



New South Wales

Boarding Houses Bill 2012

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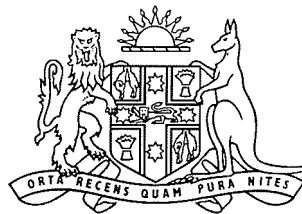
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New South Wales

Boarding Houses Bill 2012

No. , 2012

A Bill for

An Act to provide for the regulation and registration of certain boarding houses and the licensing and regulation of residential centres for vulnerable persons.

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Boarding Houses Bill 2012
Preliminary

Clause 1
Chapter 1

The Legislature of New South Wales enacts:

Chapter 1 Preliminary

1 Name of Act

This Act is the *Boarding Houses Act 2012*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Object of this Act

The object of this Act is to establish an appropriate regulatory framework for the delivery of quality services to residents of registrable boarding houses by:

- (a) providing for a registration system for registrable boarding houses, and
- (b) providing for certain occupancy principles to be observed with respect to the provision of accommodation to residents of registrable boarding houses and for appropriate mechanisms for the enforcement of those principles, and
- (c) providing for the licensing and regulation of residential centres for vulnerable persons and their staff (including providing for service and accommodation standards at such centres), and
- (d) promoting the sustainability of, and continuous improvements in, the provision of services at registrable boarding houses.

4 Definitions

- (1) In this Act:

Act administrator means any of the following:

- (a) a Minister administering the whole or any part of this Act (whether jointly or otherwise),
- (b) the Director-General,
- (c) the Commissioner.

boarding premises means a boarding house, rooming or common lodgings house, house let in lodgings, hostel or any other premises at which residents are entitled to occupy one or more rooms (but not the whole of the house, hostel or other premises) as their principal place of residence.

Commissioner means:

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Clause 4
Chapter 1

Boarding Houses Bill 2012
Preliminary

- (a) the Commissioner for Fair Trading, Department of Finance and Services, or
- (b) if no such position exists—the Director-General of the Department of Finance and Services.

council means a council within the meaning of the *Local Government Act 1993*.

Director-General means the Director-General of the Department of Family and Community Services.

enforcement officer means a person appointed as an enforcement officer under section *65.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

Government Department means a Department within the meaning of the *Public Sector Employment and Management Act 2002*.

manager, in relation to premises, means an individual who is responsible for the day to day running of the premises.

premises includes:

- (a) a building or structure, or
- (b) land or a place (whether built on or not), or
- (c) a vehicle, vessel or aircraft.

proprietor, in relation to premises, means:

- (a) in the case of premises that are leased—a tenant or sub-tenant who is entitled to immediate possession of the premises, or
- (b) in any other case—an owner of the premises.

registrable boarding house—see section *5.

relative, in relation to a person, means any of the following:

- (a) another person who is the spouse or de facto partner of the person,
- (b) another person who is a parent, step-parent, son, daughter, step-son, step-daughter, grandparent, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by blood, marriage, affinity or adoption) of the person,
- (c) another person who is a guardian of the person,
- (d) another person in whose care or custody the person has been placed in accordance with the provisions of the *Adoption Act 2000*,
- (e) in the case of an Aboriginal person or a Torres Strait Islander—another person who is, or has been, part of the extended family or

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kin of the person according to the Indigenous kinship system of the person's culture.

Note. "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.
residential centre for vulnerable persons—see section *35.

Tier 1 boarding house—see section *5 (2) and (3).

Tier 2 boarding house—see section *5 (1) (b).

vulnerable person—see section *34.

- (2) A reference in this Act to a regulation made for Chapter *4 is a reference to a regulation that is made for the purposes of a provision of that Chapter.
- (3) Notes included in this Act do not form part of this Act.

Note. For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention ("cf") to equivalent or comparable (though not necessarily identical) provisions of the *Youth and Community Services Act 1973* as in force immediately before its repeal by this Act. The Act is referred to in the notes by the abbreviation "YCS Act".

5 Meaning of "registrable boarding house"

- (1) For the purposes of this Act, a **registrable boarding house** means:
 - (a) a Tier 1 boarding house, or
 - (b) a residential centre for vulnerable persons that is required to be authorised under Chapter *4 for it to be lawfully used as such under that Chapter (a **Tier 2 boarding house**).
- (2) Boarding premises are a **Tier 1 boarding house** if the premises provide beds, for a fee or reward, for use by 5 or more residents (not counting any residents who are proprietors or managers of the premises or relatives of the proprietors or managers).
- (3) However, a **Tier 1 boarding house** does not include any of the following:
 - (a) a Tier 2 boarding house,
 - (b) premises that are the subject of a residential tenancy agreement within the meaning of the *Residential Tenancies Act 2010* or to which the *Landlord and Tenant (Amendment) Act 1948* applies,
 - (c) premises that are used as a hotel, motel or bed and breakfast accommodation,
 - (d) premises that are used as a backpackers hostel,
 - (e) a serviced apartment (being a building or part of a building that is used to provide self-contained tourist or visitor accommodation that is regularly cleaned by or on behalf of the proprietor or manager),

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Clause 6
Chapter 1

Boarding Houses Bill 2012
Preliminary

- (f) premises that are used for refuge or crisis accommodation,
- (g) premises that are used to provide accommodation for workers or employees in connection with their work or employment,
- (h) a government school or registered non-government school within the meaning of the *Education Act 1990* or any other premises that are used by an educational body to provide accommodation for its students,
- (i) a private health facility licensed under the *Private Health Facilities Act 2007*,
- (j) a nursing home within the meaning of the *Public Health Act 2010*,
- (k) a mental health facility within the meaning of the *Mental Health Act 2007*,
- (l) a public hospital within the meaning of the *Health Services Act 1997*,
- (m) a residential care facility under the *Aged Care Act 1997* of the Commonwealth operated by an approved provider under that Act,
- (n) a retirement village under the *Retirement Villages Act 1999*,
- (o) premises that are the subject of a residential tenancy agreement to which the *Residential Parks Act 1998* applies,
- (p) premises that are the subject of an occupation agreement to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies,
- (q) any permanent or temporary accommodation for vulnerable persons that is operated or directly funded by Ageing, Disability and Home Care, Department of Family and Community Services,
- (r) premises (or premises of a kind) prescribed by the regulations.

6 Relationship of Act with other laws

Nothing in this Act limits any requirement imposed by or under the *Environmental Planning and Assessment Act 1979*, the *Food Act 2003*, the *Local Government Act 1993*, the *Public Health Act 2010* or any other Act or law with respect to the use, or the provision of services to residents, of boarding premises.

Note. The Acts that are specifically referred to in this section also make provision with respect to building and accommodation standards or service standards (or both) in relation to boarding premises.

Chapter 2 Registration of boarding houses

Part 1 Introductory

7 Interpretation

- (1) In this Chapter:
initial compliance investigation—see section *16 (2).
Register means the Register of Boarding Houses kept by the Commissioner under this Chapter.
- (2) A registrable boarding house is *registered* for the purposes of this Chapter if the particulars of the boarding house are currently included in the Register.
- (3) Any notification given to the Commissioner under this Chapter is to be in the form approved by the Commissioner from time to time.
- (4) Any matter approved (or any revocation or amendment of an approved matter) by the Commissioner for the purposes of a provision of this Chapter that authorises the Commissioner to approve the matter does not have effect until it is published on the website of the Department of Finance and Services.

8 Application of Privacy and Personal Information Protection Act 1998

This Chapter has effect despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998*.

Part 2 Provision of information about registrable boarding houses

9 Notification of particulars about registrable boarding house

- (1) A proprietor of boarding premises that are used as a registrable boarding house must notify the Commissioner, in accordance with this section, of the following particulars so as to enable the Commissioner to include information about the boarding house in the Register:
 - (a) the name and address of the proprietor,
 - (b) the name (if any) and the address of the registrable boarding house,
 - (c) whether the boarding house is a Tier 1 or Tier 2 boarding house,
 - (d) whether development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 3A or Part 5.1 of that Act is required) to use the

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Clause 9	Boarding Houses Bill 2012
Chapter 2	Registration of boarding houses
Part 2	Provision of information about registrable boarding houses

- boarding house and, if so, whether such consent or approval has been granted,
- (e) the number of residents of the registrable boarding house,
 - (f) the name of the manager (if any) of the registrable boarding house,
 - (g) the total number of bedrooms provided as sleeping accommodation for the residents,
 - (h) such other particulars as may be approved by the Commissioner or prescribed by the regulations.
- (2) The proprietor must notify the Commissioner of the particulars referred to in subsection (1):
- (a) in the case of boarding premises that are a registrable boarding house on the commencement of this section—within 6 months after that commencement, or
 - (b) in the case boarding premises that become a registrable boarding house after the commencement of this section—within 28 days after the premises become a registrable boarding house, or
 - (c) in the case of a person who becomes a new proprietor of a registrable boarding house after the commencement of this section—within 28 days after the person becomes the proprietor of the boarding house.
- (3) A notification under this section must be accompanied by a registration fee of \$100 or such other registration fee as may be prescribed by the regulations.
- (4) The Commissioner may waive, reduce or postpone payment of a registration fee in accordance with the regulations.
- (5) A proprietor of a registrable boarding house who contravenes this section is guilty of an offence.
Maximum penalty:
- (a) in the case of a corporation—100 penalty units, and
 - (b) in any other case—50 penalty units.
- (6) A proprietor of a registrable boarding house is not excused from a requirement under this section to notify particulars concerning the boarding house on the ground that the notification of those particulars may incriminate the proprietor or make the proprietor liable to a penalty.

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Boarding Houses Bill 2012
Registration of boarding houses
Register

Clause 10
Chapter 2
Part 3

10 Annual returns for registrable boarding house

- (1) A proprietor of a registrable boarding house must, within 28 days after the end of the annual return period for the boarding house, notify the Commissioner of any changes as at the end date for the period in the particulars referred to in section *9 (1).
Maximum penalty:
 - (a) in the case of a corporation—20 penalty units, and
 - (b) in any other case—10 penalty units.
- (2) The annual return period for a registrable boarding house is:
 - (a) if the last time particulars were provided to the Commissioner was for the purposes of a notification under section *9—the period of 12 months commencing on the date on which the Commissioner was notified of the previous particulars under that section, or
 - (b) if the last time particulars were provided to the Commissioner was for the purposes of a notification under this section—the period of 12 months commencing on the date on which the Commissioner was notified of the previous particulars under this section.
- (3) Nothing in this section prevents any condition from being imposed on a residential centre authorisation (within the meaning of Chapter *4) that requires the furnishing of particulars to the Commissioner for the purposes of this Chapter on a more frequent basis than annually.

11 Notice of cessation of use

If any premises cease to be a registrable boarding house, the person who was the proprietor of the boarding house immediately before that cessation must notify the Commissioner of that cessation and the date on which it occurred within 28 days of the cessation.

Maximum penalty:

- (a) in the case of a corporation—20 penalty units, and
- (b) in any other case—10 penalty units.

Part 3 Register

12 Commissioner to keep Register of Boarding Houses

- (1) The Commissioner is to keep a Register of Boarding Houses.
- (2) The Register may be kept in such form as the Commissioner considers appropriate.

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Clause 13 Boarding Houses Bill 2012
Chapter 2 Registration of boarding houses
Part 3 Register

- (3) The Commissioner is to ensure that information on the Register is kept up to date.
- (4) The Commissioner may correct any error in or omission from the Register.

13 Information to be recorded on Register

- (1) The Commissioner is to record in the Register in relation to each registrable boarding house the particulars notified to the Commissioner under this Chapter and Chapter *4 about the boarding house.
- (2) The Commissioner may also record in the Register in relation to a registrable boarding house:
 - (a) particulars of any enforcement action taken in respect of the boarding house, its proprietor or any of its staff (including any action taken under Chapter *4 in the case of a Tier 2 boarding house), and
 - (b) any other particulars or information that the Commissioner considers appropriate or that may be prescribed by the regulations.

