



**PEOPLE WITH DISABILITY
AUSTRALIA**

**A voice
of our
own**

Closing the door on Assisted Boarding Houses:

**Transitioning to contemporary, affordable and
accessible housing for people with disability**

Submission to NSW Department of Customer Service (Better Regulation
Division) section 105 legislative review of the *Boarding Houses Act 2012*

**OCTOBER
2019**

About PWDA

People with Disability Australia (PWDA) is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation, and we represent the interests of the 1 in 5 Australians with a disability. We are a non-profit, non-government organisation.

PWDA's membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible and inclusive community, in which the human rights, belonging, contribution, potential and diversity of all people with disability are recognised, respected and celebrated with pride. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

PWDA is a NSW and national peak organisation and founding member of Disabled People's Organisations Australia (DPO Australia) along with Women With Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. Disabled Peoples Organisations (DPOs) are organisations that are led by, and constituted of, people with disability.

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities.

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1. Introduction

PWDA is pleased to make this submission to the Department of Customer Service (Better Regulation Division) Review of the *Boarding Houses Act 2012* (the Act).

People with disability have a right to choose where, and with whom they live, and should have the same housing options as other members of the community.

Boarding houses, including Assisted Boarding Houses, represent a form of congregate housing that does not promote or deliver on the right of people to live independently and participate in the community, which is a right under the *Convention on the Rights of Persons with Disabilities* (Article 19). Research and inquiries have also shown that people with disability living in congregate forms of housing are more likely to be exposed to violence, abuse, neglect and exploitation (Article 12).¹

We believe that a four-year transition needs to be implemented urgently as part of this Review, and Assisted Boarding Houses (ABHs) cease to be used as accommodation for people with disability in NSW. As such, our key recommendation as part of this Review, is to implement a transition plan for all people with disability who currently live in ABHs, and stop people with disability from entering them in the future.

With the introduction of the National Disability Insurance Scheme (NDIS) and new housing standards being developed through the Specialist Disability Accommodation (SDA) framework, the Review of the Act represents a significant opportunity for the NSW Government to align its legislative and policy approaches for boarding houses with these changes.

PWDA calls on the NSW Government to close all ABHs, and to support the transition of all people with disability currently living in ABHs into contemporary affordable, accessible housing that enables their right to live independently in the community with the supports they need.

We note that these supports may be provided through the NDIS, My Aged Care or the mainstream service system, and that some people who are eligible for the NDIS may be supported to transition into Specialist Disability Accommodation where they are eligible.

¹ We note that the Australian Government has established the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. PWDA believes that an area of investigation will be the experiences of people with disability living in congregate accommodation such as boarding houses, where they have been subject to many forms of violence, abuse, neglect and exploitation.

2. Background

In 2011 we outlined in our *Shut In Position Statement*² the actions that the NSW Government must take to improve outcomes for people with disability currently living in congregate settings. The actions are as follows:

1. close all residential institutions accommodating people with disability, including those operated by non-government and private sectors, and allocate and provide the resources necessary for people to move to individualised community-based housing and support options that will support their inclusion and participation in the general community
2. give people with disability control over the resources they require to live with dignity in the community, ensuring that people with disability are able to choose where and with whom they will live and which agency they will contract to provide them with social supports
3. provide people with disability with any support they may require to exercise their rights and obligations under individualised funding arrangements
4. invest in independent vision-building processes that assist people with disability and their families explore and envision genuine community living options instead of 'contemporary' institutional options
5. develop in partnership with people with disability, their families and their representative organisations, housing and support policy guidelines and frameworks that ensure that resources, programs and funding allocations, including individualised funding are only provided to implement the rights contained in the *Convention on the Rights of Persons with Disabilities*.
6. progressively and significantly increase the availability of social support necessary for people with disability to live in and be a part of the community (such as personal care, domestic assistance, and daily living skills support)
7. develop in partnership with people with disability and their representative organisations, comprehensive awareness raising strategies to challenge and overcome attitudes and beliefs that perpetuate segregated housing and support options for people with disability.

The Act was developed in 2012 in response to revelations of systematic and gross violations of human rights uncovered in premises such as Grand Western Lodge, 300 Hostel and Sunshine Lodge. At the time, PWDA objected to the Act, as it did not go far enough to uphold the human rights of people with disability and deliver contemporary approaches to housing and supports for people with disability living in the community.

² Shut In Campaign Committee (2011). '*Shut In Position Statement: Housing and support for people with disability*'.

At the time of the development of the Act, PWDA highlighted that people with disability not only have a right to quality, safe, accessible housing that promotes independent living, but also that people with disability may require adequate levels of support, such as personal care, domestic assistance and living skills support, to live independently.

