

Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness
A joint initiative of the Public Interest Advocacy Centre Ltd
and the Public Interest Law Clearing House Inc



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OVERSIGHT OF BOARDING HOUSES

Submission to the NSW Legislative Council Standing Committee on Social Issues Inquiry into ADHC services

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Homeless Persons' Legal Service

Introduction

Homeless Persons' Legal Service

In 2004, following an extensive consultation process, the Homeless Persons' Legal Service (**HPLS**) was established by the Public Interest Advocacy Centre (**PIAC**) and the Public Interest Law Clearing House (**PILCH**) NSW.¹ HPLS is largely funded by the NSW Public Purpose Fund through the support of the NSW Attorney General.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates ten clinics on a roster basis at welfare agencies in the greater Sydney area.² These are agencies that provide direct services, such as food and accommodation to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers from PILCH members.³ Since the launch of HPLS in May 2004, HPLS has provided advice to over 3800 clients.

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.

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.

1 Further information about the Public Interest Advocacy Centre and the Public Interest Law Clearing House is provided as Appendix A to this document.

2 The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Normal Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Vincentian House (St Vincent de Paul Society), Wayside Chapel (Uniting Church) and Women's and Girls' Emergency Centre.

3 The following PILCH NSW members provide lawyers on a *pro bono* basis to HPLS to provide legal services through the clinics: Allen's Arthur Robinson, Baker & McKenzie, Corrs Chambers Westgarth, Dibbs Barker, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW, Minter Ellison, Norton Rose and Thomsons Lawyers.

PIAC has also made a submission to Ageing Disability and Home care (ADHC) on the proposed *Youth and Community Services Regulation 2010*. A copy of that submission is attached.

Summary of recommendations

Recommendation

That ADHC's Annual Report and Financial Statement include information that clearly indicates the distribution of its funds to its various programs and to community organisations that serve LRC residents.

Recommendation

That ADHC disclose what action is currently being taken to introduce new legislation that will underpin rigorous and thorough regulation of the boarding house sector and that has as its central aim the protection of residents with disabilities and improvement of their standard of living.

Recommendation

That ADHC improve its practices in relation to the monitoring of LRCs and publicly disclose what actions it is taking to address the concerns raised in the June 2006 Ombudsman's Report to Parliament.

General Comments

HPLS welcomes the opportunity to make this submission to the NSW Legislative Council Standing Committee on Social Issues Inquiry into the quality, effectiveness and delivery of services provided or funded by Ageing Disability and Home Care (ADHC). HPLS acknowledges and supports steps taken by the Committee to ensure that the public hearings are accessible for people with disability through the provision of Auslan interpreters and hearing loop facilities, and the availability of several Committee documents in Braille and MP3 conversion.

This is in keeping with the standards enshrined in the United Nations' *Convention on the Rights of Persons with Disabilities* (CRPD) which Australia Ratified on 17 July 2008⁴. These obligations include that States Parties provide information intended for the general public to persons with disabilities in accessible formats and provide technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.⁵

⁴ United Nations, General Assembly, A/RES/61/106, Dov.A/61/611 13 December 2006, *Convention on the Rights of Persons with Disabilities*, opened to signature 20 March 2007, 1-44910 (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.

⁵ Article 21(a) CRPD.

Licensed Residential Centres

The focus of this submission is on ADHC's provision and funding of services to residents of licensed boarding houses (often referred to as licensed residential centres or LRCs). The legal services HPLS offers to homeless people lead it to have a particular interest in ADHC's performance in this area as this form of accommodation is often the only alternative to homelessness for many LRC residents.⁶ In addition people with disabilities, the consumers or potential consumers of the services provided or funded by ADHC, are over-represented amongst the homeless population in NSW and across Australia, although statistical information on the extent to which people with disabilities appear in the homeless population can be difficult to obtain.⁷

HPLS' ability to comment on ADHC's provision and funding of services to residents of LRCs is impeded by the lack of detailed information publicly available regarding the cost of these services. For example, ADHC's Annual Report and Financial Statement does not contain any information which would enable the amount ADHC spends on providing home care to LRC residents to be determined. This apparent lack of transparency is not in keeping with the CDRP principle that States Parties should collect and disseminate information that enables assessment of the implementation of States Parties of their obligations under the Convention.⁸

Recommendation

That ADHC's Annual Report and Financial Statement include information that clearly indicates the distribution of its funds to its various programs and to community organisations that serve LRC residents.

