

The Property Owners' Association of New South Wales



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To: ABH Project Team  
Housing, Homelessness and Disability  
NSW Communities and Justice  
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## People with additional needs living in Shared Accommodation

Discussion Paper on proposed industry reforms - May 2021

Submission on behalf of the:

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Thank you for your invitation to contribute to the discussion paper on ‘People with Additional needs living in Shared Accommodation – May 2021’.

## **BACKGROUND:**

The Property Owners Association of NSW Inc (POA NSW) is the peak body that has represented property owners, and in particular General Boarding Houses in NSW since 1951. POA NSW is self-funded, and fully reliant on the support of its membership base, which is predominantly made up of “mums and dads” investors with a single residential property holding.

## **INTRODUCTION:**

“Assisted Boarding houses” / “Specialised Share Accommodation” are a small and specialized sector of the accommodation market, characterised by complex ‘care’ issues. They are more akin to a nursing home than a general ‘accommodation only’ dwelling.

Please note this specialist care service sub-sector is not within the technical expertise of POANSW, so we are not in a position to provide specialist ‘care’ policy recommendations.

That said, we are in a position to provide some general commentary on people with additional needs who reside in non-specialist care facilities, such as those sub-letting in a residential tenancy or even in a share house.

Many of the following points were originally raised in our 2012 and 2019 submissions<sup>124</sup> on the boarding house reforms. They predominantly relate to nomenclature and the regulatory blind spot. These issues are being raised again, as they appear to remain pertinent in the ‘People with Additional needs living in Shared Accommodation’ Discussion Paper.

## NOMENCLATURE

We believe the terms “Assisted Boarding Houses” / “Specialised Share Accommodation” are misnomers. They do not accurately reflect the specialist care services provided in that sector. They are misleading and somewhat deceptive names, and they are causing unnecessary confusion.

We can cite numerous examples of how the misnomer ‘assisted boarding house’ has created unnecessary confusion and unintended consequences to the non-assisted boarding house industry, for example when Development Applications for general boarding houses are made...

*We migrated from the UK and found a place that was just perfect for a general boarding house. We didn't have much money, so we moved in and lodged a DA. We could not believe the reaction. There were over 400 objections! ..... someone was stirring them up.... boarding houses are full of paedophiles, psychos, druggies, and the like ..... We were ostracised, our kids were picked on at school. They put posters up in front of our house, on the light posts in our street and on the main roads. We were excluded from the annual street Christmas party which really upset the kids..... The DA was delayed so many times, and had to be resubmitted, all petty stuff. It dragged on forever before it was finally approved..... we built it..... [Now] I manage it, .....it's mostly locals, young couples, tradies..... [now] we Go to the Christmas party every year..... the residents too..... There's one local that still resents us, still chucks his rubbish into our place.*

*(New Australians: General Boarding House Developer and Operator)*

There are multiple media stories similar to this, in which local communities are torn apart and are up in arms just because of a general boarding house DA application.

This misunderstanding does not just occur at a pedestrian level. We have seen evidence of this confusion in the various industry stakeholder meetings like Newtown Neighbourhood Boarding House Roundtable meetings, mixing-up general and assisted boarding house sub sectors. Even learned members of society, such as Magistrate M. Jerram, State Coroner of

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<sup>124</sup> POANSW: Statutory Review of the Boarding Houses Act 2012: Discussion Paper August 2019. [https://poansw.com.au/wp-content/uploads/2019/11/GoogleDrive\\_POA-NSW-Boarding-House\\_Act\\_5\\_year\\_review-Bill-2019-SubmissionEM200919.pdf](https://poansw.com.au/wp-content/uploads/2019/11/GoogleDrive_POA-NSW-Boarding-House_Act_5_year_review-Bill-2019-SubmissionEM200919.pdf)  
POANSW Submission: Exposure Draft Boarding Houses Bill 2012.(August 2012)  
<https://poansw.com.au/wp-content/uploads/2016/05/POA-NSW-Boarding-House-Bill-2012-Submission.pdf>

NSW,<sup>125</sup> in the ‘300 Hostel’ investigation incorrectly mixes up tenant, occupant and assisted (formally Licenced Residential Centre) v general boarding house v residential tenancy. If a person of that standing can get confused about these definitions, it’s hardly surprising others not studied in such matters also make such errors.

