

# Boarding Houses Act 2012 No 74

[2012-74]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
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### Authorisation

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# Boarding Houses Act 2012 No 74



New South Wales

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# Boarding Houses Act 2012 No 74



New South Wales

An Act to provide for the registration and regulation of certain boarding houses and the licensing and regulation of assisted boarding houses.

## Part 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, and for the promotion and protection of the wellbeing of such residents, 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 assisted boarding houses and their staff (including providing for service and accommodation standards at such boarding houses), 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 Secretary,
- (c) the Commissioner.

**assisted boarding house**—see section 37.

**boarding premises** means premises (or a complex of premises) that:

- (a) are wholly or partly a boarding house, rooming or common lodgings house, hostel or let in lodgings, and
- (b) provide boarders or lodgers with a principal place of residence, and
- (c) may have shared facilities (such as a communal living room, bathroom, kitchen or laundry) or services that are provided to boarders or lodgers by or on behalf of the proprietor, or both, and
- (d) have rooms (some or all of which may have private kitchen and bathroom facilities) that accommodate one or more boarders or lodgers.

**Commissioner** means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Finance, Services and Innovation.

**council** means a council within the meaning of the [Local Government Act 1993](#).

**enforcement officer** means a person appointed as an enforcement officer under section 66.

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

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

**Government Department** means a Public Service agency within the meaning of the [Government Sector Employment Act 2013](#).

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

**person with additional needs**—see section 36.

**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.

**regulated assisted boarding house**—see section 5 (1) (b).

**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 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](#).

**Secretary** means the Secretary of the Department of Family and Community Services.

- (2) A reference in this Act to a regulation made for a Part is a reference to a regulation that is made for the purposes of a provision of that Part.
- (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 any of the following:
  - (a) a general boarding house,
  - (b) an assisted boarding house that is required to be authorised under Part 4 for it to be lawfully used as such under that Part (a **regulated assisted boarding house**).
- (2) Boarding premises are a **general 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 **general boarding house** does not include any of the following:
  - (a) a regulated assisted boarding house,
  - (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 to provide accommodation for workers or employees in connection with their work or employment,
  - (f) 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,
  - (g) a private health facility licensed under the [Private Health Facilities Act 2007](#),
  - (h) a nursing home within the meaning of the [Public Health Act 2010](#),
  - (i) a mental health facility within the meaning of the [Mental Health Act 2007](#),
  - (j) a public hospital within the meaning of the [Health Services Act 1997](#),
  - (k) a residential care facility under the [Aged Care Act 1997](#) of the Commonwealth operated by an approved provider under that Act,
  - (l) a retirement village under the [Retirement Villages Act 1999](#),
  - (m) premises that are the subject of a site agreement to which the [Residential \(Land](#)

*Lease) Communities Act 2013* applies,

- (n) premises that are the subject of an occupation agreement to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies,
- (o) social housing premises within the meaning of Part 7 of the *Residential Tenancies Act 2010*,
- (p) premises used for refuge or crisis accommodation, or accommodation for persons with additional needs, that is provided by a public authority, council or any other body or organisation and that is wholly or partly funded by the Commonwealth or the State (or an agency of the Commonwealth or the State),
- (p1) without limiting paragraph (p), premises used for accommodation that is provided by a registered provider of specialist disability accommodation for the purposes of the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
- (q) 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.

## Part 2 Registration of boarding houses

### Division 1 Introductory

#### 7 Interpretation

- (1) In this Part:

***initial compliance investigation***—see section 16 (3).

***Register*** means the Register of Boarding Houses kept by the Commissioner under this Part.

- (2) Any notification given to the Commissioner under this Part is to be in the form approved by the Commissioner from time to time.
- (3) Any matter approved (or any revocation or amendment of an approved matter) by the Commissioner for the purposes of a provision of this Part that authorises the

Commissioner to approve the matter does not have effect until it is published on the website of the Department of Finance, Services and Innovation.

## **8 Meaning of “registered”**

A registrable boarding house is **registered** for the purposes of this Part if the particulars of the boarding house are currently included in the Register.

## **Division 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 the residential or business address, of each proprietor of the boarding house,
  - (b) the name (if any) and the address of the registrable boarding house,
  - (c) whether the boarding house is a general or regulated assisted boarding house,
  - (d) whether development consent or approval is required under the *Environmental Planning and Assessment Act 1979* to use the boarding house as boarding premises and, if so, whether such consent or approval has been granted,
  - (e) the number of residents of the registrable boarding house,
  - (f) the number of residents who are under 18 years of age,
  - (g) the name of the manager (if any) of the registrable boarding house,
  - (h) the total number of bedrooms provided as sleeping accommodation for the residents,
  - (i) such other particulars as may be approved by the Commissioner or prescribed by the regulations.
- (2) A proprietor of boarding premises to which subsection (1) applies must notify the Commissioner of the particulars referred to in that subsection:
  - (a) if the boarding premises are a registrable boarding house on the commencement of this section (but subject to paragraph (c))—within 6 months after that commencement, or
  - (b) if the boarding premises become a registrable boarding house after the commencement of this section—within 28 days after the premises become a

registrable boarding house, or

(c) if the proprietor has become a new proprietor of the premises after the commencement of this section—within 28 days after the person becomes a proprietor of the premises.

- (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, or refund such a 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.

## **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 the changes (if any) 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 the period of 12 months commencing on the date that particulars were last provided to the Commissioner for the purposes of a notification under section 9 or the last anniversary of that date (whichever is the later).
- (3) Nothing in this section prevents any condition from being imposed on a boarding house authorisation (within the meaning of Part 4) that requires the furnishing of particulars to the Commissioner for the purposes of this Part 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.

## **Division 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.
- (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 Part and Part 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 Part 4 in the case of a regulated assisted 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) the name, and the residential or business address, of each proprietor of the

boarding house,

(c) whether the boarding house is a general or regulated assisted boarding house,

(d) 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 94 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 employee of the Department of Finance, Services and Innovation authorised in writing by the Commissioner, and stating:

(a) that the 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 general or regulated assisted 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.

**Division 4 Initial compliance investigations for registered boarding houses**

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

(1) For the purposes of this Division, a **registered boarding house** is a registrable boarding house that is registered.

(2) A council is to arrange for an initial compliance investigation to be conducted under this Division for each registered boarding house located in its area:

(a) if the house has not previously 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 a proprietor of the house has changed since it was registered or re-registered—within the period of 12 months after the new proprietor's name is recorded in the Register.