We also argued that the rights of people with disability will be better protected if housing and supports were separated, and delivered by different providers. A separation of housing and supports minimises the risks of one provider having what amounts to near full control over necessary supports in person's life such as housing, food, clothing, daily supports and participation in the community. Such levels of control can lead to abuses of human rights.

We note that the Act attempted to balance the right to housing and support by attempting to articulate a set of enforceable and tangible rights. In our submission to the Draft Boarding House Regulation 2013 and associated Regulatory Impact Statement, we maintained our objection to the Act. We also highlighted how a strong compliance and enforcement approach to the implementation of the Act, would be key to protecting the rights of people with disability.

Since 2013, enforcement has been weak, showing the considerable flaws in the Act.

3. Our work with the Boarding Houses Advocacy Project

PWDA is the national peak representative organisation, the NSW peak body, and a provider of individual advocacy services for people with disability, including the delivery of the NSW Boarding Houses Advocacy Project.

The Project assists people with disability who live in assisted boarding houses (ABHs) across NSW. The NSW Government has funded us to deliver the Boarding Houses Advocacy Project since 2002, in recognition of the considerable risks for people with disability living in this form of congregate accommodation.

Our work with the Project includes:

1. facilitating people with disability to participate and make decisions as they move to new living arrangements, with especially intensive input required during the closure of an boarding house
2. providing independent advocacy and information support for people with disability in dealing with managers and other service providers
3. visiting ABHs in NSW on a regular basis and assisting people with disability living in these establishments to understand their rights and raise complaints when those rights have been breached
4. monitoring the conditions that people with disability are living in and reporting to the Department of Communities and Justice (DCJ) on any breaches of the Regulation
5. this includes monitoring compliance with Section 43 of the Act, regarding the standards for services provided to people with disability around their physical and mental welfare, education, social activities, personal protection and meals
6. observing the standard of accommodation provided to people with disability, such as the standards concerning their bedrooms, bathrooms and other rooms in ABHs
7. Further monitoring the adherence to policies required under Section 16 of the Regulation, and informing DCJ of unethical conduct by staff members (failure to follow procedures for handling complaints, breaches of resident confidentiality, unreported illness, accident and emergency treatment, failure to properly administer medication and manage infectious diseases, denial of proper food and nutrition, etc).

PWDA is also a long standing member of the Boarding Houses Expert Advisory Group (BHEAG) that provides regular feedback to the Minister for Families, Communities and Disability Services and the Department.

4. Summary of Recommendations

Key Recommendation

Recommendation 1 – That the Act clearly provides that all people with disability living in Assisted Boarding Houses are transitioned out by 2024, and are supported to live independently in contemporary affordable accessible housing. The Act must also ensure adequate independent supports are also provided, and no person with disability enters a General or Assisted Boarding House in the future.

Scope of the Boarding Houses Act 2012 and the impact of the National Disability Insurance Scheme

Recommendation 2 – That the application of the Act continues to exclude Specialist Disability Accommodation providers.

Recommendation 3 – That the application of the Act is extended to prohibit proprietors of Assisted Boarding Houses to be registered as NDIS providers and deliver Supported Independent Living (SIL) packages. This will promote the separation of housing and the delivery of supports in the Act.

Registration of boarding houses and information on the public Register

Recommendation 4 – That the NSW Government adds further particulars in the public Register on all enforcement and compliance action taken in respect to registrable boarding houses, proprietors and staff.

Recommendation 5 – That the Register reflects accurate and relevant information on all registered boarding houses at all times. Relevant information includes the name of proprietors, managers and associated information.

Regulation and enforcement in the boarding houses sector

Recommendation 6 – That the NSW Government establishes, administers and adequately funds a new compliance and oversight agency that develops, implements and monitors the project to transition out all people with disability living in Assisted Boarding Houses.

Recommendation 7 – That the NSW Government investigates whether the newly formed Office of the Ageing and Disability Commissioner is suited to administering the

enforcement and compliance of the Act, noting the Official Visitors Scheme sits with the Commissioner.

Recommendation 8 – That Section 36 of the Act (meaning of “persons with additional needs”) be amended to ensure consistency with the *Disability Inclusion Act 2014*, the *Mental Health Act 2007*, the NDIS, and My Aged Care eligibility.

Recommendation 9 – That the NSW Government immediately investigates the scope of future support programs to ensure the transition of people with disability currently living in boarding houses and further ensures the necessary level of support for all people with disability being transitioned out. The scope should have regard to how well future programs promote and co-ordinate access to existing service provision systems, how well they realise residents’ human rights, and how well they support residents to make informed decisions.

Unauthorised Assisted Boarding Houses

Recommendation 10 – That the NSW Government immediately investigates and assesses the existing care and support needs of people with disability and additional needs in all boarding houses, to better understand the extent of underreporting of people with disability with “additional needs”.

