



NSW Ombudsman

DADHC: Monitoring standards in boarding houses

A special report to Parliament under s 31 of the
Ombudsman Act 1974

June 2006



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The Hon Meredith Burgmann MLC
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The Hon John Acquilina MP
Speaker
Legislative Assembly
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SYDNEY NSW 2000

Dear Madam President and Mr Speaker

I submit a report pursuant to s 31 of the *Ombudsman Act 1974*. In accordance with the Act, I have provided the Minister for Disability Services with a copy of this report.

I draw your attention to the provisions of s 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make it public forthwith.

Yours faithfully

Bruce Barbour
Ombudsman



Foreword

People who live in licensed boarding houses in our community are often highly vulnerable. Most have an intellectual disability or a psychiatric illness, or both. Many are elderly. Almost all rely on government benefits for income, the majority of which can be spent paying for board and lodging.

In these circumstances, it is essential that there are clear standards governing the care provided in these settings, and that these standards are monitored and enforced effectively.

This report concerns an inquiry by my office into the monitoring of licensed residential centres — also known as licensed boarding houses — against the requirements of the *Youth and Community Services Act 1973* ('YACS Act') and the conditions of the licence by the Department of Ageing, Disability and Home Care ('DADHC'). The report also considers DADHC's current arrangements for responding to boarding houses that should be licensed under the YACS Act, but are not.

The purpose of this report is to outline findings from our inquiry that highlight serious problems with the way boarding houses are licensed and monitored in NSW. Some of these problems relate to a failure by particular regions within DADHC to properly carry out their monitoring responsibilities. However, even where monitoring has occurred in accordance with DADHC's requirements, we have found limitations in the monitoring system because of uncertainty as to whether certain standards can be legally enforced. We have also found inadequate safeguards for protecting people with a disability who live in unlicensed boarding houses.

DADHC has taken steps to address the performance issues identified by our inquiry. The department has also prioritised completion of its review of the YACS Act.

Because of the issues identified by our inquiry, my office will continue to maintain a particular interest in a timely outcome of the review of the YACS Act, and in the implementation of any changes arising from the review.