(3) 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 boarding 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*.

(4) 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 Division at any time in the period of 12 months immediately before the date on which the boarding house was registered or re-registered or a new 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 Division 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 Division does so, the council must give the proprietor or manager of the premises written notice of the intention to enter the premises.
- (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 to the premises 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 Division, 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 Division 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 Division, 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.
- (3) If, in the exercise of a function under this Division, 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 fee for initial compliance investigation**

A council may charge and recover an approved fee under section 608 (Council fees for services) of the [Local Government Act 1993](#) for the conduct of an initial compliance investigation.

## **24 Compensation**

- (1) A council must pay compensation for any damage caused by any person authorised by the council under this Division 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 Division 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 of the council.
- (3) This section does not apply to a power conferred by a search warrant.

## 26 Relationship with other Acts

Nothing in this Division limits the exercise of powers or other functions by councils under the [Local Government Act 1993](#) or any other Act.

# Part 3 Occupancy agreements and principles for registrable boarding houses

## Division 1 Introductory

### 27 Interpretation

- (1) In this Part and Schedule 1:

**authorised representative**, in relation to a resident or former resident of a registrable boarding house, means a person who is an authorised representative (within the meaning of the [Health Records and Information Privacy Act 2002](#)) of the resident or former resident.

**occupancy agreement**, in relation to a registrable boarding house, means a written or unwritten agreement:

- (a) that is between a proprietor of the boarding house (or a person acting on behalf of the proprietor) and a resident of the house (or a person acting as an authorised representative of the resident), and

(b) under which the resident is granted the right to occupy, for a fee or reward, one or more rooms in the boarding house as a resident of the house,

but does not include a rental agreement between a proprietor and resident of a registrable boarding house (or any persons acting on their behalf).

**occupancy fee** means an amount payable by or for a resident of a registrable boarding house for the right to occupy one or more rooms in the boarding house as a resident of the house during the term of an occupancy agreement.

**occupancy principles**—see section 30.

**rental agreement** means:

(a) a residential tenancy agreement within the meaning of the *Residential Tenancies Act 2010*, or

(b) a lease to which the *Landlord and Tenant (Amendment) Act 1948* applies.

(2) Any matter approved (or any revocation or amendment of an approved matter) by the Commissioner for the purposes of a provision of this Part that authorises the Commissioner to approve the matter does not have effect until it is published on the website of the Department of Finance, Services and Innovation.

(3) The provisions of this Part are in addition to, and do not derogate from, the provisions of Part 4 in their application to authorised boarding houses within the meaning of that Part.

**Note—**

Part 4 provides for the authorisation (including licensing) of assisted boarding houses. There are additional requirements (including by way of licence conditions) concerning service and accommodation standards for residents of such boarding houses that must be complied with.

(4) Nothing in this Part prevents a contravention of an occupancy principle, to the extent that is included (or taken to be included) in an occupancy agreement, from being enforced as a breach of that agreement.

## Division 2 Occupancy agreements

### 28 Proprietor's obligation to ensure written occupancy agreement

- (1) The proprietor under an occupancy agreement must ensure that the agreement is in writing:
- (a) in relation to agreements entered into after the commencement of this section—at the commencement of the agreement, and
  - (b) in relation to agreements entered into before the commencement of this section—within the period of 3 months after the commencement of this section.

(2) Nothing in this section:

- (a) imposes any obligation on a resident of a registrable boarding house to prepare a written occupancy agreement, or
- (b) affects the enforceability of an occupancy agreement that is not in writing or is only partly in writing.

**Note—**

The Civil and Administrative Tribunal may, however, order a proprietor to enter into a written occupancy agreement on the application of a resident. See section 33.

**29 Standard forms of occupancy agreement**

- (1) The Commissioner may, by order published in the Gazette, approve a standard form of occupancy agreement.
- (2) Without limiting subsection (1), an order under that subsection may provide for the following:
  - (a) the terms of the agreement,
  - (b) more than one standard form of occupancy agreement for use for different classes of registrable boarding houses, agreements or parties,
  - (c) the addition of clauses to, or the omission or variation of terms contained in, a standard form of occupancy agreement in specified circumstances,
  - (d) the application of terms of standard forms of occupancy agreement to agreements entered into before the order approving those standard forms took effect.
- (3) 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.
- (4) Unless the regulations provide otherwise, the use of a standard form of occupancy agreement is not mandatory and, accordingly, a failure to use the standard form of agreement does not of itself affect the validity or enforceability of an occupancy agreement.
- (5) An occupancy agreement that is in or to the effect of the applicable standard form of occupancy agreement for the class of registrable boarding house, parties or agreement concerned is taken to give effect to the occupancy principles in the manner required by or under this Part.
- (6) The regulations may make provision for or with respect to requiring the use of a standard form of occupancy agreement and the enforceability of agreements that are not in the standard form.

## Division 3 Occupancy principles

### 30 Occupancy principles

- (1) The **occupancy principles** in relation to registrable boarding houses are the principles set out in Schedule 1.
- (2) The occupancy principles apply for the purposes of this Division only in relation to residents of registrable boarding houses under occupancy agreements.

**Note—**

The definition of **occupancy agreement** in section 27 (1) excludes any rental agreement between a proprietor and resident of a registrable boarding house (or any persons acting on their behalf). Accordingly, the occupancy principles do not apply in relation to a person who is entitled to reside in a registrable boarding house under a rental agreement.

- (3) The regulations may make provision for or with respect to:
  - (a) what constitutes, or what does not constitute, compliance with the occupancy principles for the purposes of this Part, and
  - (b) the issuing of guidelines for that purpose.

### 31 Application of occupancy principles

- (1) The occupancy principles apply as follows in relation to a registrable boarding house:
  - (a) a resident must be provided with accommodation in compliance with the occupancy principles,
  - (b) a resident must be given the notices, receipts or other information required by the occupancy principles,
  - (c) any notice, receipt or other information to be given to a resident under the occupancy principles must also be given to the authorised representative of the resident if the resident is a person with additional needs who has an authorised representative,
  - (d) the proprietor must exercise the proprietor's rights or powers under the occupancy agreement (including in relation to the collection, payment, retention and repayment of money) subject to any requirements of the occupancy principles.
- (2) If the application of a provision of the occupancy principles is altered by reason of regulations made for the purposes of the provision, the provision as altered has effect for the purposes of this section only on and from the time that the regulations commence.
- (3) This section is taken to be a term of every occupancy agreement (whether entered

into before or after the commencement of this section), but only on and from the day that is 3 months after the commencement of this section.

