

**BOARDING AND LODGING HOUSES: A
STUDY OF THE MARKET, LAW AND
OPTIONS FOR REFORM IN WESTERN
AUSTRALIA**

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EXECUTIVE SUMMARY

Right to Housing

Housing is an important right for all people. This right is espoused in a number of international agreements, to which Australia is a signatory.

There are many forms of, and ways of occupying, housing. Some types of housing, such as boarding and lodging houses and caravans, which may have traditionally been viewed as short-term accommodation¹, are increasingly being used as long-term housing options. In addition, residents of boarding and lodging houses were mainly transient older males, but now the sector attracts a diverse range of residents, particularly those on low incomes.

It is important to ensure that well maintained and safe boarding and lodging houses are available to provide a low cost housing option. It is also important to ensure that an equal power relationship exists between residents and owners when residents contract to access such housing.

Definitions

A lodging house can be defined as premises where a room (or part of the premises) is available for occupation for rent, with the permission of the owner. A boarding house is a lodging house where meals (or some other services) are provided. In reality, the terms are used interchangeably.

A boarding and lodging situation differs from a tenancy as a tenant receives a lease (which is a distinct interest) in property, while a boarder or lodger has a licence (or permission) from the owner to occupy premises. A tenant can generally invite people onto premises at their discretion and can exclude the owner (subject to the provisions of any statute) but in a boarding/lodging situation, the owner retains some form of control over the premises overall.

In practice, the difference between a boarder/lodger and a tenant may not be apparent. The differences become even less clear when considering a share house involving sub-letting.

There are many different definitions of boarding and lodging houses, depending on the purpose for which the definition is required and these definitions also vary amongst the States and Territories of Australia. A boarding and lodging house could include (or exclude!) hotels, motels, hostels and care facilities.

¹ Although boarding and lodging houses may be viewed as a form of homelessness, this report considers boarding and lodging houses to be a viable long-term housing option, while acknowledging that this position is based on a white European cultural perspective.

Supply and Demand

Notwithstanding the differences in defining (and therefore counting) boarding and lodging houses, there is evidence across Australia that their numbers are in decline. However, the demand for low cost housing, such as boarding and lodging houses is increasing.

Although the sector is a small one in WA, and there are relatively few complaints, there are many issues that face residents. It should also be noted that the often precarious position/tenure of residents may make complaining or enforcing rights difficult.

Residents face such issues as:

- uncertainty as to their legal status and hence their rights and responsibilities;
- unreasonable house rules and/or unfairly enforced rules;
- lack of access to their room and/or facilities;
- inadequately maintained premises;
- unfair fees and charges;
- termination without fair notice and confiscation of their belongings.

Law

Boarding and lodging houses are subject to many rules originating from the agreement between the boarder/lodger and owner, and also from rules made by local, state and national governments. Most State and Territory governments have enacted statutes that specifically regulate the relationship between residents of boarding and lodging houses and owners.

In addition, in 1995, the Commonwealth Department of Housing and Regional Development prepared a report providing a comprehensive assessment of minimum legislative standards for residential tenancies in Australia. The report suggested that the provisions of the residential tenancies legislation should apply to boarding and lodging houses, whilst also taking into account the differences that exist in boarding and lodging situations.

In WA, there are a number of problems with the current legislative framework in relation to the boarding and lodging house sector.

- The current registration system in relation to lodging houses (for the purpose of health and safety) is difficult to enforce because imposing work orders might cause closures and vulnerable residents might face the possibility of primary homelessness.
- WA has no legislation that directly regulates the relationship between boarders/lodgers and owners, so market participants must rely on common law in relation to such matters as bond lodgement, abandoned goods and contractual disputes generally.

- Boarders and lodgers are not defined under the *Residential Tenancies Act 1987* (WA) for the purpose of exclusion from coverage under this statute and this lack of clarity can be exploited by unscrupulous operators.

There appears to be a need for reform in this area.

Conclusions and recommendations

The boarding and lodging house sector performs an important function in the Western Australian community. It is a low cost and flexible form of housing for many residents, particularly those on low incomes. Boarding and lodging houses can also be sources of vibrancy in inner city areas and provide residents with ready access to services.

However, the sector is small and declining but demand continues to increase. The private market (through the operation of the price mechanism) is failing because the clientele of such accommodation are unable (often through disability) to pay the premiums required to keep this sector viable. Generally such clientele also require services other than accommodation to participate fully in society.

Supply side recommendations

The following recommendations are made to ensure a vibrant boarding and lodging house sector in WA that provides a much needed low cost housing option.