Recommendation 11 – That the NSW Government develops a pathway to transition out people with disability living in unauthorised Assisted Boarding Houses into independent contemporary affordable accessible housing.

Applications for authorisation for Assisted Boarding Houses

Recommendation 12 – That the NSW Government amends Section 44 of the Act to ensure proposed proprietors of Assisted Boarding Houses are not-for-profit providers.

Recommendation 13 – That the NSW Government amends Section 44 of the Act to introduce a requirement that prevents co-location of premises where operators hold licenses for separate, but multiple houses co-located together and jointly managed.

Authorised service providers

Recommendation 14 – That the NSW Government broadens Section 77(1) by replacing the phrase “authorise a person” with “authorise a person and/or an organisation”.

Young residents in Assisted Boarding Houses

Recommendation 15 – That the NSW Government amends Section 4 Clause (j) of Regulation to include the collection of information on numbers of children and young

persons (as defined by the *Children and Young Persons (Care and Protection) Act 1998*). This information should be used to notify the Director-General of the presence of children and young persons within a boarding houses, harmonising the Act with Section 122 of the *Children and Young Persons (Care and Protection) Act 1998* (which requires “a person who provides residential accommodation for another person who the person has reasonable grounds to suspect is a child living away from home without parental permission”). This information should also not be included on any public Register.

Recommendation 16 – That the NSW Government develops a Memorandum of Understanding and policies for all relevant NSW Government agencies to ensure the timely exchange of this information and for the undertaking of a risk assessment of the child or young person’s accommodation in a boarding house, and if determined not suitable for the needs of the young person, their relocation to appropriate alternative accommodation.

Recommendation 17 – That the NSW Government amends Part 3, Division 4, Section 13 (3) of the Regulation to require the immediate notification of the Director-General of the presence of young people with disability. An additional clause should be added stating:

“If it is determined, following assessment of the young resident’s needs (whether or not they are a young person with additional needs) that the authorised boarding house is not a suitable residence for the young person, arrangements must be made by the Department for the relocation of the young person to appropriate alternative accommodation within 14 days of the determination”.

Screening Tool

Recommendation 18 – That the NSW Government updates the Screening Tool to consider how it identifies potential NDIS participants, and where a person is identified as potentially eligible for the NDIS, a process be developed to promote access to the NDIS.

Recommendation 19 – That the NSW Government investigates how the withdrawal of Australian Unity from regional NSW impacts the application of the Screening Tool

Abuse and neglect

Recommendation 20 – That the NSW Government amends Section 26 of the Regulation to prescribe as broad as possible range of reportable incidents.

Recommendation 21 – That the NSW Government rolls out a program of support to ensure all people with disability who live in boarding houses can access the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and are informed about the role of the new Ageing and Disability Commissioner in NSW, and the NDIS Quality and Safeguards Commission.

Protection of financial affairs

Recommendation 22 – That the NSW Government requires any exchange of money involving the money of people with disability, should be appropriately receipted and recorded, and be a part of standard auditing processes that is implemented by the appropriate licensing unit.

Recommendation 23 – That the NSW Government creates a clear requirement in the Regulation that safeguards and supports are established to assist people with disability to manage their financial affairs independent of the proprietor and/or staff.

Records

Recommendation 24 – That the NSW Government ensures the Regulation reflect a resident's Occupancy Agreement is the only record/document that can be kept by the Proprietor, and all other records and documents are subject to privacy law.

5. The experiences of people with disability living in Assisted Boarding Houses

In our role in delivering the Boarding Houses Advocacy Project on behalf of the NSW Government, our individual advocates have raised multiple issues with both FACS and the NSW Ombudsman.

We have seen people with disability unable to move out of ABHs, out of fear of not getting their basic needs and disability supports met because there are few other housing options.

The Act does not separate the provision of housing (accommodation) from the provision of supports. The Act delivers these basic needs as a package, leading to the very real potential of coercion and control of people with disability without sufficient oversight and safeguards.

People with disability who live in ABHs have told us that they are forced to accept poor standards of living, and breaches of their rights and dignity because they fear becoming homeless. People with disability experience denial of the basic right to food, telling us that they only get a slice of cheese and two slices of bread to eat for dinner.

People with disability have experienced regimes of control where rewards and punishments are used by ABH proprietors, such as handing out cigarettes for particular behaviours. People with disability do not access medical treatment as needed, and tell PWDA that they are fearful of what will happen if they ask for help.

In our 2013 submission to the Regulation, we called for the Act to be immediately amended into transitional legislation, with the clear objective of closing all assisted boarding houses. We maintain this position.

6. Living in the community: Time for change

People with disability have the right to live in the community, just as people without disability. The current *Boarding Houses Act 2012* (the Act) and the supporting *Boarding Houses Regulation 2013* do not uphold this right.