- (4) Any term of an occupancy agreement or another agreement is void to the extent to which it is inconsistent with the provisions of this section.

## Division 4 Enforcement

### 32 Applications to Civil and Administrative Tribunal for dispute resolution

- (1) A relevant party may apply to the Civil and Administrative Tribunal for the resolution of an occupancy principles dispute.
- (2) A **relevant party** is:
- (a) a resident or former resident of a registrable boarding house (or an authorised representative of the resident or former resident), or
  - (b) a proprietor or former 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 or former resident of a registrable boarding house.
- (4) The Tribunal may, on application under this section, make one or more of the following orders:
- (a) an order that restrains any action in contravention of the occupancy principles,
  - (b) an order that requires an action in performance of the occupancy principles,
  - (c) an order for the payment of an amount of money (including an order for the refund or repayment of some or all of an amount paid as an occupancy fee or security deposit),
  - (d) an order as to compensation,
  - (e) an order that a party to the occupancy agreement perform such work or take such other steps as the order specifies to remedy a contravention of the occupancy principles,
  - (f) an order that requires payment of part or all of an occupancy fee to the Tribunal until the whole or part of the occupancy agreement has been performed or any application for compensation has been determined,
  - (g) an order that requires an occupancy fee paid to the Tribunal to be paid towards the cost of remedying a contravention of the occupancy principles or towards the amount of any compensation,



- (h) an order directing a proprietor, proprietor's agent or resident to comply with a requirement of this Part,
  - (i) an order directing a proprietor or proprietor's agent to give a former resident or person authorised by a former resident access to a registrable boarding house for the purpose of recovering goods of the former resident or fixtures that the former resident is entitled to remove.
- (5) The Tribunal must not make an order for:
- (a) the payment of an amount that exceeds the amount (if any) prescribed by the regulations for the purposes of this section, or
  - (b) the performance of work or the taking of steps the cost of which is likely to or will exceed the amount (if any) prescribed by the regulations for the purposes of this section.
- (6) A reference in this section to the occupancy principles is a reference to those principles as they apply under this Part in relation to residents of registrable boarding houses under occupancy agreements.

### **33 Order for written occupancy agreement**

- (1) A resident of a registrable boarding house may apply to the Civil and Administrative Tribunal for an order that the proprietor of the boarding house prepare and enter into a written occupancy agreement with the resident.
- (2) The order may:
  - (a) specify the terms of the agreement, and
  - (b) specify a commencement date for the agreement that occurred before the order was made.
- (3) The Tribunal may make an order under this section only if it is satisfied that the proprietor and resident are subject to an existing occupancy agreement that is not in writing or is only partly in writing.

## **Part 4 Assisted boarding houses**

### **Division 1 Introductory**

#### **34 Objects of Part**

- (1) The objects of this Part are:
  - (a) to ensure that persons with additional needs 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 Part aims to achieve these objects by creating a licensing and regulatory scheme for boarding premises that operate as assisted boarding houses.
- (3) A court or tribunal that, or person who, exercises any power conferred by or under this Part in relation to assisted boarding houses 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.

### **35 Definitions** (cf YCS Act, s 3)

- (1) In this Part:

**application probity check**—see section 45.

**approved** means approved by the Secretary from time to time.

**approved manager** means a person who has been granted a manager approval with respect to an assisted boarding house.

**authorised boarding house** means an assisted boarding house with respect to which a boarding house authorisation is in force.

**authorised operator** of an authorised boarding house means:

- (a) if the boarding house is a licensed boarding house—the licensee, and
- (b) if an interim permit is in force with respect to the boarding house—the interim permit holder.

**boarding house authorisation** means a boarding house licence or interim permit.

**boarding house licence**—see Subdivision 2 of Division 2.

**close associate**—see section 38.

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

- (a) 18 years old or older, and
- (b) not a person with additional needs.

**compliance notice**—see section 79.

**interim permit**—see section 54.

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

**licensed boarding house** means the premises to which a boarding house licence relates.

**licensee** means the holder of a boarding house licence.

**manager approval**—see section 60.

**relevant operator** of premises means any of the following:

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

**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 an assisted boarding house means a person who:

- (a) is 16 years old or older, and
- (b) provides, or is reasonably expected to provide, care or support services to residents of the boarding house (whether as an employee, contractor or volunteer) under the control or direction of the authorised operator or approved manager, and
- (c) has, or is reasonably likely to have, access to residents in need of such care or services,

and includes the approved manager of the boarding house or any resident providing, or reasonably expected to provide, such care or other services to other residents (whether in exchange for accommodation or otherwise).

**unauthorised boarding house** means an assisted boarding house for which there is no boarding house 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 Secretary for the purposes of a provision of this Part (other than Subdivision 4 of Division 2) that authorises the Secretary to approve the matter does not have effect until it is published on the website of the Department of Family and Community Services.

### 36 Meaning of “person with additional needs”

- (1) For the purposes of this Act, a person is a **person with additional needs** if:
- (a) the person has any one or more of the following conditions:
    - (i) an age related frailty,
    - (ii) a mental illness within the meaning of the *Mental Health Act 2007*,
    - (iii) a disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments, and
  - (b) the condition is permanent or likely to be permanent, and
  - (c) the condition results in the need for care or support services (whether or not of an ongoing nature) involving assistance with, or supervision of, daily tasks and personal care such as (but not limited to) showering or bathing, the preparation of meals and the management of medication.
- (2) The regulations may make provision for or with respect to matters and circumstances that may be used to establish or as evidence that an individual is a person with additional needs.