1. The various tiers of government work collaboratively to increase the supply of boarding and lodging houses in WA.

It is the responsibility of government to address the failure of the price mechanism to adequately distribute accommodation to vulnerable residents. Supply side assistance could include:

- building boarding and lodging houses;
- purchasing housing stock for conversion to boarding/lodging accommodation; and
- grants and concessions to existing and new boarding/lodging house operators.

Such strategies should also include allocating money to repair and upgrade existing boarding and lodging houses.

2. The state (and local) governments develop a system to “package” existing government services (currently spread out over a number of departments) such as health, guardianship, housing/utilities and transport.

The packaging of government services would provide a one-stop service information point for boarding and lodging house operators and residents. In addition, the co-ordination of service delivery to residents, incorporating the identification of individual needs, could be facilitated at this central point.

Such a service might alleviate some of the pressures currently facing boarding and lodging house operators and may decelerate closures.

Boarding and lodging house operators, residents and local governments could also contact this central government agency to advise about possible closure or downgrading of services to residents to trigger a whole of government response to minimise disruption to residents.

Demand side recommendations

The following recommendations are made to ensure that an “equal” power relationship exists between residents and owners when residents contract to access housing.

3. The *Residential Tenancies Act 1987 (WA)* be amended to incorporate Regulations and/or a Code of Conduct in relation to boarding and lodging houses.

The legislation should provide (a) clear definition/s regarding the boarding and lodging houses that are covered by the law and such (a) definition/s should provide the most vulnerable boarders and lodgers with legislative coverage.

It is the responsibility of government to assist vulnerable members of the community to access fair and equitable market outcomes when the system fails to produce such outcomes.

Legislative clarity should not result in boarding and lodging house closures if accompanied by appropriate supply side initiatives.

4. Legislative change should be accompanied by an education program and more funding of advocates.

Education is necessary to ensure stakeholders become aware of their rights and responsibilities under new legislation. Advocacy services are necessary to ensure that boarders and lodgers, who are often vulnerable consumers, can assert their rights in the marketplace.

ABBREVIATIONS USED IN THIS REPORT

Accommodation Act	Residential Services (Accommodation) Act 2002 (Queensland)
Accreditation Act (Queensland)	Residential Services (Accreditation) Act 2002
ACT	Australian Capital Territory
BCA	Building Code of Australia
BLAG	Boarders and Lodgers Action Group (NSW)
CHCWA	Community Housing Coalition of Western Australia
CTTT (New South Wales)	Consumer, Tenancy and Trader Tribunal,
DOCEP	Department of Consumer and Employment Protection
Qld	Queensland
NSW	New South Wales
NT	Northern Territory
RTT	Residential Tenancies Tribunal (South Australia)
RT Act (NT)	<i>Residential Tenancies Act</i> (Northern Territory)
RT Act (SA)	Residential Tenancies Act 1995 (South Australia)
RT Act (Vic)	Residential Tenancies Act 1997 (Victoria)
RT Act (WA)	<i>Residential Tenancies Act 1987</i> (Western Australia)
RT Act (Tas)	Residential Tenancy Act 1997 (Tasmania)
SA	South Australia
SAAP	Supported Accommodation Assistance Program
TAS	Tenants Advice Service
Tas	Tasmania
TIS	Translating and Interpreting Service
Vic	Victoria
WA	Western Australia
VCAT	Victorian Civil and Administrative Tribunal

INTRODUCTION

Report Background

The Department of Consumer and Employment Protection (DOCEP) in Western Australia (WA) administers (amongst other things) consumer protection laws. The Department is currently reviewing the *Residential Tenancies Act 1987 (WA)* [*RT Act (WA)*]. Currently, boarders and lodgers are excluded from coverage under the RT Act (WA).

It is understood that Shelter WA approached DOCEP about submitting a discussion paper that investigates options for dealing with boarders and lodgers, including the possibility of coverage under the RT Act. In developing a discussion paper, Shelter WA and the Tenants Advice Service (TAS) have been working on separate, but related projects to “gather and present data about boarding and lodging arrangements in Australia and WA to advance the discussion about options for reform of the boarding and lodging house industry in WA.”

This paper was prepared by TAS and was endorsed by the WA Tenancy Network in October 2005.

TAS is a community legal centre, specialising in tenancy law and a Central Resource Unit for the various community legal centres that provide advice and education to tenants across WA through Local Service Units.

Twelve community centres in metropolitan and regional WA that employ at least one tenancy worker comprise the Local Service Units. The role of the Local Service Units is to provide advice and education services directly to tenants.