Clearly the name boarding house has become misunderstood by the confusion caused by misnaming specialist care facilities as assisted boarding houses.

The proposal to use “Specialised Share Accommodation” is also a misnomer. It will have the same misleading impact, and this deception should be prevented.

## SUGGESTED RECOMMENDED SOLUTIONS.

POA NSW recommends an appropriate descriptive term is found to replace “Assisted Boarding Houses” / “Specialised Share Accommodation”. It should be unique and accurately describe the facility that provides specialist care services for persons with additional needs. While we understand ‘Licenced Residential Care’ centres may not be eligible for reuse, but a name that accentuates the sub-sectors key attributes, ie Specialised, Residential and in particular Care would be a more accurate representation of those facilities.

## REGULATORY BLIND SPOT: COMBINING ‘SPECIALISED SHARE ACCOMMODATION’ AND ‘GENERAL SHARE ACCOMMODATION’:

We believe the effect of combining ‘Specialised Share Accommodation’ and ‘General Share Accommodation’ in the one legislative framework will have dual adverse consequences.

-Firstly, impose unnecessary additional regulatory burdens on the general share accommodation sector.

-Secondly limiting regulatory protection to the proposed Share Accommodation sub-sector will fail to provide coverage to the other housing subsectors (ie the non-share accommodation sub-sectors), leaving a regulatory blind spot.

## DISCUSSION

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<sup>125</sup> The report by Magistrate M. Jerram, State Coroner of NSW, 11th May 2012 in relation to the “300 Hostel [which] operated at 300 Livingstone Road, Marrickville .. as ...a Licensed Residential Centre (LRC)”. pg 11, point 45. The coroner acknowledges in the report that the hostel was a LRC, **but on a number of occasions confuses the status of that facility. At many and various junctions, the 300 hostel is referred to as a boarding house (see points 11, 16, 22, 29, 114, 11, 122) and at other occasions the occupants are even referred to as tenants (point 51).** Then Coroner appears to make a somewhat confusing conclusive point: “In 2002, there were approximately 455 such residences in New South Wales, with about 5,000 residents. Only 31 of those hostels, with approximately 600 residents were licenses.” [Point 52, page 13]. Here the coroner is referring to 31 Licenced residential care facilities, licenced under the Youth and Community Services act 1973. **The ‘other 455’ are not Licenced Residential Care Facilities.**

We believe that people with special needs (but who do not require specialist care facilities) should have the same level of appropriate protections regardless of the built form of the building they live in, ie it should not matter if they reside in a sub-let in a residential tenancy, a share house, ‘illegal’ housing, or even in a caravan park.

But at the same time, we are concerned that combining ‘Specialised Share Accommodation’ and ‘General Share Accommodation’ in the one act would lead to misdirected legislation which will impose unnecessary and burdensome regulatory imposts specifically on the general share accommodation industry.

So, we are concerned that the current proposal will be ‘imbalanced and inconsistent’ by imposing unnecessary regulatory burdens on one sub sector, ie the share accommodation market, while completely missing a large segment of housing that people with additional needs reside in.

We believe the proportions of people with additional needs would be materially consistent in all subsectors of the housing market. So, for example the percentage of people living in shared accommodation with additional needs would be similar to the percentage of people with additional needs that occupy caravan parks, illegal housing or sublet in a leasing arrangement etc.