HPLS does not express a view on the quality and delivery of the services ADHC provides or funds for residents of LRCs, but confines itself to commenting on the overall effectiveness of ADHC's use and allocation of its resources in relation to ameliorating and improving the living conditions of residents of LRCs, given the LRC sector's on-going systemic issues.

ADHC expenditure on services for residents of LRCs

ADHC provides or funds a range of services that either target or are available to LRC residents. Most of these services emerged out of the Licensed Boarding House Reform Program, which was introduced in 1998. These include:

- the Active Linking Initiative (ALI) which provides or brokers recreational and social activities for residents aimed at providing social support;
- Home and Community Care (HACC) services which provide personal care, transport and other services to residents who have been assessed as meeting the relevant criteria;
- Community Support Teams, if the residents meet the relevant criteria;

⁶ The Allan Consulting Group, *Shared Accommodation for People with a Disability: A National Competition Policy Review of the Regulation of Boarding Houses*, Sydney, 2003, 10.

⁷ Australian Institute of Health and Welfare, 'Homeless SAAP clients with a disability 2002-03' (2005) 23 *Bulletin*, 3.

⁸ Article 31.2 CRPD.

- the Screening Tool for Entry to Licensed Residential Centres. This tool screens new entrants to LRCs to ensure their accommodation and support needs can be met in an LRC environment;⁹
- the funding of alternative community based accommodation to some residents with high support needs;¹⁰ and
- supporting residents in the event of the operator closing the LRC.¹¹

Research has indicated that the capacity and success of some of these services to meet the needs of LRC residents is variable.¹²

ADHC licensing functions

Under the *Youth and Community Services Act 1973* (NSW) (YACS Act), ADHC is responsible for regulating private-for-profit boarding houses that have as residents two or more 'handicapped persons'. Functions associated with ADHC's responsibility for licensing include:

- receiving and assessing license applications from boarding house proprietors;
- preparing reports on applications for the Minister;¹³
- granting licenses with conditions stipulating the duties and responsibilities of boarding house operators;¹⁴
- conducting visits to LRCs to check compliance with license conditions and YACS Regulations; and
- prosecuting breaches and, where necessary, revoking licenses, the most recent known example being Swatson House in Summer Hill.¹⁵

HPLS acknowledges that these regulatory functions are not 'services' directly delivered to LRC residents. However, HPLS submits that ADHC's performance in carrying out these functions has a direct impact on the environment in which services targeting or available to LRC residents are delivered. Any assessment of the effectiveness of these services must include an assessment of the ADHC's effectiveness in performing its regulatory functions.

Systemic issues

HPLS submits that the following systemic issues in the LRC sector undermine the quality, effectiveness and delivery of services to residents of LRCs:

- the out-dated and weak legislation and regulations governing the licensing of boarding houses;
- the failure of ADHC to regularly and adequately monitor LRCs' compliance with license conditions; and
- the lack of tenancy rights afforded LRC residents.

⁹ Ageing Disability and Home Care, *A User's Guide to the Screening Tool for Entry to Licensed Residential Centres* (2010).

¹⁰ Robinson S, Knight K & D'aegher L, *Equity of Access to HACC Services for Residents of Licensed Boarding Houses: Final Report*, The Disability Studies and Research Institute (2005) 9.

¹¹ Ageing, Disability and Home Care (ADHC), *Annual Report 2008/09*, 62.

¹² Robinson, above n 10.

¹³ Section 11(2) YACS Act.

¹⁴ Section 16 YACS Act.

¹⁵ ADHC, above n 11, 137.

The YACS Act is over 35 years old and is in virtually identical terms to when it was first passed. It has been described as ‘grossly ineffective’.¹⁶ In the YACS Act, the duties and responsibilities of licensees are limited to compliance with the maximum number of residents and reporting the death or absence for more than 24 hours of any ‘handicapped person’ at the LRC.¹⁷ The YACS Regulation lists sixteen obligations of licensees. These are very basic and address such requirements as sleeping facilities (e.g. distance between beds), medication procedures and storage space.