The Local Service Units are:

- Kimberley Community Legal Services;
- Pilbara Community Legal Service;
- Geraldton Resource Centre;
- Goldfields Community Legal Centre;
- Tenant Advocacy South West;
- Midland Information, Debt and Legal Advice Service (MIDLAS);
- Northern Suburbs Community Legal Centre;
- Welfare Rights and Advocacy Service (WRAS);
- Sussex Street Community Law Service;
- Fremantle Community Legal Centre;
- Gosnells Community Legal Centre; and
- Southern Communities Advocacy Legal Education Services (SCALES).

TAS and the Local Service Units comprise the WA Tenancy Network.

Shelter WA is an independent community based peak body that provides advice on housing issues with a particular focus on accessibility by low income and disadvantaged groups.

Market background

TAS has received complaints and is aware that DOCEP receives complaints from some members of the WA community who, when entering into arrangements for accommodation, are not clear about their legal status. This lack of legal clarity generally surfaces when a dispute or issue arises during the course of occupancy of premises. **This is a significant matter as it affects the ability of consumers to seek redress and/or maintain accommodation.**

In addition, the types of people who are generally affected by such uncertainty are some of the most vulnerable people in our society, who are on low incomes and may have few options in the private accommodation market.

It is the aim of this paper to examine the scope of this market problem and to make recommendations to address the issue.

Current projects

Preparation of this paper involved:

- an analysis of the boarding and lodging market in Australia and WA;
- a literature review in relation to boarding and lodging houses;
- a review of the legal status of boarders and lodgers in Australia and WA; and
- consideration of a number of options to address the issues identified in the boarding and lodging market.

Shelter WA developed and administered a questionnaire to operators and residents of boarding and lodging houses about their experiences. The interviews mainly involved boarding and lodging houses operating under the Supported Accommodation Assistance Program (SAAP)². Private lodging house operators (who are registered with local government authorities) were also approached and a few of these operators agreed to be interviewed.

Supply of boarding and lodging houses in WA

A separate study was conducted by the Community Housing Coalition of WA (CHCWA) to consider ways that the supply of boarding and lodging houses can be stimulated in WA. CHCWA is a peak body that represents and supports the interests of not-for-profit community housing providers in WA.

For the purposes of the CHCWA study, the current stock of boarding and lodging houses in WA was determined. However, only boarding and lodging houses in which accommodation is provided as the primary service were considered. It is understood that the CHCWA study does not consider supported accommodation projects and the youth shared housing accommodation sector.

² Information about the SAAP program is available on page 26 of this report.

Contents of the WA Tenancy Network report

This paper examines:

- the issues surrounding the definition of a boarding and a lodging house and why it is necessary to consider this sector;
- the history of the boarding and lodging house sector in Australia, including WA;
- the boarding and lodging house market in Australia, including WA;
- the law relating to boarding and lodging houses at the Federal and State levels; and
- recommendations for reform of the boarding and lodging house sector in WA.

WHAT IS A BOARDING AND LODGING HOUSE?

Right to housing

Housing is an important human right for all people. This right is espoused in a number of international agreements, to which Australia is a signatory³.

There are many different forms of conventional housing and a number of ways that people can access such housing.

Examples of different forms of conventional housing include occupation of:

- a house, either on land or water;
- a unit;
- a caravan or motor home on a site; or
- a room in a house, unit or building.

Examples of different ways to access housing include:

- ownership, or payment of a mortgage towards ownership;
- occupation of premises with the permission of the registered owner, either directly or indirectly through an agent or other assignment; and
- occupation of premises without permission of the registered owner, (also known as squatting).

From the examples of different forms of housing listed above, this report focuses on occupation of a room in a house, unit or building. The access for use of such rooms is by way of permission (obtained directly or indirectly) from the registered owner.

Case studies

Below are a number of case studies (either fictional or based loosely on interstate cases) that broadly fit the parameters above. The case studies will:

- demonstrate the variation in the types of accommodation that is possible to be considered;
- provide insights into some of the issues in this accommodation sector; and
- assist in refining the definition of boarding and lodging houses for the purpose of this report.

³ Stamford's Advisors Consultants (2002), *Statutory Review of the Residential Tenancies Act 1987 (WA) Final Report*, Department of Consumer Protection pp. 46-47

Case study 1

Upon arriving in Western Australia from Iraq, Ahmad applied for and was granted a Temporary Protection Visa (TPV). As part of the scheme, Ahmad was visited by an Immigration Officer and was given help to open a bank account, apply for Centrelink benefits and a tax file number. Unfortunately Ahmad does not qualify for settlement support and has no family in Perth. He speaks some English although he has trouble reading the language.