14 Publication of certain information on Register for public access

- (1) The Commissioner is to arrange for the following information contained in the Register about registrable boarding houses to be published on the Internet for public access:
 - (a) the name (if any) and the address of each registrable boarding house that is registered,
 - (b) whether the boarding house is a Tier 1 or Tier 2 boarding house,
 - (c) such other information as may prescribed by the regulations.
- (2) No other information contained in the Register may be made available to the public.
- (3) The information referred to in subsection (1) may also be provided to members of the public in any other manner approved by the Commissioner.

Note. See also section *92 relating to the exchange of information with other government agencies.

15 Evidential provisions concerning Register

- (1) The Register is evidence of any particulars or information recorded in it.
- (2) A certificate signed or purporting to be signed by the Commissioner, or an officer or employee of the Department of Finance and Services authorised in writing by the Commissioner, and stating:

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Boarding Houses Bill 2012
Registration of boarding houses
Initial compliance investigations for registered boarding houses

Clause 16
Chapter 2
Part 4

- (a) that premises named in the certificate were or were not registered at a specified time, or
- (b) that the premises named in the certificate were or were not registered as a Tier 1 or Tier 2 boarding house at a specified time, or
- (c) any other particulars or information recorded in the Register at a specified time,

is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

Part 4 Initial compliance investigations for registered boarding houses

16 Requirement to inspect certain registered boarding houses within 12 months of registration

- (1) A council is to arrange for an initial compliance investigation to be conducted under this Part for each registered boarding house located in its area:
 - (a) if the house has never been registered—within the period of 12 months after the house is first registered, or
 - (b) if the house has been re-registered following a period of not having been registered—within the period of 12 months after the house is re-registered, or
 - (c) if the proprietor of the house has changed since it was registered or re-registered—within the period of 2 months after the new proprietor's name is recorded in the Register.
- (2) An *initial compliance investigation* is an investigation into whether a registered boarding house complies with requirements imposed by or under the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979* with respect to the use of the house, including (but not limited to):
 - (a) requirements in relation to building and fire safety, and
 - (b) relevant standards or requirements for places of shared accommodation for the purposes of Order No 5 (d) in the Table to section 124 of the *Local Government Act 1993*.
- (3) A council is not required to arrange for an initial compliance investigation of a registered boarding house if the premises of the boarding house were inspected under the *Local Government Act 1993* or this Part at any time in the period of 12 months immediately before the date on which the boarding house was registered or re-registered or

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Clause 17	Boarding Houses Bill 2012
Chapter 2	Registration of boarding houses
Part 4	Initial compliance investigations for registered boarding houses

the proprietor's name was recorded in the Register (as the case requires).

17 Power of entry

- (1) For the purpose of conducting an initial compliance investigation, a council employee (or other person) authorised by a council may enter the premises of a registered boarding house, including any part of the premises used for residential purposes.
- (2) Entry may only be made at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the premises.

18 Inspections and investigations

For the purpose of conducting an initial compliance investigation, a person authorised to enter premises under this Part may:

- (a) inspect the premises and any food, vehicle, article, matter or thing on the premises, and
- (b) for the purpose of an inspection:
 - (i) open any ground and remove any flooring and take such measures as may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and
 - (ii) require the opening, cutting into or pulling down of any work if the person authorised has reason to believe or suspect that anything on the premises has been done in contravention of the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979* (or the regulations or other instruments under those Acts), and
- (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks, and
- (d) require any person at those premises to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation, and
- (e) take samples or photographs in connection with any inspection.

19 Notice of entry

- (1) Before a person authorised to enter premises under this Part does so, the council must give the proprietor or manager of the premises written notice of the intention to enter the premises.

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Boarding Houses Bill 2012
Registration of boarding houses
Initial compliance investigations for registered boarding houses

Clause 20
Chapter 2
Part 4

- (2) The notice must specify the day on which the person intends to enter the premises and must be given before that day.
- (3) This section does not require notice to be given:
 - (a) if entry to the premises is made with the consent of the proprietor or manager of the premises, or
 - (b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or
 - (c) if entry is required urgently and the case is one in which the general manager of the council has authorised in writing (either generally or in the particular case) entry without notice.

20 Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to any premises under a power conferred by this Part, but only if authorised by the council in accordance with this section.
- (2) The authority of the council:
 - (a) must be in writing, and
 - (b) must be given in respect of the particular entry concerned, and
 - (c) must specify the circumstances which are required to exist before force may be used.

21 Notification of use of force or urgent entry

- (1) A person authorised to enter premises under this Part who:
 - (a) uses force for the purpose of gaining entry to the premises, or
 - (b) enters the premises in an emergency without giving written notice to the proprietor or manager,must promptly advise the council.
- (2) The council must give notice of the entry to such persons or authorities as appear to the council to be appropriate in the circumstances.

22 Care to be taken

- (1) In the exercise of a function under this Part, a person authorised to enter premises must do as little damage as possible. The council must provide, if necessary, other means of access in place of any taken away or interrupted by a person authorised by it.
- (2) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.

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Clause 23	Boarding Houses Bill 2012
Chapter 2	Registration of boarding houses
Part 4	Initial compliance investigations for registered boarding houses

- (3) If, in the exercise of a function under this Part, any pit, trench, hole or bore is made, the council must, if the proprietor or manager of the premises so requires:
- (a) fence it and keep it securely fenced so long as it remains open or not sufficiently sloped down, and
 - (b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

23 Recovery of cost of entry and inspection

If a person authorised by a council enters any premises under this Part for the purpose of making an inspection and as a result of that inspection, under a power conferred on the council, the council requires any work to be carried out on or in the premises, the council may recover the reasonable costs of the entry and inspection from the proprietor or manager of the premises.

24 Compensation

- (1) A council must pay compensation for any damage caused by any person authorised by the council under this Part to enter premises, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this or any other Act.
- (2) Section 730 of the *Local Government Act 1993* applies to the resolution of claims for compensation under this section in the same way as it applies to the resolution of claims for compensation under section 198 of that Act.

25 Authority to enter premises

- (1) A power conferred by this Part to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the proprietor or manager of the premises.
- (2) The authority must be a written authority which is issued by the council and which:
 - (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the nature of the powers conferred and the source of the powers, and
 - (d) states the date (if any) on which it expires, and
 - (e) describes the kind of premises to which the power extends, and
 - (f) bears the signature of the general manager.

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Boarding Houses Bill 2012
Registration of boarding houses
Initial compliance investigations for registered boarding houses

Clause 26
Chapter 2
Part 4

(3) This section does not apply to a power conferred by a search warrant.

26 Relationship with other Acts

Nothing in Part limits the exercise of powers or other functions by councils under the *Local Government Act 1993* or any other Act.

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Clause 27 Boarding Houses Bill 2012
Chapter 3 Occupancy principles for registrable boarding houses
Part 1 Introductory

Chapter 3 Occupancy principles for registrable boarding houses

Part 1 Introductory

27 Interpretation

- (1) In this Chapter:
- occupancy agreement** means a written or unwritten agreement between the proprietor of a registrable boarding house (or a person acting on behalf of the proprietor) and a resident of the house (or a person acting on behalf of the resident) under which the resident is granted the right to occupy, for a fee or reward, one or more rooms in the house as a resident of the house.
- Note.** Any premises (or any part of premises) that is the subject of a residential tenancy agreement within the meaning of the *Residential Tenancies Act 2010* is not a registrable boarding house and can therefore not be the subject of an occupancy agreement for the purposes of this Chapter. See sections *5 (3) (b) and *35 (2) (a).
- occupancy principles**—see section *30.
- (2) The regulations may make provision for or with respect to:
- what constitutes, or what does not constitute, compliance with the occupancy principles for the purposes of this Chapter, and
 - the issuing of guidelines for that purpose.
- (3) Any matter approved (or any revocation or amendment of an approved matter) by the Commissioner for the purposes of a provision of this Chapter that authorises the Commissioner to approve the matter does not have effect until it is published on the website of the Department of Finance and Services.

28 Standard form occupancy agreements

- The Commissioner may, by order, approve a standard form of occupancy agreement.
- In approving a standard form of occupancy agreement, the Commissioner is to be satisfied that the form of agreement gives effect to the occupancy principles.
- Unless the regulations provide otherwise, the use of the standard form of occupancy agreement is not mandatory and, accordingly, a failure to use the standard form of agreement does not affect the validity or enforceability of an occupancy agreement.

Part 2 Occupancy principles

29 Entitlement to accommodation complying with occupancy principles

- (1) A resident of a registrable boarding house is entitled to be provided with accommodation in compliance with the occupancy principles.
- (2) A resident is entitled to be provided with accommodation in compliance with the occupancy principles despite the terms of any occupancy or other agreement (whether written or unwritten) to the contrary. Accordingly, any such agreement has no effect to the extent of any inconsistency with the occupancy principles to which the resident is entitled.
- (3) If a resident is a vulnerable person for whom a relative is responsible, any notice, receipt or other information to be given to the resident under the occupancy principles is also to be given to the relative.
- (4) The provisions of this Chapter are in addition to, and do not derogate from, the provisions of Chapter *4 in their application to authorised residential centres within the meaning of that Chapter.
Note. Chapter *4 provides for the authorisation (including licensing) of residential centres for vulnerable persons. There are additional requirements (including by way of licence conditions) concerning service and accommodation standards for residents of such centres that must be complied with.
- (5) The occupancy principles may only be enforced under the provisions of this Chapter, except as provided by subsection (6) and section *94.
- (6) Subsection (5) does not prevent a contravention of an occupancy principle that is included in an occupancy agreement from being enforced as a breach of that agreement.

30 Occupancy principles

- (1) The occupancy principles are those set out in this section.
- (2) A resident is entitled to live in premises that are:
 - (a) reasonably clean, and
 - (b) in a reasonable state of repair, and
 - (c) reasonably secure.
- (3) A resident is entitled to know the rules of the premises before moving in to the premises.
- (4) A resident is entitled to the certainty of a written occupancy agreement if his or her residency continues for longer than 6 weeks.
- (5) A resident is entitled to quiet enjoyment of the premises.

exposure draft

Clause 31	Boarding Houses Bill 2012
Chapter 3	Occupancy principles for registrable boarding houses
Part 2	Occupancy principles

- (6) A proprietor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes.
- (7) A resident is entitled to 8 weeks notice before the proprietor increases the amount to be paid for the right to occupy the premises.
- (8) A resident is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction.
- (9) A resident must not be evicted without reasonable notice.
- (10) A proprietor and resident should try to resolve disputes using reasonable dispute resolution processes.
- (11) A resident must be given a written receipt for any money paid to the proprietor or a person on behalf of the proprietor.

31 Applications to Consumer, Trader and Tenancy Tribunal for dispute resolution

- (1) A relevant party may apply to the Consumer, Trader and Tenancy Tribunal for the resolution of an occupancy principles dispute.
- (2) A *relevant party* is:
 - (a) a resident of a registrable boarding house (or a relative who is responsible for such a resident), or
 - (b) a proprietor of a registrable boarding house.
- (3) An *occupancy principles dispute* is a dispute between relevant parties about the application of the occupancy principles in relation to a resident of a registrable boarding house.
- (4) On an application under this section, the Tribunal may:
 - (a) dismiss the application if it considers that the occupancy principles have not been contravened, or
 - (b) make such orders as it considers appropriate to remedy or restrain a contravention of the occupancy principles.
- (5) Nothing in this section authorises the Tribunal to order the payment of damages or other compensation as a remedy for a contravention of the occupancy principles.

Chapter 4 Residential centres for vulnerable persons

Part 1 Introductory

32 Objects of Chapter

- (1) The objects of this Chapter are:
 - (a) to ensure that vulnerable persons who reside at certain boarding premises are provided with accommodation and support services of an appropriate standard, and
 - (b) to enact provisions for this purpose that are consistent (to the extent that is reasonably practicable) with the purposes and principles expressed in Articles 5, 9, 12, 14, 15, 16, 19, 21, 22, 25, 26 and 28 of the *United Nations Convention on the Rights of Persons with Disabilities*.
- (2) This Chapter aims to achieve these objects by creating a licensing and regulatory scheme for boarding premises that operate as residential centres for vulnerable persons.
- (3) A court or tribunal that, or person who, exercises any power conferred by or under this Chapter in relation to residential centres for vulnerable persons must be guided in the exercise of that power by the objects referred to in this section.
- (4) However, nothing in this section is intended to create or confer any legally enforceable obligations, rights or entitlements.