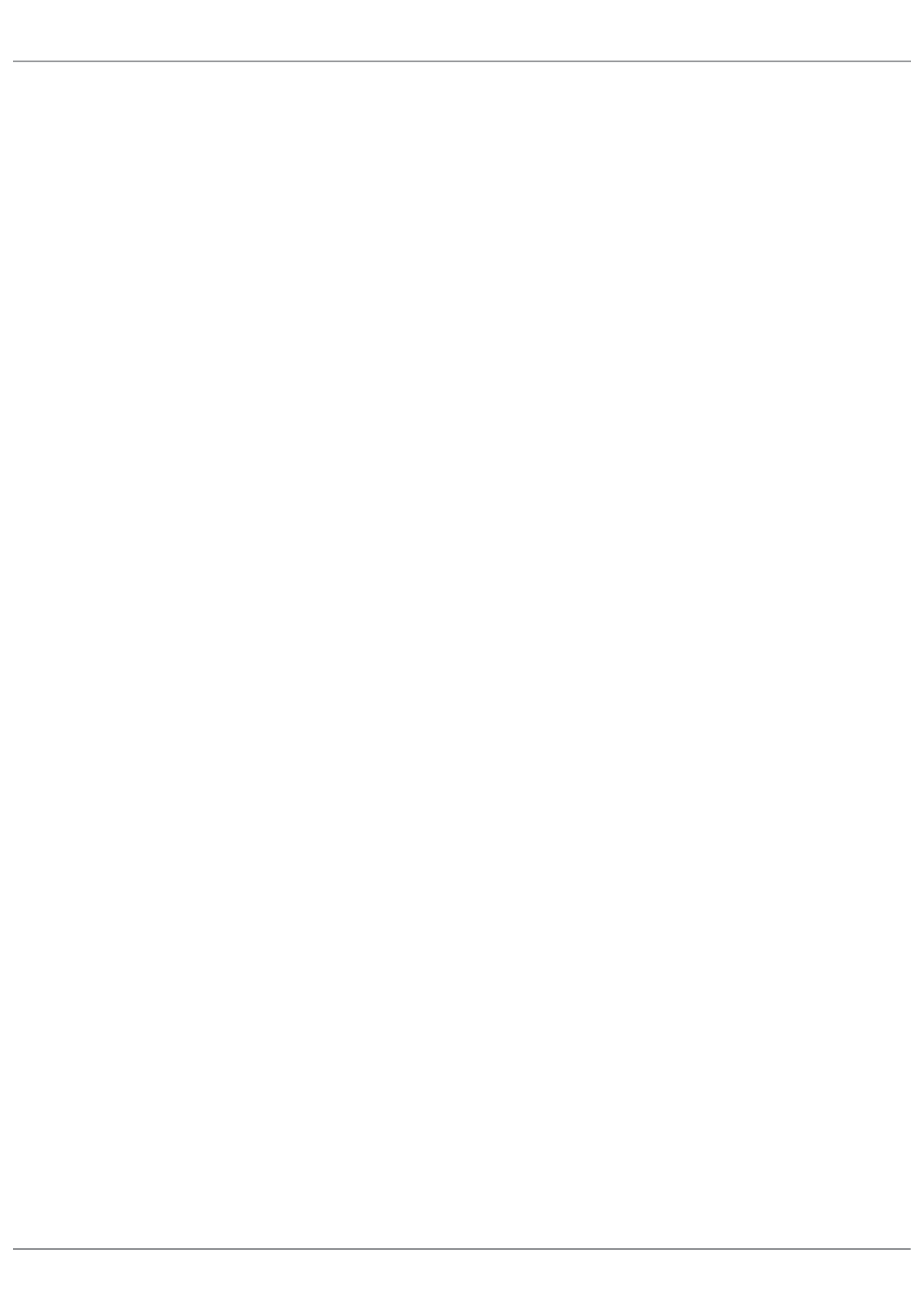


Bruce Barbour
Ombudsman



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1. Licensed residential centres

Boarding houses that have 'two or more people with a disability who require some form of supervision or social habilitation' are required to be licensed under the YACS Act, and meet certain conditions. These conditions are intended to ensure that the health, safety and welfare of residents are maintained. Boarding houses with such licences 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 around 900 beds. This compares with 179 licensed boarding houses providing 3,900 beds in 1993. Most licensed boarding houses are private for profit businesses. They vary in size from as few as six residents to as many as 60.

The majority of LRC residents receive income support, and pay between 75 and 100 per cent of their benefits for accommodation, food, and consumables such as toiletries and cigarettes. Only one licensed boarding house is run on a not for profit basis and is supported by a charitable organisation. Residents of this boarding house pay 30 per cent of their benefits for food and accommodation.

2. DADHC's role

Under the YACS Act, DADHC's role is to issue licences to operate boarding houses that accommodate people with a disability who need supervision. DADHC is also responsible for monitoring licensed boarding houses with the purpose of ensuring these comply with the licence conditions. The licensee is required to provide the facilities referred to in the licence conditions in order to ensure the health, comfort, safety and proper care of residents.

Licences issued by DADHC under the YACS Act are categorised as either 'A' or 'B'. Category A licence conditions were issued prior to 1995. Category B licences are those issued after 1995. Category B licences are more stringent than Category A in relation to communal and personal space requirements, and in requiring staff to undergo a criminal record check. In October 2001, DADHC varied the licence conditions for Category A licences to include a requirement that all staff undergo criminal record checks.

In addition to DADHC's licensing responsibilities, DADHC also has certain responsibilities under the government's Boarding House Reform Program. The program's objectives are to improve the standards of accommodation and support provided to residents in licensed boarding houses; to relocate residents with high support needs to appropriate accommodation; and to maintain licensed boarding houses where safety and affordability satisfies minimum benchmarks. Under this program, over 500 LRC residents have been relocated since 1998, and many more have received support to access health care and personal care, and to participate in community activities.

3. Concerns about DADHC's monitoring of licensed boarding houses

In May 2002, in response to complaints about DADHC's capacity to monitor standards and enforce licence conditions in boarding houses, this office initiated an investigation into these matters. At the time, DADHC's LRC licensing functions were centralised and undertaken by the Boarding House Standards Unit. These functions were regionalised in the first quarter of 2003, and the centralised unit was disbanded.