Ahmad is finding it difficult to find work because the TPV does not provide permanent residency. Finding a place to live has been even more difficult, especially meeting the up-front costs of obtaining a rental property. Still, he has met with a few real estate agents to obtain a place to rent but has had no luck, especially since he has no references and doesn't really know anyone in Perth. He has also been told that there is a big waiting list for public housing.

Ahmad was put in touch with a welfare agency that was able to find him a room in a "boarding house" in Northbridge. The room is very small, has no lock and he shares bathroom and kitchen facilities with a number of other residents. Ahmad is trying to deal with the trauma of his departure from his homeland and feels very insecure in his present living arrangement, especially since the owner has entered his room unannounced a few times. The place is also quite noisy, but Ahmad is worried that if he complains, he will be told to leave so he is just biding his time until he finds something more suitable.

The case highlights that boarding (or lodging) house accommodation:

- is often used as a last resort by some residents;
- has less up-front costs than private rental accommodation;
- is one of few low cost housing options available.

Case study 2

Erik has had a history of violence and abuse in his family and has been diagnosed as suffering from depression and schizophrenia. For most of his adult life, Erik has been living with friends or living on the streets. Erik felt particularly unsafe while sleeping rough. Erik finds it difficult to hold down a steady job and the frequent knock-backs have certainly affected Erik's confidence. He finds solace in alcohol and drugs, which also seem to quieten down the voices in his head.

Erik found a "boarding house" in Perth that provides a support service for people with mental disorders. He claims a disability pension and a percentage of this income is deducted for accommodation expenses, including utilities and board. Erik now has access to counselling and rehabilitation services, which provide him with appropriate medication and support to manage his illnesses.

The case highlights that boarding (or lodging) house accommodation may provide a service (namely medical assistance) that is just as important as the provision of accommodation.

Case study 3

Angela was living in premises consisting of 20 single rooms but shares kitchen, bathroom and laundry facilities. Angela had been living at the “boarding house” for about a year and a half. The establishment is operated by a community housing association. Angela is the sole occupant and has a key to her room, which allows her to exclude other residents. Angela makes her own meals and provides her own linen and generally cleans her room.

A set of house rules is in existence and relates to the use of the communal facilities. One of the rules states that the owner can enter any room regularly for cleaning and maintenance purposes. Angela signed an agreement upon her arrival at the boarding house and the house rules formed part of the agreement. The agreement contains a provision that prohibits visitors and pets. The agreement can be terminated if Angela threatens the health and safety of any of the other residents or the caretaker.

Angela does not receive any receipts for rent and did not pay a bond upon entering the arrangement. Angela went to Albany for a holiday for 5 days and was slightly late with her payment for the room. When she returned, her room was empty and her belongings had been given to charity.

The case highlights:

- that boarding (or lodging) house accommodation is not necessarily short-term in nature; and
- the difficulty in determining whether a person is a boarder/lodger or tenant: this issue is explained in further detail on pages 8 and 45.

Case study 4

Erin is studying veterinary science at university and lives in nearby student accommodation. The “boarding house” has 30 rooms available for students. Erin shares bathroom, kitchen and living room facilities, but has her own room. The caretaker cleans her room and provides linen. The boarding house is run by a group of investors, who are completely independent of university management.

Erin enjoys the companionship of other students and the proximity of the boarding house to university.

The case highlights that some premises that provide accommodation for multiple residents may be established for a particular purpose, for example for the aged, students or for other resident groups.

Case study 5

Cyril lives in a remote area of the Kimberley region. Most of his extended family members live in public housing that is reasonably close by. Cyril and his young family sometimes go and stay with family for extended periods of time. The houses are quite cramped and in bad condition.

Cyril has a number of health problems and needs to travel long distances to a regional hospital for treatment. Some of Cyril's family make the journey with him. While in town, Cyril drops into a "hostel" that is run by Aboriginal people. At the hostel, Cyril and his family pay board to secure clean rooms, with linen and meals provided.

The case highlights that there are many forms of accommodation variously described, including hostels, hotels, motels and hospitals that could fall under the category of "boarding" and "lodging" house. This issue about how to define a boarding and lodging house will now be examined.

Defining a boarding or lodging house

The Merriam-Webster Online Dictionary⁴ defines a "lodging house" (also called a "rooming house") as "a house where lodgings are provided for rent."