33 Definitions (cf YCS Act, s 3)

- (1) In this Chapter:

application probity check—see section *43.

approved means approved by the Director-General from time to time.

approved manager means a person who has been granted a manager approval with respect to a residential centre for vulnerable persons.

authorised operator of an authorised residential centre means:
 - (a) if the centre is a licensed residential centre—the licensee, and
 - (b) if an interim permit is in force with respect to the centre—the interim permit holder.

authorised residential centre means a residential centre for vulnerable persons with respect to which a residential centre authorisation is in force.

close associate—see section *36.

exposure draft

Clause 33 Boarding Houses Bill 2012
Chapter 4 Residential centres for vulnerable persons
Part 1 Introductory

competent relative of a person means a relative of the person who is:

- (a) 18 years old or older, and
- (b) not a vulnerable person.

interim permit—see section *52.

interim permit holder means a person to whom an interim permit has been granted.

licensed residential centre means the premises to which a residential centre licence relates.

licensee means the holder of a residential centre licence.

manager approval—see section *58.

relevant operator of premises means any of the following:

- (a) a proprietor of the premises,
- (b) the person apparently in charge of the premises.

residential centre authorisation means a residential centre licence or interim permit.

residential centre licence—see Division *2 of Part *2.

serious criminal offence means any of the following offences:

- (a) murder,
- (b) a prescribed sexual offence (within the meaning of the *Criminal Procedure Act 1986*),
- (c) any other assault under Part 3 of the *Crimes Act 1900* for which the offender has been sentenced to imprisonment,

and includes an offence committed outside of New South Wales that, if it had been committed in New South Wales, would have constituted an offence of the kind referred to in paragraph (a), (b) or (c).

staff member of a residential centre for vulnerable persons means a person who works at the centre (whether as an employee, contractor or volunteer), including a manager of the centre.

unauthorised residential centre means a residential centre for vulnerable persons for which there is no residential centre authorisation in force.

unincorporated body means a partnership or other unincorporated association of persons.

- (2) Any matter approved (or any revocation or amendment of an approved matter) by the Director-General for the purposes of a provision of this Chapter (other than Division *4 of Part *2) that authorises the Director-General to approve the matter does not have effect until it is published on the website of the Department of Family and Community Services.

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Boarding Houses Bill 2012
Residential centres for vulnerable persons
Introductory

Clause 34
Chapter 4
Part 1

34 Meaning of “vulnerable person” (cf YCS Act, s 3)

- (1) For the purposes of this Act, a person is a *vulnerable person* 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
 - (c) the condition results in the need for support, whether or not of an ongoing nature.
- (2) The fact that a person is receiving a disability pension is prima facie evidence that the person has one of the conditions referred to in subsection (1) (a).
- (3) In this section:

disability pension means any of the following:

 - (a) a disability support pension under the *Social Security Act 1991* of the Commonwealth,
 - (b) a special rate disability pension under the *Military Rehabilitation and Compensation Act 2004* of the Commonwealth,
 - (c) any other pension or other payment of a kind prescribed by the regulations.

35 Meaning of “residential centre for vulnerable persons” (cf YCS Act, s 3)

- (1) For the purposes of this Act, *residential centre for vulnerable persons* means any of the following:
 - (a) boarding premises that provide beds, for a fee or reward, for use by 2 or more residents who are vulnerable persons (not counting any vulnerable persons who reside there with their competent relatives),
 - (b) boarding premises that are declared to be a residential centre for vulnerable persons by a notice in force under section *37.
- (2) However, a *residential centre for vulnerable persons* does not include any of the following:
 - (a) premises that are the subject of a residential tenancy agreement within the meaning of the *Residential Tenancies Act 2010* or to which the *Landlord and Tenant (Amendment) Act 1948* applies,

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Clause 35 Boarding Houses Bill 2012
Chapter 4 Residential centres for vulnerable persons
Part 1 Introductory

- (b) premises that are used as a hotel, motel or bed and breakfast accommodation,
- (c) premises that are used as a backpackers hostel,
- (d) a serviced apartment (being a building or part of a building that is used to provide self-contained tourist or visitor accommodation that is regularly cleaned by or on behalf of the proprietor or manager),
- (e) premises that are used for refuge or crisis accommodation,
- (f) premises that are used to provide accommodation for workers or employees in connection with their work or employment,
- (g) a government school or registered non-government school within the meaning of the *Education Act 1990* or any other premises that are used by an educational body to provide accommodation for its students,
- (h) a private health facility licensed under the *Private Health Facilities Act 2007*,
- (i) a nursing home within the meaning of the *Public Health Act 2010*,
- (j) a mental health facility within the meaning of the *Mental Health Act 2007*,
- (k) a public hospital within the meaning of the *Health Services Act 1997*,
- (l) a residential care facility under the *Aged Care Act 1997* of the Commonwealth operated by an approved provider under that Act,
- (m) a retirement village under the *Retirement Villages Act 1999*,
- (n) premises that are the subject of a residential tenancy agreement to which the *Residential Parks Act 1998* applies,
- (o) premises that are the subject of an occupation agreement to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies,
- (p) any permanent or temporary accommodation for vulnerable persons that is operated or directly funded by Ageing, Disability and Home Care, Department of Family and Community Services,
- (q) premises or a part of premises that are exempted from the operation of this Chapter by an exemption notice in force under section *38,
- (r) premises (or premises of a kind) prescribed by the regulations.

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Boarding Houses Bill 2012
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Introductory

Clause 36
Chapter 4
Part 1

36 Meaning of “close associate”

- (1) For the purposes of this Chapter, a person is a *close associate* of an applicant for a residential centre authorisation or an authorised operator if the person:
 - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person’s own right or on behalf of any other person), in the business of the applicant or operator that is or will be carried on under the authority of the authorisation, and by virtue of that interest or power is or will be able (in the opinion of the Director-General) to exercise a significant influence over or with respect to the management or operation of that business, or
 - (b) holds or will hold any relevant position, whether in the person’s own right or on behalf of any other person, in the business of the applicant or operator that is or will be carried on under the authority of the authorisation.
- (2) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.
- (3) The provisions of this section extend to relevant financial interests and relevant powers even if those interests and powers are not payable, exercisable or otherwise enforceable as a matter of law or equity, but are nevertheless payable, exercisable or otherwise enforceable as a matter of fact.
- (4) In this section:

relevant financial interest, in relation to a business, means:

 - (a) any share in the capital of the business, or
 - (b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or
 - (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on (such as, for example, an entitlement of the owner of the premises at which the business is carried on to receive rent as lessor of the premises).

relevant position means:

 - (a) the position of director, manager or secretary, or
 - (b) any other position, however designated, if it is an executive position.

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Clause 37	Boarding Houses Bill 2012
Chapter 4	Residential centres for vulnerable persons
Part 1	Introductory

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

37 Declaration of residential centres (cf YCS Act, s 3A (1))

The Director-General may, by notice served on the relevant operator of boarding premises, declare those premises to be a residential centre for vulnerable persons if the Director-General considers that the premises provide beds, whether or not for a fee or reward, for use by 2 or more residents who are vulnerable persons (not counting any vulnerable persons who reside there with their competent relatives).

38 Director-General may exempt premises and persons (cf YCS Act, ss 3B and 23)

- (1) The Director-General may, by notice (an *exemption notice*), grant any of the following:
 - (a) an exemption for specified premises, or a specified part of premises, from the operation of:
 - (i) this Chapter (including the regulations for this Chapter), or
 - (ii) specified provisions of this Chapter or the regulations for this Chapter,
 - (b) an exemption for a specified person from the operation of:
 - (i) specified provisions of this Chapter or the regulations for this Chapter, or
 - (ii) a condition of a residential centre authorisation or manager approval.
- (2) An exemption notice is to be served:
 - (a) in the case of an exemption for premises—on the relevant operator of the premises, and
 - (b) in the case of an exemption for a person—on the person to whom the exemption is being given.
- (3) An exemption may be given unconditionally or subject to such terms and conditions as may be specified in the exemption notice.
- (4) Without limiting subsection (3), the terms and conditions that an exemption notice for premises, or a part of premises, may specify include terms and conditions for or with respect to any of the following:
 - (a) standards to be observed and facilities to be provided in connection with the health, safety and wellbeing of vulnerable

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Clause 39
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- persons residing at the premises (including, but not limited to, standards of the kind referred to in section *41 (4)),
- (b) the carrying out of inspections and investigations in relation to the premises and its residents and staff (including, but not limited to, inspections and investigations of the kind required or permitted to be carried out in relation to authorised residential centres under this or any other Act),
 - (c) any other conditions that are or may be imposed by or under this Act on a residential centre authorisation for an authorised residential centre.
- (5) If an exemption is subject to terms and conditions, the exemption operates only while the terms and conditions are not being contravened.
- (6) If the Director-General intends to revoke an exemption granted under subsection (1) (b), the Director-General must serve a notice on the person to whom the exemption was granted stating that, when 28 days have expired after service of the notice, the Director-General intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Director-General's satisfaction that the exemption should not be revoked.
- (7) When 28 days have expired after a notice has been served on a person under subsection (6), the Director-General may, after considering any submissions made to the Director-General during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.
- (8) If premises are exempted from the operation of Division *1 of Part *2, the premises are taken not to be a Tier 2 boarding house for the purposes of this Act.

Note. The premises may nevertheless be a Tier 1 boarding house.

Part 2 Authorisation of residential centres

Division 1 Requirement for residential centres to be authorised

39 Residential centres for vulnerable persons to be authorised (cf YCS Act, ss 21 (2) and (4) and 22 (1) and (4))

- (1) A proprietor of boarding premises must not use (or permit the use of) the premises as a residential centre for vulnerable persons unless the premises are used in accordance with the authority conferred by a residential centre authorisation for the premises.

Maximum penalty:

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- (a) in the case of a corporation—120 penalty units and in addition, for a continuing offence, 20 penalty units for each day the offence continues, and
 - (b) in any other case—60 penalty units and in addition, for a continuing offence, 10 penalty units for each day the offence continues.
- (2) A person must not act as the manager of boarding premises that are being used as a residential centre for vulnerable persons unless the person is an individual who is:
- (a) an authorised operator of the centre, or
 - (b) an approved manager of the centre appointed by the authorised operator of the centre.
- Maximum penalty:
- (a) in the case of a corporation—120 penalty units and in addition, for a continuing offence, 20 penalty units for each day the offence continues, and
 - (b) in any other case—60 penalty units and in addition, for a continuing offence, 10 penalty units for each day the offence continues.
- (3) It is a defence in proceedings for an offence against subsection (1) if the proprietor satisfies the court that the proprietor did not know, and could not reasonably have been expected to know, that the premises were being used as a residential centre for vulnerable persons without the authority of a residential centre authorisation.

40 Authority granted by residential centre licence and interim permits (cf YCS Act, ss 15, 16, 19 (2) (d), 21 (3) and (4) and 22)

- (1) The following kinds of licences and permits may be granted and held under this Act:
 - (a) a residential centre licence,
 - (b) an interim permit.
- (2) A residential centre licence authorises the licensee to use the premises specified in the licence as a residential centre for vulnerable persons in accordance with this Act and the conditions of the licence.
- (3) An interim permit authorises the interim permit holder to use the premises specified in the permit as a residential centre for vulnerable persons in accordance with this Act and the conditions of the permit.
- (4) The authorisation conferred by a residential centre authorisation is subject to this Act and the regulations.

41 Authorisation conditions—general provisions

- (1) A residential centre authorisation is subject to the following conditions:
 - (a) any condition imposed on the authorisation by this Act or prescribed by the regulations,
 - (b) any condition imposed on the authorisation by the Director-General under this Act.
- (2) The Director-General may impose conditions on a residential centre authorisation:
 - (a) at the time of the grant of the authorisation, or
 - (b) subsequent to the grant of the authorisation by variation of the authorisation.
- (3) The Director-General may impose or vary conditions on a residential centre authorisation for such reasons, and in such circumstances, as the Director-General considers appropriate or necessary.
- (4) Without limiting subsections (1) and (3), the conditions prescribed by the regulations or imposed by the Director-General may include conditions relating to any or both of the following:
 - (a) standards for services provided to residents (including, but not limited to, standards concerning the physical and mental welfare, education, social activities, personal protection and meals of residents),
 - (b) standards for accommodation provided to residents (including, but not limited to, standards concerning bedrooms, bathrooms and other rooms that are occupied or used by residents).
- (5) An authorised operator of a residential centre for vulnerable persons must not contravene a condition of the residential centre authorisation for the centre.