The proposed reform outlined in the Discussion Paper for this Review does not address our concerns nor provide a pathway for people with disability to leave ABHs.

Reform must start with separating housing needs from support needs for people with disability. In doing so, we expect the following issues with the Act to be addressed:

- lack of affordable alternative housing options
- over-reliance of boarding houses as a long-term housing option
- inadequate transition of the boarding houses sector into the National Disability Insurance Scheme (NDIS) system
- ineffective compliance, oversight and enforcement
- inadequate provision of personalised health, medical, and disability services and support for people with disability with complex needs.

This Review represents an opportunity for the NSW Government to take a leadership role in harmonising housing legislation in NSW with the *Convention on the Rights of Persons with Disabilities* (CRPD).

Nearly a decade on, the Act has not facilitated the level of change necessary to realise the full human rights of people with disability living in Assisted Boarding Houses. For these reasons, we make the following key recommendation:

Recommendation 1 – That the Act clearly provides that all people with disability living in Assisted Boarding Houses are transitioned out by 2024, and are supported to live independently in contemporary affordable accessible housing. The Act must also ensure adequate independent supports are also provided, and no person with disability enters a General or Assisted Boarding House in the future.

7. Responses to the Discussion Paper

Noting Recommendation 1, we make the following responses to specific questions asked in the Discussion Paper.

Implementing the following recommendations will considerably improve the current regulation of boarding houses, but it must not be viewed as an alternative to, or at the expense of, transitioning people out of boarding houses into supported contemporary affordable accessible housing in the community.

1. Scope of the *Boarding House Act 2012* and the impact of the National Disability Insurance Scheme

Discussion Paper Question 2 – *Are there any types of premises which should be included in or excluded from the Act? Should the exclusion that currently applies to Specialist Disability Accommodation for the purposes of the NDIS be extended to other NDIS service type, such as where people with disability are in receipt of SIL packages?*

The *National Disability Insurance Scheme Act 2013* and related legislation and policy came into effect after the *Boarding House Act 2012* was in force in NSW.

The key objectives of the NDIS are to:

- in conjunction with other laws, give effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities³
- support the independence and social and economic participation of people with disability.⁴

To realise the goals of the NDIS, people with disability need access to housing that is designed to meet their goals and "maximise independent lifestyles and full inclusion in the community".⁵

Housing and support arrangements should provide people with the choice and control for:

- where the person decides to live
- with whom they decide to live
- what types of supports they need and where, by whom, and when they are delivered.

From our experience, many people with disability currently live in housing and accommodation that does not meet Australia's obligations under the CRPD to live independently and be included in the community (Article 19). This includes people with

³ *National Disability Insurance Scheme Act 2013*: section 3(1)(a)

⁴ *National Disability Insurance Scheme Act 2013*: section 3(1)(c)

⁵ *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016*: clause 1.4(d)

disability, whether or not they are NDIS participants, who are living in boarding houses in NSW.

With the implementation of the NDIS, the Australian Government together with State and Territory Governments have recognised that new and innovative models of housing must be developed, so that people with disability can realise their goals for independent living and participation in the community. The Special Disability Accommodation (SDA) program represents an important approach to driving improved housing outcomes for people with disability who have high support needs.

As most, if not all ABHs, will not comply with rules and standards under the SDA framework, PWDA fully supports the continued exclusion of Specialist Disability Accommodation from the Act.

We also support extending this exclusion to Proprietors that are registered to provide Supported Independent Living (SIL) packages.

As has been noted elsewhere in the submission, to enable people to realise their rights to choice and control on who provides their daily supports, it is essential that housing provision is fully separated from the provisions of support through packages such as Supported Independent Living (SIL).

The review of the Act presents an important opportunity to ensure harmonisation with the goals and principles of the NDIS. Therefore, we recommend:

Recommendation 2 – That the application of the Act continues to exclude Specialist Disability Accommodation providers.

Recommendation 3 – That the application of the Act is extended to prohibit Proprietors of Assisted Boarding Houses to be registered as NDIS providers and deliver Supported Independent Living (SIL) packages. This will promote the separation from housing and the delivery of supports in the Act.

2. Registration of boarding houses and information on the public Register

Discussion Paper Question 5 – *Is the information on the public Register sufficient? Why or why not? What other information could be added to, or removed from, the public Register?*

Section 5 of the *Boarding Houses Regulation 2013* currently requires the public Register to publish particulars of enforcement action taken in respect to registrable boarding houses

or their Proprietor/s or staff, including any action taken under Part 4 of the *Boarding Houses Act 2012*.

While PWDA supports the public access of information relating to particulars of enforcement action, it is our understanding that the particulars are limited to prosecutions only.