In addition, a "lodger" (also called "roomer") is defined as "one who occupies a rented room in another's house."⁵

The definitions of "lodging house" and "lodger" therefore highlight:

- the provision of a room, or a part of premises is in return for a rent;
- the occupant is permitted to stay on the premises by the registered owner.

By way of comparison, a boarding house is defined as "a lodging house at which meals are provided."⁶

A boarder is defined as "one that boards, especially one that is provided with regular meals or regular meals and lodging."⁷

The definitions of "boarding house" and "boarder" highlight that a boarding house is essentially a lodging house but includes the provision of a service, specifically the provision of meals.

In practice, though, boarding houses may provide more services than just meals, such as cleaning and the provision of linen. In addition, it seems that the distinction between a boarding and a lodging house has become blurred over time with the terms being used interchangeably.⁸

⁴ Merriam-Webster Online (2005). Retrieved 18 August 2005 from <http://www.merriam-webster.com>

⁵ Merriam-Webster Online (2005). Op cit.

⁶ Merriam-Webster Online (2005). Op cit.

⁷ Merriam-Webster Online (2005). Op cit.

⁸ Luxford, Lyn (2000). National Overview of Boarding Houses in Australia, National Shelter, pp. 7-9.

How does boarding and lodging differ from renting?

When examining the definition of a lodging house above (of which a boarding house is a type), it was noted that a lodger does not occupy the whole premises.⁹ The degree of control over the accommodation being occupied is taken as a key difference between a lodger and a tenant.

It is argued that a tenant receives a lease (which is a distinct interest) in property. This means that a tenant has exclusive possession of the property and can exclude or allow people onto the property as he/she sees fit¹⁰. In addition, in many cases, the existence of a fixed term tenancy agreement allows a tenant to remain on the premises for the life of the tenancy agreement regardless whether a contract of sale has been signed and a transfer of ownership of the property has taken place.

Where a number of tenants have a direct agreement with the owner, the tenants are deemed to be co-tenants. Therefore, each of the tenants has a direct relationship with the owner and equal rights and responsibilities in relation to the tenancy. If a tenant (Tenant A) enters into a tenancy agreement with another tenant (Tenant B) to occupy part or all of the premises, Tenant A is called a “head tenant” and Tenant B is called a “sub-tenant”¹¹. Usually, the head tenant would be required to obtain permission from the owner to enter into a sub-tenancy arrangement.

A lodger, in contrast, receives a licence (or permission) to occupy premises. The owner or a representative (such as a caretaker) usually lives on the premises and retains possession of the premises overall. The lodger or licensee is permitted access to a certain part or parts of the premises, for which a fee is paid.

Tenant C, who has a tenancy agreement direct with the owner, may enter an arrangement with a person to occupy a part of the premises as a boarder or a lodger. Under such an arrangement, the tenant retains possession of the premises overall, subject to any applicable statute (discussed further on pages 23-47). Usually, such an arrangement requires permission of the registered owner of the premises.

In practice, it may be very difficult to determine whether a person is a tenant, sub-tenant or a boarder or a lodger. Further information about these difficulties is provided on page 45.

Other considerations

In summary, boarding and lodging houses are argued to be a form of accommodation involving the grant of a part of premises for a fee. However, there are a multitude of definitions of boarding and lodging houses depending on the purpose for which a definition is required. Such definitions are not uniform and in some cases can even be inconsistent.

⁹ Note: Use of the terms “lodger” and “lodging house” in this part are taken to include “boarder” and “boarding house.”

¹⁰ Note: This discretion includes the registered owner of the property, but is subject to any statute that may impose controls upon the tenant’s discretion, including the owner’s right of entry, ability to sub-let and the vicarious liability of tenants.

¹¹ Tenants Advice Service (2004), Tenants Advice Manual: A Resource for Understanding Tenancy Law in WA, ch.1.10 pp.1-6.

As illustrated by the case studies, the matters that need to be considered in any definition of a boarding or lodging house are:

- length of stay (that is, use of the premises for a holiday as opposed to a principle place of residence);
- number of rooms available for occupation;
- the main purpose of the premises (that is, provision of accommodation or provision of services); and
- whether any other rules or laws apply to such premises; such as aged care hostels and retirement villages.

The different types of definitions that exist will be explored briefly in the following section, *The History of Boarding and Lodging Houses - Australia* and also in the chapter entitled *The Law – Boarding and Lodging Houses in Australia* on page 23 and *The Law in Western Australia* on page 43.

