



public interest
ADVOCACY CENTRE LTD

Boarding house residents' rights

**Submission to Ageing, Disability and Home Care,
Department of Human Services on the *Youth and
Community Services Regulation 2010***

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (**PIAC**) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the Industry and Investment NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

PIAC's work on disability discrimination, mental health issues and homelessness

PIAC has a long history of conducting law and policy advocacy in relation to disability discrimination, mental health issues and homelessness. For many years PIAC has advocated for the rights of people with disability. PIAC has conducted test case litigation under both Federal and NSW anti-discrimination statutes, proposed amendments to substantive and procedural aspects of anti-discrimination law and responded to new and amending anti-discrimination legislation.

One of PIAC's aims is to advocate for appropriate care and treatment of people with mental illness that respects the dignity and rights of the individual. Another of PIAC's aims is to assist in ensuring the delivery of appropriate quality of health care for people in various institutional settings such as psychiatric hospitals and prisons. Through the Mental Health Legal Services Project, PIAC has developed four pilot projects and two training modules to promote and implement improved access to legal services for people with mental illness.

The Homeless Persons' Legal Service (**HPLS**), a joint initiative of PIAC and the Public Interest Law Clearing House Inc, provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. HPLS and PIAC have contributed to recent inquiries into homelessness, including a submission to NSW Fair Trading on the draft Residential Tenancy Bill which highlighted the impact of the draft bill on those experiencing homelessness, particularly people living in boarding and rooming houses.

The Regulation

PIAC is pleased that the *Youth and Community Services Regulation 2010* (NSW)(**Regulation**) will provide greater certainty and clarity regarding licence holders' obligations and responsibilities. The enforceability of appropriate licence conditions is crucial to ensuring the rights of people with disability are protected. However, PIAC believes the Regulation does not meet the standards enshrined in the United Nations' *Convention on the Rights of People with Disabilities* (**CRPD**) which Australia ratified on 17 July 2008.¹ Under the CRPD, all Australian governments have obligations to develop laws, policies and programs to promote, protect and fulfill all human rights and fundamental freedoms of people with a disability. These rights must be recognised without any limitations or exceptions. PIAC outlines below how the proposed Regulation may be strengthened to meet Australia's international human rights obligations under the CRPD.

PIAC is disappointed that the consultation period for the Regulation is only for a short period of time. The short period leaves insufficient time to consult with residents of licensed boarding houses and incorporate their views. Moreover, no accessible version of the Regulatory Impact Statement was made available. One of the key principles underlying the CRPD, and the slogan adopted during the drafting of the CRPD, was 'Nothing about us without us'. It is important that governments consult people with disability and include their views in the legislative process on issues that directly affect them.

Recommendation

The Regulation should reflect the rights contained in the Convention on the Rights of People with Disabilities.

Additional provisions – First aid and administration of prescribed medications

The Regulatory Impact Statement recommends two additional provisions be included in the Regulation. The first additional provision is a requirement that at least one staff member on duty hold qualifications in first aid. The second additional provision relates to the administration of prescribed medications. PIAC supports the inclusion of these two additional provisions in the Regulation. These provisions will provide additional protection of residents' health and safety in accordance with articles 25 (health) and 28 (adequate standard of living) of the CRPD.

Recommendation

The Regulation should be amended to include two additional clauses: to ensure at least one staff member on duty holds qualifications in first aid (clause 12(7)); and additional requirements apply regarding the administration of prescribed medications (clause 11).

Clause 5 - Sleeping facilities

The proposed Regulation does not adequately respect the privacy of residents. Residents should have a room to themselves or, in the alternative, share with one person of the same sex. This would ensure compliance with articles 22 (respect for privacy) and 19 (living independently) of the CRPD. Women with a disability are at greater

¹ United Nations, General Assembly, A/RES/61/106, Doc.A/61/611 13 December 2006, *Convention on the Rights of Persons with Disabilities*, opened for signature 20 March 2007, I-44910 (entered into force 3 May 2008), entry into force for Australia on 16 August 2008, being the 30th day after the deposit with the UN of the document of ratification.

risk of sexual abuse and may require separate sleeping arrangements. This issue is recognised in the CRPD in articles 6 (women with disabilities) and 16 (freedom from exploitation, violence and abuse). However, the Regulation does not adequately address this issue. As currently drafted, clause 5(a) places residents' beds only 75cm apart; people with physical disabilities may find it difficult to move within such confined spaces. The right to accessibility is an important right protected in article 9 (accessibility) and article 20 (personal mobility), which aims to ensure personal mobility with the greatest possible independence for persons with disability.

Recommendation

The Regulation should be amended to provide for each resident to have their own room, or in the alternative to share a room with one other person of the same sex.

Clause 8 – Recreation

PIAC is concerned that previous licence conditions requiring the development of a program of activities and care, and integration of residents into community, recreational or therapeutic activities have been removed. Clause 15(2) and (3) of the Regulation recognises the rights of residents to make decisions about the daily activities they participate in and to have assistance in accessing legal and disability services. However, there is no obligation on licence holders or managers to provide recreational activities for residents or to assist residents to access such activities. The Regulation should be amended to ensure that provision is made for the development of such programs and activities. This would ensure that the rights recognised in the CRPD in articles 19 (living independently in and being included in the community); 21 (freedom of expression and opinion and access to information); 24 (education); 29 (participation in political and public life) and 30 (participation in cultural life, recreation, leisure and sport) are protected.

