



# **Review of the Draft Boarding House Regulations 2013**

**Prepared for the NSW Government -**

**Ageing, Disability and Home Care**

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**Prepared by the Physical Disability Council of NSW**

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## Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (ie self advocate).
- To educate and inform stakeholders (ie about the needs of people with a physical disability) so they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

The Physical Disability Council appreciates the opportunity to consider, and make comment in relation to the Draft Boarding House Regulations 2013

### **.Discussion**

- i. As part of the NSW Government Ageing, Disability and Home Care (ADHC) Boarding House Reform Program, the Physical Disability Council of NSW (PDCN) would like to provide further comment on assisted boarding houses as part of the Draft Boarding House Regulations. In the prior submission prepared in August 2012, PDCN advocated for enhanced compliance for operators of assisted boarding houses in regard to the following:
  - Assessment protocols
  - Provision of support services,
  - Tenancy rights and responsibilities
  - Complaint mechanisms,
  - Access to advocacy, tenancy and legal advice
  - Privacy and confidentiality requirements
- ii. The Draft Regulations contain a clause where the Director- General needs to establish the characteristics of a person with additional needs, and in doing so needs to consider the kinds of matters or circumstances (or combinations of matters or circumstances) that may be used to establish that an individual is a person with additional needs. PDCN commends this approach as it recognises the interaction between the individuals' disability, health status, functionality and supports. To facilitate consistency in the application of this definition it is recommended that the prescribed definition be published in the Gazette. With the current reforms taking place within the provision of supports to

people with a disability, it is also recommended that the prescribed definition be revised five yearly as part of clause 105 of the Boarding House Act 2012.

- iii. Clause 14 identifies the need for a screening tool that considers the health, comfort, safety and the availability of appropriate care when assessing individual need. This is to assess the needs of new applicants looking for residency in assisted boarding homes, and for the purposes of reassessing a resident with changing needs. Where the Draft Regulations require a person to voluntarily identify whether he or she has been admitted to a psychiatric hospital, an aged care facility or a rehabilitation centre, as in clause 14 (2) (c), PDCN believes that it is not necessarily pertinent to the assessment process, and contrary to Article 22 of the Convention on the Rights of Persons with Disabilities <sup>1</sup> Article recognises the need for protection of personal respect and dignity.
- iv. The Draft Regulations recognise the importance of stronger compliance of assisted boarding houses in requiring operators to obtain approval and registration from the Director-General prior to establishing an assisted boarding house. Additionally as an added disincentive the Draft Regulations identify a number of offences that identify a monetary penalty and the public notification on the Department of Fair Trading website, identifying these offences.
- v. PDCN commends the requirements contained in clauses 7 and 8 which identify the need for operators of assisted boarding houses to have a demonstrated capacity and experience in assisting in the provision of support and with the overall supervision of assisted boarding houses. This Part of the Draft Regulations also recognise the importance of probity in so requiring criminal checks on all voluntary and paid persons involved in the management and operation of assisted boarding houses.
- vi. The focus on quality and performance standards contained in the Draft Regulations are reinforced in Schedule 1 of the Regulations. This Schedule contains greater explanation on the physical layout of the accommodation facility, the quality of staff and the availability of supports. Schedule 1 of the Regulations recognises that depending on the particular needs of residents that this will be proportional to the quantity and quality of staff employed.
- vii. PDCN commends Clause 15 which requires operators to provide residents of assisted boarding houses with the following information in writing prior to signing residency occupancy agreements;
  - The room number of the room that will be allocated
  - The services that will be provided
  - The fees payable in connection with residency
  - The procedures of the boarding house for handling complaints
  - The Regulations expect operators to develop, maintain and implement policies and procedures on the following items:
  - Ethical conduct by staff members

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<sup>1</sup> United Nation Convention on the Rights of Persons with Disabilities (2006)

- Procedures for handling complaints
  - Confidentiality of records
  - Illness, accident and emergency treatment
  - Administration of medication
  - Infectious diseases
  - Food and nutrition
- viii. PDCN would also recommend that policies and procedures were developed on the following key issues to reinforce quality standards:
- Decision making skills
  - Person centred services
  - Privacy and dignity
  - Information and advocacy services
  - Review and referral processes
  - Termination of occupancy
  - Access to legal aid
- ix. PDCN believes that residents of assisted boarding houses must have access to an independent complaint mechanism with recognised timeframes. This safeguard will ensure that all complaints are investigated fairly without bias, and would facilitate access to justice whilst providing for the right to liberty and security. PDCN would recommend that the Draft Regulations require a robust and transparent complaints mechanism with a consistent appeals process, based on the model rules outlined by the NSW Ombudsman Office.<sup>2</sup>
- x. It concerns PDCN about the lack of detail in the Draft Regulations and Schedule about when occupancy is terminated. Currently clause 18 of the Draft Regulations only requires that an operator of assisted boarding house notify the Director- General. To ensure that tenants are aware of their tenancy rights, PDCN would recommend that additional advice be sought from the NSW Government- Fair Trading on giving a termination notice.

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<sup>2</sup> NSW Government, NSW Ombudsman – Handling Complaints (CSDO- 02)  
<http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/community-and-disability-services/handling-complaints-csd02> - accessed 19 February 2013