During the course of our investigation, DADHC informed us of legal advice that had been provided to the department in June 1999. The advice said that many of the licence conditions imposed by the department on boarding houses licenses may be *ultra vires*, that is, beyond the power of the department to enforce.

According to the advice, the only conditions that are enforceable are those concerning the number of residents, the physical and structural requirements of the premises, and certain record keeping responsibilities. Conditions that may not be enforceable include those concerning:

- the adequacy of the quantity and nutritional value of food served
- the maintenance of records concerning the administration of certain medications
- the administration and supervision of medication and access to health care
- staffing suitability including criminal record checks and numbers and competency of staff
- residents' minimum clothing requirements
- the conditions under which residents undertake domestic duties
- assistance to residents with mobility problems who have to use stairs on the premises
- requirements to minimise financial exploitation, abuse, mistreatment and neglect of residents
- retaliation in the event of a resident complaining
- residents' access to advocacy services, friends and family.

DADHC told us that, while the department waited for legislative clarification, its strategy was to enforce all conditions "as far as possible".

Our 2002 investigation found that DADHC was either failing or unable to enforce licence conditions. The investigation was also critical of DADHC's documentation and record keeping in relation to its monitoring activities concerning licensed boarding houses.

A key recommendation arising from our investigation was for DADHC to review all licensed boarding houses to ensure that appropriate standards of care were being provided to residents. In response to this recommendation, DADHC advised us that this would be achieved through implementation of its proposed monitoring strategy, to be undertaken by DADHC regional staff. DADHC told us:

With the use of this monitoring strategy ... the department will be able to better monitor all LRCs in regards to meeting the requirements of the YACS Act and their conditions of licence. The policy provides clear procedural guidelines for DADHC regional staff in managing breaches of licence conditions to ensure appropriate follow up action by DADHC with respect to standards of care provided to residents. Again the extent to which the department can pursue enforcement of certain conditions is qualified by the ultra vires issue.

4. DADHC's licensed residential centres policy

In August 2003, DADHC introduced its *Licensed Residential Centres: Licensing, Monitoring, and Closure Policy* (the 'LRC policy').

The policy objectives are to ensure:

- the health, safety and welfare of residents is maintained
- licensed boarding houses comply with the YACS Act
- relationships between DADHC and the licensed boarding house industry are cooperative and productive
- accountability and transparency in the operation of DADHC's licensing and monitoring obligations.

According to the policy, monitoring of licensed boarding houses is to occur bi-monthly, with a comprehensive review against all the licence conditions being undertaken every three years. These three-yearly reviews are referred to as 'full service reviews'.

If monitoring identifies breaches of licence conditions, monitoring staff determine the level of risk to residents associated with the breach, and assess how quickly the breach should be remedied. For example, leaving vulnerable residents without proper supervision at night would be a high level breach that should be addressed immediately. On the other hand, a faulty door hinge that does not place the immediate health, comfort, safety and proper care of residents at risk would be a low-level breach.

The policy also requires monitoring staff to assess the cumulative impact of ongoing breaches of the licence conditions.

If a licensed boarding house commits a serious breach of its conditions of licence, or if the licensed boarding house fails to address identified breaches within a reasonable timeframe, the policy highlights that DADHC staff have a range of options open to them. These include sending the boarding house a letter warning them of possible prosecution and commencing proceedings.

The LRC policy does not make any reference to the *ultra vires* issue.

Under the *Local Government Act 1993*, local councils also have responsibilities in relation to licensed boarding houses; however, these are limited to certification for relevant fire safety requirements; broad health requirements and general amenity of the premises. Councils are not required to maintain records of boarding houses within their area.

5. Review of the YACS Act

At about the same time as this office initiated its 2002 investigation into DADHC's monitoring of licensed boarding houses, DADHC commenced a review of the YACS Act. DADHC's review was initiated for a number of reasons, including questions about the enforceability of the legislation, a decline in the number of licensed boarding houses, and poor standards of accommodation within the industry.

DADHC told us that in April 2004, the department provided the Minister for Disability Services with an options paper in response to the review findings. At the request of the (then) Minister, the review report was released for public submissions with a closing date of 1 December 2004.

