

Embargoed until 10:30am, 29th June 2006

Ombudsman reports on boarding houses

NSW Ombudsman Bruce Barbour has released a report identifying serious problems in the system that is meant to protect people who live in boarding houses.

Mr Barbour said the Department of Ageing, Disability and Home Care (DADHC) had failed to properly carry out its monitoring responsibilities in parts of the state.

In addition, he said, there remained a longstanding, unresolved legal question over the government's power to enforce licence conditions for boarding house operators.

'Most of the people who live in licensed boarding houses in NSW have an intellectual disability or a psychiatric illness, or both. Many are elderly, almost all rely on government benefits for income, and most of that money is spent on board and lodgings,' Mr Barbour said.

'These are people who are often highly vulnerable, so it is essential that there are clear standards governing the care provided for them, and that these standards are monitored and enforced effectively.'

The Ombudsman said there had been increasing community concern about the extent of boarding houses operating illegally and about the ever-diminishing number of beds in licensed boarding houses.

Mr Barbour said his office first identified deficiencies in DADHC's capacity to monitor and enforce standards in licensed boarding houses in 2002.

DADHC responded to the findings of that investigation by establishing a new policy that aimed to secure the health and welfare of residents and to ensure that boarding house operators complied with the law. The department said the new policy would also ensure comprehensive monitoring of all licensed boarding houses.

In 2002, DADHC initiated a review of the governing legislation – the *Youth and Community Services Act 1973* ('YACS Act'). The review was based in part on legal advice that many of the conditions in boarding house licenses may be *ultra vires*, that is, beyond the power of the department to enforce.

In August 2005 DADHC told the Ombudsman that the review had not progressed beyond an options paper and public submissions.

Mr Barbour said because his office was still receiving complaints about the care and treatment of residents of licensed boarding house, it was decided to initiate a new inquiry.

The report of this inquiry – released today – says that DADHC’s implementation of its licensed boarding house policy has been variable across NSW. Only some of DADHC’s regions had embraced the policy at the time of the inquiry. As well, uncertainty about the ultra vires question has diminished the department’s capacity to effectively monitor and enforce licence conditions.

Mr Barbour said that DADHC advised him last month that it was acting to address the deficiencies identified in the report and was providing advice to the NSW Government on directions for the YACS Act.

‘We welcome the department’s recent promise to ensure that its licensing staff are properly trained and supported, although we note that DADHC failed to adequately meet its commitment in 2003 about implementation of an effective monitoring system.

‘We also welcome the news that DADHC has provided the Government with relevant advice on the legislation, including the key issues of the power to enforce licence conditions for boarding houses and potentially illegal operators,’ Mr Barbour said.

‘In view of the circumstances of many people who rely on boarding house accommodation, the community needs to be confident that monitoring of any new arrangements proposed by the government is of the highest quality.’

Background:

Under the YACS Act, a boarding house must be licensed if it provides accommodation for two or more people who have a disability and require supervision.

Boarding houses with licenses are referred to as ‘Licensed Residential Centres’ (LRCs) or licensed boarding houses.

If a boarding house provides accommodation for two or more people with a disability who require supervision but is not licensed to do so, it is operating illegally.

Currently there are 55 LRC licences in NSW with a total capacity of about 900 beds.

This compares with 179 licensed boarding houses providing 3,900 beds in 1993.

DADHC has reported that it has significant, unresolved difficulties in establishing whether boarding houses should be licensed.

There are also questions about whether DADHC has sufficient power under current law to investigate complaints about potentially illegal boarding house operators.