Refer to footnote <sup>126</sup>. It reproduces a 2019 POANSW guestimate that demonstrates that the vast majority of residents in compliant general boarding houses do not have ‘additional

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<sup>126</sup> In 2019, (POANSW: Statutory Review of the Boarding Houses Act 2012: Discussion Paper August 2019) produced a guestimate of sub sectors within registered Boarding House sector to provide a guide into the numbers of NSW boarding Houses that fall into a range of different ‘categories’. It was developed to provide a guestimate of the number of people who may meet the definition of ‘persons with additional needs’. It is reproduced as follows...

Note this ‘guestimate’ relies on information provided during the NNC Boarding House Round Table meeting on 3<sup>rd</sup> September 2019, where a DJC officer estimated that about 300 boarding houses sit in a “grey area” in terms of potentially housing residents that be caught by S37 of the Boarding House Act (ie may have 2 or more ‘vulnerable persons with additional needs’).

**Table: POANSW “guestimate” of Registered Boarding House by sub sectors in 2018.**

<b>-Low Cost ‘Grey area’ v Low Cost ‘Non-Grey area’</b>		
Affordable General Registered BH “Grey Area”	<b>300</b>	( <b>28.7%</b> of 1043 TRBH )
Affordable General Registered BH “Non-Grey Area.	<b>316</b>	( <b>30.3%</b> of 1043 TRBH )
<b>-Low Cost v Other</b>		
Affordable General Registered BH (as at 2017)	<b>616</b>	( <b>59.0%</b> of 1043 TRBH )
Other General Registered BH	<b>410</b>	( <b>39.3%</b> of 1043 TRBH )
<b>-General v Assisted</b>		
Total General Registered BH	<b>1026</b>	( <b>98.6%</b> of 1043 TRBH )
Total Assisted Registered BH	<b>17</b>	( <b>1.6%</b> of 1043 TRBH )
Total Registered BH (TRBH)	<b>1043</b>	( <b>100%</b> of 1043 TRBH )

Firstly, as can be seen, only 1.6% of registered boarding houses are assisted boarding houses that contain 2 or more s37 ‘vulnerable persons with additional needs’.

needs'. In fact, we proposit that our guesstimated population of people with additional needs lies between 4.4% - 10.2%, which would be materially consistent with the general population and consistent with populations within all general sub sectors of the housing market<sup>127</sup>.

## CONSEQUENCES

The proposed regulatory 'imbalance and inconsistency' will contribute to non-pareto optimal housing decisions, as it imposes unnecessary red tape, cost and administrative burdens on some suppliers. This then has knock on effects on the general supply of affordable housing as these burdens are ultimately passed on to all occupants in the form of higher prices or lower compliant supply. Studies have found this leads to adverse effects on the well-being of occupants<sup>128</sup>, and drives market failure.

## SUGGESTED RECOMMENDED SOLUTIONS.

The proposed regulatory reforms should seek to achieve an even balanced and consistent framework. We believe a broadening of coverage is required, so as to ensure that the person with additional needs is afforded the same level of protection regardless of the built form of the dwelling, without imposing inconsistent and irregular regulatory burdens on specific housing sub-sectors.

We recommend:

-The creation of two separate acts to specifically house the legislation and regulations for the protection of people with additional needs. It should apply regardless of the built form of the dwelling. In effect, any necessary special protections should attach to the person who had the need (but who do not require specialist care facilities), and then that would then apply in the built form of the dwelling that they reside in. While Specialist Care Providers (ie "Assisted Boarding houses" / "Specialised Share Accommodation") should be regulated specifically:

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Further we explored the general boarding house sector by incorporating the 'guesstimate' provided by the DJC officer that there are '300 grey area' boarding houses that may or may not contain at least 1 or more 'vulnerable persons with additional needs'. Given this 300 number, 28.7% possibly have around 1-2 residents that are 'vulnerable persons with additional needs'. If we make further assumptions, that 10%-30% (the industry average of 10 occupants ) of 300 grey area' boarding houses house residents are 'close' to the S37 "vulnerable persons with additional needs" definition, then this gives us a population closer to about 4.4%-10.2% of registered boarding house residents, which is a small percentage of the population, and materially consistent with the general population.

