or similar body must be paid an allowance, per week, equal to 1.2% of the standard weekly rate if they are appointed by the employer to perform first aid duty”.

This cost would be incurred by the employer in question. However, it should be noted that the submission raising this issue has advised that it would need to levy such costs as resident fee increases, representing a significant risk. However, on consideration of evidence contained in the NSW Ombudsman’s Report of Reviewable Deaths (2004 and 2006), it is considered that the benefits of a requirement for staff trained in first aid outweigh the costs.

4.5 Issues raised that are addressed in legislation

Notification of the death of a resident

Two submissions (from an individual and a disability peak) noted the importance of including a requirement in the Regulation for notification of death of a resident of a licensed residential centre to ADHC.

This provision is already made in the *YACS Act 1973*. Specifically, clause 26(1) titled Notifications of certain deaths and absences provides that:

“If a handicapped person dies at licensed premises, the licensed manager of the premises shall forthwith give notice of the death to:

- (a) the member of the police force in charge of the police station nearest the licensed premises, and
- (b) the Director-General”.

This process is detailed in the internal ADHC policy manual to guide regional staff in the licensing and monitoring of licensed residential centres.

Maximum penalties

Five submissions considered that the maximum penalty of \$500 that may be imposed upon licensees or licensed managers for a contravention of the regulation is insufficient. However, the *YACS Act 1973* does not allow for fines greater than \$500 for a breach of a regulation. Clause 32 (3)(d) states that a regulation may “impose a penalty not exceeding \$500 for any contravention of a regulation”. Therefore, penalty increases would require a review of the *YACS Act 1973*, which is considered as an option of the NSW boarding house reform.

4.6 Issues raised that may be addressed by guidelines and procedures

A total of seven submissions from licensees, disability service providers and other respondents considered that overall, the proposed Regulation would benefit from additional detail or wording clarification. Three submissions also commented that the level of detail varies across clauses in the proposed Regulation.

Additional comments seeking further clarification or procedures in relation to specific topics or clauses are detailed in Table 2, below.

It is considered that all such comments can be adequately addressed through the development of guidelines and procedure to accompany the Regulation. This would serve to clarify responsibilities and assist operators of licensed residential centres to understand what is required of them.

Table 2

Topic or clause	Recommendation or comment from respondent
The objective of the amended Regulation	<ul style="list-style-type: none"> The objective lacks clarity.
The procedure for relocation of residents following a breach of the Regulation that results in revocation of a licence	<ul style="list-style-type: none"> ADHC should cooperate with another approved agency to facilitate relocation in a given time. <p><u>Note:</u> This procedure is detailed in the internal ADHC policy manual to guide regional staff in the licensing and monitoring of licensed residential centres.</p>
Clause 4 Licensee compliance and penalties	<ul style="list-style-type: none"> Amend to provide a range of additional obligations on licensees in relation to matters consequent to the suspension or revocation of a license. <p><u>Note:</u> The internal ADHC policy manual to guide regional staff in the licensing and monitoring of licensed residential centres sets out the procedure for suspension and revocation of a licence.</p>
Clause 7 Meals	<ul style="list-style-type: none"> Clarify “adequate variety, quality and quantity” and “adequate refreshments” in paragraphs (a) and (c). Refer to ADHC’s Ensuring Good Nutrition Policy.
Clause 9 Personal storage space: towel racks	<ul style="list-style-type: none"> Requirement for towel racks is redundant if a licensed residential centre regularly washes towels.
Clause 12 Safety and health	<ul style="list-style-type: none"> Clarify “effective infection control program” in paragraph 6.
Clause 13 Abuse and neglect	<ul style="list-style-type: none"> Refer to existing ADHC Abuse and Neglect policy. Clarify “adequate” in paragraph 2(f). Clause is too broad and open to interpretation. Clarify prohibitions on certain restrictive behaviour management practices. Detail process for reporting and follow up of suspected cases of abuse and neglect.
Clause 14 Protection of financial affairs	<ul style="list-style-type: none"> Some paragraphs appear to contradict others. Clarify “must be given support” in paragraph 2.
Clause 15 Protection of interests of residents	<ul style="list-style-type: none"> Service providers should be accredited. <p><u>Note:</u> Accreditation of service providers is ADHC’s responsibility and is detailed in internal policy and procedure.</p> <ul style="list-style-type: none"> Clarify protection of residents’ interests referring to NSW Standards for Disability Services.
Clause 18 Staffing arrangements	<ul style="list-style-type: none"> Clarify “adequate” in paragraphs 1 and 2. Add detail regarding the overnight supervision of residents.
Clause 19 Screening tool for entry	<ul style="list-style-type: none"> Ensure the relocation of the resident is ADHC’s responsibility. <p><u>Note:</u> Relocation of residents is ADHC’s responsibility and is detailed in internal policy and procedure.</p> <ul style="list-style-type: none"> Clarify why the screening tool is required as this is unclear to industry.

4.7 Issues raised that may be addressed by NSW boarding house sector reform

Many submissions proposed a repeal of the *YACS Act 1973* and the development of new legislation to reflect Australia's obligations under international law and best practice in disability services. While the main source of these submissions were disability service providers, disability peaks and advocacy organisations, one licensee also favoured the repeal of the *YACS Act 1973* and the development of legislation specific to licensed residential centres.

It is considered that this issue, in addition to others raised in submissions relating to broader boarding house sector reform, may be best addressed through work being undertaken by the Interdepartmental Committee (IDC) on the Reform of Shared Private Residential Services.

The IDC was established as an outcome of a meeting of the Ministers for Disability Services, Housing, Fair Trading and a representative of the Minister for Local Government in April 2008 at which the Ministers agreed in principle to the development of an overarching centrally administered regulatory framework for private residential services such as boarding houses.

The IDC, chaired by ADHC, comprises senior officials from the NSW Treasury, Fair Trading, Housing NSW, NSW Health and the Departments of Premier and Cabinet, Local Government, and Planning.

Table 3 below, provides a summary of the issues raised in submissions that could be considered in the work of the IDC.

Table 3

Topic or clause	Recommendation or comment from respondent
General comments about the boarding house sector	<ul style="list-style-type: none"> • There are inconsistencies in the way licensed residential centres operate. • Introduce a licence scheme for unlicensed boarding houses.
People with a disability residing in boarding houses	<ul style="list-style-type: none"> • The overall standards and requirements in the proposed Regulation remain inadequate for people with a disability residing in licensed residential centres. • Residents are vulnerable and require the highest possible standards to protect them. • The regulatory regime needs to be consistent with the Convention on the Rights of Person with Disabilities and the NSW Standards for Disability Services. • Include tenancy rights for residents of boarding houses and insert provisions that hold boarding house providers accountable for unfair evictions.
<i>YACS Act 1973</i>	<ul style="list-style-type: none"> • Repeal and replace the <i>YACS Act 1973</i> as it is outdated.
Monitoring	<ul style="list-style-type: none"> • Include provisions relating to an accreditation and quality assurance scheme. • Improve monitoring for compliance.
Fees	<ul style="list-style-type: none"> • Consider the capping of fees charged by licensed premises and the monitoring of this.

Topic or clause	Recommendation or comment from respondent
Viability of industry	<ul style="list-style-type: none"> Continue to develop strategies to maintain the viability and growth of the industry. Take into consideration that licensed residential centres are not government funded. Licensed residential centres should receive government subsidies to implement additional provisions.
Support	<ul style="list-style-type: none"> Clarity about who will provide the support/expertise needed to ensure that residents are not subjected to abuse or neglect.
Suitable staff	<ul style="list-style-type: none"> Many licensed residential centres have undertaken Certificate III in Community Services (disability work).
Carer services	<ul style="list-style-type: none"> The NSW Government should be responsible to provide carer services to residents with a disability.
Tone	<ul style="list-style-type: none"> The proposed Regulation seems to take a negative attitude towards licensees, operators and staff of licensed residential centres.
Building standards	<ul style="list-style-type: none"> Licensed residential centres should comply with Australian Standards regarding design for access and mobility.
Record keeping	<ul style="list-style-type: none"> Records should be made available at the licensed premises for monitoring purposes. Records should be maintained of all contact with medical practitioners and health services.
Clause 5 Sleeping facilities	<ul style="list-style-type: none"> Add requirements for the provision of: <ul style="list-style-type: none"> sufficient blankets to ensure warmth in winter adequate heating disability access to bedrooms and bathrooms a private or double room if requested a mattress suitable for the needs of a person with a disability a wardrobe.
Clause 6 Clothing and toiletries	<ul style="list-style-type: none"> Add requirements for: <ul style="list-style-type: none"> the right for residents to choose their clothing (no clothes pooling) personal items such as toothbrushes and razors not to be shared provision of enough clean, dry towels clothing to be labelled toiletries and laundry costs to be included in the cost of board/lodging. Licensed residential centres should not be liable for providing clothing and facilities. They can assist where required but cannot provide them without funding.
Clause 7 Meals	<ul style="list-style-type: none"> Include requirement for access to basic meals and preparation facilities outside of meal times.
Clause 9 Personal storage space	<ul style="list-style-type: none"> Delete clause 9 and merge with clause 5.
Clause 11 Medication	<ul style="list-style-type: none"> Insert requirements for: <ul style="list-style-type: none"> residents to have the freedom to choose and change their own GPs and psychiatrists if appropriate residents to be encouraged to attend medical appointments in the community licensees to have relevant medical information available to them all health practitioners to be registered all written directions to come from a face to face consultation residents who are on psychotropic medications have their medications reviewed at least annually by a psychiatrist treatment plans for psychotropic PRN medications to result from face to face consultations with resident and be subject to regular monitoring & review.
Clause 12 Safety and Health	<ul style="list-style-type: none"> Insert requirement for establishment of fire evacuation procedure. Insert provisions regarding epilepsy.
Clause 13 Abuse or neglect	<ul style="list-style-type: none"> Insert requirement in paragraph 2(f) for licensed premises staff to assist residents with clothing each morning.