Maximum penalty:

 - (a) in the case of a corporation—40 penalty units and in addition, for a continuing offence, 10 penalty units for each day the offence continues, and
 - (b) in any other case—20 penalty units and in addition, for a continuing offence, 5 penalty units for each day the offence continues.

Division 2 Residential centre licences

42 Licence applications (cf YCS Act, s 11 (1))

- (1) An application for a residential centre licence is to be made to the Director-General.

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- (2) An application may be made:
- (a) if the proprietor (or proposed proprietor) of the premises concerned is a natural person, a corporation or a body politic—by the person, corporation or body politic, or
 - (b) if the proprietor (or proposed proprietor) of the premises concerned is a trustee—by the trustee, or
 - (c) if the proprietors (or proposed proprietors) of the premises concerned are the members of an unincorporated body—by any of those members authorised by the members to make the application on their behalf.
- (3) A person is a *proposed proprietor* of premises for the purposes of subsection (2) if the person is seeking to become a proprietor of the premises in order to use them as a residential centre for vulnerable persons.
- (4) An application for a licence:
- (a) must be in the approved form and contain such particulars and other information as may be approved, and
 - (b) may specify only one proposed licensee.

43 Investigations and inquiries in relation to licence applications (cf YCS Act, s 11 (2))

- (1) If the Director-General receives an application for a residential centre licence, the Director-General may carry out such investigations and inquiries in relation to the application as the Director-General considers necessary for a proper consideration of the application.
- (2) Without limiting subsection (1), the Director-General is to conduct (or to arrange for the conduct of) the following checks (an *application probity check*) before an application for a licence is determined:
- (a) criminal record checks of the applicant, the proposed approved manager and proposed staff members of the proposed licensed residential centre,
 - (b) if the applicant is not a natural person—criminal record checks of any person involved in the control or management of the applicant (such as a chief executive officer, director or majority shareholder of a corporation),
 - (c) if the applicant makes the application on behalf of an unincorporated body—criminal record checks of any partner or member of the management committee or other office holder of the body,
 - (d) a criminal record check of any other close associate of the applicant that may be required by the Director-General,

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- (e) a check of the financial capacity of the applicant and the applicant's associates to operate the proposed residential centre,
 - (f) such other checks as may be prescribed by the regulations.
- (3) The Director-General may require an applicant to conduct any of the application probity checks and provide the results of those checks to the Director-General either when the application is made or at a specified time before the application is determined.
- (4) If a criminal record check in relation to a person cannot be conducted or is unavailable (whether at all or in relation to a particular period), the Director-General may require the person concerned to provide the Director-General with a statutory declaration in the approved form regarding the person's criminal record.
- Note.** For example, a criminal record check may not be able to be conducted in relation to a period of time during which the person concerned resided overseas.
- (5) The Director-General may refuse to determine an application for a licence if a requirement made by the Director-General under this section is not complied with.

44 Decision of Director-General in relation to licence application (cf YCS Act, s 12)

- (1) The Director-General may, after considering an application for a residential centre licence (including any application probity checks or other matters required by the regulations), grant the licence or refuse to grant the licence.
- (2) Without limiting subsection (1), the Director-General may refuse to grant a residential centre licence if the Director-General is of the opinion that:
 - (a) a person proposed as the licensee, the individual proposed as the approved manager or any close associate of the applicant is not a suitable person to be involved in the management or operation of a residential centre for vulnerable persons, or
 - (b) the applicant does not have (or is unlikely to have) the financial capacity to operate the proposed licensed residential centre.
- (3) The Director-General must refuse to grant a residential centre licence if the Director-General is of the opinion that (based on information obtained from application probity checks) any of the following persons has been convicted of a serious criminal offence:
 - (a) the applicant,
 - (b) the individual proposed as the approved manager,
 - (c) a proposed staff member,

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- (d) if the applicant is not a natural person—any person involved in the control or management of the applicant (such as a chief executive officer, director or majority shareholder of a corporation),
 - (e) if the applicant makes the application on behalf of an unincorporated body—any partner or member of the management committee or other office holder of the body,
 - (f) any other close associate of the applicant in respect of whom an application probity check has been required by the Director-General.
- (4) The regulations may also specify mandatory or discretionary grounds for refusing the granting of a licence.
- (5) As soon as practicable after the Director-General determines an application, the Director-General must serve the applicant with a notice stating whether the licence has been granted and, if it has been refused, the reasons for the refusal.

45 Variation of licence (cf YCS Act, s 17)

- (1) The Director-General may, by notice served on the licensee, vary a residential centre licence (including any conditions of the licence imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on a licence, the substitution of a condition, or the omission or amendment of a condition.

46 Appointment of substitute licensee

- (1) The Director-General may, on the Director-General's own initiative or on the application of the licensee or person concerned, vary a residential centre licence to appoint a person as licensee under the licence in place of the existing licensee.
- (2) Any such variation may be made only:
 - (a) if the licence was granted to authorise the use of a residential centre for vulnerable persons by a person for or on behalf of an unincorporated body or trust and, as a result of a change in circumstances, it is no longer appropriate for the person to be the licensee for or on behalf of that body or trust, or
 - (b) if the existing licensee has died, or
 - (c) if the existing licensee is a corporation that is an externally administered body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (d) in any other circumstances prescribed by the regulations.

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- (3) A person appointed by the Director-General as licensee is taken to be the licensee under the licence for the period (if any) specified by the Director-General in the appointment.

47 Suspension or cancellation of licences (cf YCS Act, s 18)

- (1) The Director-General may, by notice served on the licensee, suspend or cancel a residential centre licence:
- (a) if the Director-General is of the opinion that the licensee or any close associate of the licensee is no longer a suitable person to be involved in the management or operation of the licensed residential centre, or
 - (b) if the Director-General is of the opinion that the continued use of the residential centre under the licence would constitute an unacceptable risk to the safety, welfare or wellbeing of any vulnerable person or other persons residing at the premises, or
 - (c) if the Director-General is of the opinion that the licensee has contravened any provision of this Act or the regulations (whether or not the licensee has been convicted of an offence for the contravention), or
 - (d) if the Director-General is of the opinion that a condition of the licence has been contravened, or
 - (e) on any other grounds specified in the regulations.
- (2) The notice served on the licensee must state the reasons why the licence is being suspended or cancelled and, in the case of a suspension, the period during which the licence is suspended (being a period of no more than 6 months).
- (3) The Director-General may, by the same notice, suspend the licence and provide for the cancellation of the licence at the end of the suspension period unless specified conditions are met during the suspension period.
- (4) A licensee whose licence is cancelled must surrender the licence to the Director-General within 28 days after the licence is cancelled.
- Maximum penalty (subsection (4)): 20 penalty units.

48 Surrender of licence

- (1) A licensee may, by notice in the approved form given to the Director-General and accompanied by the residential centre licence, voluntarily surrender the licence.
- (2) If a licensed residential centre ceases to be used as (or to be) a residential centre for vulnerable persons, the licensee must surrender the residential centre licence to the Director-General within 28 days after the cessation.

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Maximum penalty (subsection (2)): 20 penalty units.

- (3) The surrender of a licence under this section takes effect 28 days after the licence is returned to the Director-General, unless the Director-General serves the licensee with a notice specifying an earlier date for the surrender to take effect or it is sooner cancelled or otherwise ceases to be in force.

Note. An interim permit may be granted in relation to a licensed residential centre if its licence is surrendered so as to enable it to continue to function on a short term basis. See section *52 (3) (c).

49 Duration of licence

- (1) A residential centre licence may be granted for a fixed term or for no fixed term.
- (2) If a residential centre licence is granted for a fixed term, the licence remains in force for the term specified in the licence, unless sooner surrendered or cancelled or it otherwise ceases to be in force.
- (3) If a residential centre licence is granted for no fixed term, it remains in force until it is surrendered or cancelled or it otherwise ceases to be in force.
- (4) In any case, a residential centre licence is taken not to be in force for the purposes of this Act during any period in which it is suspended.
- (5) If the licensee under a residential centre licence dies, the licence is taken to be suspended for the period of 28 days after the death or such further period as the Director-General may allow.

Note. See section *46 concerning the variation of a licence to substitute a new licensee and section *52 concerning the issuing of interim permits.

50 Form of licence (cf YCS Act, s 13)

- (1) A residential centre licence is to be in the approved form.
- (2) Without limiting subsection (1), a residential centre licence is to specify:
- (a) the person or persons to whom the licence is granted, and
 - (b) the term (if any) for which it is granted.

51 Display of licence (cf YCS Act, s 21 (5))

The licensee of a licensed residential centre must ensure that a copy of the residential centre licence is displayed in a conspicuous position at the centre.

Maximum penalty:

- (a) in the case of a corporation—10 penalty units, and

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- (b) in any other case—5 penalty units.

Division 3 Interim permits

52 When interim permits may be granted (cf YCS Act, ss 18 (1) and (2) and 20)

- (1) The Director-General may, whether on the Director-General's own initiative or on the application of the person concerned, grant a permit (an *interim permit*) to a person to use or continue to use specified boarding premises as a residential centre for vulnerable persons on a short-term basis.
- (2) An application for an interim permit is to be made in the approved form and contain such particulars and other information as may be approved.
- (3) An interim permit may be granted as follows:
 - (a) to an applicant for a residential centre licence for the premises concerned pending the final determination by the Director-General as to whether the licence should be granted,
 - (b) to a person seeking appointment by the Director-General as the replacement licensee under a residential centre licence for the premises concerned where the licence was suspended because of the death of the previous licensee pending the final determination by the Director-General as to whether the person should be so appointed,
 - (c) to a person (including a former licensee) that the Director-General considers suitable so as to enable the premises concerned to continue to be used as a residential centre for vulnerable persons despite the surrender, suspension or cancellation of the residential centre licence for the premises,
 - (d) to a person that the Director-General considers suitable to enable a residential centre for vulnerable persons to continue to be operated during the absence of the licensee for the centre (whether because of illness or otherwise),
 - (e) to a person in such other circumstances as may be prescribed by the regulations.
- (4) If residential centre licence for a residential centre for vulnerable persons is in force when an interim permit is granted for the centre, the licence is taken to be suspended while the interim permit remains in force for the centre.
- (5) As soon as practicable after the Director-General determines an application, the Director-General must serve the applicant with a notice stating whether the permit has been granted and, if it has been refused, the reasons for the refusal.

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(6) An interim permit is to be in the approved form.

53 Duration of interim permit (cf YCS Act, s 19 (3))

- (1) An interim permit remains in force for the period specified in the permit, unless:
 - (a) sooner revoked or it otherwise ceases to be in force, or
 - (b) the period is extended under subsection (3).
- (2) The maximum period that may be specified for the duration of an interim permit is:
 - (a) in the case of a permit granted to an applicant for a residential centre licence or an applicant seeking appointment by the Director-General as the replacement licensee under a residential centre licence for the premises concerned—3 months, or
 - (b) in any other case—6 months.
- (3) The Director-General may from time to time, by notice served on the interim permit holder, extend the period during which an interim permit (other than a permit of the kind referred to in subsection (1) (a)) remains in force by a period specified in the notice (not exceeding 6 months each time), but not so that the permit remains in force for a total period of more than 2 years.

54 Variation of interim permit

- (1) The Director-General may, by notice served on the interim permit holder, vary an interim permit (including any conditions of the permit imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on a permit, the substitution of a condition, or the omission or amendment of a condition.

55 Revocation of interim permit (cf YCS Act, s 19 (4))

- (1) The Director-General may, by notice served on the interim permit holder, revoke an interim permit:
 - (a) if the Director-General is of the opinion that a condition of the permit has been contravened, or
 - (b) on any other ground that the Director-General considers sufficient.
- (2) The notice served on the interim permit holder must state the reasons why the permit is being revoked.