In order to ensure people with disability in the future are as informed as possible, we recommend the Register also include, but not limited to, the following particulars:

1. notices of non-compliance
2. associated improvement action plans to address breaches
3. sanctions prior to prosecution.

Further, as previously noted in our submission on the Exposure Draft – Boarding Houses Bill 2012, PWDA believes the Register should be modelled on existing regulatory and compliance frameworks already established within comparable sectors providing services to vulnerable persons, such as the aged care and child care sectors.

For example, the Early Childhood Education and Care Directorate (the Directorate) in the NSW Department of Education is responsible for regulating early childhood education and care providers. The Directorate publishes a similar list of particulars with its public list of enforcement actions.⁶ The list provides significant detail on enforcement actions, including but not limited to:

- a) providers who have been convicted for offences under NSW early childhood and care legislation and had that conviction recorded and penalties imposed by a court
- b) authorised supervisors who have been convicted for offences under NSW early childhood and care legislation and had that conviction recorded and penalties imposed by a court
- c) providers who have had action taken by the Department to suspend, revoke, or refuse to grant a provider licence or service approval
- d) providers who have had additional conditions placed on their licence or a service approval by the Department
- e) providers who the Department has had reason to believe are committing offences and so informed parents of children enrolled in their services that it was inadvisable for the children to continue to attend services.

The boarding houses sector would benefit from such detail. To address some of the existing issues with the public Register, we recommend:

⁶ See, for example: <https://education.nsw.gov.au/early-childhood-education/investigation-feedback-and-complaints/published-enforcement-and-decision-actions>

Recommendation 4 – That the NSW Government adds further particulars in the public Register on all enforcement and compliance action taken in respect to registrable boarding houses, Proprietors and staff.

Recommendation 5 – That the Register reflects accurate and relevant information on all registered boarding houses at all times. Relevant information includes the name of proprietors, managers and associated information.

3. Regulation and enforcement in the boarding houses sector

Discussion Paper Question 7 – *How could we improve the local regulation of boarding houses?*

1. Create a new compliance and oversight agency

In our 2013 submission to the Draft Boarding House Regulation 2013 and associated Regulatory Impact Statement, we highlighted the need to establish a new and separate compliance and oversight agency for the NSW boarding houses sector.

Currently local councils carry the regulatory enforcement of the Act, and according to the Department of Fair Trading *Boarding Houses Act 2012: Guide for Councils*⁷ some of the responsibilities for local councils include:

- approval of new boarding houses
- enforcing safety and accommodation standards in existing boarding houses
- fine unregistered operators
- ensure unregistered operators meet building, safety and accommodation standards.

A potential compliance and oversight agency would include the above responsibilities, and it could also include the following:

- oversee the transition of people with disability into better affordable and accessible housing
- provide appropriate protections for people with disability with additional needs
- manage the public Register
- assist in the oversight of people with disability needs and their access to services
- implement monitoring of compliance programs for improvement.

Therefore the proposed compliance and oversight agency would be integral in ensuring the smooth transition out of all people with disability living in Assisted Boarding Houses, and supporting them to live independently in contemporary affordable accessible housing.

⁷ NSW Department of Fair Trading (2013). *Boarding Houses Act 2012: Guide for Councils*. June 2013.

Considering this, we recommend:

Recommendation 6 – That the NSW Government establishes, administers and adequately funds a new compliance and oversight agency that develops, implements and monitors the project to transition out all people with disability living in Assisted Boarding Houses.

Recommendation 7 – That the NSW Government investigates whether the newly formed Office of the Ageing and Disability Commissioner is suited to administering the enforcement and compliance of the Act, noting the Official Visitors Scheme sits with the Commissioner.

2. The new agency can ensure access to disability supports and services for all people with disability in boarding houses

The oversight agency also has a potentially significant role to play in driving access to disability supports and services for all boarding houses with people with disability.

Currently boarding houses are excluded from the NDIS Quality and Safeguards regulatory framework for people with disability with SDA and SIL packages as discussed in Section 1 above. Further, those with NDIS plans face barriers to accessing necessary supports and services as the NDIS only recognises a primary disability.

From our experience, people with disability living in disability often have multiple physical and mental health issues, in addition to one or more diagnosed primary disability. This often means supports and services that do not relate to the primary disability in a resident's NDIS plan, will need to be provided by other government and non-government services to meet obligations under the *NSW Disability Inclusion Act 2014*, the *NSW Mental Health Act 2007* and My Aged Care.

This would require an alignment of what is currently stated in Section 36 of the *Boarding Houses Act 2012* (meaning of “persons with additional needs”) to ensure consistency with the related NSW legislation and national social service systems. Therefore, we recommend:

Recommendation 8 – That Section 36 of the Act (meaning of “persons with additional needs”) be amended to ensure consistency with the *Disability Inclusion Act 2014*, the *Mental Health Act 2007*, the NDIS, and My Aged Care eligibility.