### 37 Meaning of “an assisted boarding house” (cf YCS Act, s 3)

- (1) For the purposes of this Act, **an assisted boarding house** 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 persons with additional needs (not counting any persons with additional needs who reside there with their competent relatives),
  - (b) boarding premises that are declared to be an assisted boarding house by a notice in force under section 39.
- (2) However, an **assisted boarding house** does not include any of the following:
- (a) premises that are used as a hotel, motel or bed and breakfast accommodation,

- (b) premises that are used as a backpackers hostel,
- (c) 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),
- (d) premises that are used to provide accommodation for workers or employees in connection with their work or employment,
- (e) 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,
- (f) a private health facility licensed under the *Private Health Facilities Act 2007*,
- (g) a nursing home within the meaning of the *Public Health Act 2010*,
- (h) a mental health facility within the meaning of the *Mental Health Act 2007*,
- (i) a public hospital within the meaning of the *Health Services Act 1997*,
- (j) a residential care facility under the *Aged Care Act 1997* of the Commonwealth operated by an approved provider under that Act,
- (k) a retirement village under the *Retirement Villages Act 1999*,
- (l) premises that are the subject of a residential tenancy agreement to which the *Residential Parks Act 1998* applies,
- (m) premises that are the subject of an occupation agreement to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies,
- (n) social housing premises within the meaning of Part 7 of the *Residential Tenancies Act 2010*,
- (o) premises used for refuge or crisis accommodation, or accommodation for persons with additional needs, that is provided by a public authority, council or any other body or organisation and that is wholly or partly funded by the Commonwealth or the State (or an agency of the Commonwealth or the State),
- (o1) without limiting paragraph (o), premises used for accommodation that is provided by a registered provider of specialist disability accommodation for the purposes of the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
- (p) premises or a part of premises that are exempted from the operation of this Part by an exemption notice in force under section 40,
- (q) premises (or premises of a kind) prescribed by the regulations.

### 38 Meaning of “close associate”

- (1) For the purposes of this Part, a person is a **close associate** of an applicant for an authorisation, approval or exemption under this Part 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, approval or exemption, and by virtue of that interest or power is or will be able (in the opinion of the Secretary) 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, approval or exemption.
- (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.

**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.

**39 Declaration of assisted boarding houses** (cf YCS Act, s 3A (1))

- (1) The Secretary may, by notice served on the relevant operator of boarding premises, declare those premises to be an assisted boarding house if the Secretary is satisfied that:
  - (a) the premises provide beds for use by 2 or more residents who are persons with additional needs (not counting any persons with additional needs who reside there with their competent relatives), and
  - (b) the premises are not excluded from the definition of **assisted boarding house** by section 37 (2), and
  - (c) the making of the declaration is necessary to ensure the wellbeing of the residents of the premises.
- (2) The Secretary may declare boarding premises to be an assisted boarding house under this section even though some or all of the residents are being provided with beds without fee or reward.

**40 Secretary may exempt premises and persons** (cf YCS Act, ss 3B and 23)

- (1) The Secretary 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 Part (including the regulations for this Part), or
    - (ii) specified provisions of this Part or the regulations for this Part,
  - (b) an exemption for a specified person from the operation of:
    - (i) specified provisions of this Part or the regulations for this Part, or
    - (ii) a condition of a boarding house 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:
- (a) may be given unconditionally or subject to such terms and conditions as may be specified in the exemption notice, and
  - (b) must specify a period for its duration (being a period not exceeding 12 months).
- (4) Without limiting subsection (3) (a), 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 persons with additional needs residing at the premises (including, but not limited to, standards of the kind referred to in section 43 (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 boarding houses under this or any other Act),
  - (c) any other conditions that are or may be imposed by or under this Act on a boarding house authorisation for an authorised boarding house.
- (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 Secretary intends to revoke an exemption granted under subsection (1) (b), the Secretary 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 Secretary intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Secretary'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 Secretary may, after considering any submissions made to the Secretary 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 Subdivision 1 of Division 2 (whether under this section or by or under the regulations for this Part), the premises are taken not to be a regulated assisted boarding house for the purposes of this Act.

**Note—**

The premises may nevertheless be a general boarding house.



## **Division 2 Authorisation of assisted boarding houses**

### **Subdivision 1 Requirement for assisted boarding houses to be authorised**

#### **41 Assisted boarding houses 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 an assisted boarding house unless the premises are used in accordance with the authority conferred by a boarding house authorisation for the premises.

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.
- (2) A person must not act as the manager of boarding premises that are being used as an assisted boarding house unless the person is an individual who is:
    - (a) an authorised operator of the boarding house, or
    - (b) an approved manager of the boarding house appointed by the authorised operator of the boarding house.

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 an assisted boarding house otherwise than in accordance with the authority conferred by a boarding house authorisation.

#### **42 Authority granted by boarding house 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 boarding house licence,
  - (b) an interim permit.

- (2) A boarding house licence authorises the licensee to use the premises specified in the licence as an assisted boarding house 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 an assisted boarding house in accordance with this Act and the conditions of the permit.
- (4) The authorisation conferred by a boarding house authorisation is subject to this Act and the regulations.

#### **43 Authorisation conditions—general provisions**

- (1) A boarding house 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 Secretary under this Act.
- (2) The Secretary may impose conditions on a boarding house 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 Secretary may impose or vary conditions on a boarding house authorisation for such reasons, and in such circumstances, as the Secretary considers appropriate or necessary.
- (4) Without limiting subsections (1) and (3), the conditions prescribed by the regulations or imposed by the Secretary 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 an assisted boarding house must not contravene a condition of the boarding house authorisation for the boarding house.

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.

## **Subdivision 2 Boarding house licences**

### **44 Licence applications** (cf YCS Act, s 11 (1))

- (1) An application for a boarding house licence is to be made to the Secretary.
- (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 an assisted boarding house.
- (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.

#### **Note—**

Section 60 (3) provides that 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 boarding house licence.

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

- (1) If the Secretary receives an application for a boarding house licence, the Secretary may carry out such investigations and inquiries in relation to the application as the Secretary considers necessary for a proper consideration of the application.
- (2) Without limiting subsection (1), the Secretary 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, a proposed approved manager and any proposed staff members of the proposed licensed boarding house,

- (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 Secretary,
  - (e) a check of the financial capacity of the applicant and the applicant's close associates to operate the proposed assisted boarding house,
  - (f) such other checks as may be prescribed by the regulations.
- (3) The Secretary may require an applicant to conduct any of the application probity checks and provide the results of those checks to the Secretary 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 Secretary may require the person concerned to provide the Secretary 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 Secretary may refuse to determine an application for a licence if a requirement made by the Secretary under this section is not complied with.

**46 Decision of Secretary in relation to licence application** (cf YCS Act, s 12)

- (1) The Secretary may, after considering an application for a boarding house 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 Secretary may refuse to grant a boarding house licence if the Secretary is of the opinion that:
- (a) a person proposed as the licensee, an 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 an assisted boarding house, or
  - (b) the applicant does not have (or is unlikely to have) the financial capacity to operate the proposed licensed boarding house.
- (3) The Secretary must refuse to grant a boarding house licence if the Secretary 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) an individual proposed as the approved manager,
  - (c) a proposed staff member,
  - (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 Secretary.
- (4) The regulations may also specify mandatory or discretionary grounds for refusing the granting of a licence.
- (5) As soon as practicable after the Secretary determines an application, the Secretary 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.