On 12 August 2005, in response to our enquiries concerning the review's progress, the department advised that it had not progressed the matter due to limited staff and competing priorities.

In the meantime, we continued to receive complaints about the care and treatment of LRC residents.

6. Our Inquiry

In these circumstances, we decided to initiate an inquiry to establish:

- whether monitoring of licensed boarding houses was occurring across the State in accordance with the department's policy requirements
- whether breaches of licence conditions were being addressed in accordance with the policy
- whether possible lack of enforceability of certain of the licence conditions was impacting on DADHC's LRC monitoring in any way; and
- if so, whether possible lack of enforceability of some of the licensing conditions was impacting on the safety, welfare and health of residents.

We notified DADHC of our inquiry on 30 September 2005.

7. The inquiry process

At the commencement of our inquiry, we asked the department whether its LRC policy was being implemented in all regions where LRCs exist. The department told us '*Yes, the Department is overseeing the implementation of the Licensed Residential Centres, Licensing, Monitoring and Closure Policy in all regions where Licensed Residential Centres exist*'. We also asked if the department was aware of any regional variations in how the policy was implemented. The department responded:

The Department's [LRC policy] requires that the officers involved with the monitoring and regulation of LRCs adhere to the policy specifications, such as the procedures for documentation and records.

The Department is not aware of any significant variations in implementation of this policy across relevant regions. Some minor variations may occur to meet local needs – for example, in Western region the frequency of visits may align with staff's presence in a specific geographical area.

In order to support the regional staff with the continued use of the policy the Department is undertaking a range of activities to achieve a consistent and co-ordinated approach to the implementation of the policy. This includes: holding regular information sessions; continuing to develop monitoring tools; disseminating regular information and guidance updates; and maintaining LRCs as a regular agenda item on Departmental monthly management meetings.

Our inquiry included the following steps:

- We asked DADHC to provide us with a list of all licensed boarding houses by region, and asked the department to provide advice concerning:
 - action being taken, or proposed to be taken, to progress the YACS review/consultation, and the timeframes for this work
 - DADHC's responsibilities in relation to unlicensed boarding houses, and whether these presented the department with any particular challenges
 - implementation of the department's LRC policy, including whether it was being implemented in all regions where licensed boarding houses operate; whether the department was aware of any regional variations in how the policy was being implemented; and whether the effectiveness of the policy in ensuring the safety and proper care of residents of licensed residential centres, had been assessed.
- We visited DADHC regional offices responsible for monitoring licensed boarding houses and reviewed their licensing and monitoring files with a particular focus on the department's monitoring of licence conditions since August 2003, the date on which the department's LRC policy had been endorsed.
- We reviewed all files held by the department in relation to 'Potentially Illegal Operators' — the term used by the department to describe and categorise boarding houses that may have two or more people with a disability who require some form of supervision or social habilitation, but which are not licensed under the YACS Act.
- We interviewed regional staff responsible for monitoring licensed boarding houses. We also interviewed their managers.
- We interviewed service coordinators of the Active Linking Initiative. This is a program funded by DADHC to help licensed boarding house residents access community activities. Our aim was to establish whether they had received complaints about the quality of care provided by licensed boarding houses, or had concerns themselves, and if so, how they resolved them.

In the last quarter of 2005, DADHC realigned its regions, reducing them from eight to six.

At the time of our review of regional files and interviews with regional staff (November-December 2005), the new regional arrangements were not yet finalised. In our view, the changes to the regions have little, if any, bearing on the conclusions reached from our inquiry.

The final report on our inquiry was provided to the Director General of DADHC on 17 March 2006. The Director General provided advice on the department's response to the final report on 8 May 2006.

8. Our overall observations and findings

The purpose of our inquiry was to explore three matters.

First, we wanted to establish whether monitoring of licensed boarding houses was occurring across the State in accordance with the policy requirements.

Contrary to the department's advice, the evidence demonstrated that implementation of the policy had been variable across regions, with only some regions embracing the policy. Where routine monitoring of licensed boarding houses had occurred, the evidence showed that, in many instances, this led to improvements in the health, safety and welfare of residents.