THE HISTORY OF BOARDING AND LODGING HOUSES – AUSTRALIA

INTRODUCTION

This section deals with the emergence and subsequent decline of boarding and lodging houses in Australia, especially WA, since European settlement. The second part of this chapter examines the experience of Indigenous Australians in relation to boarding and lodging houses and the concept of homelessness for this group.

EUROPEAN SETTLEMENT

Inner city phenomenon

Comfort¹² argues that boarding and lodging house accommodation typically featured in the early development of the colonies. In a report by National Shelter¹³, it is suggested that inner cities have traditionally been sites of higher density developments. Single males, or males intending to bring out their families to the new areas, used boarding houses (particularly) for accommodation and services, such as cooked meals and provision of clean linen.

Boarding and lodging houses were quite labour intensive and were historically run by families or single women (that is, the operations were made viable through the use of a low or an unpaid workforce).

Gold rush

In Perth, boarding and lodging houses seem to have been established around the 1890s. A major factor contributing to their establishment was the gold rush in the Eastern Goldfields. It is argued that WA's gold boom economy at this time attracted single men from the eastern states and overseas. Many people used the boarding and lodging houses in Perth as a stopover point on their way to, or return from, the goldfields.

It has been noted that a number of boarding houses (particularly) were located along the length of Hay Street, St George's Terrace, Murray Street and Newcastle Street at this time. In addition, many boarding houses were located in Kalgoorlie.¹⁴

¹² Comfort, Judith (1977), *Perth Lodging Houses: Proprietorship and Tenancy*. Department of Anthropology, University of Western Australia, pp. 14

¹³ Luxford, Lyn (2000), *op. cit.*

¹⁴ Town of Vincent (2005) *Vincent Heritage*. Retrieved 21 July 2005, from www.vincentheritage.com.au in section entitled, "*Gold Boom and Growth: 1891 – 1919.*"

Boarding –v – Lodging houses

Greenhalgh et al (2004)¹⁵ cite research based in Melbourne arguing that a boarding house was traditionally viewed as a respectable form of accommodation and included the provision of meals and cleaning. New arrivals and single males relied on boarding houses for accommodation in the city until they found, and could afford, more permanent accommodation in the suburbs.

A lodging house, in contrast, was considered to be a cheap form of accommodation for the working class, transients and the poor. It is also argued that lodging house accommodation may have been considered to be a shorter term accommodation option than boarding houses. Such lodging houses are likely to have been what National Shelter's report refers to as...."poor quality, over-crowded and [posing] substantial health risks."¹⁶

In WA, an important area for the establishment of boarding and lodging houses was Fremantle. Fremantle contained a number of boarding and lodging houses to cater for the transient population moving through the port.¹⁷

Popularity of boarding and lodging houses

The popularity of boarding and lodging houses can also be attributed to the general economic conditions of the time. Comfort¹⁸ argues that lodging houses (using the historical definition) were popular during periods of economic hardship, such as during a world war or the Great Depression. During the war periods, widows would take in lodgers to provide income for the family. The Depression years of the 1920s and 1930s saw demand increase for cheap accommodation in the inner city areas as people tried to find work.

In addition, in WA during the 1930s, flats were constructed following the development and availability of gas stoves. At this time, many boarding house operators submitted plans to convert their boarding houses into self-contained flats. However, many applications were declined because of concerns about the density of such developments.¹⁹

¹⁵ Greenhalgh et al, (2004). *Boarding Houses and Government Supply Side Intervention: Final Report* (Electronic version) Retrieved June 2005, from the Australian Housing and Urban Research Institute website, www.ahuri.edu.au pp.8

¹⁶ Luxford, Lyn (2000), op. cit. pp. 9.

¹⁷ Comfort, J (1977), op. cit. pp. 16.

¹⁸ Comfort, J (1977), op. cit. pp. 16-17.

¹⁹ Town of Vincent (2005), op. cit. in section entitled "*Depression, War & Residential Boom: 1920-1946.*"

Changing clientele

As the general population has become more affluent over time, people began relocating to the suburbs and the inner city became a place of low cost “undesirable” accommodation. In addition, in the 1970s, manufacturing also began relocating to outer suburban areas. Consequently, although the inner city accommodation (particularly lodging houses) traditionally attracted transient older men, growing proportions of women, younger people and people from non-English speaking backgrounds were living in such areas. Such residents tend to be those on low incomes, particularly those with a disability²⁰.

The current profile of a typical boarding or lodging house resident is examined in further detail on pages 19-20.