**47 Variation of licence** (cf YCS Act, s 17)

- (1) The Secretary may, by notice served on the licensee, vary a boarding house licence (including any conditions of the licence imposed by the Secretary).
- (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.

**48 Appointment of substitute licensee**

- (1) The Secretary may, on the Secretary's own initiative or on the application of the licensee or person concerned, vary a boarding house 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 an assisted boarding house 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.

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

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

(1) The Secretary may, by notice served on the licensee, suspend or cancel a boarding house licence:

(a) if the Secretary 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 boarding house, or

(b) if the Secretary is of the opinion that the continued use of the assisted boarding house under the licence would constitute an unacceptable risk to the safety, welfare or wellbeing of any person with additional needs or other persons residing at the premises, or

(c) if the Secretary 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 Secretary 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 Secretary 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 Secretary within 28 days after the licence is cancelled.

Maximum penalty (subsection (4)): 20 penalty units.

**50 Surrender of licence**

(1) A licensee may, by notice in the approved form given to the Secretary and accompanied by the boarding house licence, voluntarily surrender the licence.

- (2) If a licensed boarding house ceases to be used as (or to be) an assisted boarding house, the licensee must surrender the boarding house licence to the Secretary within 28 days after the cessation.

Maximum penalty: 20 penalty units.

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

**Note—**

An interim permit may be granted in relation to a licensed boarding house if its licence is surrendered so as to enable it to continue to function on a short term basis. See section 54 (3) (c).

### **51 Duration of licence**

- (1) A boarding house licence may be granted for a fixed term or for no fixed term.
- (2) If a boarding house 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 boarding house 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 boarding house 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 boarding house licence dies, the licence is taken to be suspended for the period of 28 days after the death or such further period as the Secretary may allow.

**Note—**

See section 48 concerning the variation of a licence to substitute a new licensee and section 54 concerning the issuing of interim permits.

### **52 Form of licence** (cf YCS Act, s 13)

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

### **53 Display of licence** (cf YCS Act, s 21 (5))

The licensee of a licensed boarding house must ensure that a copy of the boarding house

licence is displayed in a conspicuous position at the boarding house.

Maximum penalty:

- (a) in the case of a corporation—10 penalty units, and
- (b) in any other case—5 penalty units.

### **Subdivision 3 Interim permits**

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

- (1) The Secretary may, on the Secretary'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 an assisted boarding house 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 boarding house licence for the premises concerned pending the final determination by the Secretary as to whether the licence should be granted,
  - (b) to a person seeking appointment by the Secretary as the replacement licensee under a boarding house licence for the premises concerned where the licence was suspended because of the death of the previous licensee, pending the final determination by the Secretary as to whether the person should be so appointed,
  - (c) to a person (including a former licensee) that the Secretary considers suitable so as to enable the premises concerned to continue to be used as an assisted boarding house despite the surrender, suspension or cancellation of the boarding house licence for the premises,
  - (d) to a person that the Secretary considers suitable to enable an assisted boarding house to continue to be operated during the absence of the licensee for the boarding house (whether because of illness or otherwise),
  - (e) to a person in such other circumstances as may be prescribed by the regulations.
- (4) If a boarding house licence for an assisted boarding house is in force when an interim permit is granted for the boarding house, the licence is taken to be suspended while the interim permit remains in force for the boarding house.
- (5) As soon as practicable after the Secretary determines an application, the Secretary 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.



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

**55 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 boarding house licence or an applicant seeking appointment by the Secretary as the replacement licensee under a boarding house licence for the premises concerned—3 months, or
- (b) in any other case—6 months.

(3) The Secretary 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 (2) (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.

**56 Variation of interim permit**

(1) The Secretary may, by notice served on the interim permit holder, vary an interim permit (including any conditions of the permit imposed by the Secretary).

(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.

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

(1) The Secretary may, by notice served on the interim permit holder, revoke an interim permit:

- (a) if the Secretary is of the opinion that a condition of the permit has been contravened, or
- (b) on any other ground that the Secretary considers sufficient.

(2) The notice served on the interim permit holder must state the reasons why the permit is being revoked.

(3) An interim permit holder whose interim permit is revoked must surrender the permit to the Secretary 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.

#### **58 Surrender of interim permit**

- (1) An interim permit holder may, by notice in the approved form given to the Secretary 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) an assisted boarding house, the interim permit holder must surrender the interim permit to the Secretary within 28 days after the cessation.

Maximum penalty: 20 penalty units.

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

### **Subdivision 4 Approval of managers of assisted boarding houses**

#### **59 Assisted boarding house to be managed by approved manager in certain cases**

- (1) It is a condition of a boarding house 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 assisted boarding house 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 boarding house.
- (2) The person appointed must be a person authorised by his or her manager approval to act as the manager of the assisted boarding house.

#### **60 Manager approvals** (cf YCS Act, s 14 (1))

- (1) The Secretary 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 assisted boarding house.
- (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 boarding house authorisation.

(4) A manager approval is to be in the approved form.

**61 Decision of Secretary in relation to applications for manager approval** (cf YCS Act, s 14 (2))

- (1) The Secretary 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 Secretary may refuse to grant a manager approval:
  - (a) if the Secretary is of the opinion that the applicant is not a suitable person to be involved in the management of an assisted boarding house, or
  - (b) on any other grounds prescribed by the regulations.
- (3) As soon as practicable after the Secretary determines an application, the Secretary 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.

**62 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.
- (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 Secretary 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 Secretary.

**63 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 Secretary under this Act.
- (2) The Secretary 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 Secretary may impose or vary conditions on an approval for such reasons, and in such circumstances, as the Secretary 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.

#### **64 Variation of approval**

- (1) The Secretary may, by notice served on the approved manager, vary a manager approval (including any conditions of the approval imposed by the Secretary).
- (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.

#### **65 Suspension or revocation of approval**

- (1) The Secretary may, by notice served on the approved manager, suspend or revoke a manager approval:
- (a) if the Secretary is of the opinion that the approved manager is no longer a suitable person to be involved in the management of an assisted boarding house, or
  - (b) if the Secretary is of the opinion that the approved manager has contravened any provision of this Act or the regulations (whether or not the approved manager has been convicted of an offence for the contravention), or
  - (c) if the Secretary is of the opinion that a condition of the manager approval has been contravened, or
  - (d) on any other grounds prescribed by 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 approval is suspended (being a period of no more than 6 months).
- (3) The Secretary 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 Secretary within 28 days after the approval is revoked.