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- (3) An interim permit holder whose interim permit is revoked must surrender the permit to the Director-General within 28 days after the permit is revoked.

Maximum penalty (subsection (3)):

- (a) in the case of a corporation—40 penalty units, and
(b) in any other case—20 penalty units.

56 Surrender of interim permit

- (1) An interim permit holder may, by notice in the approved form given to the Director-General and accompanied by the interim permit, voluntarily surrender the permit.

- (2) If the premises to which an interim permit relates cease to be used as (or to be) a residential centre for vulnerable persons, the interim permit holder must surrender the interim permit to the Director-General within 28 days after the cessation.

Maximum penalty (subsection (2)):

- (a) in the case of a corporation—40 penalty units, and
(b) in any other case—20 penalty units.

- (3) The surrender of an interim permit under this section takes effect 28 days after the permit is returned to the Director-General, unless the Director-General serves the interim permit holder with a notice specifying an earlier date for the surrender to take effect or it is sooner revoked or otherwise ceases to be in force.

Division 4 Approval of managers of residential centres

57 Residential centre to be managed by approved manager in certain cases

- (1) It is a condition of a residential centre authorisation that the authorised operator must ensure that at least one approved manager is appointed by the operator to act as the manager of the residential centre for vulnerable persons to which the authorisation relates if:

- (a) the operator is a corporation, body politic or trustee or holds the authorisation on behalf of an unincorporated body, or
(b) the operator is an individual who is not acting (or does not intend to act) as the manager of the centre.

- (2) The person appointed must be a person authorised by his or her manager approval to act as the manager of the residential centre.

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58 Manager approvals (cf YCS Act, s 14 (1))

- (1) The Director-General may, on application made by or on behalf of a person, grant an approval (a *manager approval*) that authorises the person to act as the manager of a specified residential centre for vulnerable persons.
- (2) An application for a manager approval is to be made in the approved form and contain such particulars and other information as may be approved.
- (3) Without limiting subsection (1), an application for a manager approval may, with the consent of the person seeking the approval, be made on the person's behalf as part of an application for a residential centre authorisation.
- (4) A manager approval is to be in the approved form.

59 Decision of Director-General in relation to applications for manager approval (cf YCS Act, s 14 (2))

- (1) The Director-General may, after considering an application for a manager approval (including any probity checks or other matters required by the regulations), grant the approval or refuse to grant the approval.
- (2) Without limiting subsection (1), the Director-General may refuse to grant a manager approval:
 - (a) if the Director-General is of the opinion that the applicant is not a suitable person to be involved in the management of a residential centre for vulnerable persons, or
 - (b) on any grounds prescribed by the regulations.
- (3) As soon as practicable after the Director-General determines an application, the Director-General must serve the applicant with a notice stating whether the approval has been granted and, if it has been refused, the reasons for the refusal.

60 Duration of approval

- (1) A manager approval may be granted for a fixed term or for no fixed term.
- (2) If a manager approval is granted for a fixed term, the approval remains in force for the term specified in the approval, unless sooner surrendered or revoked or it otherwise ceases to be in force.
- (3) If a manager approval is granted for no fixed term, the approval remains in force until it is surrendered or revoked or it otherwise ceases to be in force.

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- (4) In any case, a manager approval is taken not to be in force for the purposes of this Act during any period in which it is suspended.
- (5) An approved manager may, by notice in the approved form given to the Director-General and accompanied by the manager approval, voluntarily surrender the approval. Any such surrender takes effect on the day on which the notice is given to the Director-General.

61 Conditions of approvals

- (1) A manager approval is subject to the following conditions:
 - (a) any conditions imposed by this Act or prescribed by the regulations,
 - (b) any conditions imposed by the Director-General under this Act.
- (2) The Director-General may impose conditions on an approval:
 - (a) at the time of the grant of the approval, or
 - (b) subsequent to the grant of the approval by variation of the approval.
- (3) The Director-General may impose or vary conditions on an approval for such reasons, and in such circumstances, as the Director-General considers appropriate or necessary.
- (4) A person who is an approved manager must not contravene a condition of the person's manager approval.
Maximum penalty: 20 penalty units and in addition, for a continuing offence, 5 penalty units for each day the offence continues.

62 Variation of approval

- (1) The Director-General may, by notice served on the approved manager, vary a manager approval (including any conditions of the approval imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on an approval, the substitution of a condition, or the omission or amendment of a condition.

63 Suspension or revocation of approval

- (1) The Director-General may, by notice served on the approved manager, suspend or revoke a manager approval:
 - (a) if the Director-General is of the opinion that the approved manager is no longer a suitable person to be involved in the management of a residential centre for vulnerable persons, or
 - (b) if the Director-General is of the opinion that the approved manager has contravened any provision of this Act or the

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- regulations (whether or not the approved manager has been convicted of an offence for the contravention), or
- (c) if the Director-General is of the opinion that a condition of the manager approval has been contravened, or
 - (d) on any other grounds specified in the regulations.
- (2) The notice served on the approved manager must state the reasons why the manager approval is being suspended or revoked and, in the case of a suspension, the period during which the permit is suspended (being a period of no more than 6 months).
- (3) The Director-General may, by the same notice, suspend the approval and provide for the revocation of the approval at the end of the suspension period unless specified conditions are met during the suspension period.
- (4) An approved manager whose manager approval is revoked must surrender the approval to the Director-General within 28 days after the approval is revoked.
- Maximum penalty (subsection (4)): 20 penalty units.

Division 5 Review of authorisation and approval decisions

64 Applications for reviews by the Administrative Decisions Tribunal (cf YCS Act, ss 3A (2)–(4) and 24)

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Director-General:
- (a) a refusal or failure to grant a residential centre authorisation or manager approval to the person,
 - (b) the imposition or variation of a condition on a residential centre authorisation or manager approval held by the person (including a variation of a residential centre licence to appoint a substitute licensee),
 - (c) the suspension, cancellation or revocation of a residential centre authorisation or manager approval held by the person,
 - (d) a refusal or failure to grant an exemption under section *38,
 - (e) the imposition or variation of terms and conditions on an exemption granted under section *38 or the revocation of such an exemption,
 - (f) the declaration of boarding premises that are owned, leased or occupied by the person to be a residential centre for vulnerable persons for the purposes of this Act.

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- (2) For the purposes of this section, an application for the grant of a residential centre authorisation, manager approval or exemption under section *38 is taken to have been refused if the authorisation, approval or exemption is not granted within 60 days after the application is made in accordance with this Act.
- (3) An application under subsection (1) (f) may be made only on the ground that the premises to which the declaration relates are not being used to provide beds for 2 or more residents who are vulnerable persons (not counting any vulnerable persons who reside there with their competent relatives).
- (4) Subsection (3) applies despite the provisions of section 63 (1) or (2) of the *Administrative Decisions Tribunal Act 1997*.

Part 3 Compliance and enforcement

Division 1 Enforcement officers

65 Appointment of enforcement officers (cf YCS Act, s 25 (1))

- (1) The Director-General may appoint persons as enforcement officers for the purposes of this Chapter.
- (2) A person is eligible for appointment as an enforcement officer only if the person is a member of staff of the Department of Family and Community Services.

66 Identification card

- (1) The Director-General is to issue each enforcement officer with an identification card as an enforcement officer.
- (2) An identification card is to be in the approved form.
- (3) A person who has been issued with an identification card must return it to the Director-General on demand.
Maximum penalty: 10 penalty units.
- (4) An enforcement officer must produce his or her identification card for inspection on request when exercising the functions of an enforcement officer.

67 Obstruction of enforcement officer (cf YCS Act, s 25 (6))

- (1) A person must not, without reasonable excuse:
 - (a) hinder or obstruct an enforcement officer in the exercise of a function under this Chapter, or

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- (b) fail to comply with any requirement made by an enforcement officer under this Chapter.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, and
(b) in any other case—50 penalty units.
- (2) A person is not guilty of an offence against this section unless it is established that, if requested to do so at the material time, the enforcement officer produced for inspection the enforcement officer's identification card issued under this Division.
- (3) A person is not guilty of an offence of failing to comply with a requirement made by an enforcement officer under this Chapter unless the person was warned on that occasion that a failure to comply with the requirement may constitute an offence.

Division 2 Investigation powers

68 Definition—person involved in management of authorised residential centre

- (1) In this Division, a *person involved in the management of an authorised residential centre* means:
- (a) a person who is (or was formerly) an authorised operator of the centre, or
(b) a person who is (or was formerly) an approved manager of the centre, or
(c) a person who is (or was formerly) a staff member of an authorised operator or otherwise engaged to provide or assist in providing services at the centre, or
(d) if the authorised operator (or former authorised operator) of the centre was a corporation or body politic—a person who is (or was formerly) involved in the control or management of the authorised operator (such as a director, chief executive officer or majority shareholder), or
(e) a person who is (or was formerly) a partner, or a member of a management committee or other office holder of, an unincorporated body involved in the management or operation of the centre, or
(f) a person who is, or was formerly, a trustee of a trust involved in the management or operation of the centre, or
(g) any other person (or a person belonging to a class) prescribed by the regulations.

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69 Power to require provision of documents

- (1) The Director-General may, by notice served on a person involved in the management of an authorised residential centre, require the person to provide to the Director-General such relevant documents as the Director-General specifies in the notice.
- (2) The following documents are *relevant documents*:
 - (a) any record that a person is required to keep by or under this Chapter (including under the regulations for this Chapter),
 - (b) such other documents as the Director-General reasonably requires for the purposes of the administration or enforcement of this Chapter.
- (3) A notice under this section must specify the manner in which the documents are required to be provided and a reasonable time by which the documents are required to be provided.
- (4) A notice under this section may only require a person to provide existing documents that are in the person's possession or that are within the person's power to obtain lawfully.
- (5) If any document required to be provided under this section is in electronic, mechanical or other form, the notice requires the document to be provided in written form, unless the notice otherwise provides.
- (6) If any document required to be provided under this section is not in the English language, the notice is taken to require a written translation of its content to be provided with the document, unless the notice otherwise provides.
- (7) The Director-General may take copies of any documents provided under this section.
- (8) If the Director-General has reason to believe that any documents provided under this section are evidence of an offence against this Chapter or the regulations for this Chapter, the Director-General may retain the documents until proceedings for the offence have been heard and determined.

70 Power to require answers to questions

- (1) The Director-General may, by notice served on a person involved in the management of an authorised residential centre, require the person to answer questions about any matters in respect of which information is required for the administration or enforcement of this Chapter.
- (2) The Director-General may, by notice, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of

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the corporation to be the corporation's representative for the purpose of answering questions under this section.

- (3) Answers given by a person nominated by the corporation bind the corporation.
- (4) The Director-General may, by notice, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend to answer questions under this section is to be:
 - (a) a place or time nominated by the person, or
 - (b) if the place or time nominated is not reasonable in the circumstances or a place or time is not nominated by the person, a place and time nominated by the Director-General that is reasonable in the circumstances.
- (6) In this section, a reference to a corporation includes a reference to a body politic.

71 Functions may be exercised outside this State

- (1) A notice may be given under this Division to a person involved in the management of an authorised residential centre even though the person is outside the State, as long as the activities concerned are or were carried out in this State.
- (2) The Director-General, or a delegate of the Director-General, may attend at a place outside this State for the purpose of obtaining answers to questions asked of a person under this Division.

72 Failure to comply with requirement to provide documents or information or answer questions

A person who, without reasonable excuse, fails to comply with a requirement made of the person under this Division is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—40 penalty units and in addition, for a continuing offence, 10 penalty units for each day the offence continues, and
- (b) in any other case—20 penalty units and in addition, for a continuing offence, 5 penalty units for each day the offence continues.

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73 Provisions relating to requirements to provide documents or information or answer questions

(1) Self-incrimination not an excuse

A person is not excused from a requirement under this Division to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.

(2) Information or answer not admissible if objection made

However, any information provided or answer given by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against this Division or section *93) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.

(3) Documents admissible

Any document provided by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

(4) Further information

Further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Division is not inadmissible on the ground:

- (a) that the document or information had to be provided or the answer had to be given, or
- (b) that the document or information provided or answer given might incriminate the person.