It is argued that Perth’s boarding and lodging houses started to become less desirable as an accommodation option as other types of housing became available. Consequently, boarding and lodging houses were both increasingly utilised by low income groups. As a result, the terms “boarding house” and “lodging house” are often used interchangeably. In this report, one particular term has not been favoured and hence both terms are generally used.

Table 1 (using available data) below shows the decline in the number of registered lodging²¹ houses from at least 1955, but possibly earlier. The data was compiled by Judith Comfort²² from the register of lodging houses kept by the Perth City Council.

Table 1: Number of Registered Lodging Houses in Perth 1893-1977

YEAR	NUMBER OF REGISTERED LODGING HOUSES
1893	22
1900	47
1955	531
1960	269
1965	277
1970	246
1975	170
1977	143

Comfort²³ notes that the major cause of lodging house closures in Perth during the 1970s is change of use, particularly conversion to office use.

²⁰ Greenhalgh et al, (2004), op. cit, p.1.

²¹ Note: the term “lodging house” is used as this is the terminology used and defined in the *Health Act 1911* and the various local laws.

²² Comfort, J. op. cit. pp. 17.

²³ Comfort, J. op. cit. pp. 20.

Declining supply

As the clientele of boarding and lodging houses diversifies, the level of stock of boarding and lodging houses is diminishing. According to research cited by National Shelter²⁴, there has been an eleven per cent decrease in the number of Australian households that live in some type of shared accommodation arrangement. Such shared arrangements include boarding and lodging house stock.

As the amount of low cost housing (including low cost private rental housing²⁵) becomes increasingly more difficult to find, boarding and lodging house residents have less housing options and may, out of necessity, use boarding houses for longer periods than would otherwise be the case. This trend is also discussed in greater detail on page 20.

There are a number of factors that can be attributed to the declining supply of boarding and lodging houses in Australia. Some of these factors contributing to a reduction in the supply of boarding and lodging houses are outlined below.

Anti-plague controls

In the late nineteenth and early twentieth century, anti-plague controls were applied and a "large number of [lodging] houses were demolished during this period."²⁶

Inheritance

As noted earlier, boarding and lodging houses were traditionally run by families. It has been argued that generally, around 30 per cent of families who inherit property will sell such property in the first year.²⁷ The likelihood of sale upon inheritance is further enhanced by the knowledge that the residents of this accommodation are likely to have high needs (being disabled and/or have substance abuse issues).

Financial viability

As boarding houses have increasingly attracted lower income residents, and the industry is labour intensive, the returns for operating a boarding/lodging house are (not surprisingly) low. Rising operating costs are also being experienced through increased insurance premiums, high local government rates and compliance with new laws (such as the goods and services tax and fire safety provisions).

For example, it is suggested that most boarding and lodging houses in New South Wales operate on a profit level that is below three per cent.²⁸

²⁴ Luxford, Lyn (2000), op. cit. pp. 25.

²⁵ Greenhalgh et al (2004), op. cit, pp.4.

²⁶ Luxford, Lyn (2000), op. cit. pp. 9.

²⁷ Greenhalgh et al, (2004), op. cit. pp. 11.

²⁸ Luxford, Lyn (2000), op. cit. pp. 30-31.

In addition to low returns, operators of boarding and lodging houses experience rising potential returns on the sale and/or alternative use of their asset²⁹. Alternative uses of boarding houses include:

- re-development as multi units or strata title developments for sale as self-contained accommodation;
- student accommodation; and
- tourist (short-term) accommodation, such as backpacker accommodation³⁰.

It has been argued that for a five room building, although the occupancy rates of short-term backpacker accommodation may be variable throughout a given year, overall income would be expected to double when used as backpacker accommodation as opposed to being used as a boarding house.³¹

Consequently, with low returns for the sector and greater profits to be made elsewhere, there is little incentive for operators to enter the industry without government intervention. In addition, families who inherit boarding and lodging houses often are unwilling and/or unable to sustain the original business.³²

Gentrification

A factor, related to changed use, contributing to the general decline of boarding or lodging house stock is the process of gentrification³³. Gentrification is the process by which older suburbs are rebuilt and renewed, following the influx of affluent people into an area, resulting in a reduction of low cost housing and the displacement of poorer residents.

Gentrification would therefore be expected to increase the demand for boarding and lodging house accommodation while also contributing to a decline in supply.

Major events

Major events that are held in Australian cities, that attract a significant number of visitors from all over the world, seem to accelerate the decline of boarding or lodging houses (and low cost accommodation generally) in an area. This phenomenon was evident in the lead up to the Sydney Olympics and the 1988 Expo held in Brisbane. The more rapid decline appears to result as re-development pressures and gentrification processes intensify.