Topic or clause	Recommendation or comment from respondent
Clause 14 Protection of financial affairs	<ul style="list-style-type: none"> • ALL model could be extended to cover financial skill development. • The two preferred methods of assisting residents with financial affairs are through the Office of the Protective Commissioner or licensed manager. • Advocacy is vital in monetary matters. • Insert provision for a receipt to be issued to each resident and their financial guardian, and a copy of all be made available for inspection.
Clause 15 Protection of interests of residents	<ul style="list-style-type: none"> • Support provided to clients needs to be independent from the licensee and regulations should identify that clients must not suffer retribution for accessing support and advocacy services. • Family and friends should be encouraged to report any obstructions to visits to relevant authorities. • It is essential for licensed residential centres to have privacy and confidentiality strategies in place.
Clause 16 Procedure for dealing with complaints	<ul style="list-style-type: none"> • Consider the Consumer, Trader & Tenancy Tribunal having jurisdiction to settle disputes arising between boarding house residents and operators. • Insert requirements for: <ul style="list-style-type: none"> - a complaint procedure, in accessible formats individual advocates for residents - record keeping of all complaints received - records to be inspected by licensing officers/community visitors if required. • Insert separate clause against retribution, and that residents can discuss issues related to the licensed premises with anyone of their choosing.
Clause 17 Chief Executive notification	<ul style="list-style-type: none"> • Insert requirement that incidents of sexual assault are referred to a Sexual Assault Service and/or Police as a minimal standard. • Add requirement that any criminal act, or alleged criminal act, is immediately reported to the Police as well as the CE as a minimum standard.
Clause 18 Staffing arrangements	<ul style="list-style-type: none"> • Require the employment of skilled staff who respect the rights of clients, who are aware of current policies and legislation pertaining to abuse, and who will support clients and their families or guardians to access complaint mechanisms and raise any concerns they have about services. • Insert requirement for criminal record checks on staff. • Include employment policies that promote respect for clients.
Clause 19 Screening tool for entry	<ul style="list-style-type: none"> • Insert requirement that screening tool be reapplied when a resident's health deteriorates and/or their support needs increase.
Clause 20 Resident information register	<ul style="list-style-type: none"> • Insert requirement that staff record any illnesses or other health issues of the resident, irrespective of whether they are considered to be 'serious'. • Include requirement for staff to record any assistance required to meet residents support needs. • Clarify that 'person responsible' refers only to consent for medical and dental treatment.

4.8 Additional comments raised in submissions

Terminology

A number of additional comments raised in the submissions relate to the terminology used in the proposed Regulation.

Two submissions suggested an amendment to clause 6(b) of the Regulation relating to clothing. As residents fundamentally decide what clothing and footwear they wear, submissions considered that licensees should not be required to ensure that “each resident must wear clothing and footwear suited to climate and seasonal conditions”. Instead, it is more reasonable to ask that licensees *encourage* residents to dress appropriately for the weather.

Importantly the need to respect the individual preferences of residents was identified in feedback from residents.

A further two submissions also requested an amendment be made to references to ‘next of kin’ in clauses 12 and 20. In order to be consistent with the terminology used in the *Guardianship Act 1987* and the *Mental Health Act 2007*, these submissions considered that ‘person responsible’ and ‘primary carer’ be used.

Many submissions also suggested that the phrase “reasonably wishes to access” (in reference to health services and support services in clauses 12(3) and 15(3), respectively) should be removed or changed, as it should not be up to the licensee to determine what supports are reasonable for clients to access.

Access to advocacy services

Eleven submissions provided comment on advocacy and access issues for residents. Notably, concern was expressed regarding the fact that the current regulation requires residents to identify and request services. Submissions reported that clients often need support to access these services. Four submissions stated that the support provided to clients needs to be independent from the licensee and that the Regulation should identify that clients must not suffer retribution for accessing support and advocacy services.

Recreation

Six submissions raised concern with clause 8 regarding recreation. These submissions broadly pertained to three recommendations, as follows:

- greater specificity of requirements
- rewording to place a positive obligation on licensees to encourage and support residents to participate in leisure, recreation and entertainment in the wider community
- reinstatement of the wording of the previous licence condition relating to recreation.

In addition, 2 submissions made general comments that the Regulation should provide for services to promote the social inclusion of residents.

5 Recommendations

Based on the views provided through the consultation process, it is recommended that:

1. the proposed Youth and Community Services (YACS) Regulation 2010 replace the Youth and Community Services Regulation 2005 which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

2. additional provisions in Option 4 (Remake the existing 2005 Regulation with changes) of the Regulatory Impact Statement are included in the YACS Regulation 2010 with the exception of one element of the new provision into clause 11 Medication “*The administration of prescription medication to a resident is to be reviewed at least once every 3 months by the relevant health practitioner*”.

Therefore the new provision in Clause 11 will read:

“Subject to the other requirements of this clause, any prescription medication of a resident:

(a) must, if it is practicable to do so, be separated by a registered pharmacist into individual doses in a blister pack and be clearly marked so as to identify the resident, and

(b) must be administered directly to the resident and a record of that administration be retained.”

3. an amendment to the draft regulation in clause 6(b) ‘each resident must wear clothing and footwear suited to climate and seasonal conditions’ in clause 6 (b) is replaced with ‘be encouraged to wear clothing and footwear suited to climate and seasonal conditions’. Clause 6 will now read as:

“Each resident must:

(a) have a supply of personal clothing and footwear that is adequate to allow for laundering and repair, and

(b) be encouraged to wear clothing and footwear suited to climate and seasonal conditions.”

4. an amendment to the draft regulation in clause 8 (Recreation) ‘each resident must have access to a television, radio, books, games and a sofa’ to be replaced with

‘Each resident must:

(a) have access to a television, radio, books, games and a sofa, and

(b) be given the opportunity to participate in activities in the community’.

5. an amendment to the draft regulation in clauses 12 and 20 ‘next of kin’ is replaced with ‘primary carer’ as defined in the Mental Health Act 2007 and ‘person responsible’ as defined in the Guardianship Act 1987.

Clause 12 is in regards to ‘safety and health’. Clause 12(5) will now read as:

“A resident’s primary carer or person responsible must be notified as soon as possible of any serious accident or illness suffered by the resident.

Clause 20 is in regards to resident information register. The amendment is in clause 20 (e) which will now read as:

“A register containing the following information in relation to each resident at the licensed premises must be maintained: (e) name and address of resident’s primary carer or person responsible.”

6. an amendment to the draft regulation in clause 12(3) 'resident reasonably wishes to access' is replaced with 'resident requires or wishes to access'. Therefore clause 12(3) will now read as:

"Each resident must receive assistance in accessing any health services that the resident requires or wishes to access."

7. the insertion of an additional obligation into clause 15 (Protection of interests of residents) requiring licensees to provide residents with information on support services, advocacy service or other service or information providers (such as legal service providers and disability rights and support organisations).
8. an amendment to the draft regulation in clause 15(3) 'a resident who reasonably wishes to access any support services' is replaced with 'a resident wishes to access any support services'.

Therefore 15(3) will now read as:

"A resident who wishes to access any support services, advocacy services or other service or information providers (such as legal service providers and disability rights and support organisations) must be assisted (and not obstructed in any way) in accessing those services (whether the service provider consults with the resident at the licensed premises or any other place outside of the licensed premises)."

9. ADHC develop guidelines and procedures to address a range of issues identified in the submissions relating to clarification of terms and specific procedures.
10. issues identified in the submissions relating to a change in the *Youth & Community Services Act 1973* as well as issues relating to broader boarding house sector reforms are referred to the Interdepartmental Committee on Reform of the Shared Private Residential Services Sector.

6 Appendix 1 Proposed Youth & Community Services Regulation 2010 (Public Consultation Draft)

Please follow this link to access the document [Proposed Youth & Community Services Regulation 2010 \(Public Consultation Draft\)](#)

7 Appendix 2: Regulatory Impact Statement - Youth and Community Services Regulation 2010 (Draft)

1 PURPOSE OF THIS REGULATORY IMPACT STATEMENT

Title of proposed regulation	Youth and Community Services Regulation 2010
Relevant Act	Youth and Community Services Act 1973
Responsible Minister	Minister for Disability Services, the Hon Peter Primrose MLC
Proponent	Ageing, Disability & Home Care, Department of Human Services

1. The *Subordinate Legislation Act 1989* (Subordinate Legislation Act) requires a regulatory impact statement to be prepared before any new regulation is made. The regulatory impact statement (RIS) must comply with guidelines that are set out in the Act. It must deal with matters including:

- the objectives sought to be achieved in the regulation and the reasons for them;
- alternative options for achieving those objectives;
- an assessment of the costs and benefits of the proposed regulation and the alternative options;
- an assessment as to which of the options provides the greatest net benefit or least net cost to the community; and
- the proposed consultation program.

2. This RIS also serves as a Better Regulation Statement in accordance with the requirements of the NSW Government's *Guide to Better Regulation*.

3. There are seven better regulation principles set out in the NSW Government's *Guide to Better Regulation*. The seven principles are:

Principle 1: The need for government action should be established;

Principle 2: The objective of government action should be clear;

Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options;

Principle 4: Government action should be effective and proportional;

Principle 5: Consultation with business and the community should inform regulatory development;

Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered;

Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

2. APPROACH TAKEN IN THIS REGULATORY IMPACT STATEMENT

4. The Subordinate Legislation Act provides for regulations to have a limited life – in most cases regulation is automatically repealed five years after they are made. When a regulation is due for repeal, the responsible agency must review the regulation and decide whether the regulation should be remade.
5. The proposed *Youth and Community Services Regulation 2010 (2010 Regulation)* is to be made under sections 11(1), 14(1) and 32 (the regulation making power) of the *Youth and Community Services Act 1973 (YACS Act)*, and will replace the existing *Youth and Community Services Regulation 2005 (2005 Regulation)*.
6. This RIS proposes to remake the current provisions. The 2005 Regulation was recently amended.¹ The objective of this amendment was to place various obligations on licensees and licensed managers of residential centres for handicapped persons relating to:
 - a. Standards required, and facilities to be provided, for the health, comfort, safety and proper care of persons residing at residential centres for handicapped persons;
 - b. The qualifications and experience of persons employed at residential centres for handicapped persons; and
 - c. The making and keeping of records in respect of residential centres for handicapped persons.
7. These obligations were, prior to their enactment, imposed on licensees and licensed managers by way of license conditions attached to each licensee's licence. There was some uncertainty as to the scope of the Minister for Ageing and Disability's power to impose conditions on a licence where the conditions did not directly 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. A further objective of the amendments to the 2005 Regulation, as well as the proposed 2010 Regulation, is to create greater certainty regarding licensee's obligations, providing greater clarity regarding their responsibilities.
8. In addition to remaking the current provisions, the RIS discusses the possible incorporation of additional provisions into the 2010 Regulation, namely:
 - a. The requirement that one staff member on duty must hold qualifications in the administration of first aid. This amends the existing requirement that licensees must ensure that one staff member employed must hold qualifications in the administration of first-aid;
 - b. Requirements regarding the administration of prescribed medications, including the obligation to provide certain prescribed medications to residents in dose

¹ Amended by the *Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010*.

administration aid devices (pre-packed blister packs) and the obligation to maintain records of such administrations.

