



## Boarding house inspections: Information for NSW local councils on developing a boarding house inspection program

This factsheet should be read together with the *Boarding Houses Act 2012 – Guide for Councils* (June 2013) available at [www.fairtrading.nsw.gov.au/ftw/Tenants\\_and\\_home\\_owners/Boarding\\_houses.page](http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Boarding_houses.page)

<p><b>About the <i>Boarding Houses Act 2012</i></b></p> <p>The NSW Government introduced the <i>Boarding Houses Act 2012</i> (BHA) in response to concerns about the safety, welfare and wellbeing of people living in boarding houses.</p> <p>The BHA commenced on 1 January 2013. The BHA requires operators of two types of boarding houses to register their boarding house with NSW Fair Trading. The two types of boarding houses that need to be registered are:</p> <ol style="list-style-type: none"> <li>1. “General” boarding houses - boarding premises accommodating five or more residents, and</li> <li>2. “Assisted” boarding houses - boarding premises accommodating two or more residents who have “additional needs”.</li> </ol>	<p>For more information about the objectives and definitions of the BHA, refer to Parts A, B and C of the <i>Boarding Houses Act 2012 – Guide for Councils</i></p>
<p><b>Requirement to conduct an initial compliance inspection of all registered boarding houses</b></p> <p>Councils must inspect boarding houses within 12 months of their registration or re-registration with Fair Trading (unless inspected within the previous 12 months), and within 12 months of notification of a change of ownership.</p> <p>To access the Boarding Houses Register, go to “Accommodation Registers” on the NSW Fair Trading website, and click on “Start search” and then “Boarding House Register”. Councils can enter the name of the boarding house or search by suburb, postcode, or local government area.</p> <p>The BHA provides councils with new powers to gain access to boarding houses in order to conduct an initial compliance inspection. On gaining access, councils must inspect boarding houses for compliance with relevant standards in the <i>Environmental Planning and Assessment Act 1979</i> (EPAA), the <i>Local Government Act 1993</i> (LGA), and any associated regulations.</p> <p>Councils may charge boarding house owners a fee for conducting the inspection – the fee should be set in accordance with the LGA and included in the council’s annual fees and charges.</p>	<p>For details of the powers of councils and the relevant sections in the LGA and EPAA, refer to Part D of the <i>Boarding Houses Act 2012 – Guide for Councils</i></p>
<p><b>Boarding houses that have not registered</b></p> <p>If a council has information that a property is operating as a boarding house but has failed to register with NSW Fair Trading, council may use existing powers under the LGA and EPAA to enter and inspect the premises. In addition to any action taken for breaches under the LGA or EPAA, councils may also issue a penalty notice to the boarding house operator for failing to register.</p> <p>Councils need to be aware of their responsibilities under both the LGA and EPAA to consider whether any order the council makes is likely to make a resident homeless, and if so, whether the resident/s are able to arrange alternative accommodation in the local area.</p> <p>Enforcement action against a boarding house can be recorded on the Boarding House Register. This information can only be entered by NSW Fair Trading.</p> <p>Councils can email <a href="mailto:registryinquiries@finance.nsw.gov.au">registryinquiries@finance.nsw.gov.au</a> with details of the enforcement action, or if necessary phone 1800 502 042. The title of the email should indicate that it is about the Boarding House Register.</p>	<p>Refer to Parts J, K, and L of the <i>Boarding Houses Act 2012 – Guide for Councils</i></p> <p>See Part M of the <i>Guide</i></p>

### **Regular inspections after the initial compliance inspection**

The BHA only requires councils to conduct an initial compliance inspection. It is then up to the council to determine whether further action needs to be taken in relation to the boarding house. It is also up to the council to determine whether the boarding house will be inspected regularly, for example on an annual basis.

See DLG *Circular to Councils 13-02, Boarding Houses Act 2012*, [www.dlg.nsw.gov.au/dlg/dlghome/documents/Circulars/13-02.pdf](http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Circulars/13-02.pdf)

### **Example of a “risk-based” inspection program for boarding houses**

*The following boarding house inspection program is considered good practice, depending on the council's resources and the priorities of the community:*

1. All registered boarding houses are inspected within 12 months of registration with NSW Fair Trading (required under the BHA).
2. All complaints about unregistered boarding houses, or registered boarding houses that have previously been inspected, will result in an inspection within the timeframe set out in council's service standards. However, if the complaint is about fire safety or life-threatening health or safety risks, council will inspect the premises as soon as possible.
3. During inspections council officers will use an Inspection Report (may wish to adapt the template provided with this Factsheet) to identify whether the property:
  - a. Has fire safety standards appropriate for the property's use as a boarding house and the BCA class
  - b. Meets the shared accommodation standards set out in the *Local Government (General) Regulation 2005*
  - c. Has appropriate consent or is otherwise permitted by council to be used as a boarding house
  - d. Has residents who appear frail, or have intellectual or psychiatric disabilities, who may require (or are being provided with) daily support services - the council will notify NSW Family and Community Services (FACS) of their observations so FACS can assist residents or conduct its own investigations under Part 4 of the BHA.
4. If the boarding house receives a satisfactory inspection report, they will be assessed as being of low risk and marked for re-inspection every two years.
5. If the property is assessed as posing a serious risk to the safety, welfare and wellbeing of residents or neighbours, for example, if fire standards are unsatisfactory, the council will conduct regular inspections and, if necessary undertake compliance activity until satisfactory compliance is achieved. Operators will be referred to FACS - Housing NSW for advice on whether they can access a fire safety works grant.
6. If the property's compliance with other standards is unsatisfactory, but does not pose a serious risk to residents or neighbours, council will issue a compliance notice and inspect the property again in 6 months. If the second inspection is satisfactory, the council can mark the boarding house for re-inspection in two years.
7. Where a property is unregistered but is clearly operating as a boarding house within the definition of the BHA, the council will conduct all inspections as if it were registered, but will also advise the operator of the need to register with NSW Fair Trading, and of benefits available including land tax exemption. Council should also consider whether it is appropriate to issue a penalty notice for failing to register.