

## **BOARDING HOUSES BILL 2012**

PROOF 17 OCTOBER 2012

**Bill introduced on motion by Mr Andrew Constance, read a first time and printed.**

### **Second Reading**

**Mr ANDREW CONSTANCE** (Bega—Minister for Ageing, and Minister for Disability Services) [4.10 p.m.]: I move:

That this bill be now read a second time.

The key purpose of the Boarding Houses Bill 2012 is to protect the rights of residents living in all boarding houses through the introduction of major reform to the industry and to promote the sustainability of the boarding house industry in New South Wales. Boarding houses play an integral role in the provision of low-cost, affordable housing, particularly for people who may otherwise struggle to afford private accommodation. Although there is no clear data available on the exact number of boarding houses in New South Wales, it is estimated that there are around 750 boarding houses operating, the vast majority of which are located in the Sydney metropolitan region.

In New South Wales the boarding house industry is largely unregulated. Boarding houses accommodating two or more people with a disability are regulated under the Youth and Community Services Act. Since the Act came into force around 38 years ago it has largely remained unchanged while the number of boarding houses licensed under it has actually been steadily diminishing. Today there are only 23 boarding houses, providing 526 beds, licensed under this Act. The unlicensed sector, on the other hand, is only partially regulated. It is estimated that around 7,000 people live in unlicensed boarding houses. While some aspects of these boarding houses are regulated, such as fire safety and food preparation, many smaller boarding houses do not have to comply with accommodation or operating standards. There is also a lack of information about the sector, making it difficult for local councils to monitor and enforce any standards that do apply.

People living in boarding houses are some of the most disadvantaged in our society—people who are reliant on low incomes or pensions, people with mental health issues or have an intellectual disability, people who are frail aged and have multiple and complex health needs and people who are socially isolated. Many boarding house residents pay fees similar to those paid in the private rental market. Despite this they have fewer rights or protections than tenants and have no formal mechanisms to assert their rights.

Residents commonly face problems with inadequate security and concerns for their personal safety. Many, despite having significant needs, struggle to access health, social, legal and financial support services, and this can impact significantly on their quality of life. The bill will address longstanding issues in the industry and decades of inaction by government—issues impacting on the safety, welfare and wellbeing of boarding house residents and on the viability and quality of boarding houses—inadequate information about the unlicensed sector, an outmoded and inadequate regulatory framework, gaps in protections for residents and a lack of occupancy rights.

In report after report the New South Wales Ombudsman, and more recently the State Coroner, have highlighted these issues and found the current system wanting. In fact, the

New South Wales Ombudsman has produced three reports in seven years—in 2004, 2006 and 2011—that have been critical of the slow pace of legislative reform in this sector and have highlighted issues such as the lack of regulation of the unlicensed boarding house sector, inadequate rights of entry to Ageing, Disability and Home Care officers for monitoring purposes, residents' lack of occupancy rights and their limited access to advocacy services.

Since becoming Minister I have been incredibly concerned about the state of play as it relates to a number of licensed boarding house facilities where people have been subjected to unacceptable environments. This relates to a number of boarding houses in more recent times, one being the subject of a number of Ombudsman reports, such as the Grand Western Lodge in western New South Wales. This bill has not come out of the blue. There has been talk of reforms over many decades. The bill is the result of an extensive analysis of the issues and consultation with key stakeholders. Since October last year the Government has been working, with the assistance of the Interdepartmental Committee on Boarding House Reform, to develop a final reform proposal that strikes a balance between the need to maintain the viability of the boarding house sector and the need to provide appropriate protections for some of the most disadvantaged people in our community.

In July and August this year an exposure draft bill was released for consultation with key stakeholders. Face-to-face consultations were also held providing an opportunity for stakeholders to inform the Government about the potential impacts and possible improvements to the exposure draft bill. Over 126 submissions and comments were received, the majority of which demonstrated strong support for the reforms from peak bodies, advocacy groups, service providers and key stakeholders, many of whom consider the reforms to be long overdue.