9. This RIS will focus primarily upon those provisions of the existing 2005 Regulation that relate to the obligations referred to in paragraph 6 above. The remaining provisions of the existing 2005 Regulation are matters of a machinery nature. The RIS also discusses the incorporation of provisions relating to additional requirements in first aid and additional requirements regarding the administration of prescribed medications.
10. The RIS first considers the objectives of the proposed 2010 Regulation. The RIS then considers a range of options by which the objectives may be met, and the costs and benefits of each option. As part of this process, the RIS also considers the Government's Better Regulation Principles and concludes that the proposed 2010 Regulation delivers the greatest net benefit for the community.
11. The NSW government's Interdepartmental Committee (IDC) on the Reform of the Shared Private Residential Services Sector is developing a whole of government approach to the broader boarding house sector and is considering options for future regulatory requirements including reform, repeal and consolidation of existing legislative instruments, including the YACS Act. Until this reform work is completed, it is in the best interests of persons with a disability and in order to help maintain standards in licensed residential centres that obligations as proposed in the 2010 Regulation be maintained.
12. Submissions about the proposed 2010 Regulation can be made to:

The Boarding House Regulation Team
Sector Development Branch
Ageing, Disability and Home Care, Department of Human Services
Level 5, 83 Clarence Street
Sydney NSW 2000
13. Enquiries about this RIS may be directed to the Boarding House Regulation Team on (02) 8270 2066.
14. Submissions must be received by close of business on 13 July 2010.

3. THE YACS ACT AND THE OBJECTIVES OF THE 2010 REGULATION

3.1 The YACS Act

15. The YACS Act was amended in 1979 to licence and monitor 'residential centres for handicapped persons'. Key provisions included were:
 - a. The introduction of a definition of 'handicapped persons', being "*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*".
 - b. The definition of 'residential centres for handicapped persons', being "*premises comprising or of the nature of lodgings or a 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, and otherwise that a person who is a relative of those persons”.

- c. the requirement to lodge applications for licenses to operate a residential centre for handicapped persons by intending licensees – section 11.
- d. The granting of licenses subject to conditions – section 16.
- e. The ability to suspend or revoke licenses on prescribed grounds, including failure to comply with the YACS Act, the regulations or licence conditions – section 18.

3.2 The rationale for Government action

16. When the 1979 amendments to the YACS Act were introduced to Parliament, the then Minister for Youth and Community Services stated that the primary purpose of the amendments was the requirement that residences accommodating handicapped persons be licensed, stating:

“The Licensing Provisions of the Youth and Community Services (Amendment) Bill are directed at ensuring that accommodation that is provided for handicapped persons is at least of a certain minimum standard...”.

17. These amendments established a licensing regime for ‘residential centres for handicapped persons’. The amendments were to provide a ‘*clear statement of minimum standards*’; *that it does not propose to close down facilities but to ‘co-operate with reputable people to ensure acceptable standards’.*²
18. The YACS Act forms part of the ‘community welfare legislation’ as referred to in the *Community Welfare Act 1987*. Its objects, as set out in section 4 of the *Community Welfare Act*, include “to ensure the provision, to the maximum extent possible, of services for, and assistance to, persons disadvantaged because of ... physical or intellectual impairment”.
19. The licensing regime was introduced in 1979 in response to concerns about the quality of accommodation provided to people with disabilities. In 1981, the licensing system commenced with the introduction of ‘conditions’ on a licence. The licensing regime was further tightened in 1995 with the introduction of new operating standards.
20. However, as discussed further below, there was some uncertainty as to the scope of the Minister for Ageing and Disability’s power to impose conditions on a licence where the conditions did not directly relate to the licensed premises or the licensee or licensed manager.
21. The *Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010*, which amended the 2005 Regulation, incorporated prescribed standards to be met by licensees and/or licensed managers of ‘residential centres for handicapped persons’. These prescribed standards were not new, as they were imposed on licensees and licensed managers by way of license conditions attached to each licensee’s licence.

² Alt Beatty Consulting “Boarding house Reform Program – Evaluation” August 2001.

22. Prior to these recent amendments to the 2005 Regulation, licenses granted to conduct residential centres for handicapped persons contained a set of conditions that the licensee and licensed manager have the responsibility to follow. These conditions set standards which must be observed. Licensees and licensed managers were required to adhere to the standards contained in licence conditions - a licensee or licensed manager who contravenes or fails to comply with any licence condition is guilty of an offence in contravention of the YACS Act. Prosecution of offences or breaches of licence conditions is regarded as a criminal offence.
23. These licence conditions were administered and enforced by ADHC, through regular monitoring of licensed premises for compliance. However, there was some uncertainty as to the scope of the Minister for Ageing and Disability's power to impose conditions on a licence where the conditions did not directly 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. This view was irrespective of Parliament's apparent intention that accommodation provided for handicapped persons is at least of a certain minimum standard.
24. There was a clear need for government action to remedy, as far as possible, the apparent inconsistency between Parliament's intention to introduce standards and the enforceability of such standards. Although this uncertainty as to the scope of the Minister for Ageing and Disability's power to impose conditions on a licence³ had been identified for some time, ADHC continued to enforce all licence conditions through regular monitoring for compliance and the threat of prosecution for breach. The existing obligations contained in the 2005 Regulation resolve this uncertainty.
25. As noted earlier, the prescribed standards introduced into the 2005 Regulation by way of the *Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010* were not new. In this regard, their introduction did not place additional burden on licensees or licensed managers.
26. The purpose of maintaining these conditions in the 2010 Regulation is to create greater certainty regarding licensee's obligations thereby ensuring that the residents' health and safety are protected and that reasonable standards regarding important matters such as hygiene, sanitation, residents' rights and lifestyle are observed. Appropriate regulation is essential, as many people with a disability are vulnerable to abuse and exploitation. Greater certainty regarding obligations also provides licensees and licensed managers with greater clarity regarding their responsibilities.
27. Resolving this uncertainty has been the subject of numerous reviews and recommendations over the years including those of the NSW Ombudsman.

3.3 Regulation making power under the YACS Act

28. The YACS Act contains a number of regulation-making powers, including for the following
 - a. standards to be observed and facilities to be provided to ensure the health, comfort, safety and proper care of handicapped persons residing at licensed premises – section 32(2)(b);
 - b. the qualifications and experience of persons employed at licensed premises – section 32(2)(c);

³ Where the conditions do not directly relate to the licensed premises or the licensee or licensed manager

- c. the making and keeping of records and the furnishing of returns in respect of licensed premises – section 32(2)(d);
- d. the inspection of licensed premises – section 32(2)(e);
- e. any matter that by the YACS Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the YACS Act – section 32(1).

3.4 The 2010 Regulation

- 29. The 2010 Regulation proposes to remake those provisions of the existing 2005 Regulation that relate to the obligations on licensees and licensed managers in relation to matters regarding the standards to be observed and the facilities to be provided, the qualifications and experience of staff and the making and keeping of records.
- 30. These provisions include:
 - a. Standards regarding sleeping facilities - these concern standards regarding a resident's bed, mattress, linen, pillows etc;
 - b. Clothing and toiletries requirements – these concern the supply of clothing and other personal items;
 - c. Meal requirements for residents – these concern standards regarding meals, and the availability of meals;
 - d. Recreational requirements for residents – these concern minimum recreational facilities;
 - e. Storage space requirements, including both personal storage space for residents and general storage space requirements for the residential centre;
 - f. Requirements regarding the handling of medication, including proper administration and maintenance of proper records – these concern compliance with certain standards relating to the handling of medication and the maintenance of adequate records regarding the supply of certain types of medication;
 - g. Standards regarding safety and health – these concern the maintenance of adequate records regarding fire drills, the maintenance of effective infection control programs, fully stocked first aid kits, and the provision of medicinal and dental treatment for residents;
 - h. Requirements regarding the treatment of residents, including issues regarding abuse and neglect and the protection and management of a resident's financial affairs;
 - i. Requirements regarding the protection of a resident's rights and interests, including the right to privacy and confidentiality, the right of the resident to make decisions about their daily events and activities, the entitlement to advocacy and other support services and access to family and friends;
 - j. Procedures for dealing with complaints;

- k. Notification requirements to ADHC on the occurrence of certain events – these concern notification for events such as death of a resident or alleged sexual assault;
 - l. Staffing requirements, including their qualification and experience;
 - m. Screening requirements upon entry to the residential center – these concern the application of a screening tool to assess prospective residents' suitability to accommodation;
 - n. The maintenance of adequate records regarding each resident.
31. Although not yet reflected in the 2010 Regulation, the Government is also considering the introduction of additional provisions relating to additional qualifications in first aid and additional requirements regarding the administration of prescribed medications. These provisions relate to:
- a. A requirement that there be one staff member on duty at the licensed premises who holds qualifications in the administration of first aid;
 - b. Requirements regarding the administration of prescribed medications, namely an obligation to provide certain prescribed medications to residents in dose administration aid devices (pre-packed blister packs) and an obligation to maintain records of such administrations.
32. These are discussed in more detail in paragraph 4.4 following.
- 3.5 *The objectives of the 2010 Regulation***
33. The objectives of the 2010 Regulation are to remake the provisions of the 2005 Regulation with respect to the following:
- a. Obligations on licensees and licensed managers of residential centres for handicapped persons in relation to those centres including the standards to be observed and the facilities to be provided, the qualifications and experience of staff and the making and keeping of records;
 - b. The forms to be used for an application for a licence and for the Minister's consent to the replacement of a licensed manager by another person;
 - c. Savings and formal matters.
34. These standards, to be observed by licensees and licensed managers, relate to the care, safety and well being of residents and the provision of services from the premises. The objectives of these provisions are to ensure that the residents' health and safety are protected and that reasonable standards regarding matters such as hygiene, sanitation, residents' rights and lifestyle are observed.
35. The remake also ensures certainty regarding licensee's obligations, providing greater clarity regarding their responsibilities.
36. The objectives of each of the proposed additional provisions are to further ensure that residents' health and safety are adequately protected by the maintenance of reasonable standards:

- a. The proposed first aid requirements will further ensure that residents, many of whom have ongoing medical conditions, are afforded proper medical attention, particularly in the event of a critical incident.
- b. The proposed requirements regarding the administration of prescribed medications ensures the correct dosages of medications are provided to residents, significantly reduces the possibility of tampering with dosages and encourages and makes it easier for residents to administer their own medication.