74 Effect on other functions

- (1) This Division does not affect any functions conferred by any other provision of this Act or by any other Act.
- (2) In particular, this Division does not affect the functions conferred by Division *3.
- (3) This Division does not limit the conditions that can be imposed on a residential centre authorisation or manager approval.

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Division 3 Powers of entry

75 Powers of entry and inspection by enforcement officers without consent or warrant (cf YCS Act, s 25 (2)–(4))

- (1) The following premises may be entered under this section:
 - (a) an authorised residential centre,
 - (b) premises that are the subject of an application for a residential centre authorisation.
- (2) An enforcement officer may, at any time and with such assistants (including police officers) as may reasonably be required, enter such premises and do any of the following for an enforcement purpose:
 - (a) inspect the premises and any plant, equipment, vehicle or other thing,
 - (b) photograph or film, or make audio recordings or make sketches of, any part of the premises or anything at the premises,
 - (c) inspect and make copies of, or take extracts from, any document kept at the premises,
 - (d) take any document or any other thing at the premises,
 - (e) ask a person at the premises:
 - (i) to answer a question to the best of that person's knowledge, information and belief, or
 - (ii) to take reasonable steps to provide information or produce a document.
- (3) Without limiting subsection (2), an enforcement officer exercising functions under this section may be accompanied by one or more medical practitioners and any such medical practitioners may inspect the premises and observe, examine and speak with any person apparently residing at the premises.
- (4) A power under subsection (2) (a), (b), (c) or (d) is limited to a document or thing that is used or likely to be used in the management or operation of the premises.
- (5) If the enforcement officer takes any document or thing under this section, he or she must:
 - (a) give notice of the taking of the document or thing to the person apparently in charge of it or to a manager of the premises, and
 - (b) return the document or thing to that person or the premises within 7 days after taking it.
- (6) An enforcement officer may not enter and inspect an unauthorised residential centre unless:

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- (a) the enforcement purpose for which the officer is entering the centre is to make an inquiry in relation to an application for a residential centre authorisation for the centre, or
 - (b) the manager of the centre consents to the entry and the inspection, or
 - (c) the officer is doing so under the authority of a search warrant.
- (7) In this section:
enforcement purpose means any of the following purposes:
- (a) making an inquiry in relation to an application for a residential centre authorisation for premises,
 - (b) ensuring that the provisions of this Chapter and the regulations for this Chapter with respect to premises, and of any conditions imposed on a residential centre authorisation or other authority with respect to premises, are being complied with,
 - (c) ensuring that the conditions of any exemption relating to premises are being complied with.

76 Powers of entry by authorised service providers without consent or warrant

- (1) The Director-General may, by instrument in writing (the **authorisation instrument**), authorise a person (an **authorised service provider**) to enter authorised residential centres under this section if the Director-General is of the opinion that the person is able to provide relevant information or advice to residents of such centres about support services, legal services or advocacy services provided by the person or the organisation to which the person belongs.
- (2) The authorisation of an authorised service provider is subject to any requirements of this section and to such conditions as may be specified in the authorisation instrument.
- (3) An authorised service provider may, at any reasonable time and subject to the conditions of the authorisation, enter an authorised residential centre for the purpose of conferring with any resident of the centre to determine whether the resident wishes to access the services provided by the provider or the organisation to which the provider belongs.
- (4) An authorised service provider must give the authorised operator or approved manager of the authorised residential centre at least 24 hours notice of the provider's intention to enter the centre.
- (5) When entering an authorised residential centre under this section, an authorised service provider must identify (or make a reasonable attempt to identify) himself or herself to the manager or any other person apparently in charge of the centre.

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- (6) An authorised service provider must produce his or her authorisation instrument for inspection on demand when exercising his or her functions under this section.
- (7) The Director-General may, by notice served on the authorised service provider, revoke the authorisation of the provider at any time and for any reason.
- (8) It is a condition of a residential centre authorisation and a manager approval that the authorised operator and approved manager of the centre permit an authorised service provider to enter, and confer with residents of, the authorised residential centre in the manner authorised by or under this section.

77 Entry and inspection under search warrant (cf YCS Act, s 25 (7))

- (1) An enforcement officer may (with the written consent of the Director-General) apply to an authorised warrants officer for a search warrant if the enforcement officer has reasonable grounds for believing that a provision of this Chapter or the regulations for this Chapter has been or is being contravened at any premises.
- (2) An authorised warrants officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an enforcement officer named in the warrant:
 - (a) to enter the premises, and
 - (b) to search the premises for evidence of a contravention of this Chapter or the regulations for this Chapter, and
 - (c) to exercise the powers conferred on an enforcement officer by section *75.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:
 - (a) may accompany an enforcement officer executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist the enforcement officer in the exercise of the officer's functions under this section.
- (5) In this section:
authorised warrants officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Division 4 Compliance notices

78 Issue of compliance notices by Director-General

- (1) If the Director-General is of the opinion that a person is contravening a provision of this Chapter or the regulations for this Chapter, the Director-General may serve on the person a notice (a **compliance notice**) requiring the person to remedy the contravention within the period specified in the notice.
 - (2) A compliance notice must:
 - (a) give particulars of the alleged contravention, and
 - (b) include information about rights (if any) to seek a review of the Director-General's decision to issue the notice.
- Note.** Section *89 (9) allows the regulations to provide for the internal review of compliance notices.
- (3) A compliance notice may include directions as to the measures to be taken to remedy any contravention to which the notice relates or to otherwise comply with the notice.
 - (4) A compliance notice may offer the person to whom it is issued a choice of ways in which to remedy the contravention or to comply with the notice.

79 Failure to comply with compliance notice

A person who, without reasonable excuse, fails to comply with a requirement imposed by a compliance notice issued to the person is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—40 penalty units and in addition, for a continuing offence, 10 penalty units for each day the offence continues, and
- (b) in any other case—20 penalty units and in addition, for a continuing offence, 5 penalty units for each day the offence continues.

80 Proceedings for offences not affected by compliance notices

- (1) The issue, variation or revocation of a compliance notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.
- (2) However, a person cannot be convicted of both an offence of failing to comply with a compliance notice and another offence against this Act or the regulations in respect of the same act or omission.

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Division 5 Operation of residential centres for vulnerable persons

81 Records

- (1) It is a condition of a residential centre authorisation that the authorised operator ensures that requirements of this section concerning records are complied with.
- (2) An authorised operator of an authorised residential centre must ensure that such records as the regulations require are kept in relation to the centre.
- (3) The authorised operator must ensure that the records are kept in such a manner that they are readily accessible if the authorised operator is required to produce them to the Director-General, or to any other person who is authorised to inspect them, under this Chapter.

82 Notification of deaths, sexual assaults and absences in or from authorised residential centres (cf YCS Act, s 26)

- (1) The manager of an authorised residential centre must, as soon as is reasonably possible after becoming aware of the following incidents, report the incident to the Director-General:
 - (a) the death of a resident of the centre,
 - (b) the sexual assault (or the making of an allegation of sexual assault) of a resident of the centre,
 - (c) the absence of a resident of the centre for a period of more than 24 hours if the resident has not informed the manager of his or her whereabouts.
- (2) The manager must also report the death of a resident of the centre to a police officer as soon as is reasonably practicable after becoming aware of the death.
- (3) A manager of an authorised residential centre who contravenes this section is guilty of an offence.
Maximum penalty: 50 penalty units.

83 Probity checks on staff members of authorised residential centres

- (1) It is a condition of the residential centre authorisation that the authorised operator must ensure that the requirements of this section concerning staff members are complied with.
- (2) A person must not be engaged as a staff member of an authorised residential centre unless the authorised operator is satisfied that the person is a suitable person to be involved in the management or operation of the centre.

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- (3) In deciding whether a person is a suitable person to be involved in the management or operation of the centre, the authorised operator must first ensure that a criminal record check is conducted on the person.
- (4) The authorised operator must ensure that a new criminal record check is conducted or obtained in respect of a staff member every 3 years during the period while the person remains a staff member.
- (5) The authorised operator of an authorised residential centre must not engage (or continue to engage) a person to be a staff member of the centre if:
 - (a) the operator is satisfied from the person's criminal record check that the person has committed a serious criminal offence, or
 - (b) the person refuses to obtain or submit to a criminal record check for the purposes of this section.
- (6) The authorised operator must:
 - (a) ensure that a record is kept of any criminal record checks conducted for the purposes of this section for a period of 3 years after the check is conducted, and
 - (b) make any such record available for inspection by an enforcement officer on request.
- (7) The regulations may make provision for or with respect to the obtaining and conduct of criminal record checks for the purposes of this section (including the use of a statutory declaration to verify a person's criminal record when a criminal record check cannot be obtained or conducted).

Division 6 Removal of vulnerable persons from unauthorised residential centres

84 Removal of young residents from unauthorised residential centres (cf YCS Act, s 27)

- (1) This section applies in relation to any vulnerable person who is under 18 years of age and a resident of an unauthorised residential centre (a *young resident*).
- (2) If requested to do so by an officer or employee of the Department of Family and Community Services, a parent or guardian of a young resident (or a person acting on behalf of a parent or guardian) is to remove the young resident from an unauthorised residential centre as soon as possible after the request is made.
- (3) If a young resident is not removed following any such request or a parent or guardian of the young resident cannot be located, the young resident is taken to be a child in respect of whom grounds exist under section 71 of the *Children and Young Persons (Care and Protection)*

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Clause 85 Boarding Houses Bill 2012
Chapter 4 Residential centres for vulnerable persons
Part 3 Compliance and enforcement

Act 1998 for the making of a care order and may be dealt with in accordance with Chapter 5 of that Act.

85 Assessment of certain removal expenses resulting from unauthorised residential centres (cf YCS Act, s 31)

- (1) The following persons may apply to the Local Court for a determination under this section if a person (*the offender*) has been convicted of the offence of using (or permitting the use of) an unauthorised residential centre as a residential centre for vulnerable persons without a residential centre authorisation:
 - (a) a vulnerable person who was a resident of the centre at the time the offence was committed and moved to another residence within the period of 28 days after the offence was committed,
 - (b) the Director-General if the Department of Family and Community Services incurred expenses in connection with the removal of vulnerable persons who were resident at the unauthorised residential centre and moving them to other residences.
- (2) An application under this section must be made within 12 months after the conviction of the offender.
- (3) In determining an application under this section, the Local Court is to determine an amount that seems just and reasonable to the Court:
 - (a) in the case of an application by a vulnerable person—to compensate for the removal expenses and any other expenses incurred by the person when the person moved to another residence, or
 - (b) in the case of an application by the Director-General—to compensate for the removal expenses and any other expenses incurred by the Department of Family and Community Services when moving vulnerable persons who were resident at the unauthorised residential centre to other residences.
- (4) An amount determined by the Local Court on an application made under this section operates as a judgment debt of the offender under the *Civil Procedure Act 2005* and is enforceable as such under that Act.

Division 7 Other enforcement provisions

86 Certificate evidence concerning residential centres (cf YCS Act, s 3B)

A certificate signed or purporting to be signed by the Director-General, or an officer or employee of the Department of Family and Community Services authorised in writing by the Director-General, and stating that:

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- (a) a person named in the certificate was or was not at a specified time the holder of a residential centre authorisation or a manager approval, or
- (b) any residential centre authorisation or manager approval held by a specified person was or was not at a specified time subject to a specified condition or suspended, or
- (c) premises were or were not at a specified time an authorised residential centre,

is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

Part 4 General

87 Director-General may require further information for applications

- (1) The Director-General may, by notice served on a relevant person in relation to an application under this Chapter, require the relevant person to do one or more of the following things:
 - (a) provide, in accordance with directions in the notice, such information as, in the opinion of the Director-General, is relevant to the investigation of the application and is specified in the notice,
 - (b) produce, in accordance with directions in the notice, such records as, in the opinion of the Director-General, are relevant to the investigation of the application and permit examination of the records, the taking of extracts from them and the making of copies of them,
 - (c) authorise a person described in the notice to comply with a requirement of the kind referred to in paragraph (a) or (b),
 - (d) furnish to the Director-General such authorisations and consents as the Director-General requires for the purpose of enabling the Director-General to obtain information (including financial and other confidential information) from other persons concerning the person and the person's associates.
- (2) A *relevant person in relation to an application* for the purposes of this section is any of the following:
 - (a) the applicant,
 - (b) if the applicant is not a natural person—any person involved in the control or management of the applicant (such as a chief executive officer, director or majority shareholder of a corporation),

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- (c) if the applicant makes the application on behalf of an unincorporated body—any partner or member of the management committee or other office holder of the body,
 - (d) any other close associate of the applicant.
- (3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.
- (4) The Director-General may refuse to determine an application under this Chapter if a requirement made under this section in relation to the application is not complied with.