Second, we wanted to know whether breaches of licence conditions were being addressed in accordance with DADHC's policy, and whether lack of enforceability of some of the licence conditions was adversely affecting DADHC's monitoring of licensed boarding houses.

Again, the evidence showed regional variations. However, leaving aside the regional variations, the inquiry demonstrated that uncertainty over the enforceability of certain licensing conditions adversely affects DADHC's capacity to effectively monitor and enforce licence conditions. One region had failed to effectively monitor those licence conditions that may be *ultra vires*, and had not attempted to enforce them. Three regions had experienced significant obstacles when attempting to enforce all of the licence conditions. Only one region reported that the legal issues surrounding the enforceability of some of the licence conditions had not affected its monitoring and enforcement of the licence conditions.

In response to our 2002 investigation, DADHC had assured this office that implementation of the department's LRC monitoring policy would ensure comprehensive monitoring of all licensed boarding houses through full service reviews. This clearly had not occurred.

Finally, we wanted to know if questions in relation to the enforceability of certain licence conditions were adversely affecting the safety, welfare and health of residents. The evidence obtained from our inquiry demonstrated that this was the case.

9. Our specific findings

9.1 Routine monitoring

DADHC's LRC policy requires routine monitoring of licensed boarding houses to occur every 6-8 weeks. At the end of each visit a Monitoring Inspection Report is to be completed. Any outstanding or new breaches, assessment of level of risk, and timeframes required to address breaches, are to be documented in the report. A copy of the report is to be given to the licensee/ licensed manager and a copy placed on file. Breaches of licence conditions should be followed up consistent with the level of breach.

According to the policy, there should have been at least 14 routine monitoring visits for all licensed boarding houses (this number is based on an assumption that site visits would or should have occurred every eight weeks from commencement of the LRC policy in August 2003).

We found that during this period only three licensed boarding houses had been the subject of routine monitoring in accordance with the policy requirements. In fact, two licensed boarding houses had only received two routine monitoring visits. More specifically, we found that:

- Routine monitoring of boarding houses had been variable across regions since the LRC licensing and monitoring functions were regionalised in 2003. It was not occurring in one region, it was not a priority in another, and it had occurred erratically in yet another region. Consistent monitoring over time had occurred in only two regions. This meant that, for some residents in some licensed boarding houses, no one with authority was regularly ensuring that they were living in acceptable conditions.
- Where routine monitoring visits occurred, in the main these focussed on breaches of physical conditions. The less tangible, welfare orientated licence conditions appeared to be addressed less frequently during these monitoring visits. Our inquiry found that these

conditions tended to be monitored only during the three yearly comprehensive full service reviews. As a number of licensed boarding houses had not had a comprehensive full service review, we identified this as an issue of concern.

- While three regions had followed the department's policy position that all the licence conditions were to be monitored, and where possible enforced, one region was neither monitoring nor attempting to enforce possible *ultra vires* conditions. The monitoring strategy adopted by another region meant that many of the conditions had not been monitored for compliance since August 2003.
- This meant that licence conditions across regions were being differentially monitored and enforced. For example, three regions required licensed boarding house staff and management to undergo criminal record checks, one did not, and staff in one region were uncertain as to whether they should. Some regions enforced minimal staffing numbers while others did not. Some regions required boarding houses to have a room available for residents who are sick, one region did not and two regions were awaiting direction from DADHC's central office on the issue. Our inquiry found similar inconsistencies in the way regions monitored licence conditions about staffing suitability, and conditions concerning residents' rights and welfare.
- We also found that, other than frequency of visits and conditions monitored, there was some variation in the way routine visits were documented. All regions except one used the department's standard 'Routine Monitoring Report'. Where these reports were used, generally there was evidence that the licensee or licensed manager was informed about the outcome of the monitoring visit. However, in one region, these reports were not used and therefore it was not clear that identified breaches were being properly followed up.

Monitoring and enforcement of licence conditions under the YACS Act is a difficult job made more so by the *ultra vires* issue. Given this, it is concerning that a number of DADHC's licensing staff told us that they were uncertain about what is an acceptable minimum standard in relation to licence conditions.