The bill being introduced today is the combination of this process. The bill provides a comprehensive, contemporary and robust legislative framework for the regulation of all boarding houses in New South Wales comprising the following elements: central registration with the register of boarding houses, common accommodation standards, mandatory inspections by local government, the introduction of occupancy rights and an enhanced replacement scheme for the licensing and operation of boarding houses for people with additional needs. All registrable boarding houses as defined in the bill will have to comply with the central registration and inspection requirements in part 2 of the bill while boarding house proprietors and residents will be required to abide by their obligations under the occupancy principles scheme, which is contained in part 3. Accommodation standards, which previously only applied to boarding houses accommodating 12 people or more, will apply to smaller boarding houses.

Part 2 of the bill provides for the registration of registrable boarding houses with the Commissioner for Fair Trading. Clause 9 requires boarding house proprietors to provide basic identification information as well as information about the number of residents, the number of beds and bedrooms, and other profiling information for inclusion on the register. This will help the register achieve its objectives of assessing risk and monitoring trends in the boarding house industry. Proprietors of existing boarding houses will have six months after the Act commences to register. Proprietors of boarding houses that are established after the Act commences will have 28 days to register.

All boarding house proprietors will be required to update their register annually. The costs of registration will be a one-off fee of \$100, which will go towards the costs of the registration

scheme. Clause 13 details what information is to be recorded on the register and what will be made available to the public, the name and address of the boarding house and the proprietors, and the category of boarding house. It will be an offence not to register a registrable boarding house and to provide false and misleading information for the register. Those penalties prescribed include 50 penalty points or \$5,500 for an individual or 100 penalty units or \$11,000. The Minister for Fair Trading, who is in the Chamber and will contribute to this debate, will have carriage of the centralised registration process.

Division 4 of part 2 contains provisions requiring local councils to undertake initial compliance investigations of registered boarding houses within 12 months of their being registered unless the premises have been inspected in the past 12 months. The purpose of inspection is for the council to determine whether the premises comply with planning, building and fire safety requirements and accommodation standards. All boarding houses will have to comply with the standards for shared accommodation set out in the Local Government (General) Regulation 2005. Previously these standards only applied to boarding houses accommodating 12 people or more. Under the bill they will apply to all registrable boarding houses, that is, boarding houses accommodating five people.

If, as a result of an inspection, a boarding house is deemed to be operating without proper authorisation or in breach of a standard, it is a matter for the council to take the appropriate action under its existing powers. Part 3 of the bill introduces a principles-based approach to occupancy rights for boarding house residents based on the model adopted by the Australian Capital Territory in its Residential Tenancy Act 1997 but with enhancements for New South Wales residents. The principles will provide legal protection to both proprietors and residents and guide their relationship. Under this part a resident of a registrable boarding house is entitled to be provided with accommodation in compliance with certain occupancy principles. The occupancy principles are detailed in schedule 1 and provide for a range of entitlements such as the right to live in premises that are reasonably clean and in a reasonable state of repair, to know the house rules before moving in, to quiet enjoyment of the premises and to be given written receipts for payment of any money to the proprietor.

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Occupancy principle 10 provides that a resident is not to be evicted without reasonable written notice. In determining what is reasonable notice the proprietor can take into account the safety of other residents, the proprietor and the manager of the boarding house. For example, where a resident has threatened the safety of others it will be reasonable to evict that person straightaway. Yesterday, when I visited the Wayside Chapel, Pastor Graham Long made the point that he was aware of instances when residents who had gone to hospital had returned to their boarding house to find their belongings out on the street. The New South Wales scheme includes additional occupancy principles: that a resident be entitled to four weeks written notice before a proprietor increases the occupancy fee, that a resident be given prior notice that he or she will be charged for utilities, and that the proprietor can only charge a reasonable amount for these utilities based on the cost to the proprietor.