4. ALTERNATIVES TO MAKING THE 2010 REGULATION

37. Options for remaking the 2005 Regulation as proposed are:

- a. Do nothing
- b. Address the matters through the YACS Act rather than in the regulation
- c. Remake the 2005 Regulation without changes
- d. Remake the 2005 Regulation with changes

4.1 OPTION 1: DO NOTHING

38. This would mean that no new regulations are made when the 2005 Regulation is repealed. If this occurs, there will be no legislative prescription regarding standards to be observed by licensees and licensed managers relating to the care, safety and well being of residents and the provision of services from the premises.

39. **Costs:** if the 2005 Regulation is not remade, there will be no legislative standards regarding important matters such as hygiene, sanitation, residents' rights and lifestyle. This option would not ensure that reasonable standards regarding these matters are maintained.

40. **Benefits:** It is difficult to identify any benefits of not making the 2010 Regulation.

41. It is therefore proposed that this option not be adopted.

4.2 OPTION 2: ADDRESS THE MATTERS THROUGH THE YACS ACT

42. An alternative would be to amend the YACS Act to specifically make clear that the Minister is empowered to authorise conditions on a licence on any matter relating to the care, safety and well being of residents and the provision of services from the residential centre. This would eliminate the need for any regulation on the issue.

43. **Costs:** the requisite amending legislation may take significantly longer to be enacted than the proposed 2010 Regulation. The implication of this is that the risk of there being no standards or the issue of uncertainty as to the scope of the Minister's power to impose conditions is drawn out longer than if the 2010 Regulation was made. There may also be significantly higher administrative costs associated with an amendment to the YACS Act, compared with remaking a regulation.

44. **Benefits:** the potential for greater Parliamentary scrutiny for the matters provided for in the proposed 2010 Regulation, in that the matters would need to be passed by

Parliament rather than be subject to disallowance by Parliament. However, the scope of this benefit is reduced by:

- a. the existence of the Legislative Review Committee, which provides scrutiny of statutory instruments;
- b. the existence of the Better Regulation Office, which ensures that regulation does not impose unnecessary burdens on business and the community;
- c. the fact that the obligations recently inserted into the 2005 Regulation and now contained in the 2010 Regulation were initially imposed on licensees and licensed managers by way of conditions on licenses.
- d. The fact that the process of inserting the obligations into the 2005 Regulation satisfied the better regulation principles.

45. It is therefore proposed that this option not be adopted.

4.3 OPTION 3: REMAKE THE EXISTING 2005 REGULATION WITHOUT CHANGES

46. This option requires a consideration of the provisions in the existing 2005 Regulation that necessitate this RIS; namely, the provisions relating to the imposition of obligations on licensees and licensed managers regarding the standards to be observed and the facilities to be provided, the qualifications and experience of staff and the making and keeping of records, and whether these provisions should be remade without amendment.

47. **Costs:** As noted earlier, the prescribed standards introduced into the 2005 Regulation by way of the *Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010* were not new, they were found in conditions attached to licenses granted to conduct residential centres for handicapped persons. Licensees and licensed managers were required to adhere to the standards contained in licence conditions. These conditions were regularly monitored by ADHC for compliance – and a licensee or licensed manager who contravenes or fails to comply with any licence condition is guilty of an offence in contravention of the YACS Act. In this regard, their introduction did not place additional burden on licensees or licensed managers, but created greater certainty and clarity regarding licensee’s and licensed manager’s obligations.

48. The same principles will apply in relation to the remake of the 2005 Regulation. The standards contained in the 2010 Regulation are not new, as they replicate those contained in the 2005 Regulation, which in turn were found in conditions attached to licenses granted to conduct residential centres for handicapped persons. Their introduction therefore will not place additional burden on licensees or licensed managers.

49. The costs associated with this option relate to the compliance costs associated with licensees meeting the requirements of the 2010 Regulation. Compliance costs are both the direct cash flow effects of complying with the 2010 Regulation, as well as the administration time associated with the new regulation. A discussion of these anticipated costs is set out in the table below.

50. Furthermore, if the 2005 Regulation is remade without change, the proposed provisions relating to additional qualifications in first aid and additional requirements regarding the administration of prescribed medications will not be implemented, and the benefits associated with their inclusion will not be achieved.

51. **Benefits:** Remaking the 2005 Regulation without change will allow the continuance of the legislative prescription regarding standards to be observed by licensees and licensed managers relating to the care, safety and well being of residents and the provision of services from the premises. These obligations help ensure that residents' health and safety are protected and that reasonable standards regarding important matters such as hygiene, sanitation, residents' rights and lifestyle are observed. Benefits of the 2010 Regulation include:
- providing greater transparency regarding safety and quality requirements, ensuring certainty regarding licensee's obligations and providing greater clarity regarding their responsibilities. This provides clearer understanding for operators, residents and the community of what are acceptable standards in licensed residential centres.
 - reducing the risk of avoidable harm events.
 - helping promote a culture of maintaining safety and quality of service within licensed residential centres, which may help alleviate public health risk exposure, such as hospital costs.
52. A discussion of additional anticipated benefits is set out in the table below.
53. Summary of costs and benefits of proposed 2010 Regulation:

Proposed obligation	Costs	Benefits
Standards regarding sleeping facilities	<ul style="list-style-type: none"> • Cost of improving any substandard amenity, eg bedroom facilities, bedding, and cleanliness. 	<ul style="list-style-type: none"> • Improved amenity, including bedroom facilities, cleanliness.
Clothing and toiletries requirements	<ul style="list-style-type: none"> • Cost of improving any substandard amenity, eg toiletries. 	<ul style="list-style-type: none"> • Improved amenity, including cleanliness and personal hygiene.
Meal requirements for residents	<ul style="list-style-type: none"> • Cost of improving any substandard amenity, eg meal preparation. • Time cost regarding preparation of meals. 	<ul style="list-style-type: none"> • Improved amenity, including quality and frequency of meals.
Recreational requirements for residents	<ul style="list-style-type: none"> • Cost of improving any substandard amenity, eg recreational facilities. 	<ul style="list-style-type: none"> • Improved amenity, including recreational facilities for residents.
Storage space requirements	<ul style="list-style-type: none"> • Cost of improving any substandard amenity, eg storage facilities. 	<ul style="list-style-type: none"> • Improved amenity, including storage facilities for residents.
Requirements regarding the handling of medication, including proper administration and maintenance of proper records	<ul style="list-style-type: none"> • Management of medication requires staff time and administrative costs to maintain files on the medical needs of residents and maintain proper procedures for administration of medication. 	<ul style="list-style-type: none"> • Protection of residents' health and safety in relation to medication. • Establishment of a recordable way of tracking administration of medication helps avoid errors regarding administration of medication.
Standards regarding safety and health, including maintenance of records	<ul style="list-style-type: none"> • Maintenance of records, establishment of infection control program and 	<ul style="list-style-type: none"> • Protection of residents' health and safety, including recourse to proper medical

Proposed obligation	Costs	Benefits
regarding fire drills, infection control programs, fully stocked first aid kits.	<ul style="list-style-type: none"> assisting residents accessing health services requires staff time and administrative costs. • Cost of improving any substandard amenity, eg first aid kit and storage facilities for medication. • First aid training. 	attention in critical events.
Requirements regarding the treatment of residents, including protection and management of a resident's financial affairs	<ul style="list-style-type: none"> • Management of financial affairs requires staff time and administrative costs including the issue of receipts to residents and access to Guardianship Tribunal when requested. 	<ul style="list-style-type: none"> • Protection of residents' rights.
Requirements regarding the protection of a resident's rights and interests	<ul style="list-style-type: none"> • No cost. 	<ul style="list-style-type: none"> • Protection of residents' rights.
Procedures for dealing with complaints	<ul style="list-style-type: none"> • Management of a complaints mechanism requires staff time. 	<ul style="list-style-type: none"> • Protection of residents' rights.
Notification requirements to ADHC	<ul style="list-style-type: none"> • Reporting to ADHC requires staff time and administrative costs. 	<ul style="list-style-type: none"> • Potential benefits to residents in light of reporting requirements and scope to avoid similar events reoccurring.
Staffing requirements	<ul style="list-style-type: none"> • Compliance costs associated with any additional staffing requirements. • Administrative costs associated with ensuring proper recruitment and training of staff. 	<ul style="list-style-type: none"> • Improved quality of service delivery to residents. • Potential prevention of unsuitable persons working at licensed residential centres.
Screening requirements	<ul style="list-style-type: none"> • Screening processes and maintenance of a screening tool register requires staff time and administrative costs. 	<ul style="list-style-type: none"> • Benefits to both operators and residents through assurance that suitable persons reside at licensed residential centres.
The maintenance of adequate records	<ul style="list-style-type: none"> • Maintenance of a resident register requires staff time and administrative costs. 	<ul style="list-style-type: none"> • Protection of residents' health and safety in relation to health care.

54. **Conclusion:** The identified benefits far outweigh any anticipated costs. Regulation is essential as many people with a disability are vulnerable to abuse and exploitation. The 2010 Regulation achieves the objective of creating greater certainty regarding licensee's obligations and their enforceability, thereby ensuring that the residents' health and safety are protected.
55. In light of the additional benefits proposed under Option 4.4, it is recommended that this option not be adopted.

4.4 **OPTION 4: REMAKE THE EXISTING 2005 REGULATION WITH CHANGE**

56. This option proposes to remake the existing provisions of the 2005 Regulation (as discussed in Option 3) and proposes the inclusion of additional provisions intended to further ensure that residents' health and safety is protected. These additional provisions are:
- a. A requirement that there be one staff member on duty at the licensed premises who holds qualifications in the administration of first aid;
 - b. Requirements regarding the administration of prescribed medications, namely an obligation to provide certain prescribed medications to residents in dose administration aid devices (pre-packed blister packs) and an obligation to maintain records of such administrations.
57. Provisions incorporating these additional provisions have not as yet been incorporated into the 2010 Regulation, and comment is sought from the public as to the merits of including such provisions. Proposed amendments to the draft 2010 Regulation which would implement the additional provisions are:

Clause 12(7) amended to read:

"There must be a suitable and fully stocked first aid kit at the licensed premises and at least one member of the staff on duty must hold qualifications (of a type approved by the chief executive) in the administration of first aid."