We also learnt that only a few of DADHC's staff who were performing the boarding house monitoring role at the time of our inquiry, had attended a two-day training course provided by the department in August 2003. As there had been significant turnover of licensing staff in some regions, a number of staff felt that they needed more training. In one region, monitoring responsibilities appeared to have been given to staff who had no delegation or licensing training. In our view, this is unacceptable.

Some staff also reported feeling ill equipped and not particularly well supported by the department when dealing with boarding house licensees and managers who challenged the department's power to enforce licence conditions. One DADHC licensing officer told us of having to continuously deal with complaints from various agencies about resident wellbeing at one particular licensed boarding house. In the officer's view, his option for resolving the alleged breaches was limited to trying to negotiate improvements with the licensee. A letter of warning of a prosecutable offence had not been sent or suggested by his supervisors. Our review of the relevant monitoring file suggested that it was the licensee who allegedly breached the conditions who was determining when to remedy breaches identified by the licence officer. These alleged breaches included ongoing concerns about the cleanliness of the premises, residents being required to use plastic cups to scoop boiling water from an urn as the urn tap had broken, inadequate food storage and kitchen hygiene, non-compliance with council fire safety requirements

and the licence requirement that staff be trained in the use of fire safety equipment, inadequate storage of medication, and hazardous open passageways with no handrails on stairs.

9.2 Full service reviews

DADHC's LRC policy states that:

A Full Service Review will be conducted once every 3 years and differs from a routine monitoring inspection in that it reviews the LRC's compliance with all of the Licence Conditions at that one point in time. Prior notice of the Full Service Review is given to the Licensee/Licensed Manager to ensure all information and relevant staff are available for consultation.

In 2003, we recommended to DADHC that the department review all licensed boarding houses to ensure appropriate standards of care were being provided to residents. In response, DADHC assured us that this would be achieved through implementation of its monitoring strategy, of which the full service review would be a pivotal component. We acknowledged the critical nature of these reviews because they would assess compliance against all the licence conditions.

Given the limited nature of routine monitoring visits, we expected that DADHC would ensure the completion of full reviews would have been as close as possible to the commencement of the three-year cycle. However, we found just under a third of all licensed boarding houses had not been fully reviewed.

Consequently, two years after implementing its new monitoring policy, DADHC was still inadequately placed to judge whether appropriate standards of care were being provided to all licensed boarding house residents. Given the acknowledged vulnerability of these people, this situation is unsatisfactory.

DADHC staff provided a number of reasons as to why full service reviews had not been completed, including staffing instability, workloads, and competing priorities. However, the lack of priority given to completion of these comprehensive reviews raises questions for us about the adequacy of DADHC's commitment to its responsibilities under the YACS Act.

Even when full reviews had been completed, in some regions these were poorly documented and, contrary to the department's procedures, had little supporting documentation to support assessments of compliance against the conditions.

9.3 Determining level of risk when assessing breaches of licence conditions

When assessing breaches of licence conditions, regional staff are required to make an assessment of the level of risk to residents. The compliance timeframe applied for breaches of licence conditions ranges from a request for an immediate response to compliance being required within six months. Regional staff are also directed to consider the effect of non-compliance in circumstances where the licensee or licensed manager fails to address breaches of the Act or conditions and/or continually fails to meet specified compliance timeframes.

During our inquiry we found:

- All but one region generally complied with the LRC policy requirements relating to determining the levels of risk to residents when assessing licence breaches. The region where this did not occur also failed to comply with the department's documentation requirements.
- Only three of the five regions used unscheduled and/or out of hours visits to check compliance with action plans for addressing high-level breaches of the licence conditions, such as overnight supervision for residents or the adequacy of evening meals.

9.4 Regional management of non-compliance with licence conditions

Section 21 of the *Youth and Community Services Act* sets out the obligation of proprietors to comply with the conditions of the licence or permit. Under the Act, penalties exist for breaching licence conditions.

The department's LRC policy provides for a range of responses in the event of a licensed boarding house proprietor breaching licence conditions and for not taking reasonable steps to remedy the breaches. The responses include setting immediate compliance timeframes and strictly monitoring the licensee or licensed manager's response; varying the licence; sending a notice warning of a prosecutable offence to the licensee and/or licensed manager; prosecution of the licensee and/or licensed manager; and revocation of the licence.