Occupancy principle 8 provides that the proprietor can require a security deposit from the resident but of no more than the fee for two weeks of occupancy, and that must be repaid to the resident no more than 14 days after the end of the occupancy agreement, less any amount necessary to cover certain costs, such as repairs, occupation fees, cleaning and replacing locks. There is no requirement to register or lodge a written occupancy agreement. However, the bill provides for a written agreement to be adopted and for the Commissioner for Fair Trading to approve standard forms of occupancy agreements. A written occupancy agreement

must give effect to the occupancy principles.

Occupancy principle 11 states that a proprietor and a resident should try to resolve disputes using reasonable dispute resolution processes. This means that the proprietor and resident should try to talk about the dispute first. If that does not work, either the proprietor or the resident can apply to the Consumer, Trader and Tenancy Tribunal to resolve the dispute. The tribunal will be able to make a range of orders, depending upon the nature of the dispute. For example, the tribunal could make an order about the amount of notice the proprietor is required to give the resident, it could make an order about whether the proprietor should repay the whole or part of a security deposit, or it could make a finding about whether the proprietor has given prior notice to the resident about utility charges. The tribunal can also order compensation where either party has suffered damage as a result of a breach of the occupancy principles.

The bill divides boarding houses into two categories: general boarding houses and assisted boarding houses. A general boarding house is defined in clause 5 as a boarding house accommodating five or more residents for fee or reward, which does not fall within a list of exclusions in the bill, such as hotels and motels, backpacker hostels, aged care homes and retirement villages—premises that provide temporary accommodation or that are regulated in some other way. General boarding houses will be required to comply with the requirements I have just described: registration, accommodation standards, inspections and occupancy principles. An assisted boarding house is defined in clause 37 as a boarding house that accommodates two or more persons with additional needs. Assisted boarding houses will also be required to be authorised, and to comply with standards and protections specifically designed to ensure the safety, welfare and wellbeing of boarding house residents with additional needs.

Part 4 of the bill deals with the regulation of assisted boarding houses and is consistent with contemporary approaches to regulation. These provisions will come under my administration, with Ageing, Disability and Home Care responsible for ensuring their effective operation. Guiding the provisions in part 4 are specific articles from the United Nations Convention on the Rights of Persons with Disabilities, which was ratified in 2008. Clause 34 references those articles relevant to boarding houses and expresses the Government's commitment to the convention. It also provides guidance on the scope of the provisions and will help ensure that the new scheme is clearly focused on better outcomes for boarding house residents.

Under clause 36, a person with additional needs is defined as someone who is frail-aged, has a mental illness and/or an intellectual, psychiatric, sensory or physical disability and—I emphasise "and"—the person also needs support or supervision with daily tasks and personal care such as showering, preparing meals or managing his or her medication. A person who is able to manage without such support will not be considered a person with additional needs. It is not the Government's intention to intervene in the lives of people with a disability who can manage independently. Rather, our aim is to ensure that people with additional needs living in boarding houses receive additional protections, and the assistance they need to promote and protect their rights and their dignity.

Clause 39 enables the director general to declare premises to be an assisted boarding house if the director general is satisfied that the premises accommodate two or more persons with additional needs and that the premises do not fall within the list of exemptions. Premises can be exempted from the Act with or without conditions, such as accommodation and service

standards and inspections and investigations of the premises by Ageing, Disability and Home Care and the NSW Ombudsman, but only for a period of 12 months, after which a final determination has to be made. Under clause 41 it will be an offence for a person to operate an assisted boarding house without proper authorisation. The maximum penalty for such an offence will be 120 penalty units or \$13,200 in the case of a corporation and 20 penalty units for each day the offence continues, and 60 penalty units or \$6,600 in the case of an individual and 10 penalty units for each day the offence continues.