The addition of two new provisions into clause 11 Medication as follows:

"The administration of prescription medication to a resident is to be reviewed at least once every 3 months by the relevant health practitioner."

"Subject to the other requirements of this clause, any prescription medication of a resident:

- (a) must, if it is practicable to do so, be separated by a registered pharmacist into individual doses in a blister pack and be clearly marked so as to identify the resident, and*
- (b) must be administered directly to the resident and a record of that administration be retained."*

58. **Costs:** the costs associated with this option relate to the compliance costs associated with licensees meeting the incremental requirements of the 2010 Regulation. Compliance costs are both the direct cash flow effects of complying with the 2010 Regulation, as well as the administration time associated with the new regulation. The costs and benefits analysis provided in relation to Option 3 above would similarly apply to Option 4.
59. In addition to the costs discussed in relation to Option 3, existing licensed residential centres will bear incremental costs where the proposed 2010 Regulation imposes additional requirements. These costs will vary from facility to facility. Some facilities may find that they are already in compliance with some (or all) of the additional provisions of the 2010 Regulation, and therefore there will be minimal (or no) costs associated with the 2010 Regulation. Others, however, may face costs in introducing

the additional provisions proposed. The costs associated with each of these additional provisions are described below.

60. **Staff member on duty qualified in the administration of first aid:** the Government is proposing to amend the requirement contained in the 2005 Regulation that at least one staff member must hold qualifications in the administration of first aid to an obligation that one staff member qualified in the administration of first aid must be on duty.
61. The costs associated with this obligation are minimal. The current cost of a St John Ambulance Australia emergency first aid course, which teaches the basics of sustaining life until medical help arrives and is valid for three years, is \$175 per person for a two day course (one day of which is self-study as opposed to face to face direct training). Once qualified, a one day recertification course costs \$150. Licensed residential centres employ approximately 3 to 5 staff members depending on size. It is anticipated that not all staff members would be required to undertake a first aid course.
62. The NSW Ombudsman, in a number of reports of reviewable deaths from 2004 to 2007, has been consistently critical of the first aid response at some premises, noting that the responses appeared limited and Cardiopulmonary Resuscitation (CPR) had not been performed. The Ombudsman emphasized that at all times there needed to be at least one staff member qualified in first aid available at the premises to render first aid. Failure to have a staff member on duty able to perform first aid may lead to deaths which could otherwise potentially have been avoided.
63. ADHC is aware of documented incidents where residents of licensed residential centres have not had access to a telephone to phone emergency services. There are also a number of licensed residential centres which are remote from immediate first aid in the event of an emergency. The consequences of this is that it is foreseeable that in the event of a medical emergency there may be, for some licensed residential centres, a delay between the critical event and the arrival of proper medical assistance (there may be some locations where medical assistance may have to travel between 10 to 15 kilometres). It is imperative that in the intervening vital period there is a staff member available and qualified to render essential first aid such as CPR.
64. In the Ombudsman's Message in the overview of the Reviewable Deaths in 2007 he notes:

"Of particular note is the agency (ADHC's) progress in ensuring consistent first aid requirements across accommodation services for people with disabilities, progress towards completing the Review of the Youth and Community Services Act 1973, and progress towards improving the health care of people with intellectual disabilities".

He goes on to say in the Executive Summary:

"We have consistently stated that it should be mandatory – regardless of the accommodation setting - that there should always be at least one person on shift with current first aid qualifications. Our concern is that, while first aid certificates are mandatory for DADHC staff, this is not the case for staff in funded services or licensed boarding houses.....We note that the five people who died in 2007 appeared to receive inadequate first aid, four lived in funded services and 1 lived in a licensed boarding house. It is critical that people with disabilities in care are supported by staff

who have first aid training, particularly given their vulnerability to critical incidents related to medication toxicity or overdose, choking, falls, and serious health concerns”.

65. ADHC responded to the funded services issue by amending the Health Care Policy and Procedures to include a requirement that funded services have at least one person on each shift with a current first aid qualification, and compliance with policy is now a condition of the funding agreement between ADHC and funded accommodation providers.
66. The provision to have at least one person on each shift with a current first aid qualification will bring licensed residential centres into line with ADHC operated and funded accommodation services for people with a disability.
67. **Administration of prescribed medications:** the current 2005 Regulation contains a number of provisions regarding the administration of psychotropic PRN medication and PRN medication. This RIS considers a number of additional provisions relating to the safe administration of medication. These relate specifically to the administration of prescription medication, namely:
 - a. prescriptions be pre-packed by a pharmacist in sealed blister packs, and that such medication be administered directly to the individual for whom it was intended;
 - b. the maintenance of records regarding the administration of prescription medication;
 - c. an obligation to ensure that a resident’s prescription medication administration is reviewed by the relevant health practitioner at least once every three months.
68. Sealed blister packs (also known as Webster packs or dose administration aids) which are filled and pre-sealed by pharmacists cost approximately \$5 per week. The costs associated with this obligation will vary from facility to facility. It is understood that a majority of current licensed residential centres already use blister packs, and pass the costs on to the individual resident. ADHC encourages licensed residential centres to refer to NSW Health’s Circular 97/10 – *Guidelines for the Handling of Medication in Community-Based Health Services and Residential Facilities in New South Wales*. These Guidelines encourage the use of suitably labeled ‘pre-packs’ for prescription medication, and are specifically targeted at “*the handling of medication by persons employed in community based health services and in residential facilities such as group homes, **boarding houses** and hostels*”. Those that do not apply this practice and will need to introduce it will likely pass the costs on to each resident. These premises will also likely face compliance costs, in the form of administration time, associated with introducing the new practice.
69. Although the majority of current licensed residential centres already use blister packs, some do not.
70. While the recommendations of Circular 97/10 have been encouraged as best practice, and have been voluntarily adopted by a number of licensed residential centres, they are currently not able to be legally enforced and a number of unsafe medication practices have been observed in licensed boarding houses.
71. Unsafe medication practices were highlighted in the 1996 Health Care Complaints Commission report, *The care and management of people with a mental illness*

residing in boarding houses who require treatment with psychotropic medication. Since that time unsafe medication practices continue to be observed by ADHC Officers and noted by the Ombudsman. ADHC is aware of incidents where medication has been found in unmarked or wrongly marked containers. These practices create a medical and health risk, not just to the intended recipient of the medication, but potentially to other residents who may be given incorrect medication.

72. **Benefits:** In addition to the benefits discussed in relation to Option 3 above, the additional benefits of Option 4 arise as a result of the added protections to residents' health and safety through the maintenance of the additional obligations proposed.
73. **Staff member on duty qualified in the administration of first aid:** By maintaining a staff member on duty with qualifications in the administration of first aid who is able to properly respond to medical situations until such time as proper medical assistance arrives, residents will more likely receive proper medical attention, particularly in critical situations. The introduction of such an obligation will further provide for the proper health, safety and care of persons residing at residential centres.
74. **Administration of prescribed medications:** Pre-packaging of prescription medication in sealed blister packs ensures the correct dosage of medications is provided to residents, significantly reduces the possibility of tampering with dosages and errors in administration, and also encourages and makes it easier for residents, where possible, to administer their own medication.
75. These additional medication management practices further ensure the health and safety of residents. The use of blister packs, and the maintenance of a record system of medication administration ensure a recordable way of tracking that medication was administered in accordance with the instructions of the prescribing practitioner.
76. **Conclusion:** The identified benefits far outweigh any anticipated costs. It is therefore proposed that this option be adopted.

4.5 NON-REGULATORY OPTIONS

77. To have no conditions on a licence or regulations regarding matters relating to the care, safety and well being of residents and the provision of services from the premises – this option would clearly not be appropriate. Studies have concluded that regulation of shared accommodation for people with disabilities is justified on a number of grounds, including:
 - a. Addressing market failures such as inadequate information for consumers – a person with a disability may not have the ability to make an informed decision on whether a particular boarding house will satisfy all his or her needs while ensuring a safe and protected environment;
 - b. Regulation can be said to address the issue of public health and safety – as many people with a disability are vulnerable to abuse and exploitation, appropriate regulation is essential to ensure the provision of quality accommodation and support;
 - c. Residents may be vulnerable because of the nature of their disability.
78. No regulation, or the other alternative of self-regulation (through the maintenance of an industry code) has inherent risk, particularly when services are provided to

vulnerable persons. There is a risk that with these options operators would ignore minimum health, hygiene and safety requirements in order to reduce costs. This has the potential for increased risk to the residents.

79. Prior to the introduction of the licensing regime, a series of reports into boarding houses consistently highlighted serious concerns with regard to people with disabilities residing within the sector. These included:
- Poverty and Mental Illness, Australian Government Commission of Inquiry Into Poverty - the 'Henderson Report' (1977);
 - the Report of the Royal Commission into Deep Sleep Therapy - 'the Chelmsford Report' (1990);
 - the Human Rights and Mental Illness: Report of the National Inquiry into Human Rights of People with Mental Illness - 'the Burdekin Report' (1993);
 - the Report on the Task Force on "Private For Profit " Hostels (1993); and
 - the Health Care Complaints Commission Report (1996).
80. Some of these reports found that although residents often contributed their entire pensions and allowances to the cost of their care, the health, welfare and rights of people with disabilities were largely neglected in order for the service to make a profit. Concerns noted in some or all of the reports included:
- poor to terrible physical and structural environment of many services;
 - overuse of medication;
 - inadequate staffing, both in respect to inadequate numbers as well as qualifications;
 - financial exploitation;
 - inadequate protection of residents from other forms of neglect and abuse;
 - isolation of some services; and
 - lack of external or generic support services or advocacy - in some cases outright hostility of the proprietor to such services.
81. Given these factors, the rationale for government intervention can be said to be to protect the health, safety and basic freedoms of people with disabilities living in shared accommodation.⁴

5. CONSULTATION

82. The regulation of licensed residential centres in NSW, which forms the basis of the proposed 2010 Regulation, has been the subject of scrutiny and consultation through previous review and consultation processes. These processes included:

⁴ The Allen Consulting Group "Shared Accommodation for People with a Disability – A National Competition Policy Review of the Regulation of Boarding Houses": September 2003.