The proposed oversight agency would also be responsible for investment in support programs that ensure people with disability who are being transitioned out of boarding houses, receive the required level of support.

This must include people in boarding houses who do not have an NDIS plan. The proposed oversight agency therefore also has a responsibility for ensuring the investment in support programs to maintain the continuity of care for all people with disability, regardless of whether they have an NDIS plan. Considering this, we recommend:

Recommendation 9 – That the NSW Government immediately investigates the scope of future support programs to ensure the transition of people with disability currently living in boarding houses and further ensures the necessary level of support for all people with disability being transitioned out. The scope should have regard to how well future programs promote and co-ordinate access to existing service provision systems, how well they realise residents’ human rights, and how well they support residents to make informed decisions.

4. Unauthorised Assisted Boarding Houses

Currently Section 41 of the Act makes it an offence for an Assisted Boarding House to operate without proper authorisation. A boarding house must be authorised if 2 or more residents are persons with “additional need” (Section 37).

As the Discussion Paper notes, the extent general boarding houses have residents that meet the “additional needs” threshold under Section 36 of the Act is unknown.⁸

Section 36 of the Act defines a person with additional needs as:

36 Meaning of “person with additional needs”

(1) For the purposes of this Act, a person is a *person with additional needs* if:

- (a) the person has any one or more of the following conditions:
 - (i) an age related frailty,
 - (ii) a mental illness within the meaning of the *Mental Health Act 2007*,
 - (iii) a disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments, and
- (b) the condition is permanent or likely to be permanent, and

⁸ NSW Department of Customer Service (2019). *Statutory Review of the Boarding Houses Act 2012 Discussion Paper*, August 2019: p. 20.

- (c) the condition results in the need for care or support services (whether or not of an ongoing nature) involving assistance with, or supervision of, daily tasks and personal care such as (but not limited to) showering or bathing, the preparation of meals and the management of medication.

From our experience, and from the limited research on this topic, it appears general boarding houses are underreporting the prevalence of residents who meet the “additional needs” threshold as a means of circumventing authorisation.⁹

One evaluation study found that 35% of boarding house residents reported that there were two or more people requiring daily care including assistance with showering, moving around and taking medication. Also in 2017, proprietors reported that of all residents requiring daily care in their boarding house, 36% did not have adequate access to services.¹⁰

Considering this, there is an urgent need to understand how many people with a disability currently live in unauthorised Assisted Boarding Houses. Therefore we recommend:

Recommendation 10 – That the NSW Government immediately investigates and assesses the existing care and support needs of people with disability and additional needs in all boarding houses, to better understand the extent of underreporting of people with disability with “additional needs”.

When people are found to meet the threshold of “additional needs”, the proposed oversight agency should also have responsibility for developing a pathway, to transition people with disability living in unauthorised Assisted Boarding Houses into independent contemporary affordable accessible housing. To achieve this, we recommend:

Recommendation 11 – That the NSW Government develops a pathway to transition out people with disability living in unauthorised Assisted Boarding Houses into independent contemporary affordable accessible housing.

⁹ Martin, C. (2019). *Boarding houses in New South Wales: growth, change and implications for equitable density*. City Futures Research Centre, Faculty of Built Environment, University of NSW: p.16.

¹⁰ Drake, G. (2018). *Evaluation of the Boarding Houses Act 2012: Report 4 and Final Report*, Feb 2018, p. 32.

5. Applications for authorisation for Assisted Boarding Houses

Discussion Paper Question 26 – *What is the impact of specifying that only one person can be the applicant to be the licensee?*

In respect to the above question of multiple licensees, it is worth noting the Act and supporting Regulation is silent on the co-location of premises where operators hold licenses for separate, but multiple houses co-located together and jointly managed. A current example are the licensed premises in Wallerawang.

PWDA has consistently opposed the co-location or clustering of accommodation and supports for people with disability arguing it is little more than a modern form of institutionalisation.

This is known as ‘cluster housing’, where research has noted people with disability experience the following:¹¹

- supported by fewer staff
- exposed to greater changes or inconsistencies in living arrangements
- exposed to more restrictive management practices (seclusion, sedation, physical restraint, polypharmacy)
- are more likely to lead more sedentary lives
- participate in fewer and a more restricted range of leisure, social and friendship activities.

Given the above risks associated with the co-location of multiple licensee premises, the Act must be amended to prevent such practices from occurring. Currently Section 44(2)(a) of the Act provides the license applicant (proposed proprietor) must be a “natural person, a corporation or a body politic”. Clearly, this requirement has not prevented co-location from happening.

To address this we recommend proposed proprietors be limited to not-for-profit providers. From our experience, for-profit providers commonly dependent on efficiencies of scale that typically compromise service quality and care, de-incentivises person-centred approaches, and diminishes the realisation of human rights.