Maximum penalty (subsection (4)): 20 penalty units.

## **Division 3 Compliance and enforcement**

### **Subdivision 1 Enforcement officers**

#### **66 Appointment of enforcement officers** (cf YCS Act, s 25 (1))

- (1) The Secretary may appoint persons as enforcement officers for the purposes of this Part.
- (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.

#### **67 Identification card**

- (1) The Secretary 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 Secretary 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.

#### **68 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 Part, or
  - (b) fail to comply with any requirement made by an enforcement officer under this Part.

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 Subdivision.
  - (3) A person is not guilty of an offence of failing to comply with a requirement made by an enforcement officer under this Part unless the person was warned on that occasion that a failure to comply with the requirement may constitute an offence.

## Subdivision 2 Investigation powers

### 69 Definition—person involved in management of authorised boarding house

In this Subdivision, a ***person involved in the management of an authorised boarding house*** means:

- (a) a person who is (or was formerly) an authorised operator of the boarding house, or
- (b) a person who is (or was formerly) an approved manager of the boarding house, 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 boarding house, or
- (d) if the authorised operator (or former authorised operator) of the boarding house 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 boarding house, or
- (f) a person who is, or was formerly, a trustee of a trust involved in the management or operation of the boarding house, or
- (g) any other person (or a person belonging to a class) prescribed by the regulations.

### 70 Power to require provision of documents

- (1) The Secretary may, by notice served on a person involved in the management of an authorised boarding house, require the person to provide to the Secretary such relevant documents as the Secretary 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 Part (including under the regulations for this Part),
  - (b) such other documents as the Secretary reasonably requires for the purposes of the administration or enforcement of this Part.
- (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 Secretary may take copies of any documents provided under this section.
- (8) If the Secretary has reason to believe that any documents provided under this section are evidence of an offence against this Part or the regulations for this Part, the Secretary may retain the documents until proceedings for the offence have been heard and determined.

#### **71 Power to require answers to questions**

- (1) The Secretary may, by notice served on a person involved in the management of an authorised boarding house, require the person to answer questions about any matters in respect of which information is required for the administration or enforcement of this Part.
- (2) The Secretary may, by notice, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of 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 are taken to have been given by the corporation.
- (4) The Secretary 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 Secretary that is reasonable in the circumstances.
- (6) In this section, a reference to a corporation includes a reference to a body politic.

#### **72 Functions may be exercised outside this State**

- (1) A notice may be given under this Subdivision to a person involved in the management

of an authorised boarding house even though the person is outside the State, as long as the activities concerned are or were carried out in this State.

- (2) The Secretary, or a delegate of the Secretary, may attend at a place outside this State for the purpose of obtaining answers to questions asked of a person under this Subdivision.

**73 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 Subdivision 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.

**74 Provisions relating to requirements to provide documents or information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Subdivision to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Subdivision 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.
- (3) **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 Subdivision is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against this Subdivision or section 95) 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.
- (4) **Documents admissible** Any document provided by a person in compliance with a



requirement under this Subdivision is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

- (5) **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 Subdivision 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.

### **75 Effect on other functions**

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

## **Subdivision 3 Powers of entry**

### **76 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 boarding house,
  - (b) premises that are the subject of an application for a boarding house 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 boarding house unless:
- (a) the enforcement purpose for which the officer is entering the boarding house is to make an inquiry in relation to an application for a boarding house authorisation for the boarding house, or
  - (b) the manager of the boarding house 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 boarding house authorisation for premises,
  - (b) ensuring that the provisions of this Part and the regulations for this Part with respect to premises, and of any conditions imposed on a boarding house 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.

## **77 Powers of entry by authorised service providers without consent or warrant**

- (1) The Secretary may, by instrument in writing (the **authorisation instrument**), authorise a person (an **authorised service provider**) to enter authorised boarding houses under this section if the Secretary is of the opinion that the person is able to provide relevant information or advice to residents of such boarding houses about support services, financial 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:
  - (a) is subject to any requirements of this section and to such conditions as may be specified in the authorisation instrument, and
  - (b) remains in force for the period specified in the authorisation instrument (being a period not exceeding 12 months), unless sooner revoked or surrendered.
- (3) An authorised service provider may, at any reasonable time and subject to the conditions of the authorisation:
  - (a) enter an authorised boarding house for the purpose of conferring with any resident of the boarding house to determine whether the resident wishes to access the services provided by the provider or the organisation to which the provider belongs, and
  - (b) provide such services, or arrange for the organisation to provide such services, if a resident wishes to access the services.
- (4) An authorised service provider must give the authorised operator or approved manager of the authorised boarding house at least 24 hours notice of the provider's intention to enter the boarding house.
- (5) When entering an authorised boarding house 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 boarding house.
- (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 Secretary 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 boarding house authorisation and a manager approval that the authorised operator and approved manager of an authorised boarding house permit an authorised service provider to enter, and confer with residents of, the authorised boarding house in the manner authorised by or under this section.

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

- (1) An enforcement officer may (with the written consent of the Secretary) apply to an authorised warrants officer for a search warrant if the enforcement officer has reasonable grounds for believing that a provision of this Part or the regulations for this Part 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 Part or the regulations for this Part, and
  - (c) to exercise the powers conferred on an enforcement officer by section 76.
- (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*.

## Subdivision 4 Compliance notices

**79 Issue of compliance notices by Secretary**

- (1) If the Secretary is of the opinion that a person is contravening a provision of this Part or the regulations for this Part, the Secretary 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 Secretary's

decision to issue the notice.

**Note—**

Section 91 (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.

**80 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.

**81 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.

**Subdivision 5 Operation of assisted boarding houses**

**82 Records**

- (1) It is a condition of a boarding house authorisation that the authorised operator ensures that the requirements of this section concerning records are complied with.
- (2) An authorised operator of an authorised boarding house must ensure that such records as the regulations require are kept in relation to the boarding house.
- (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 Secretary, or to any other person who is authorised to inspect them, under this Part.

**83 Notification of deaths, sexual assaults and other incidents involving residents of authorised boarding houses** (cf YCS Act, s 26)

- (1) The manager of an authorised boarding house must, as soon as is reasonably possible after becoming aware of any of the following incidents, report the incident to the Secretary:
  - (a) the death of a resident of the boarding house,
  - (b) the sexual assault (or the making of an allegation of sexual assault) of a resident of the boarding house,
  - (c) the absence of a resident of the boarding house for a period of more than 24 hours if the resident has not informed the manager of his or her whereabouts,
  - (d) such other incidents involving residents as may be prescribed by the regulations.