- In 1994, a consultation process with the industry, Department of Health and advocacy groups led to the development of variations to the then existing licence conditions.
- In 1997 and 1998 reports on the industry and a survey of residents provided the basis for the NSW Government's approach to licensed residential centres resulting in:
 - The establishment of the Boarding House Reform Program, the objectives of which include to improve standards and support to residents and to ensure boarding houses remain viable options where safety and affordability satisfy minimum standards; and
 - A review of the relevant legislation.
- In 2001, Alt Beatty Consulting reviewed the Boarding House Reform Program. This included industry consultation and focus groups with a series of licensed residential centres and their proprietors, managers and some residents.
- A National Competition Policy Review of the regulation of boarding houses conducted by the Allen Consulting Group in 2003 reviewed the licensing regime of the YACS Act and the associated Licence Conditions applied to operators. The Allen Consulting Group observed that regulation of shared accommodation for people with disabilities can be justified on the grounds that:
 - Regulation addresses market failures such as lack of information for consumers;
 - Residents may be vulnerable and in need of guardianship or protection;
 - Residents may be 'locked in' to a particular provider because of the nature of some centres and the predisposition of some residents due to their conditioning.

As part of its review, the Allen Consulting Group conducted a cost/benefit analysis of the licensing arrangements in the YACS Act. It noted that while licensing regimes have an impact on economic efficiencies because they create entry barriers and hence distort underlying supply decisions, the benefits of the current licensing arrangements can be seen to be the protection of the health, safety and basic freedoms of people with disabilities living in shared accommodation. It further noted that the enforcement of the conditions attached to licenses was uncertain. This may impinge on any benefits derived from the licensing arrangements in place.

- Following the release of the National Competition Policy Review Report *Shared Accommodation for People with a Disability*, ADHC invited public submissions and engaged Alt Beatty Consulting to undertake consultations with licensees, residents, their families and guardians. Alt Beatty's findings of these consultations, provided in 2005, included support from operators that a regulation could resolve issues pertaining to the current legislation and that most stakeholders considered it important to clarify the standards expected. Resident responses to the review indicated a requirement for safe, appropriate and clean accommodation, a reasonable variety and quantity of food, and protection of basic rights, including privacy.

- The NSW Ombudsman, in response to a complaint in 2004 regarding the enforcement of licence conditions, recommended that ADHC take 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.
- The NSW Ombudsman further reiterated this recommendation in his report to Parliament in 2006 (entitled “DADHC Monitoring standards in boarding houses”) and found that issues pertaining to the enforceability of licence conditions had an adverse impact on the health safety and well being of residents.
- The Boarding House Expert Advisory Group (BHEAG), comprising members of the industry, service providers, peak bodies and advocacy groups, has been advising ADHC since 2002 in relation to policy issues pertaining to the licensing of residential centres and services provided to residents under the Boarding House Reform Program. This has included advice regarding the adequacy of provisions in the Licence Conditions issued under the YACS Act relating to the health, safety and well being of residents. Recent advice from the BHEAG reflected that these issues have been raised over a number of years and require a response from the NSW Government in providing certainty to the regulatory environment and therefore improved outcomes for residents.
- In December 2009, ADHC met with the BHEAG in relation to the proposed amendments to the 2005 Regulation. Members of the BHEAG indicated that they were satisfied the proposal to amend the 2005 Regulation would go some way to addressing the current issues with Licence Conditions pertinent to the health, safety and wellbeing of residents. Members were of the view that the proposed amendments would not impact on licensees but would create greater certainty regarding licensee’s obligations ensuring that resident’s health and safety is protected. Members were also of the view that consultation was unnecessary as the long-standing issues being addressed have been the subject of many reviews, inquiries and reports recommending that Government respond by providing certainty to the regulatory environment to improve outcomes for residents.
- ADHC met again with key members of the BHEAG in February 2010 – they were satisfied that the proposed draft Amended 2005 Regulation addressed issues regarding the imposition of prescribed standards contained in existing licence conditions by way of regulation.
- An Evaluation of the Active Linking Initiative (ALI) services in 2009, an initiative of the Boarding House Reform Program, included consultation with the industry, residents, service providers and peak bodies. ALI services aim to integrate residents of Licensed Residential Centres into the community in ways which are meaningful and sustainable. ALI services are funded by ADHC and provided by non government organisations (NGOs). The ALI Evaluation found, inter alia, that there were barriers to residents accessing services due to inadequate provisions under the YACS Act, specifically with regard to a lack of sanctions to prevent LRC managers from restricting ALI providers access to residents and withdrawing ALI support from residents as a form of retribution. Stakeholders advocated through this Evaluation for the Agency to address these issues.

83. All stakeholders will have the opportunity to express their views on the matters addressed in this RIS.

84. The location of this RIS and a copy of the proposed 2010 Regulation have been advertised in the Sydney Morning Herald and in the Government Gazette. Copies will be supplied upon request.
85. Additional copies of this RIS and the draft 2010 Regulation may be obtained from Ageing, Disability and Home Care's website www.dadhc.nsw.gov.au
86. Submissions in relation to this RIS should be made to the Boarding House Regulation Team by 13 July 2010.
87. Copies of this statement are to be forwarded to:
- 300 Hostel
 - Aftercare
 - Aged & Community Services Association of NSW & ACT Inc
 - Blackheath Area Neighbourhood Centre
 - Carinya
 - Carinya Marrickville
 - Castle Personnel
 - Cavendish Lodge
 - Coleman House
 - Daisy Cottage
 - Denroma Home
 - Department of Planning
 - Department of Premier and Cabinet
 - Disability Trust
 - Division of Local Government
 - Fernlea Hostel
 - Frank's Boarding House
 - Grand Western Lodge
 - Harnett Avenue LRC
 - Honeysuckle Cottage
 - House With No Steps
 - Housing NSW
 - Hume Avenue LRC
 - Hunter and New England Area Health Service
 - Intellectual Disability Rights Services
 - Jasmine Cottage
 - Kelvinside Lodge
 - Kingham Street LRC
 - Lane Street LRC
 - Lester Lodge
 - Lithgow Neighbourhood Centre
 - Lyon Parade LRC
 - Melrose
 - Miller Lodge
 - National Disability Services
 - New Horizon Enterprises Ltd
 - Newtown Neighbourhood Centre
 - Northern Sydney and Central Coast Area Health Service
 - NSW Council for Intellectual Disability
 - NSW Health
 - NSW Treasury Office of Financial Management
 - NSW Office of Fair Trading
 - NSW Ombudsman
 - Office of the Public Guardian
 - People With Disability Australia Inc
 - Portland Road LRC
 - Raintree Retreat
 - Rose Cottage
 - Riverview Hostels
 - Rosnel Guest House
 - Samaritans
 - Sandalwood Lodge
 - Sethmo on Thompson
 - Sister Myree Harris
 - Smiths Hall
 - Sunderland Street LRC
 - Sunshine Lodge
 - Supported Living
 - Sydney South West Area Health Service
 - Tinonee Haven
 - UnitingCare
 - Willow Cottage

6. FUTURE REFORM

88. The current framework for licensing residential centres for handicapped people under the YACS Act is cost effective, efficient and streamlined for users, service providers and the community. The NSW government's Interdepartmental Committee (IDC) on the Reform of the Shared Private Residential Services Sector was established in 2008 to examine the application of various regulatory regimes in the sector as well as gaps in the regulatory regime which can impact on the health, safety and well being of residents.
89. The IDC is developing a whole of government approach to the broader boarding house sector and is considering options for future regulatory requirements including reform, repeal and consolidation of existing legislative instruments, including the YACS Act.
90. Until this reform work is completed, it is in the best interests of persons with a disability and in order to help maintain standards in licensed residential centres that the uncertainty regarding the scope of the Minister for Ageing and Disability's power to impose conditions is resolved by way of the 2010 Regulation.
91. Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness: The IDC is considering options for addressing the housing and support needs of people with a disability residing in boarding houses and addressing issues for boarding house operators which arise from the complex regulatory environment under which they operate. The review of the YACS Act has been subsumed into the work of the IDC. Developing a broader reform strategy is a complex and lengthy process, encompassing legislative reform across a number of agencies and instruments.
92. Until the work of the IDC has been completed, it is crucial that the current obligations are maintained to ensure minimum standards in licensed residential centres are observed. The proposed 2010 Regulation will provide stability and certainty to the regulatory environment pending the outcome of Government's consideration to the broader reform agenda for this sector.

7. CONCLUSION

93. The analysis in this RIS shows that, of the alternative options for regulation that have been considered, the proposed 2010 Regulation is the best method by which to achieve the Government's objectives.

8 Appendix 3 Distribution List for the Proposed Youth & Community Services Regulation 2010 and the Regulatory Impact Statement

Copies of these documents were sent to the following stakeholders:

- 300 Hostel
- Aftercare
- Aged & Community Services Association of NSW & ACT Inc
- Blackheath Area Neighbourhood Centre
- Carinya
- Carinya Marrickville
- Castle Personnel
- Cavendish Lodge
- Coleman House
- Daisy Cottage
- Denroma Home
- Department of Planning
- Department of Premier and Cabinet
- Disability Trust
- Division of Local Government
- Fernlea Hostel
- Frank's Boarding House
- Grand Western Lodge
- Harnett Avenue LRC
- Honeysuckle Cottage
- House With No Steps
- Housing NSW
- Hume Avenue LRC
- Hunter & New England Area Health Service
- Intellectual Disability Rights Services
- Jasmine Cottage
- Kelvinside Lodge
- Kingham Street LRC
- Lane Street LRC
- Lester Lodge
- Lithgow Neighbourhood Centre
- Lyon Parade LRC
- Melrose
- Miller Lodge
- National Disability Services
- New Horizon Enterprises Ltd
- Newtown Neighbourhood Centre
- Northern Sydney and Central Coast Area Health Service
- NSW Council for Intellectual Disability
- NSW Health
- NSW Treasury Office of Financial Management
- NSW Office of Fair Trading
- NSW Ombudsman
- Office of the Public Guardian
- People With Disability Australia Inc
- Portland Road LRC
- Raintree Retreat
- Rose Cottage
- Riverview Hostels
- Rosnel Guest House
- Samaritians
- Sandalwood Lodge
- Sethmo on Thompson
- Sister Myree Harris
- Smiths Hall
- Sunderland Street LRC
- Sunshine Lodge
- Supported Living
- Sydney South West Area Health Service
- Tinonee Haven
- UnitingCare
- Willow Cottage