Under the old Act the penalty is a mere \$500 and \$200 for each subsequent day—hardly a disincentive to running an illegal operation. All penalties under the old Act have been updated and are now expressed in penalty units, allowing penalties to be increased appropriately over time. Boarding house authorisations can be made subject to conditions and will be subject to various requirements prescribed by the regulations, which will be prepared immediately after the passage of the bill. The regulations will deal with a whole range of requirements in greater detail, such as standards for services provided to residents, including standards to ensure privacy, personal protection and meals; and standards for accommodation provided to residents, including standards for bedrooms, bathrooms and other rooms used by the residents.

Clauses 44 to 53 deal with applications for authorisations for assisted boarding houses. An authorisation may only be granted to an applicant that is considered to be suitable to be involved in the management or operation of a boarding house and has the financial capacity to operate one. Under these provisions, boarding house licence applicants will be required to undergo probity checks, including criminal record checks and financial probity checks. A person who has been convicted of a serious criminal offence, such as murder, a prescribed sexual offence or an assault for which the offender has been sentenced to imprisonment, will not be able to hold a licence. The regulations enable other offences to be taken into account in considering an application. These checks also apply to an individual proposed as the approved manager or to a partner or close associate of the applicant, or in the case of a corporation, to any person involved in the control or management of the corporation such as a director, or majority shareholder.

Boarding house managers and staff will also be required to undergo criminal record checks every three years. A potential or current staff member who has committed a serious criminal offence cannot be employed or continue to be employed. The provisions also deal with the variation, suspension, cancellation and surrender of licences and provide clear time frames for these processes. Clause 49 provides that a licence can be suspended or cancelled where the licensee or a close associate is no longer considered to be a suitable person, or where the continued operation of the boarding house would pose an unacceptable risk to the safety, welfare or wellbeing of the residents, or where there has been a breach of the Act, the regulations or licence conditions. Clause 48 also allows the director general to appoint a substitute licensee where there has been a change of circumstances or where the existing licensee has died. A copy of the licence must be displayed in a conspicuous position in the boarding house.

Clauses 54 to 58 provide for interim permits to be issued for a period of six months to enable an assisted boarding house to operate on a short-term basis, such as when a licence applicant is waiting for a final determination, where the premises have been sold to someone else, or where it is necessary to appoint a temporary licensee, but only to a person who is considered suitable. Clauses 59 to 65 provide for the requirement for managers of assisted boarding

houses to be approved, subject to probity checks, and for manager approvals to be made subject to conditions, varied, suspended and revoked. Clauses 66 to 86 detail the various powers that will be available for ensuring compliance and enforcement of assisted boarding houses with the Act and regulations. Clause 66 provides for the appointment of enforcement officers—who must be employees of the Department of Family and Community Services—whose role it will be to investigate and enforce compliance issues.

Enforcement officers will be required to carry an identity card and produce it when carrying out their duties. Enforcement officers will have the power to request the provision of documents and information, and to require answers to questions. Obstruction of an enforcement officer or failure to comply with a request to produce documents or information or answer questions will be an offence. When exercising these powers, enforcement officers will be required to warn the person that failure to comply is an offence. Enforcement officers will now be able to enter an authorised boarding house without consent or without a warrant to make inquiries and ensure the premises comply with relevant conditions, and can do that with the assistance of others, such as a police officer or a medical practitioner. Clause 78 details a circumstance in which a search warrant is required.

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Clause 79 provides that where an authorised boarding house is in breach of these conditions, a compliance notice can be issued. Failure to comply with a compliance notice is an offence that carries with it a penalty of 40 penalty units for a corporation and 10 penalty units for each day the offence continues, and 20 penalty units for an individual and five penalty units for each day afterwards. Having dealt with a number of issues in the past 16 months in relation to a particular boarding house we have found the current Youth and Community Services Act entirely inappropriate and inadequate. Various sources connected to that boarding house, including the official community visitors who do a wonderful job, have suggested to me that these changes are absolutely and fundamentally necessary. Under the current Act residents who wish to access support or advocacy services must be assisted by the operator to access them. In the past some licensed boarding house operators have been reluctant to allow support and advocacy services to enter premises.