Recommendation

The Regulation should be amended (in clause 8 or clause 15) to include a requirement that licence holders or managers provide a program of recreational activities or facilitate the integration of residents into community recreational activities.

Clause 12 - Safety and health

There is no provision under the proposed Regulation for licensed boarding houses to be accessible as required by article 9 (accessibility) of the CRPD. This may mean toilets, beds, kitchen facilities and fire escapes are difficult to access for people with mobility problems. On 15 March 2010, the Commonwealth Attorney-General released the *Disability (Access to Premises – Buildings) Standards 2010* (Cth) (**Standards**), which set performance requirements and technical specifications for non-discriminatory access to buildings. The Standards will apply to Class 3 and Class 1b buildings, which include boarding houses.² Although the Standards do not commence until 1 May 2011 they provide an important benchmark for accessibility and should be referred to in the Regulation.

Additionally, the clause should be amended to include a requirement for a fire evacuation procedure.

² See Explanatory Statement, *Disability (Access to Premises—Buildings) Standards 2010*, pp. 30 and 31.

Recommendation

The Regulation should be amended to include a requirement for a fire evacuation procedure. The Regulation should include a requirement that premises comply with the Disability (Access to Premises – Buildings) Standards 2010.

Clause 15 - Protection of interests' of residents

Under clause 15(3), a resident must be assisted in accessing any support, advocacy or other service. As discussed above, this clause should be amended to include support in accessing and engaging in community life such as attending community run activities and social outings. Clauses 15(4) and (5) refer to a resident's contact with family and friends and states that such contact should not be obstructed unless in 'compliance with a direction from a person who has authority to make such a direction'. It is unclear whom such a person might be and in what circumstances a direction limiting a resident's contact with family and friends can be made. PIAC is concerned that, as currently drafted, this could include a staff member of the licensed premise. This should be removed to ensure that the rights of residents, including the right to privacy (article 22), right to live independently and be included in the community (article 19), right to family (article 23) and to associate with people of their choosing, are protected.

Recommendation

The Regulation should be amended to remove the reference in clause 15(4) and (5) to 'unless in compliance with a direction from a person who has authority to make such a direction'.

Clause 16 - Procedure for dealing with complaints

Clause 16 should be amended to include a requirement for a complaints procedure. This should include the ability of residents to access independent advocacy and legal services and timelines for the handling of complaints. The procedure should be available in accessible formats. The protection in clause 16(2) from retribution should be extended to residents who do not make formal complaints, but who raise issues with staff on an informal basis.

Recommendation

Clause 16 should be amended to include the requirement for a complaint procedure. The complaint procedure should be available in accessible formats. Clause 16(2) should be amended to include protection from retribution if an informal complaint is made.

Clause 17 - Chief executive to be notified of certain matters

Clause 17(1) and (2) requires incidents of sexual assault and criminal acts to be notified to the chief executive of Ageing, Disability and Home Care, Department of Human Services. This should be amended to include a requirement that such incidents be reported to the police. This would ensure adequate recognition of the right of people with disability to access to justice (article 13) and equal recognition before the law (article 12).

Recommendation

Clause 17 should be amended to include a requirement that incidents of sexual assault and criminal acts be reported to police.

Clause 18 - Staffing arrangements

Clause 18(2) states an 'adequate number of persons must be on duty' at licensed premises. This is unclear and does not provide certainty on actual staffing numbers. A more appropriate requirement is a ratio of staff to residents. Additionally, there should be a requirement that staff be supervised whilst on duty. Clause 18(3) requires staff to have the 'knowledge and skills' to competently exercise their functions. This could go further and require regular training on relevant policies and legislation. Ensuring that staff receive regular training and adequate supervision may also reduce the risk of abuse and neglect. The strengthening of clause 18 will ensure articles 16 (freedom from exploitation, violence and abuse) and 28 (adequate standard of living and social protection) of the CRPD are met.

Recommendation

Clause 18 should be amended to require a staff to resident ratio; regular training of staff; and adequate staff supervision.

Tenancy rights

PIAC is concerned that the Regulation does not provide tenancy protection for residents. The issue of tenancy rights for residents of boarding houses has been raised over the years, for example in the Boarding House and Lodging House Bill 1991 (NSW), the New South Wales Law Reform Commission in its report on the Review of the *Disability Services Act 1993 (NSW)*³ and more recently in the Allen Consulting Report on Shared Accommodation for People with a Disability in 2003⁴, but remains unresolved. The recently passed *Residential Tenancy Act 2010* (NSW) excludes people living in boarding houses.

People living in licensed boarding houses are particularly vulnerable tenants, yet they continue to be denied legislative protection. Residents are particularly vulnerable to evictions and rent increases (up to 100% of their pension). Residents face retribution, including eviction without notice, for raising concerns about their accommodation. Residents do not have the protection of the law and cannot challenge such actions by licence managers or licence holders in the Consumer, Trader and Tenancy Tribunal.

Tenancy related rights are recognised in the CRPD, including the freedom from exploitation, violence and abuse (article 16); living independently and being included in the community (article 19), and the right to adequate standards of living and social protection (article 28).

Recommendation

That the Regulation be amended to include tenancy rights for residents.

³ Law Reform Commission New South Wales, *Review of the Disability Services Act 1993 (NSW)*, Report No 91 (1999).

⁴ The Allen Consulting Group, *Shared Accommodation for People with a Disability: A National Competition Policy Review of the Regulation of Boarding Houses*, Sydney (2003).