9 Appendix 4 Key Issues raised by respondent group

Respondent	Matters not for consideration as recommendations		Matters for broader reform	Matters for guidelines	Matters for consideration as recommendations
	Matter not to be considered	Reason why			
Licensees	Regulation should not be remade	Regulation required for safety and wellbeing of residents	<ul style="list-style-type: none"> Review of the YACS Act 1973 Development of strategies to maintain viability and growth of the industry 	<ul style="list-style-type: none"> Clarification of terminology 	<ul style="list-style-type: none"> Proposed provision relating to frequency of medical reviews is up to medical practitioner and not enforceable by licensee
	Costs associated with first aid training for staff eg salary	In light of NSW Ombudsman's Reports, the benefits of a requirement for staff trained in first aid outweigh the costs			
	Inclusion of medication management requirements constitute cost impact due to 'dispensing' implication	Current health policy and legislation do not reflect this interpretation			
Residents			<ul style="list-style-type: none"> Residents' comments suggest need for right to make own decisions about daily life, eg bedtime, clothing, meals Residents' comments suggest need for right to report complaints or abuse without retribution 		
Disability service providers	Requirement for criminal record checks for all staff and annual criminal record check for licensees	Matter not to be considered due to work being done by the Ombudsman on employment probity	<ul style="list-style-type: none"> Review of YACS Act 1973 Inclusion of greater protections with people 	<ul style="list-style-type: none"> Clarification of terminology, including references to 'adequate' food 	

	Increased maximum penalty for breach of Regulation	Maximum penalty of \$500 is stipulated in YACS Act 1973	<p>with a disability, in line with the NSW Standards for Disability Services</p> <ul style="list-style-type: none"> • Additional requirements regarding sleeping facilities, eg individual rooms • Additional requirements regarding clothing, eg personal supply • Requirement to keep records of all medication administered • Requirement for a complaints procedure including provisions forbidding retribution 	and staff	
Disability peaks	Requirement for criminal record checks for all staff and annual criminal record check for licensees	Matter not to be considered due to work being done by the Ombudsman on employment probity	<ul style="list-style-type: none"> • Review of YACS Act 1973 • Inclusion of greater protections with people 		<ul style="list-style-type: none"> • Obligation on licensees to support residents to participate in

	Increased maximum penalty for breach of Regulation	Maximum penalty of \$500 is stipulated in YACS Act 1973	<p>with a disability, in line with the Convention on the Rights of Persons with Disabilities</p> <ul style="list-style-type: none"> • Inclusion of tenancy rights regarding matters such as eviction, threats and harassment • Additional requirements regarding sleeping facilities, eg individual rooms • Additional requirements regarding clothing, eg personal supply • Requirement to keep records of all medication administered 		<p>recreation activities in the community</p> <ul style="list-style-type: none"> • Requirement for more proactive assistance from licensees in accessing advocacy services • Changes to terminology
Advocacy organisations	Requirement for criminal record checks for all staff	Matter not to be considered due to work being done by the Ombudsman on employment probity	<ul style="list-style-type: none"> • Review of YACS Act 1973 • Inclusion of greater 	<ul style="list-style-type: none"> • Clarification of terminology, including references 	<ul style="list-style-type: none"> • Obligation on licensees to support residents

	Increased maximum penalty for breach of Regulation	Maximum penalty of \$500 is stipulated in YACS Act 1973	<p>protections with people with a disability, in line with international human rights instruments</p> <ul style="list-style-type: none"> • Inclusion of tenancy rights regarding matters such as eviction, occupancy agreements and unfair retribution • Additional requirements regarding sleeping facilities, eg individual rooms • Additional requirements regarding clothing, eg personal supply • Requirement to keep records of all medication administered • Requirement for a complaints procedure including provisions forbidding retribution • Development of strategies to promote sector viability 	to 'adequate' staff	<p>to participate in recreation activities in the community</p> <ul style="list-style-type: none"> • Requirement for more proactive assistance from licensees in accessing advocacy services
Ombudsman/Of ficial Community Visitors	Requirement for criminal record checks for all staff	Matter not to be considered due to work being done by the Ombudsman on employment probity	<ul style="list-style-type: none"> • Review of the YACS Act and broader reform • Requirement to keep records of matters such as health practitioners, support providers and illness <p>Inclusion of provision that residents do not suffer retribution for accessing support and advocacy</p>		

Public Guardian			<ul style="list-style-type: none"> • Broad sector reform • Inclusion of greater protections with people with a disability, in line with the Convention on the Rights of Persons with Disabilities • Additional requirements regarding sleeping facilities eg private rooms • Requirement to keep medical records 	<ul style="list-style-type: none"> • Improved monitoring and compliance 	
Individual	Requirement for criminal record checks for all staff and annual criminal record check for licensees	Matter not to be considered due to work being done by the Ombudsman on employment probity	<ul style="list-style-type: none"> • Inclusion of tenancy rights regarding matters such as eviction 		
Other (Disability Discrimination Legal Centre)	Disallowance of Regulation if all issues not taken up	Some issues contradict other submissions, some issues are not relevant to the Regulation, and some issues are to be dealt with through broader reform or guidelines	<ul style="list-style-type: none"> • Inclusion of greater protections with people with a disability, in line with the Convention on the Rights of Persons with Disabilities and current disability standards • Inclusion of tenancy rights regarding matters such as eviction, threats and harassment • Additional requirements regarding sleeping facilities, eg individual rooms 	<ul style="list-style-type: none"> • Development of detailed policies for operationalising Regulation 	<ul style="list-style-type: none"> • Obligation on licensees to support residents to participate in recreation activities in the community • Requirement for more proactive assistance from licensees in accessing advocacy services • Changes to terminology
	Increased maximum penalty for breach of Regulation	Maximum penalty of \$500 is stipulated in YACS Act 1973			

10 Appendix 5 Regulatory Impact Statement on the Proposed *Youth & Community Services Regulation 2010* – Matrix Summary Report

TOTAL SUBMISSIONS

Number of submissions responding to RIS	Categories of respondents									Types of Submissions				Number of Submission raising issues outside the RIS
	1: Licensees	2: Disability Providers	3: Govt Agency	4: Public Authority	5: Individual	6: Peak	7: Advocacy Org	8: Residents	9: Other	Written	Email	Phone	Other	
22	5	3	1	3	1	3	3	1	2	22				1

1. ISSUES IN SUBMISSIONS

1.1 GENERAL COMMENTS ON THE PROPOSED CHANGED REGULATION (unrelated to a specific Clause or Paragraph of the Proposed Regulation or specific Option of the Regulatory Impact Statement).

Theme/Issue	No. of submissions
The Youth and Community Services amendment (Obligation to Licensees) Regulation 2010 is commended	7
Overall standards and requirements in proposed reg remain inadequate for people with disabilities residing in LRCs	2
Repeal and replace the YACS Act / outdated Act / broader reform required	11
Amend YACS Act simultaneously with reg	1
Tenancy rights / occupancy rights	7
Objective of the amended regulation is not clear	3
Reg should also include an accreditation and quality assurance scheme, services to promote social inclusion	2
Residents of licensed boarding houses are vulnerable and require the highest possible standards to protect them.	8
Capping of fees charged by Licensed Premises	2
Monitoring of tariffs	1
Some components of the YACS Amendment (Obligations of Licensees) Regulation 2010 require clarification.	6
Dispute resolution between boarding house providers and residents / complaints handling processes required	2

Theme/Issue	No. of submissions
No notification of death of a resident to the Department is required in reg	2
Critical of consultation method used in regards to the RIS	7
Supports the making of the Regulation however greater sector reform is necessary	11
The proposed regulation could be improved if more detail / guidelines were provided / more resources.	11
Regulation should reflect the minimum practice requirements outlined in policy documents such as 'Standards in Action' and the minimum practice and policy requirements of ADHC operated and funded services	1
Improved monitoring for compliance	5
Concerns raised regarding proposed reg impacting on LRCs and their viability and decline of the industry - including comparison to funded services, increased responsibility on LRCS, significant costs to comply with some obligations.	2
Concern re who will provide the support / expertise needed to ensure that residents are not subjected to any abuse or neglect.	2
Take into consideration the acceptance of the Community Visitors Scheme by LRCs – provides advocacy to residents.	1
Many LRC staff has undertaken Certificate III in Community Services (Disability work).	1
Formulation of regulatory regime that does not discriminate against persons with a disability. Regulation should be consistent with relevant UN Convention on the Rights of Persons with Disabilities (CRPD) Articles.	8
Level of prescription of obligations in clauses varies / inconsistencies	2
Lack of standards in LRCs for vulnerable people contrasts to Disability Services Standards in other areas of daily living.	3

Theme/Issue	No. of submissions
Inconsistencies between LRCs on how operate	1
The ultra vires Licence Conditions cannot be remedied by the amended regulation	2
The amended reg does not meet Better Regulation Principles.	1
Government should be responsible to provide carer services to residents with a disability	1
LRCS should receive government subsidies to implement additional provisions	2
Seems to be a negative attitude towards licensees / operators/ staff of LRCs	3
Introduce a licence scheme for unlicensed boarding houses	1
If an LRC is in breach of any standards, that cooperate with ADHC or other approved agency to relocate residents to another location within a specified period...	2
Request for independent Legal Advice to confirm that the amendment can be made.	2
The word "suffered" should be removed throughout regulation	1

2.1 RESPONSES TO SPECIFIC OPTIONS AND PARAGRAPHS IN THE REGULATORY IMPACT STATEMENT.

RIS Option No.	Topic <i>(list as required)</i>	Paragraph <i>(list as required)</i>	No. of submissions	Summary of comments	Proposed Regulation Changes <i>(√ appropriate column and include text where possible)</i>		
					Support	Reject	Other
Option 1: Do nothing (38-41)			1	Consideration should be given to the repeal of the YACs Act and creation of legislation specifically for LRCs.	x		
Option 2: Address the matters through the YACS Act (42-25)			1	Submission specifically stated support for Option 2	x		
Option 3: Remake the existing 2005 Regulation without changes			1		x		
Option 4: Remake the existing 2005 Regulation with changes (56-76)			13	Supports indirectly – requests further amendments to the Reg.	x		