Considering the above, we recommend the following:

¹¹ Emerson, E. 2004b. Cluster housing for adults with intellectual disability. *Journal of Intellectual Disability and Developmental Disability*. 29 (3):187-197.

Recommendation 12 – That the NSW Government amends Section 44 of the Act to ensure proposed proprietors of Assisted Boarding Houses are not-for-profit providers.

Recommendation 13 – That the NSW Government amends Section 44 of the Act to introduce a requirement that prevents co-location of premises where operators hold licenses for separate, but multiple houses co-located together and jointly managed.

6. Authorised service providers

Discussion Paper Question 29 – *Is the current requirements that one person be specified as an “authorised service provider” adequate? Should the definition of “authorised service provider” be broadened to include any employees of a named organisation providing services to an assisted boarding house?*

PWDA is currently an “authorised service provider” providing individual advocacy services.

Section 77(1) of the Act requires us to submit in writing the names of people (the “authorisation instrument”) who are to enter an assisted boarding house. We are also required under Section 77(4) to provide the authorisation instrument with at least 24 hours notice before we enter an assisted boarding house.

This current arrangement is cumbersome. If the individual representing PWDA changes, it currently requires the authorisation to be rescinded and then re-issued with the new the replacing individual. It would be more efficient for the authorisation instrument to name the organisation, and not particular individuals. This would ensure we are able to provide the authorised service more effectively.

Therefore we recommend the following:

Recommendation 14 – That the NSW Government broadens Section 77(1) by replacing the phrase “authorise a person” with “authorise a person and/or an organisation”.

7. Young people with disability in assisted boarding houses

Discussion Paper Question 35 – *Are the current provisions of the Act in relation to young persons adequate?*

Both the Act and Regulation should be amended to ensure that children and young people are not accommodated in any boarding house.

To achieve this, and noting Section 13 in the Regulation and Section 85 in the Act, we reiterate below the recommendations we made in our 2013 submission to the Draft Boarding House Regulation 2013 and associated Regulatory Impact Statement:

Recommendation 15 – That the NSW Government amends Section 4 Clause (j) of Regulation to include the collection of information on numbers of children and young persons (as defined by the *Children and Young Persons (Care and Protection) Act 1998*). This information should be used to notify the Director-General of the presence of children and young persons within a boarding houses, harmonising the Act with Section 122 of the *Children and Young Persons (Care and Protection) Act 1998* (which requires “a person who provides residential accommodation for another person who the person has reasonable grounds to suspect is a child living away from home without parental permission”). This information should also not be included on any public Register.

Recommendation 16 – That the NSW Government develops a Memorandum of Understanding and policies for all relevant NSW Government agencies to ensure the timely exchange of this information and for the undertaking of a risk assessment of the child or young person’s accommodation in a boarding house, and if determined not suitable for the needs of the young person, their relocation to appropriate alternative accommodation.

Recommendation 17 – That the NSW Government amend Part 3, Division 4, Section 13 (3) of the Regulation to require the immediate notification of the Director-General of the presence of young people with disability. An additional clause should be added stating:

“If it is determined, following assessment of the young resident’s needs (whether or not they are a young person with additional needs) that the authorised boarding house is not a suitable residence for the young person, arrangements must be made by the Department for the relocation of the young person to appropriate alternative accommodation within 14 days of the determination”.

8. Screening Tool

Discussion Paper Question 36 – *Is the current purpose of the Screening Tool still valid?*

The last time the Screening Tool was reviewed was in 2009. While the Discussion Paper notes “the actual concept or purpose has not changed since its introduction in 1999”,¹² there is a clear need to update the assessment to promote access to the NDIS.

¹² NSW Department of Customer Service (2019). *Statutory Review of the Boarding Houses Act 2012 Discussion Paper*, August 2019: p. 27

Currently the tool is used to screen out potential people with disability with high or complex needs. For those who are found to have high or complex needs, the Screening Tool could also be used to identify who may be eligible for the NDIS. Therefore we recommend:

Recommendation 18 – That the NSW Government updates the Screening Tool to consider how it identifies potential NDIS participants, and where a person is identified as potentially eligible for the NDIS, a process be developed to promote access to the NDIS.

Lastly, Australian Unity currently conducts Screening Tool assessments on behalf of the NSW Government.¹³ We note the withdrawal of Australian Unity in regional parts of NSW,¹⁴ and so we hold concerns over how this impacts on the application of the Screening Tool. Therefore we recommend:

Recommendation 19 – That the NSW Government investigates how the withdrawal of Australian Unity from regional NSW impacts the application of the Screening Tool.