Note these are guesstimates and very simple calculations, but they are consistent with POA NSW operator member feedback, that the vast majority of compliant registered general boarding houses do not house persons 'with additional needs.'

<sup>127</sup> Pg 23 POANSW: Statutory Review of the Boarding Houses Act 2012: Discussion Paper August 2019

<sup>128</sup> Pg 22 & Pg 28. EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT. Associate Professor Gabrielle Drake February 2018 ACU.

5 year research data by Associate Professor Drake shows that *"limited affordable housing options and increased occupancy fees" ... do cause ... "a significant fall in residents satisfaction measured by the seven indicators of their personal well-being"*

## **1. Specialist Care Providers**

We believe “Assisted Boarding houses” / “Specialised Share Accommodation” are fundamentally more akin to nursing homes. Providers would require specialist medical and nursing knowledge and skills to be able to cater for complex mental and physical health issues. These are complex issues beyond the normal skill level of general housing providers. All legislative provisions that relate to “Assisted Boarding houses” / “Specialised Share Accommodation” should be segregated and specifically relate to these specialist care facilities only. They should not cross over or be combined with general housing legislation or regulations (eg Share Accommodation Act or even RTA, etc).

## **2. People with additional needs (but who do not require specialist care facilities)**

Another act should apply so as to attach to any person with additional needs (that do not require specialist care services), and that would automatically apply to the built form of the dwelling they reside in.

### **Additional Safeguards:**

Additional safeguards should be incorporated to ensure that the dwelling and/or the provider is an appropriate setting. If the dwelling is inappropriate or it can not be utilised without imposing hardship on the provider or other occupants, then a body like DJC (or equivalent) should be made available to assist with the provision of appropriate housing for the ‘person with additional needs’

-An information/education campaign so that all housing providers are appropriately informed of these provisions. This would include DJC or equivalent’s contact details and an outline assistance services provided.

-There should be a separate public register for “Assisted Boarding houses” / “Specialised Share Accommodation”.

## **CONCLUDING SUMMARY:**

In our 2012 and 2019 submissions<sup>129</sup> on the boarding house reforms we proposed that combining Licenced Residential Care facilities and general boarding houses in the one act, would compromise the regulatory objectives of the legislation for the general boarding house

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<sup>129</sup> POANSW: Statutory Review of the Boarding Houses Act 2012: Discussion Paper August 2019. [https://poansw.com.au/wp-content/uploads/2019/11/GoogleDrive\\_POA-NSW-Boarding-House\\_Act\\_5\\_year\\_review-Bill-2019-SubmissionEM200919.pdf](https://poansw.com.au/wp-content/uploads/2019/11/GoogleDrive_POA-NSW-Boarding-House_Act_5_year_review-Bill-2019-SubmissionEM200919.pdf)  
POANSW Submission: Exposure Draft Boarding Houses Bill 2012.(August 2012) <https://poansw.com.au/wp-content/uploads/2016/05/POA-NSW-Boarding-House-Bill-2012-Submission.pdf>



sector. Further this left a regulatory blind spot, as other sub sectors of the housing market are not covered.

These issues continue to prevail in the current proposals, and they should be addressed. We recommend the following solutions.

1. The name “Assisted Boarding houses” / “Specialised Share Accommodation” is a misnomer and a unique name that accurately describes specialised ‘licenced residential care’ facilities should be adopted.
2. Separate legislation /regulations that addresses specialist care facilities is specifically required for the “Assisted Boarding houses” / “Specialised Share Accommodation” sub sector.
3. A broader legislative framework is required to afford protection in a balanced and consistent way to person with additional needs (but who do not require specialist care facilities). It could automatically apply to all people with additional needs (but who do not require specialist care facilities) so they are afforded an adequate level of protection regardless of the built form of the dwelling they may live in.

Yours Faithfully,

On behalf of The Property Owners Association of NSW.

**Peter Dormia.**

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