During our inquiry we reviewed DADHC's monitoring files. Records from those files indicate that standards of care provided by licensed boarding houses vary greatly across the state. This observation was supported by our interviews with monitoring staff. In one region alone, records relating to the monitoring of licence conditions had recorded serious and ongoing alleged breaches of licence conditions by a number of licensed boarding houses. For example:

Records relating to licensed boarding house 1 noted:

- medication storage and safety issues relating to premises
- fire detection system disconnected
- evidence of residents smoking in rooms, staff receiving no fire training, no evacuation procedure
- similar issues identified in previous years.

Records relating to licensed boarding house 2 noted:

- Extensive concerns identified through complaints and routine monitoring including
 - restriction of services to residents
 - various complaints about the administration of medication
 - inadequate staffing resulting in strangers entering the premises at night leading to allegations of sexual assault by female residents
 - inadequate medical attention for residents
 - poor nutrition.

Records relating to licensed boarding house 3 noted:

- night supervisor not competent
- complaints of staff shouting at residents if they make a mistake
- no staff roster
- no fire evacuation drill and no documentation of compliance with local government authority requirements.

Our inquiry found that where regions had allegedly experienced ongoing non-compliance by licensed boarding houses with the licence conditions, the response of the regions varied. Most of the alleged serious breaches of licence conditions were in relation to those conditions about which there is a question as to their enforceability. Once again, regional responses to breaches of these types of conditions varied. Most regions had attempted to either direct compliance or at least negotiate with licensees and/or licensed managers to achieve compliance where breaches had occurred. However, where this was not successful, only two regions had issued a notice warning of a prosecutable offence, and only one region had initiated a prosecution. Others took no further action.

We had strong concerns about the department's response to alleged breaches of boarding house conditions in one particular region where monitoring staff from that region told us that the region's practice was not to monitor those conditions that may be *ultra vires*. Our inquiry found that, in this region, DADHC was not effectively monitoring matters such as the management of residents' financial affairs, residents' access to services such as Home Care, and the amount of recreational space available to residents within licensed boarding houses.

In our view, this situation places some residents in a particularly vulnerable situation. It highlights the importance of both effective training and support of DADHC's monitoring staff.

9.5 Potentially illegal operators

Prior to regionalisation of the licensing function in the first quarter of 2003, DADHC's Boarding House Standards Unit maintained a list of potentially illegal operators.

There has been growing concern in the community about the extent of boarding houses operating illegally. This concern sits alongside the related issue of the ever diminishing number of beds in licensed boarding houses.

In these circumstances, we sought to clarify DADHC's position in relation to potentially illegal operators. We also sought advice from the department about the number of complaints DADHC had received about these operators since regionalisation of the LRC licensing function, as well as advice about the action taken by the department in response to these complaints.

In response to our specific question to DADHC about whether the department faced any particular challenges in relation to meeting its responsibilities concerning unlicensed boarding houses, the department advised that challenges exist in relation to the *'resources required to identify the location of such premises; a reliance on informants; and establishing that two or more residents are handicapped within the definition of the Act.'*

In October 2005, DADHC issued a memo to all the department's regional directors, clarifying DADHC's powers of entry to unlicensed premises and outlining the policy for dealing with these

premises. The memo directs that DADHC officers can only enter unlicensed premises under the following circumstances:

- An officer may enter unlicensed premises if invited by a person with the authority to issue the invitation.
- An officer could accept an invitation from a boarder or lodger to enter but only for the purpose of conversing in the privacy of their room or in a space set aside to receive visitors.
- In the performance of duties authorised by the [YACS] Act, an officer may only enter an unlicensed premises for the purpose of making an inquiry following an application for a licence or under the authority of a warrant (Section 25(5) of the Act).

According to the records kept by the five regions that we reviewed for our inquiry, DADHC received fewer than 10 complaints about potentially illegal operators between late 2003 and late 2005.

While it appears to us that DADHC has taken reasonable steps to investigate these complaints, in some instances the investigator's assessment of whether two or more residents have a 'handicap' has been based on very limited information. For example, assessments were based on a description of the residents provided by the operator; or assessments were based solely on the DADHC officer's sighting of the residents. In fact, our review of these matters supports the department's advice that establishing that two or more residents are handicapped within the meaning of the Act is a significant challenge. What is also clear is that these difficulties have not been resolved through the department's release of its October 2005 policy for dealing with potentially illegal operators.