88 General provisions relating to notices under this Chapter

- (1) This section applies in relation to the issuing of notices by the Director-General or an enforcement officer under this Chapter or regulations for this Chapter.
- (2) A notice must be:
- (a) in writing, and
 - (b) served on the person on whom it is required to be served by the provision under which it is issued.
- (3) A notice has effect on the day on which it is served or on such later day as may be specified in the notice or specified by the provisions under which it is issued.
- (4) A notice (other than a cancellation or revocation notice that has already taken effect) may be varied or revoked by a further notice served on the person on whom the original notice was served.
- (5) A notice may be varied by modification of, or addition to, its terms and specifications.
- (6) The revocation or variation has effect when notice of the revocation or variation is served on the person to whom the notice was issued.
- (7) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (8) The revocation of a notice does not prevent the issue of another notice.
- (9) A notice is to be in the approved form, subject to any other requirements of the regulations or the provision of this Chapter under which a notice is issued.

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Clause 89
Chapter 4
Part 4

89 Regulations relating to residential centres for vulnerable persons (cf YCS Act, s 32 (2))

(1) Authorisations and manager approvals

The regulations may make provision for or with respect to the following matters:

- (a) classes of residential centre authorisations and manager approvals,
- (b) the matters to be specified in a residential centre authorisation,
- (c) prescribed conditions of residential centre authorisations.

(2) Applications for authorisations and manager approvals

The regulations may make provision for or with respect to the following matters:

- (a) the persons who may apply for residential centre authorisations and manager approvals,
- (b) the form and manner in which, and the time within which, an application for a residential centre authorisation or manager approval may be made,
- (c) the information and evidence required to be provided in connection with an application (which may include, without limitation, personal information about the applicant and proposed staff and any close associate of the applicant),
- (d) requiring that an application (and its supporting documents and information) be lodged in stages as specified in the regulations,
- (e) the consideration and determination of applications, including (but not limited to) the following:
 - (i) the time within which an application (or a particular stage of an application) is to be dealt with,
 - (ii) the grounds on which an application (or a particular stage of an application) may be rejected,
 - (iii) the grounds on which the Director-General may refuse to grant a licence or approval,
 - (iv) the way in which the rejection or determination of the application (or a particular stage of an application) is to be communicated to the applicant.

(3) Probity checks

The regulations may make provision for or with respect to the following matters:

- (a) the carrying out of probity checks (including, for example, checks concerning financial matters and criminal histories),

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- (b) the persons who may be the subject of a probity check (including applicants for residential centre authorisations or manager approvals, authorised operators and approved managers and close associates of such persons),
- (c) the verifying of criminal records or other probity matters by means of statutory declarations.

(4) **Variation, suspension, cancellation and revocation of authorisations and approvals**

The regulations may make provision for or with respect to the following matters:

- (a) additional grounds on which a residential centre authorisation or manager approval may be varied, suspended, cancelled or revoked,
- (b) requiring the giving of notice of an intention to vary, suspend, cancel or revoke a residential centre authorisation or manager approval,
- (c) allowing an authorised operator or an approved manager time to make submissions in relation to any such intention,
- (d) the effect of a variation, suspension, cancellation or revocation of a residential centre authorisation or manager approval,
- (e) the restoration of a residential centre authorisation or manager approval that has been suspended, cancelled or revoked.

(5) **Authorised operators**

The regulations may make provision for or with respect to the following matters:

- (a) the functions of authorised operators in connection with authorised residential centres,
- (b) requiring an authorised operator to notify the Director-General of the particular service or services that the operator provides or intends to provide,
- (c) the appointment by the Director-General of a person as licensee under a residential centre licence in substitution for an existing licensee.

(6) **Approved managers**

The regulations may make provision for or with respect to the following matters:

- (a) the appointment and functions of approved managers in connection with authorised residential centres,

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Clause 89
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- (b) the maximum number of residential centres for vulnerable persons in respect of which the same approved manager may be appointed as approved manager,
- (c) the maximum number of persons who may be appointed as an approved manager of a residential centre for vulnerable persons,
- (d) the authorisation by the Director-General of another person to act as the approved manager of a residential centre for vulnerable persons during the absence (because of illness or otherwise) of the approved manager of the residential centre for vulnerable persons.

(7) **Operation and inspection of authorised residential centres**

The regulations may make provision for or with respect to the following matters:

- (a) standards to be observed and facilities to be provided in connection with the health, safety and wellbeing of vulnerable persons residing at authorised residential centres (including, but not limited to, standards of the kind referred to in section *41 (4)),
- (b) the screening of staff members and residents of authorised residential centres,
- (c) the qualifications and skills of staff members of authorised residential centres,
- (d) complaint handling procedures for authorised residential centres,
- (e) the inspection of authorised residential centres.

(8) **Advisory bodies**

The regulations may make provision for or with respect to the constitution and functions of bodies (including the remuneration of their members) to advise on the regulation of residential centres for vulnerable persons under this Act.

(9) **Compliance notices**

The regulations may make provision for or with respect to the following matters:

- (a) the internal review of a decision to issue a compliance notice,
- (b) the stay of a decision to issue a compliance notice pending the determination of such an internal review.

(10) **Records and returns**

The regulations may make provision for or with respect to the following matters:

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- (a) the records that are to be kept by authorised operators and approved managers, including (but not limited to) the following:
 - (i) the information that the records are to contain,
 - (ii) the form in which they are to be made,
 - (iii) the person responsible for making and maintaining them,
 - (iv) the persons who may inspect them,
 - (v) the period for which they are to be retained,
- (b) the provision of returns and other information with respect to authorised residential centres (including, but not limited to, returns and other information about residents, staff members and managers).

(11) **Exemptions**

The regulations may make provision for or with respect to the following matters:

- (a) exempting (whether conditionally or unconditionally) specified residential centres for vulnerable persons, or residential centres for vulnerable persons of a specified class, from the requirement that they be authorised under this Chapter or from any other requirement imposed by or under this Chapter,
- (b) regulating the residential centres for vulnerable persons so exempted (including, without limitation, establishing standards to be met by those residential centres for vulnerable persons and inspections of such centres),
- (c) the making of applications for exemptions under section *38.

(12) **Fees**

The regulations may make provision for or with respect to the following matters:

- (a) the charging of fees in connection with the administration of this Chapter (including, but not limited to, application fees),
- (b) the waiver, reduction, deferral or refund of fees charged in connection with the administration of this Chapter.

(13) **Relationship of section to other provisions**

This section does not limit the generality of section *101 (Regulations) or any other provision of this Act that requires or permits regulations to be made with respect to a matter.

Chapter 5 Miscellaneous

90 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

91 Delegations

- (1) An Act administrator may delegate any of the administrator's functions under this Act or the regulations to an authorised delegate of the administrator, other than this power of delegation.
- (2) A delegate may sub-delegate any of the functions delegated to the delegate by the Act administrator to another authorised delegate of the administrator if the delegate is authorised in writing to do so by the administrator.
- (3) In this section:
authorised delegate of an Act administrator means any of the following:
 - (a) if the administrator is not a Minister—a member of staff of the Government Department of which the administrator is the Department Head or to which the administrator belongs,
 - (b) if the administrator is a Minister—a member of staff of a Government Department for which the Minister is responsible.

92 Exchange of information

- (1) An Act administrator may enter into an arrangement (*an information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging any information that is held by the administrator or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of the functions of the Act administrator under this Act or the regulations or of the relevant agency concerned.
- (3) Under an information sharing arrangement, the Act administrator and the relevant agency are, despite any other Act or law of the State, authorised:
 - (a) to request and receive information that is held by the other party to the arrangement, and
 - (b) to disclose that information to the other party.
- (4) In this section:

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Clause 93 Boarding Houses Bill 2012
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Part 4 General

relevant agency means any of the following:

- (a) the NSW Police Force,
- (b) a Government Department of which the Commissioner or Director-General is the Department Head or to which he or she belongs,
- (c) a council.

93 False and misleading information

A person who provides any document or information or does any other thing in purported compliance with a requirement made by or under this Act, knowing that it is false or misleading in a material particular, is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, and
- (b) in any other case—50 penalty units.

94 Enforcement of provisions of this Act and regulations

- (1) In this section, *contravention* includes a threatened or apprehended contravention.
- (2) An Act administrator, and only an Act administrator, may apply to the Land and Environment Court for an order to remedy or restrain a contravention of a provision of this Act or the regulations, whether or not any right of the administrator has been or may be infringed by or as a consequence of that contravention.
- (3) On any such application, the Land and Environment Court may, if satisfied that a contravention has occurred, or that a contravention will, unless restrained by order of the Court, continue or be committed, make such order or orders as it thinks fit to remedy or restrain the contravention.

95 Continuing offences

- (1) A person who is guilty of an offence because the person fails to comply with a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
 - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.

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Miscellaneous
General

Clause 96
Chapter 5
Part 4

- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

96 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

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Clause 97 Boarding Houses Bill 2012
Chapter 5 Miscellaneous
Part 4 General

- (10) In this section, **authorised officer** means:
- (a) a police officer, and
 - (b) in relation to an offence against a provision of Chapter *2 or regulations for that Chapter—a person who:
 - (i) is employed by a council or subject to its control or direction, and
 - (ii) is an authorised person (within the meaning of the *Local Government Act 1993*) for the purposes of section 679 (Penalty notices for certain offences) of that Act, and
 - (c) in relation to an offence against a provision of Chapter *4 or regulations for that Chapter—an enforcement officer within the meaning of that Chapter, and
 - (d) a person (or a person belonging to a class) prescribed by the regulations for the purposes of this paragraph.

97 Nature of proceedings for offences (cf YCS Act, s 28)

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
 - (a) summarily before the Local Court, or
 - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) Proceedings for an offence against this Act or the regulations may be commenced within 12 months after the time when the offence is alleged to have been committed.
- (4) Proceedings for an offence against a provision of this Act or the regulations may only be commenced with the written consent of the Minister administering the provision, except as provided by subsection (5).
- (5) A council may commence proceedings for an offence against a provision of Chapter *2 or regulations for that Chapter without obtaining the written consent of the Minister administering that provision.

98 Evidence of use of boarding premises as residential centre

- (1) This section applies to the following proceedings:

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General

Clause 99
Chapter 5
Part 4

- (a) proceedings before a court or tribunal to remedy or restrain a contravention of this Act or the regulations in relation to the use of a registrable boarding house,
 - (b) applications for a search warrant in respect of a registrable boarding house.
- (2) In any proceedings to which this section applies, the court, tribunal or other person determining the proceedings may rely on circumstantial evidence to find that particular premises is a registrable boarding house.
- Note.** Examples of circumstantial evidence include (but are not limited to) the following:
- (a) evidence of the premises being advertised expressly or implicitly for the purposes of a registrable boarding house (including advertisements on the premises, on public notice boards, in newspapers, in directories or on the Internet),
 - (b) evidence relating to internal and external signs and notices at the premises (including price lists, notices to occupants and offers of services) that is consistent with the use of the premises as a registrable boarding house,
 - (c) evidence of the layout of rooms, and the number and arrangement of beds, at the premises that is consistent with the use of the premises as a registrable boarding house,
 - (d) evidence relating to persons entering and leaving the premises (including the depositing of luggage) that is consistent with the use of the premises as a registrable boarding house.