**Note—**

Section 122 of the *Children and Young Persons (Care and Protection) Act 1998* requires a person who provides residential accommodation for another person who the person has reasonable grounds to suspect is a child living away from home without parental permission to inform the Secretary of the child's whereabouts. A child for the purposes of that section is a person who is under 16 years of age.

- (2) The manager must also report the death (or the sexual assault or the making of an allegation of sexual assault) of a resident of the boarding house to a police officer as soon as is reasonably practicable after becoming aware of the incident concerned.
- (3) A manager of an authorised boarding house who contravenes this section is guilty of an offence.

Maximum penalty: 50 penalty units.

**84 Probity checks on staff members of authorised boarding houses**

- (1) It is a condition of the boarding house 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 boarding house unless the authorised operator is satisfied that the person is a suitable person to be involved in the management or operation of the boarding house.
- (3) In deciding whether a person is a suitable person to be involved in the management or operation of the boarding house, 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 boarding house must not engage (or continue to engage) a person to be a staff member of the boarding house 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).

## **Subdivision 6 Removal of persons with additional needs from unauthorised boarding houses**

### **85 Removal of young residents from unauthorised boarding houses** (cf YCS Act, s 27)

- (1) This section applies in relation to any person with additional needs who is under 18 years of age and a resident of an unauthorised boarding house (a **young resident**).
- (2) If requested to do so by an 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 boarding house 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 or young person in need of care and protection for the purposes of the *Children and Young Persons (Care and Protection) Act 1998*.

**Note—**

The Secretary may take action under the *Children and Young Persons (Care and Protection) Act 1998* to protect children or young persons who are in need of care and protection.

### **86 Assessment of certain removal expenses resulting from unauthorised boarding houses** (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) boarding premises as an assisted boarding house without the authority of a boarding house authorisation:

- (a) a person with additional needs who was a resident of the boarding house 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 Secretary if the Department of Family and Community Services incurred expenses in connection with the removal of persons with additional needs who were resident at the unauthorised boarding house 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 person with additional needs—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 Secretary—to compensate for the removal expenses and any other expenses incurred by the Department of Family and Community Services when moving persons with additional needs who were resident at the unauthorised boarding house 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 4 Review of authorisation, approval and enforcement decisions**

### **87 Applications for administrative reviews by the Civil and Administrative Tribunal** (cf YCS Act, ss 3A (2)-(4) and 24)

- (1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions of the Secretary:
- (a) a refusal to grant a boarding house authorisation or manager approval to the person,
  - (b) the imposition or variation of a condition on a boarding house authorisation or manager approval held by the person (including a variation of a boarding house licence to appoint a substitute licensee),



- (c) the suspension, cancellation or revocation of a boarding house authorisation or manager approval held by the person,
  - (d) a declaration under section 39 of boarding premises for which the person is a relevant operator to be an assisted boarding house for the purposes of this Act,
  - (e) a refusal to grant an exemption under section 40 to the person or in respect of premises for which the person is a relevant operator,
  - (f) the imposition or variation of terms and conditions on an exemption granted, or the revocation of an exemption granted, under section 40 to the person or in respect of premises for which the person is a relevant operator,
  - (g) the issuing or variation of a compliance notice.
- (2) For the purposes of this section, an application for the grant of a boarding house authorisation, manager approval or exemption under section 40 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.

## **Division 5 General**

### **88 Certificate evidence concerning assisted boarding houses** (cf YCS Act, s 3B)

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

- (a) a person named in the certificate was or was not at a specified time the holder of a boarding house authorisation or a manager approval, or
- (b) any boarding house 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 boarding house,

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

### **89 Secretary may require further information for applications**

- (1) The Secretary may, by notice served on a relevant person in relation to an application under this Part, 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 Secretary, 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 Secretary, 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 Secretary such authorisations and consents as the Secretary requires for the purpose of enabling the Secretary to obtain information (including financial and other confidential information) from other persons concerning the person and the person's close 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),
  - (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 Secretary may refuse to determine an application under this Part if a requirement made under this section in relation to the application is not complied with.

## **90 General provisions relating to notices under this Part**

- (1) This section applies in relation to the issuing of notices by the Secretary or an enforcement officer under this Part or regulations for this Part.
- (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 provision 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 original 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 Part under which a notice is issued.

**91 Regulations relating to assisted boarding houses** (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 boarding house authorisations and manager approvals,
  - (b) the matters to be specified in a boarding house authorisation,
  - (c) prescribed conditions of boarding house 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 boarding house authorisations and manager approvals,
  - (b) the form and manner in which, and the time within which, an application for a boarding house 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 Secretary 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),
- (b) the persons who may be the subject of a probity check (including applicants for boarding house 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 boarding house 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 boarding house 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 boarding house authorisation or manager approval,
- (e) the restoration of a boarding house 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 boarding houses,
- (b) requiring an authorised operator to notify the Secretary of the particular service or services that the operator provides or intends to provide,
- (c) the appointment by the Secretary of a person as licensee under a boarding house 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 boarding houses,
  - (b) the maximum number of assisted boarding houses in respect of which the same approved manager may be appointed as an approved manager,
  - (c) the maximum number of persons who may be appointed as an approved manager of an assisted boarding house,
  - (d) the authorisation by the Secretary of another person to act as the approved manager of an assisted boarding house during the absence (because of illness or otherwise) of the approved manager of the assisted boarding house.
- (7) **Operation and inspection of authorised boarding houses** 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 persons with additional needs residing at authorised boarding houses (including, but not limited to, standards of the kind referred to in section 43 (4)),
  - (b) the screening of staff members and residents of authorised boarding houses,
  - (c) the assessment of persons as persons with additional needs,
  - (d) the qualifications and skills of staff members of authorised boarding houses,
  - (e) complaint handling procedures for authorised boarding houses,
  - (f) the inspection of authorised boarding houses.
- (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 assisted boarding houses 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:

- (a) the records that are to be kept by authorised operators and approved managers (or former 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 boarding houses (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 assisted boarding houses, or assisted boarding houses of a specified class, from the requirement that they be authorised under this Part or from any other requirement imposed by or under this Part,
- (b) regulating the assisted boarding houses so exempted (including, without limitation, establishing standards to be met by those assisted boarding houses and inspections of such boarding houses),
- (c) the making of applications for exemptions under section 40.