9. Abuse and neglect

Discussion Paper Question 37 – *Are the current provisions of the Act adequate in relation to abuse and neglect?*

Currently the Regulation does not adequately prevent abuse and neglect, as the provisions are limited to responses only. The Act would be strengthened by further provisions on the identification of abuse and neglect.

From our experience, the risk of abuse and neglect is strongly linked to a person with disability's reliance on a proprietor to provide both affordable housing and support. The absence of viable alternatives have meant people with disability remain in abusive service environments, because it is the only way they can receive essential support.

Therefore, it is very difficult to detect, investigate and prosecute violence in closed settings such as boarding houses. As a result, the current prevalence of abuse and neglect of people with disability in boarding houses is not known.

However in our 2010 *Accommodating Violence* Report we noted a high prevalence of the risk to, and incidence of, domestic violence experienced by people with disability in boarding houses. Numerous reports by the NSW Ombudsman have also highlighted inadequate protections for already vulnerable people with disability from harm.¹⁵

¹³ Refer to: <https://www.facs.nsw.gov.au/providers/housing/assisted-boarding/screening-tool>

¹⁴ Kirkwood, I (2019). *Australian Unity hands 3000 NDIS clients back to the federal government union*. 31 May 2019 <<https://www.newcastleherald.com.au/story/6192264/ndis-provider-getting-out-of-regional-nsw/>>

¹⁵ NSW Ombudsman (2011) *More than Board and Lodging: the need for Boarding House reform*: p. 2.

To better understand the extent of abuse and neglect, Section 83(1)(d)¹⁶ of the Act provides a broad power under the Regulation to prescribe reporting of any incident involving people with disability. Therefore Section 26 of the Regulation could be amended to require reporting of as broad as possible range of reportable incidents as possible.

This would act as a mechanism to better understand the prevalence of abuse and neglect, as well as creating a clear legal obligation to identify and respond to more instances of abuse and neglect.

Therefore we recommend:

Recommendation 20 – That the NSW Government amends Section 26 of the Regulation to prescribe as broad as possible range of reportable incidents.

Recommendation 21 – That the NSW Government rolls out a program of support to ensure all people with disability who live in boarding houses can access the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and are informed about the role of the new Ageing and Disability Commissioner in NSW, and the NDIS Quality and Safeguards Commission.

10. Protection of financial affairs with additional needs

Discussion Paper Question 38 – *Should there be a clause in the Regulation which states that in a boarding house which is authorised to accommodate a person with additional needs, a receipt for any money received from, or on behalf of that person, must be issued to the person and a copy of all such receipts kept?*

We would support greater transparency and accountability of the use money belonging to people with disability, and therefore we would support the issuing of receipts for money received from people with disability. However we do not support the notion that a proprietor would ever manage financial affairs on behalf of a resident.

Under no circumstances should a proprietor have direct access or control over a resident's financial affairs. We have seen the extensive and serious financial abuse and misuse of funds by Proprietors and staff, resulting in emotional abuse and restrictive practices preventing people with disability from their freedom of movement and participation in the community.

Safeguards and systems need to be established which support people with disability to manage their own finances to prevent further exploitation.

¹⁶ Section 83(1)(d) states: "such other incidents involving residents may be prescribed by the regulations".

We recommend:

Recommendation 22 – That the NSW Government requires any exchange of money involving the money of people with disability, should be appropriately receipted and recorded, and be a part of standard auditing processes that is implemented by the appropriate licensing unit.

Recommendation 23 – That the NSW Government creates a clear requirement in the Regulation that safeguards and supports are established to assist people with disability to manage their financial affairs independent of the proprietor and/or staff.

11. Records

Discussion Paper Question 39 – *Are the current provisions of the Act adequate in relation to record keeping adequate? Should the records required to be kept by an assisted boarding house, and which are therefore available for inspection by a FACS boarding house*

- a) *enforcement officer, be expanded to include:*
- b) *Occupancy Agreements*
- c) *NDIS Plans and NDIS Service Agreements?*
- d) *Payments to a service provider under the NDIS Plan?*
- e) *any other record or document?*

We would support proprietors keeping a record of the Occupancy Agreement, as they are party to the agreement. However, we would consider the proprietor keeping a record of NDIS plans and service agreements as a clear breach of privacy.

We covered payments made to a service provider under an NDIS plan in Recommendation 22, and therefore we only recommend the following:

Recommendation 24 – That the NSW Government ensures the Regulation reflect a resident's Occupancy Agreement is the only record/document that can be kept by the Proprietor, and all other records and documents are subject to privacy law.



**PEOPLE WITH DISABILITY
AUSTRALIA**

For individual advocacy support contact the **Wayfinder Hub** between 9:00 am and 5:00 pm (AEST) Monday to Friday via phone (toll free) on **1800 843 929** or via email at info@wayfinderhub.com.au.

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