Apart from the issue of whether DADHC has sufficient power under current legislation to investigate complaints about potentially illegal operators, there is also the question of capacity. All of the regions we reviewed in our inquiry reported that they did not have the capacity to proactively identify potentially illegal operators. Regional staff also reported that there is little, if any, liaison between DADHC regional staff and local councils in relation to the issue of unlicensed premises. Even if there were, local councils' role in relation to ensuring minimum standards in boarding houses, including those that should be licensed under the YACS Act, is limited to certification for relevant fire safety requirements, broad health requirements and general amenity of premises.

10. DADHC's response to our inquiry findings and recommendations

In March 2006, in response to our inquiry findings, DADHC acknowledged that there was scope to improve the department's monitoring of licensed boarding houses.

In response to a provisional statement of our findings, DADHC told us that the department was:

- progressing the review of the *Youth and Community Services Act* in order to provide an approach to regulatory and quality aspects for this industry
- funding casework services to provide residents of Licensed Residential Centres with personal care planning, support with community integration and assistance to access equipment and other services
- scheduling training sessions for all regional staff with direct involvement in the Licensed Residential Centre monitoring process commencing April 2006
- updating the department's policy manual.

In light of this advice, we recommended in our final report that DADHC should prioritise its contribution to the review of the *Youth and Community Services Act*. We also recommended that DADHC's contribution to the review should include consideration of the regime for dealing with both LRCs and 'potentially illegal operators'.

In relation to the department's contribution to the review of the YACS Act, DADHC advised us in May 2006 that the department would soon complete the review of the Act and is: '*currently providing advice to the Government on directions for the Act*'. Moreover, '*the issue of potentially illegal operators is being considered and included in the advice being provided to Government*'.

In our final report we also recommended that DADHC address the many performance deficiencies identified by our inquiry.

We have been advised that all regions are now undertaking regular monitoring of the licensed boarding houses within their regions. Full service reviews in one region will now occur annually. Specific action is occurring to address the problems our inquiry identified with the monitoring of a particular boarding house where the majority of residents have high support needs and there are questions about the adequacy of the supervision provided to these residents.

DADHC has advised us that individual performance issues are being addressed through a range of strategies including enhanced supervision of staff, job rotation, and better training of those staff who are delegated by the department to monitor licensed boarding houses. The department has also implemented a range of strategies to ensure staff adherence to monitoring requirements.

11. Conclusions

In the final report on our 2002 investigation, we observed:

The residents of licensed boarding houses are an extremely vulnerable group of people. They usually live in these facilities because they have no real alternatives. They often rely solely on a pension for income, which can be completely spent paying the boarding house proprietor for their board and lodging. Many have physical and/or intellectual disabilities with a proportion also suffering mental illness. Many are elderly.

The provision of decent accommodation and appropriate services is not always an easy job. The needs among a group of residents can be highly complex and varied. What is true for the majority is that they are dependent on the support and advocacy, if not of family members, of community or departmental workers to ensure their best interests are served.

... in this situation, it is absolutely essential that appropriate standards are set governing the care provided and that those standards are monitored and enforced effectively.

These observations remain just as relevant today. While we welcome DADHC's recent promise to ensure that its licensing staff are properly trained and supported, we do so in the knowledge that DADHC failed to adequately meet its July 2003 commitment to this office regarding the rolling out of an effective monitoring system. In these circumstances, my office will continue to monitor closely whether DADHC meets its commitments in a timely manner.

There is another matter that requires further comment. In its July 2003 advice to this office, the department noted that '*the extent to which the department can pursue enforcement of certain conditions is qualified by the ultra vires issue*'. As our inquiry has shown, this is still a key issue

adversely impacting on DADHC's capacity to effectively monitor boarding houses. We therefore welcome DADHC's advice to us that it has provided the Government with relevant advice on directions for the Act.

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. We look forward to the outcome of the review of the YACS Act and recommend that DADHC advise us on its progress and implementation by the end of September 2006.

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