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

(13) **Relationship of section to other provisions** This section does not limit the generality of section 103 (Regulations) or any other provision of this Act that requires or permits regulations to be made with respect to a matter.

## Part 5 Miscellaneous

### 92 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.

### 93 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.

### 94 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 the Act administrator or relevant agency:
  - (a) to determine applications made under this Act or the regulations, or
  - (b) to determine whether to cancel, revoke, suspend or vary a licence, permit, registration or other approval, or an exemption or declaration, that is granted, made or given under this Act or the regulations, or
  - (c) to facilitate the carrying out of inspections, probity checks or other enforcement action under this Act or the regulations, or
  - (d) to determine whether a person is a person with additional needs.
- (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:

**relevant agency** means any of the following:

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

#### **95 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.

#### **96 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.

#### **97 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.



(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.

## 98 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.

(10) In this section, **authorised officer** means:

(a) a police officer, and

- (b) in relation to an offence against a provision of Part 2 or regulations for that Part—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 Part 4 or regulations for that Part—an enforcement officer within the meaning of that Part, and
- (d) a person (or a person belonging to a class) prescribed by the regulations for the purposes of this paragraph.

**99 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 Part 2 or regulations for that Part without obtaining the written consent of the Minister administering that provision.

**100 Evidence of use of boarding premises as general or assisted boarding houses**

- (1) This section applies to the following proceedings:
  - (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 general boarding house or assisted boarding house,
  - (b) applications for a search warrant in respect of a general boarding house or assisted 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 are a general boarding house or assisted 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 general boarding house or assisted 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 general boarding house or assisted 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 general boarding house or assisted 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 general boarding house or assisted boarding house.

**101 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
    - (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.

## **102 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.

## **103 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.

## **104 (Repealed)**

## **105 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.
- (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.

## **Schedule 1 Occupancy principles**

(Section 30 (1))

### **1 State of premises**

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.

## **2 Rules of registrable boarding house**

A resident is entitled to know the rules of the registrable boarding house before moving into the boarding house.

## **3 Penalties for breaches of agreement or house rules prohibited**

A resident may not be required to pay a penalty for a breach of the occupancy agreement or the rules of the registrable boarding house.

## **4 Quiet enjoyment of premises**

A resident is entitled to quiet enjoyment of the premises.

## **5 Inspections and repairs**

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.

## **6 Notice of increase of occupancy fee**

A resident is entitled to 4 weeks written notice before the proprietor increases the occupancy fee.

## **7 Utility charges**

(1) The proprietor is entitled to charge a resident an additional amount for the use of a utility if:

- (a) the resident has been notified before or at the time of entering the occupancy agreement of the use of utilities in respect of which the resident will be charged, and
- (b) the amount charged is based on the cost to the proprietor of providing the utility and a reasonable measure or estimate of the resident's use of that utility.

(2) A **utility** for the purposes of this clause is each of the following:

- (a) the supply of electricity,
- (b) the supply of gas,
- (c) the supply of oil,
- (d) the supply of water,
- (e) the supply of any other service prescribed by the regulations.

## **8 Payment of security deposits**

(1) The proprietor may require and receive a security deposit from the resident or the

resident's authorised representative only if:

- (a) the amount of the deposit does not exceed 2 weeks of occupancy fee under the occupancy agreement, and
  - (b) the amount is payable on or after the day on which the resident (or the resident's authorised representative) enters the agreement.
- (2) Within 14 days after the end of the occupancy agreement, the proprietor must repay to the resident (or the resident's authorised representative) the amount of the security deposit less the amount necessary to cover the following:
- (a) the reasonable cost of repairs to, or the restoration of, the registrable boarding house or goods within the premises of the boarding house, as a result of damage (other than fair wear and tear) caused by the resident or an invitee of the resident,
  - (b) any occupation fees or other charges owing and payable under the occupancy agreement or this Act,
  - (c) the reasonable cost of cleaning any part of the premises occupied by the resident not left reasonably clean by the resident, having regard to the condition of that part of the premises at the commencement of the occupancy,
  - (d) the reasonable cost of replacing locks or other security devices altered, removed or added by the resident without the consent of the proprietor,
  - (e) any other amounts prescribed by the regulations.
- (3) The proprietor may retain the whole of the security deposit after the end of the occupancy agreement if the costs, fees or charges referred to in subclause (2) (a)-(e) are equal to, or exceed, the amount of the security deposit.
- (4) In this clause:

**security deposit** means an amount of money (however described) paid or payable by the resident of a registrable boarding house or another person as security against:

- (a) any failure by the resident to comply with the terms of an occupancy agreement, or
- (b) any damage to the boarding house caused by the resident or an invitee of the resident, or
- (c) any other matter or thing prescribed by the regulations.

## 9 Information about occupancy termination

A resident is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction.

## **10 Notice of eviction**

- (1) A resident must not be evicted without reasonable written notice.
- (2) In determining what is reasonable notice, the proprietor may take into account the safety of other residents, the proprietor and the manager of the registrable boarding house.
- (3) Subclause (2) does not limit the circumstances that are relevant to the determination of what is reasonable notice.

## **11 Use of alternative dispute resolution**

A proprietor and resident should try to resolve disputes using reasonable dispute resolution processes.

## **12 Provision of written receipts**

A resident must be given a written receipt for any money paid to the proprietor or a person on behalf of the proprietor.

# **Schedule 2 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 are defined for the purposes of Part 4 of this Act have the same meanings as in that Part, 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 39 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:
  - (a) is taken to be an exemption notice for the purposes of section 40 (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, and
  - (b) is taken to have a duration of 12 months commencing on the repeal day, unless a sooner expiry date was specified in the order under section 3B of the YCS Act.
- (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 87.

### 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:

- (a) is taken to be an exemption notice for the purposes of section 40 (1) (b) with the same kind of provisions and conditions, and may be amended and revoked under this Act accordingly, and
- (b) is taken to have a duration of 12 months commencing on the repeal day, unless a sooner expiry date was specified under section 23 of the YCS Act.

### 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 boarding house 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 49 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 49 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 87.
- (3) Without limiting section 43, 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 84 on boarding house 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 YCS Act since before 1995,
  - (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 43, 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 boarding house licence with respect to the premises concerned.
- (3) Nothing in this clause prevents the Director-General from subsequently varying, suspending or cancelling a boarding house 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 63, 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 assisted boarding houses**

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 an assisted boarding house within the meaning of this Act.

**Schedule 3 (Repealed)**