Clause 78 allows authorised service providers such as support, legal, financial or advocacy services to enter premises without the operator's consent or a warrant in order to talk to residents about the services they can provide and will provide to any resident who would like to access them. Before entering the premises, an authorised service provider must identify himself or herself to the manager or anyone else in charge and produce his or her authorisation if requested. As with the current Act, the bill requires the manager of an authorised boarding house to notify certain incidents, such as the death of a resident and a sexual assault or allegation of sexual assault to the director general and the police. The manager will also be required to notify the director General if a resident is absent for more than 24 hours and has not told the manager of his or her whereabouts. The intention of the provision is to ensure that where a resident with additional needs appears to have gone missing, prompt action is taken to find that resident and ensure the resident is safe.

Clauses 85 and 86 provide for the removal of young persons with additional needs from unauthorised boarding houses and for the department to be compensated for removal and other expenses where the department has had to move a person with additional needs from an unauthorised boarding house. Clause 87 provides for the review of a range of decisions by the

Administrative Decisions Tribunal including authorisation and exemption decisions, a declaration that premises are an assisted boarding house and compliance notices. Clause 91 details a broad range of matters that can be dealt with in the regulations, including applications for authorisations and manager approvals, probity checks, service and accommodation standards, screening of staff members and residents, the assessment of persons as persons with additional needs, the qualifications and skills required of staff members of assisted boarding houses, complaints handling procedures for assisted boarding houses, inspections, compliance notices, record keeping and returns. This will address previous concerns about limitations on the regulation-making power under the Youth and Community Services Act.

Part 5 of the bill, which applies to both general and assisted boarding houses, deals with a variety of matters aimed at facilitating the operation of the Act, including the ability of agencies to exchange information to carry out their functions, and the issuing of penalty notices and proceedings for offences under the Act. Proceedings for offences can be brought either in the Local Court or the Land and Environment Court. Clause 100 adopts circumstantial evidence provisions similar to those found in the Environmental Planning and Assessment Act 1979 in relation to backpacker hostels and brothels which explicitly allow a court to consider circumstantial evidence in proceedings to obtain a search warrant or to remedy or restrain an unregistered or unauthorised boarding house from operating.

The kinds of evidence a court can take into account can include evidence that the premises are advertising themselves as a boarding house, evidence of the layout of the premises and the layout of beds, and evidence relating to people entering and leaving the premises in a way which suggests that the premises are operating as a boarding house. Clause 104 provides for the repeal of the Youth and Community Services Act and Youth and Community Services Regulation. This will only be done when the new Boarding Houses Regulation is in place. Schedule 2 provides for the conversion of orders, exemptions, licenses, permits and approvals made under the Youth and Community Services Act to remain valid under the new Act.

Schedule 3 provides for various protections under the Youth and Community Services Act to be retained. These include powers under the Coroner's Act 2009 which enable the coroner to hold an inquest into the death of a person in declared or licensed premises and provisions under the Community Services (Complaints, Reviews and Monitoring) Act 1993 which provide for the resolution of complaints about boarding houses, inspections by official community visitors, reviews by the New South Wales Ombudsman into boarding house services and investigations into the deaths of boarding house residents. Clause 105 provides for the review of the Act after five years of operation to determine whether the Act and its objects are still appropriate.

The introduction of the bill is in many ways the first step in the reform process. The next step will be to establish an implementation committee comprising relevant government agencies, non-government organisations, residents and boarding house proprietors to oversee the required changes to the boarding house industry as well as to policies, programs and services across administering government agencies. Effective implementation and commitment by all involved will be critical to the success of the reforms. I am pleased to be able to lead this process. The Minister for Family and Community Services, the Minister for Fair Trading, the Minister for Local Government and I will also be required 18 months after the commencement of the bill to report back on the impact of the reform process on the boarding house industry.