RIS Option No.	Topic <i>(list as required)</i>	Paragraph <i>(list as required)</i>	No. of submissions	Summary of comments	Proposed Regulation Changes <i>(√ appropriate column and include text where possible)</i>		
					Support	Reject	Other
	Clause 12(7) First Aid “...stocked first aid kit at...premises & at least one member of the staff on duty must hold qualifications...in first aid.”		10	Submission specifically mentioned support or objection to additional provisions as outlined in the RIS.	x		
			2			x	
	Clause 11 (1) Medication “The administration of prescription medication to a resident is to be reviewed at least once every 3 months by the relevant health practitioner.”		10	Submission specifically mentioned support or objection to additional provisions as outlined in the RIS.	x		
			2			x	

RIS Option No.	Topic (list as required)	Paragraph (list as required)	No. of submissions	Summary of comments	Proposed Regulation Changes (√ appropriate column and include text where possible)		
					Support	Reject	Other
	Clause 11 Medication (2a) “...prescription medication...be separated by a registered pharmacist into individual doses in a blister pack and be clearly marked...”		8	Submission specifically mentioned support or objection to additional provisions as outlined in the RIS.	x		
			1			x	
	Clause 11 (2b) “...prescription medication... must be administered directly to the resident and a record of that administration be retained.”		9	Submission specifically mentioned support or objection to additional provisions as outlined in the RIS.	x		
			2			x	
Non-regulatory options (77-81)							

PARTS 2&3 SPECIFIC CLAUSES & PARAGRAPHS:

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
Clause 4: Licensee compliance and penalties	1		Clarification re meaning of "maximum penalties"		
6	1				LRC to comply with Aust Standard re design for access & mobility / Aust Govt Disability Premises Standards (May 2011)
	5		Increase the penalty		
	1				Breach of obligation could result in suspension or revocation of licence. May also include obligations to relocate residents, accept an administrator, continue to provide advocacy without any obstruction.

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
Clause 5: Sleeping facilities 11	7				Add requirement for sufficient blankets to ensure warmth in winter. Add requirement for adequate heating. Add disability access to bedrooms and bathrooms. Provision of 2 beds per room, eventually with single lockable room (locked by resident)
	7	Delete 5 (a)			Resident provided with private room and dual occupancy provided if requested by resident.
	1				Provision of mattress suitable to the person with a disability's needs Insert a wardrobe as a requirement for storage of clothing – (costs to be met by LRCs).
Clause 6: Clothing and toiletries 8	6				Add the right for residents to choose their clothing (no clothes pooling) Ensure personal items such as toothbrushes and razors are not shared and that enough clean, fry towels are provided.

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
	2				Clothing should be labelled.
	1				Toiletries and laundry costs be included in cost of board/lodging
	2		Amend 6 (b) to read “to be provided with” rather than “wear”.		
	1			LRCs should not be liable for providing clothing and toiletries. They can assist where required. Cannot provide unless there is funding.	
Clause 7: Meals 6	4		Clarification of the term “adequate variety and quantity of refreshments, adequate standards of food”. These are open to interpretation.		Suggest reference to ADHC’s Ensuring Good Nutrition Policy / Standards in Action / clear standards for LRCs
	3				Include access to basic meal provisions and preparation facilities outside of meal times.

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
Clause 8: Recreation 8	3		This clause doesn't specify the requirements. Needs clarification.		
	3	Reinstate the previous obligation (license condition wording).			
	2		Re-word to place positive obligation on the licensee so residents are encouraged and supported to participate in leisure, recreation, & entertainment in general community.		
	1				Add requirement that licence holders or managers provide a program of recreational activities or facilitate the integration of residents into community recreational activities.

Issue		Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
PART 2	Number of submissions				
Clause 9: Personal storage space	1	Delete clause 9 & merge with clause 5.			
3	1	Redundant if LRC regularly washes towels			
	1				Insert provision for wardrobes for each resident.
Clause 10: General storage space	0				
0					
Clause 11: Medication	1				Insert freedom to choose own GP and psychiatrist if appropriate.
5					

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
	2				<p>Insert: Residents who are on psychotropic medications have their medications reviewed at least annually by a psychiatrist</p> <p>Those residents have the right to choose and if desired change their treating medical practitioner</p> <p>Residents should be encouraged to attend medical appointments in the community.</p>
	1				<p>Licensees to have relevant medical info available to them re meds they administer</p>
	1			<p>Details of all medication programs (not just PRN) being administered must be stored on site in a secure place</p>	

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
	1				All health practitioners must be registered and written directions come from a face to face consultation. Treatment plan for psychotropic PRN medications result from face to face consultations with resident and plans subject to regular monitoring & review.
Clause 12: Safety and health 7	3				Insert requirement for establishment of fire evacuation procedure.
	1		Clarification of what is meant by “effective infection control program”		
	3		Re-word “next of kin” ad replace with “guardian, primary carer or person responsible” terms used in the Guardianship Act 1987 NSW and the Mental health Act 2007 NSW.		

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
	1	Delete “reasonable wishes”.			
	1		Re-word /clarify what is “reasonable” and how this is determined.		Insert provisions re Epilepsy – accommodation that is safe, conditions that may prompt a seizure are minimised. Seizure records are maintained for at least annual review by neurologist, follow or record info in a epilepsy management plan.
	1				Requirement for records to be maintained of all contact with medical practitioners and health services
	1				Amend clause to state ‘each resident receives assistance to access any health services they may require’. Include ‘support services’ such as behaviour intervention and disability support services.

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
	1				Insert requirement that one staff member on duty have CURRENT first aid qualifications.
Clause 13: Abuse or neglect 7	4				Include use of ADHC Abuse and Neglect Policy / implement current abuse prevention policies
	2		Re-word to reflect the Convention on the Rights of Persons with Disabilities.		Provide a standard/practice guideline re “adequate supervision” eg staff to resident ratio.
	1		There should be a complete prohibition on all forms of physical or chemical restraint.		Clause 13 is too broad and is open to interpretation.
	1				Insert re prohibitions and restrictions on certain behaviour management practices and with positive behaviour support.
	1		Clarification of “adequate clothing”. Issue of clothe pooling.		Insert supervision to assist residents in the morning with clothing.

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
	1				Reporting mechanism for cases of suspected abuse and neglect and process for follow up.

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraphs)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraphs)	Recommendations to insert (new clause/paragraph)
Clause 14: Protection of financial affairs 6	3	(4) seem unnecessary given (1,2,3).	14 (2) is contradictory to the later sections. (4) is not practical as staff assist residents on a daily basis with small financial matters eg transport to shops / bank etc.		
	1				ALI model could be extended to cover financial skill development
	1			Two methods to assist residents requiring guidance re finances: OPC or licensed manager	
	1				Advocacy is vital in monetary matters
	1				Insert 'a receipt ...must be issues to the resident and their financial guardian and a copy of all...must be available at the LRC for inspection by an officer.
	2		Clarify phrase 'must be given support' re-word to say that licensee & Licensed manager to make referral for any necessary support required by the resident.		

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraphs)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraphs)	Recommendations to insert (new clause/paragraph)
Clause 15: Protection of interests of residents 11	7				Insert the ability for support and advocacy services to be able to alert residents to their availability.
	1				Suggest service providers be accredited.
	1		The term “reasonably” should be removed as it should not be up to the licensee or operator to determine what is ‘reasonable’.		
	1				Family and friends be encouraged to report to relevant authorities about any obstructions to visits.
	2		Clarification of protection of residents interests – reference to NSW Disability Service Standards		
	1				Essential for LRCs to have privacy and confidentiality strategies in place
	1	Remove reference to ‘unless in compliance with a direction from a person who has authority to make such a direction,’			

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraphs)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraphs)	Recommendations to insert (new clause/paragraph)
Clause 16: Procedure for dealing with complaints 6	6 4 1 2				<p>Insert requirement for a complaint procedure to be in place, in accessible formats for residents.</p> <p>Insert separate clause against retribution as a result of any reasonable action taken by residents, and that residents can discuss issues related to the licensed premises with anyone of their choosing.</p> <p>Insert requirement to appoint individual advocates for residents.</p> <p>Insert operator/licensee keep proper records of all complaints received and manner which they are responded to. Records can be inspected by licensing officers/community visitors if required.</p>
Clause 17: Chief Executive notification 3	1				<p>Suggest obligation for licensee to give notification of death to ADHC with particular reference to s35 <i>Coroners Act 2009 (NSW)</i>.</p>
	2				<p>Requirement that incidents of sexual assault are referred to a Sexual Assault</p>

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraphs)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraphs)	Recommendations to insert (new clause/paragraph)
	2				
	3		Clarification of the term "adequate"		
	1	This would be a major cost increase to industry with staff salary increase for people who have completed training in line with the Award.			
	2				Add detail re overnight supervision of residents.
	2				Requirement for a staff to resident ratio, regular training and adequate supervision.
Clause 19: Screening tool for entry 4	1		Clarification of why the tool is required. Not clear to the industry.		
	2			Change intent re relocation of resident "within 1 month of	

Issue PART 2	Number of submissions	Recommendations to delete (clause/paragraphs)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraphs)	Recommendations to insert (new clause/paragraph)
				determination” to be responsibility of Dept, not proprietor.	
	1				Insert that screening tool be re-applied when residents health deteriorates (remove significantly) and/or their support needs increase.
Clause 20: Resident information register 4	1				Insert requirement that staff record any illnesses or other health issues of the resident, irrespective of whether they are considered by be ‘serious’. Include requirement for staff to record any assistance required to meet residents support needs Clarify that ‘person responsible’ refers only to consent for medical and dental treatment.
	3		Re-word “next of kin” ad replace with “guardian, primary carer or person responsible” terms used in the Guardianship Act 1987 NSW and the Mental health Act 2007 NSW.		

Issue PART 3	Number of submissions	Recommendations to delete (clause/paragraph)	Recommendations to reword (wording clarification)	Recommendations to change intent (of clause/paragraph)	Recommendations to insert (new clause/paragraph)
Clause 21: Form of application for licence AND Schedule 1 3	2				Insert annual criminal record checks for Licensee and Licensed Manager
	1				Include Screening tool in the Forms section of the Reg.
Clause 22: Form of application for change of licensed manager AND Schedule 2					
Clause 23: Savings					