99 Giving or service of documents (cf YCS Act, s 34)

- (1) A document that is authorised or required by this Act or the regulations to be given to or served on any person may be given or served:
- (a) in the case of a natural person:
 - (i) by delivering it to the person personally, or
 - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) by sending it by facsimile transmission to the facsimile number of the person, or
 - (b) in the case of a body corporate:
 - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or

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Clause 100 Boarding Houses Bill 2012
Chapter 5 Miscellaneous
Part 4 General

(ii) by sending it by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law (including the regulations) or of the rules of a court authorising a document to be served on or given to a person in any other manner.

100 Provision of documents to Act administrator

(1) A document may be served on, or given to, or lodged with, an Act administrator by leaving it at, or by sending it by post to:

- (a) the office of the administrator, or
- (b) if the administrator has more than one office, any one of the administrator's offices.

(2) Nothing in this section affects the operation of any provision of a law (including the regulations) or of the rules of a court authorising a document to be served on or given to an Act administrator in any other manner.

101 Regulations (cf YCS Act, s 32 (1) and (3) (d))

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 40 penalty units in the case of a corporation or 20 penalty units in any other case.

102 Repeal of Youth and Community Services Act 1973 No 90 and related legislation

Each of the following is repealed:

- (a) the *Youth and Community Services Act 1973*,
- (b) the *Youth and Community Services Regulation 2010*,
- (c) the *Miscellaneous Acts (Disability Services and Guardianship) Repeal and Amendment Act 1987*.

103 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

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Miscellaneous
General

Clause 103
Chapter 5
Part 4

-
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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Boarding Houses Bill 2012

Schedule 1 Savings, transitional and other provisions

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) If the regulations so provide, any such provision may:
 - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule), and
 - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

Part 2 Provisions consequent on enactment of this Act

2 Interpretation

- (1) In this Part:

repeal day means the day on which the YCS Act is repealed by this Act.

residential centre for handicapped persons has the same meaning as it had in the YCS Act.

YCS Act means the *Youth and Community Services Act 1973* as in force immediately before the repeal day.
- (2) Any terms or expressions used in this Part that is defined for the purposes of Chapter *4 have the same meanings as in that Chapter,

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Boarding Houses Bill 2012

Savings, transitional and other provisions

Schedule 1

except in so far as they are defined differently in this Part or the context or subject-matter otherwise indicates or requires.

- (3) If this Part provides for an event or other thing to occur on the repeal day, that event or thing is taken to occur at the beginning of that day.
- (4) A condition of a licence, permit or order in force under the YCS Act (whether imposed by the Minister or by that Act or regulations under that Act) that is continued in effect by operation of this Part for the licence, permit, approval or notice under this Act into which the licence, permit or order under the YCS Act is converted may be varied by the Director-General under this Act as if the Director-General had imposed the condition.
- (5) If a declaration, condition or exemption under the YCS Act that is converted by this Part refers to a provision of the YCS Act, the reference is to be read on the conversion to be a reference to a provision (if any) of this Act that substantially corresponds to the provision of the YCS Act.
- (6) For the purposes of this Part, proceedings are not finally determined if:
 - (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
 - (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

3 Conversion of orders under sections 3A and 3B of YCS Act

- (1) On and from the repeal day, an order in force under section 3A of the YCS Act immediately before that day (an *existing inclusion order*) is taken to be a notice for the purposes of section *37 with respect to the same premises, and may be amended and revoked under this Act accordingly.
- (2) On and from the repeal day, an order in force under section 3B of the YCS Act immediately before that day is taken to be an exemption notice for the purposes of section *38 (1) (a) (i) with respect to the same premises and subject to the same terms and conditions, and may be amended and revoked under this Act accordingly.
- (3) If an application to the Administrative Decisions Tribunal for the review of an existing inclusion order had been made (but not finally determined) before the repeal day, the application may be dealt with and determined as if the application for review had been made under section *64.

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Boarding Houses Bill 2012

Schedule 1 Savings, transitional and other provisions

4 Conversion of section 23 exemptions

On and from the repeal day, an exemption in force under section 23 of the YCS Act immediately before that day is taken to be an exemption notice for the purposes of section *38 (1) (b) with the same kind of provisions and conditions, and may be amended and revoked under this Act accordingly.

5 Conversion of existing licences

- (1) On and from the repeal day, a licence that was in force (including a suspended licence) under the YCS Act (an *existing licence*) immediately before that day with respect to a residential centre for handicapped persons is taken to be a residential centre licence (a *converted licence*) granted for the same premises, period (if any) and licensee, and may be varied, surrendered, suspended and cancelled under this Act accordingly.
- (2) If a suspended existing licence becomes a converted licence:
 - (a) the converted licence is taken to have been suspended under section *47 for the period of 60 days commencing on the repeal day or the remaining period of suspension (if any) of the existing licence (whichever is the shorter), and
 - (b) the Director-General is taken to have issued a notice of suspension under section *47 that cancels the licence at the end of that period, and
 - (c) if an application to the Administrative Decisions Tribunal for the review of the suspension of the existing licence had been made (but not finally determined) before the repeal day—the application may be dealt with and determined by the Tribunal as if the application for review had been made under section *64.
- (3) Without limiting section *41, the conditions of the converted licence are taken (until they are varied under this Act) to include the same conditions to which the existing licence was subject, except to the extent that any of those conditions are inconsistent with this Act, the regulations or conditions that are imposed by or under this Act.
- (4) The condition imposed by section *83 on residential centre licences in its application to a converted licence applies subject to the following additional requirements:
 - (a) the licensee is to provide the Director-General with a criminal record check in relation to the licensee within 6 months after the repeal day if the licensee had been a licensee under the YSC Act since before 1995,

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Boarding Houses Bill 2012

Savings, transitional and other provisions

Schedule 1

- (b) the licensee is also to ensure that a criminal record check is conducted for each person who is a staff member on the repeal day within 6 months after the repeal day.
- (5) For the purposes of deciding whether to suspend or cancel a converted licence, the Director-General may treat a contravention of the YCS Act, the regulations under that Act or a condition of the existing licence occurring before the repeal day as if it were a contravention of this Act, the regulations under this Act or a condition of the converted licence (as the case requires).

6 Conversion of existing permits

- (1) On and from the repeal day, a permit that was in force under the YCS Act immediately before that day with respect to a residential centre for handicapped persons (an *existing permit*) is taken to be an interim permit granted for the same premises, period and permit holder (a *converted permit*), and may be varied, surrendered and revoked under this Act accordingly.
- (2) Without limiting section *41, the conditions of the converted permit are taken (until they are varied under this Act) to include the same conditions to which the existing permit was subject, except to the extent that any of those conditions are inconsistent with this Act, the regulations or conditions that are imposed by or under this Act.
- (3) For the purposes of deciding whether to revoke a converted permit, the Director-General may treat a contravention of the YCS Act, the regulations under that Act or a condition of the existing permit occurring before the repeal day as if it were a contravention of this Act, the regulations under this Act or a condition of the converted permit (as the case requires).

7 Proceedings with respect to cancelled former licences

- (1) If proceedings are commenced (but not finally determined) before the repeal day for the review of the revocation of a licence under the YCS Act (a *former licence*), the proceedings may be dealt with and determined as if the YCS Act and the regulations under that Act had not been repealed.
- (2) If the determination of the Administrative Decisions Tribunal or court in any such proceedings (once they are finally determined) is that the former licence should not have been revoked, the Director-General is required to issue the former licensee with a residential centre licence with respect to the premises concerned.

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Schedule 1 Savings, transitional and other provisions

- (3) Nothing in this clause prevents the Director-General from subsequently varying, suspending or cancelling a residential centre licence that the Director-General is required to issue under this clause.

8 Approval of existing licensed managers

- (1) This clause applies to the following persons (an *existing manager*):
- (a) a person who was the licensed manager of licensed premises under the YCS Act immediately before the repeal day,
 - (b) a person who was authorised under section 20 of the YCS Act immediately before the repeal day to have the conduct of a residential centre for handicapped persons during the absence of the person authorised by a licence or permit under that Act to have that conduct.
- (2) On and from the repeal day, an existing manager is taken to have been granted a manager approval for the premises concerned, and the approval may be varied, suspended or revoked under this Act accordingly.
- (3) The approval is taken to have been granted for the period of 6 months commencing on the repeal day, unless sooner suspended or revoked.
- (4) Without limiting section *61, the conditions of the approval are taken (until they are varied under this Act) to include the same conditions to which the existing manager's authorisation under the YCS Act was subject, except to the extent that any of those conditions are inconsistent with this Act, the regulations or conditions that are imposed by or under this Act.

9 Allocation of proceedings in the Administrative Decisions Tribunal

Any functions under the YCS Act to be exercised by the Administrative Decisions Tribunal (whether by reason of the operation of this Part or otherwise) on or after the repeal day continue to be allocated to the Community Services Division of the Tribunal under the *Administrative Decisions Tribunal Act 1997* despite the amendment made to Schedule 2 to that Act by this Act.

10 Effect of this Part on premises that are not residential centres

Nothing in this Part operates to convert a licence, permit or other authorisation granted or issued under the YCS Act in respect of premises if those premises are not a residential centre for vulnerable persons within the meaning of this Act.

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Boarding Houses Bill 2012

Amendment of legislation

Schedule 2

Schedule 2 Amendment of legislation

2.1 Administrative Decisions Tribunal Act 1997 No 76

Schedule 2 Composition and functions of Divisions

Omit “*Youth and Community Services Act 1973*” from clause 2 of Part 1.

Insert in alphabetical order of Acts:

Boarding Houses Act 2012

2.2 Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

[1] Section 4 Definitions

Omit paragraph (h) of the definition of *community welfare legislation* in section 4 (1).

[2] Section 4 (1), definition of “community welfare legislation”

Insert after paragraph (i):

and includes the provisions of the *Boarding Houses Act 2012* and the regulations under that Act that are administered by the Minister.

[3] Section 4 (1), definition of “residential centre for handicapped persons”

Omit the definition. Insert instead:

residential centre for vulnerable persons has the same meaning as it has in the *Boarding Houses Act 2012*.

[4] Sections 4 (1) (definition of “service provider”), 8 (6) (definition of visitable service”) and 35 (1) (f)

Omit “residential centre for handicapped persons” wherever occurring.

Insert instead “residential centre for vulnerable persons”.

[5] Section 35 (2)

Insert in alphabetical order:

residential centre for vulnerable persons includes premises that were a residential centre for handicapped persons (within the meaning of this Act before it was amended by the *Boarding Houses Act 2012*) at the time of the death concerned.

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Boarding Houses Bill 2012

Schedule 2 Amendment of legislation

2.3 Community Welfare Act 1987 No 52

Section 5 Delegation

Insert after section 5 (3):

- (4) However, a reference to community welfare legislation in this section does not include a reference to the *Boarding Houses Act 2012* even if it is wholly or partly administered by the Minister.

2.4 Coroners Act 2009 No 41

[1] Section 24 Jurisdiction concerning deaths of children and vulnerable persons

Omit “disabled persons” from section 24 (1) (e).

Insert instead “vulnerable persons”.

[2] Section 24 (3)

Omit the definition of *residential centre for disabled persons*.

Insert instead:

residential centre for vulnerable persons has the same meaning as it has in the *Boarding Houses Act 2012*, and includes:

- (a) premises that would be a residential centre for vulnerable persons within the meaning of that Act but for an exemption for the premises granted under section *38 of, or given by the regulations under, that Act, and
- (b) premises that were a residential centre for disabled persons (within the meaning of this section before it was amended by that Act) at the time of the death concerned.

2.5 Local Government (General) Regulation 2005

Clause 83

Omit the clause. Insert instead:

83 Relevant standards for certain places of shared accommodation

- (1) This clause applies to the following kinds of places of shared accommodation:
 - (a) places of shared accommodation that are class 3 buildings under the *Building Code of Australia* (within the meaning of the *Environmental Planning and Assessment Act 1979*),

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Amendment of legislation

Schedule 2

- (b) places of shared accommodation that are registrable boarding houses within the meaning of the *Boarding Houses Act 2012*.
- (2) For the purposes of Order No 5 (d) in its operation as to places of shared accommodation to which this clause applies, the standards for places of shared accommodation set out in Part 1 of Schedule 2 are relevant standards referred to in Columns 1 and 2 of the Table to section 124 of the Act.

Note. An Order can be made requiring compliance with these standards if they are not being complied with.