Recommendation

That ADHC disclose what action is currently being taken to introduce new legislation that will underpin rigorous and thorough regulation of the boarding house sector and that has as its central aim the protection of residents with disabilities and improvement of their standard of living.

Concerns have been raised time and again regarding the adequacy of ADHC’s monitoring of LRCs. A report prepared by the NSW Ombudsman in 2006 found that routine monitoring of LRCs did not take place in most instances¹⁸ and that just under a third of all LRCs had not been the subject of a complete Full Service Review.¹⁹ The Ombudsman also found many other gaps in ADHC monitoring of LRCs. There is no evidence to date that ADHC has adequately addressed the concerns raised in this report.

Recommendation

That ADHC improve its practices in relation to the monitoring of LRCs and publicly disclose what actions it is taking to address the concerns raised in the June 2006 Ombudsman’s Report to Parliament.

Residents of boarding houses, both licensed and unlicensed, are not tenants and are explicitly excluded from the protections provided in the *Residential Tenancies Act 2010* (NSW).²⁰ In NSW, the right of a boarding house resident to occupy the premises derives from the contract between the resident and the boarding house proprietor. If the resident ‘breaches’ the contract, he or she may be evicted with little or no notice. These contracts do not provide any rights regarding notice of rent increases, the condition and repair of the premises or any means of resolving disputes.²¹ HPLS queries whether all residents of LRCs have sighted, signed and adequately understood their contract with the proprietor.

The initial and welcome reforms implemented under the Boarding House Reform Program and the introduction and funding of a range of services to LRC residents, has led to some improvements in

¹⁶ The Allan Consulting Group, above n 6, 28.

¹⁷ Section 26 YACS Act.

¹⁸ NSW Ombudsman, *DADHC: Monitoring Standards in Boarding Houses: a special report to Parliament under s 31 of the Ombudsman Act 1974* (2006) 6.

¹⁹ *Ibid* 8.

²⁰ Section 8(1)(c) *Residential Tenancies Act 2010* (NSW).

the living conditions of residents of LRCs. HPLS also believes that the proposed new Regulation will provide greater certainty and clarity regarding the obligations and responsibilities of licensees. A copy of PIAC's recent submission is attached.

However, HPLS is concerned that ADHC's drive to reform the licensed boarding house sector has waned. There is no evidence of a clear policy direction in relation to the future of the licensed boarding house industry, with the issue of boarding houses warranting only a passing mention in ADHC's policy document *Stronger Together*.²² Outdated and ineffective legislation remains in place, while ADHC appears to only partially fulfil its functions under this weak legislative regime. Meanwhile vulnerable residents of LRCs continue to live in a fundamentally flawed form of accommodation.

²¹ The Allan Consulting Group, above n 6, 76; Tenants' Union of NSW, *Occupancy Rights for residents of Licensed Residential Centres: a briefing paper by the Tenants' Union of NSW*, Sydney, October 2005, 1.

²² Ageing Disability and Home Care, *Stronger Together: A new direction for disability services in NSW 2006-2016*, Sydney, May 2006, iii.

Appendix A

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;
- 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 Allen's 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.

The Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) NSW was established in 1992 by the Law Society of New South Wales, the Public Interest Advocacy Centre and the private legal profession to respond to the growing incidence of unmet legal needs within the community. Underlying the establishment of PILCH is the commitment from lawyers that the provision of legal services on a *pro bono publico* ('for the public good') basis is intrinsic to legal professional responsibility.

The aims of PILCH are:

- to identify matters of public interest that warrant legal assistance *pro bono publico*;
- to identify the legal needs of non-profit organisations;
- to match disadvantaged and under-represented individuals, groups and non-profit organisations with a need for otherwise unavailable legal assistance with PILCH member firms and barristers;
- to utilise the diverse skills and resources of lawyers in a broad range of public interest matters;
- to expand the participation of private practitioners in the law reform process;
- to seek the integration of *pro bono* work with legal practice; and

- to encourage co-operation between private practitioners and public interest lawyers.

PILCH provides services to community organisations and individuals for free. It is a membership-based organisation with members including small, medium and large private law firms, individual barristers, barristers' chambers, law schools, accounting firms, Legal Aid NSW, the Law Society of NSW, the NSW Bar Association and PIAC.