

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [3.28 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Boarding Houses Bill 2012, the key purpose of which is to protect the rights of residents living in all boarding houses in New South Wales through the introduction of major reform to the industry. As my speech is the same as that given in the other House, I seek leave to incorporate the remainder in *Hansard*.

Leave granted.

The Government is pleased to introduce the Boarding Houses Bill 2012.

The key purpose of the Boarding Houses Bill 2012 is to protect the rights of residents living in all boarding houses in New South Wales through the introduction of major reform to the industry.

Though 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 place over 30 years ago it has largely remained unchanged, while the number of boarding houses licensed under it has been steadily diminishing. Today there are only 23 boarding houses licensed under this Act providing 526 beds.

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 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 in the private rental market. Despite this, they have fewer rights or protections than tenants and 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, which can impact significantly on their quality of life.

This bill will address longstanding issues in the industry and decades of inaction by the previous 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 NSW Ombudsman, and more recently the State Coroner, have highlighted these issues and found the current system wanting. We owe it to the residents of the 300 Hostel and their families to remedy this situation.

This bill has not come out of the blue. It is the result of an extensive analysis of the issues and consultation with key stakeholders. Since October last year the Government has been working hard to develop a final reform proposal which strikes a balance between the need to maintain the viability of the boarding house industry 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 potential impacts and possible improvements. 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 culmination of this process.

The Boarding Houses Bill 2012 provides a comprehensive, contemporary and robust legislative framework for the regulation of all boarding houses in New South Wales which consists of the following elements—central registration with the Register of Boarding Houses, common accommodation standards, mandatory inspections by local councils, 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.

I will leave it to my colleague the Minister for Fair Trading, who will be responsible for administering parts 2 and 3, to explain these aspects of the bill in more detail.

The bill also 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, backpackers hostels, aged care homes and retirement villages—

premises that provide temporary accommodation or which 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 which 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 be 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, which references those articles relevant to boarding houses, 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 focussed 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, and I emphasise and, the person also needs support or supervision with daily tasks and personal care such as showering, preparing meals, or managing their 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 they are satisfied that the premises accommodate two or more persons with additional needs and 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 the Department of 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, or 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; 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 on 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, where the applicant is not an individual or a partner or close associate, 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 timeframes 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 or 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 where a licence applicant is waiting for a final determination—for example, 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 they 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 a warrant to make inquiries and ensure the premises comply with relevant conditions, and can do this with the assistance of others such as a police officer or medical practitioner. Clause 78 details the circumstances in which a search warrant is required.

Where an authorised boarding house is in breach of these conditions, a compliance notice can be issued—clause 79. Failure to comply with a compliance notice is an offence which 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 5 penalty units for each day afterwards.

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 to talk to residents about the services they can provide and provide them 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 their 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 goes absent for more than 24 hours and has not told the manager of their 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 them and ensure they are 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—the ability of agencies to exchange of information to carry out their functions, 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 backpackers' 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: 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 provides for the resolution of complaints about boarding houses; inspections by Official Community Visitors; reviews by the NSW 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 this bill is but the first step in the reform process.

The next step will be to establish an Implementation Committee, comprising relevant government agencies and 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, together with me, the Minister for Fair Trading and the Minister for Local Government, 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 will commence with an examination of the need for further incentives and assistance to support the supply of boarding house accommodation.

I will also be working closely with the Ministers for Family and Community Services, Health and Mental Health to identify the needs of boarding house residents, and the need for any additional incentives to improve resident 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. I will quote the words of one resident who wrote to us during the consultation process:

I am a Pensioner living in a boarding house in Surrey 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 these boarding houses, but on those who are exploiting disadvantaged residents in need of urgent or affordable accommodation. Our focus is on developing a better understanding of the "unlicensed" sector of the industry, the conditions which 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", 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.

I end finally with a quote from Winston Churchill which I believe is apt: "I never worry about action, but only inaction."

I commend this bill to the House.