This process will commence with an examination of the need for further incentives and assistance to support the supply of boarding house accommodation. I will also work closely with the Minister for Family and Community Services and the Minister for Mental Health to identify the needs of boarding house residents and the need for any additional incentives to improve residents' access to services. The Government acknowledges that well-run boarding houses can provide safe, affordable accommodation for people who would otherwise struggle to rent in the private market. One resident who wrote to us during the consultation process said:

I am a Pensioner living in a boarding house in Surry Hills. As Pensioners we are old and some of us have health concerns. However, we have all been looking after ourselves for over forty odd years. We take pride in our independence ... All common areas are clean as are the bathrooms and are kept so fervently. Every room has smoke detectors and sprinkler system. There are no vermin and regular checks are made to keep it so. We share a pleasant garden at the rear of the house. We enjoy these conditions because the owners are humane and responsible and know their business will run smoothly with happy tenants. Boarding houses are essential to people like myself and my friends ...

The Government's attention is not on boarding houses such as the one described by that resident, but on those that are exploiting disadvantaged residents in need of urgent or affordable accommodation. I acknowledge the work done by the member for Ryde following his election to this place in the 2008 by-election. He did an enormous amount of work on reform related to student accommodation and boarding houses after hearing of examples of people being exploited in his local community by unscrupulous operators. Our focus is on developing a better understanding of the unlicensed sector of the industry, the conditions that have allowed this sector to proliferate and on regulating the industry to bring poor performing operators to a higher level of professionalism and quality of service. In designing these reforms, the Government has been cognisant of the need to take a light touch and a positive approach to regulation. The reforms should assist proprietors to streamline their operations, become better informed about government incentives and become more viable, thereby improving the profile and legitimacy of the boarding house industry as a whole.

Finally, I thank the individuals and organisations that participated in and made contributions to the exposure draft consultation process. These include boarding house proprietors from the licensed and unlicensed sector, boarding house residents, peak bodies, resident and disability advocacy groups, numerous non-government organisations including community legal centres, members of the Boarding House Expert Advisory Group, and various government agencies that participated in the interdepartmental committee on boarding house reform. I also thank my fellow Ministers, in particular the Minister for Fair Trading, the Minister for Local Government, the Minister for Mental Health, and the Minister for Family and Community Services. The Government acknowledges that this is not an easy process and it is very easy for mixed messages in the community to impact on people's perceptions of what it will mean.



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We could not continue to stand by while review after review was being undertaken and recommendation after recommendation was being made by the NSW Ombudsman and more recently the State Coroner, who made a number of key recommendations following a coronial inquest into six deaths at the 300 Hostel in Marrickville. This is not an easy process. The Government recognises that some proprietors are deadset against this reform, but they need to reflect on the fact that people in this State have been forced to reside in unacceptable and intolerable conditions. We cannot continue to allow that to happen. The NSW Ombudsman has consistently called for an overhaul of this legislation and I recognise his role in this process. The great thing about this legislative reform is that although it operates across a number of government agencies, it is a whole-of-government approach.

It is not just reform as it relates to the current licensed sector in New South Wales, which I spelled out earlier today. I know that the Minister for Fair Trading will deal with the unlicensed sector in greater detail tomorrow. Ultimately we as a community cannot continue to stand by and allow any environment in which people are subjected to abuse or find themselves in completely unacceptable and unhygienic slummy conditions. I know that the legitimate and good operators in this State do not want to see their industry harmed by those who are doing the wrong thing. I particularly recognise the work of departmental officials of Ageing, Disability and Home Care who are very keen for me to use the following quote from Winston Churchill, which I believe is very pertinent to the Government's reform process: "I never worry about action, but only inaction." I commend the bill to the House.

**Debate adjourned on motion by Mrs Barbara Perry and set down as an order of the day for a later hour.**