²⁹ Information about the varying forms of ownership, including the “for profit” or private sector are examined on pages 18-19.

³⁰ Greenhalgh et al, (2004), op. cit., pp.(i), 9.

³¹ Luxford, Lyn (2000), op. cit. pp. 27-28.

³² Greenhalgh et al, (2004), op. cit., pp. 10-11.

³³ Luxford, Lyn (2000), op. cit. pp. 26-29.

It was noted that when Fremantle hosted the defence of the America's Cup in 1987, the resulting real estate boom caused low income people to be displaced from their homes, including flats, hotels and boarding houses.³⁴ Consequently, the decline in the numbers of boarding houses in Fremantle peaked in the mid 1980s in anticipation of the holding of this world class event.

The experience of Indigenous Australians

The Australian Bureau of Statistics (ABS)³⁵ defines boarding houses as an "Other Non-Residential Building" (that is, other than a commercial or industrial building), and more specifically as a "Short-Term Accommodation Building" in a category with hotels, motels, hostels or lodges. In addition, Chamberlain³⁶, using ABS data to determine the level of homelessness in Australia, includes short-term accommodation in a boarding house as a form of "secondary homelessness". Residents living long-term in a boarding house are also taken to be part of the homeless population, and more specifically, included in the definition of "tertiary homelessness."

Such definitions assume that a small rented flat is the cultural "standard".

In mainstream society, Indigenous people are generally subject to a range of social and economic disadvantage in Australia, including poor health, poverty, violence and incarceration³⁷. In addition, Comfort found evidence of discrimination in Perth against the acceptance of Aborigines into boarding and lodging house accommodation by operators.³⁸

It could be argued that Indigenous Australians feel "homeless" following the European colonisation of Australia. Indigenous Australians traditionally led a tribal lifestyle, with a spiritual connection to the land, where whole areas were perceived to be "home." Some communities still have this concept of "home" as a form of connectedness to the land³⁹.

Other forms of homelessness for Indigenous people may also contain a spiritual element and include loss of family and kinship networks and being without a role in the community.

³⁴ Luxford, Lyn (2000), op. cit. pp. 29.

³⁵ Australian Bureau of Statistics (2003), *ABS Functional Classification of Buildings: Functional Classification of Buildings structure*. Retrieved 22 August 2005 from www.abs.gov.au/Ausstats

³⁶ Chamberlain and MacKenzie (2001), *Counting the Homeless 2001* Cat. 2050.0 Australian Bureau of Statistics. Retrieved 27 June 2005 from www.countingthehomeless.com.au pp. 12.

³⁷ Jardine-Orr, Andrea et al (2003), *Indigenous Housing and Governance: Case Studies from Remote Communities in WA and NT*. Retrieved August 2005, from the Australian Housing and Urban Research Institute website, www.ahuri.edu.au pp.1-2.

³⁸ Comfort, J op. cit, pp. 47-49.

³⁹ Memmott, Paul et al (2003), *Categories of Indigenous Homeless People and Good Practice Responses to their Needs*. Retrieved August 2005, from the Australian Housing and Urban Research Institute website, www.ahuri.edu.au pp. 20-30.

It is argued that social problems can occur when Indigenous people exercise their choice to live outside of conventional forms of shelter, including camps. Such problems include access to unsanitary water, violence and other health issues. It is also argued that public space has become a commodity and the use of such public space is essentially a contest between market participants (such as ratepayers) and the “homeless”, who are deemed to be engaging in “antisocial” and/or illegal activities.⁴⁰

For the purpose of this report, it is assumed that boarding and lodging houses are a “legitimate” form of long-term accommodation, whilst also acknowledging that this assumption evolves from certain (white European) cultural underpinnings.

Conclusion

The experience of Australian states is that the stock of boarding and lodging houses and low cost “mainstream” accommodation generally, is declining. In addition, the rate of decline can be accelerated in a particular area if a world class major event is held. History also tells us that the residents of the sector have changed from predominantly males to a more diverse yet poor resident base.

⁴⁰ Memmott, Paul et al (2003), op. cit, pp. 20-30.

THE MARKET - BOARDING AND LODGING HOUSES IN AUSTRALIA

In this section, we will consider the current state of the boarding and lodging house market in Australia, including Western Australia. Specifically, the supply of, and demand for, boarding house accommodation will be examined. However, it is noted from the previous chapter that the boarding and lodging house sector is in decline.

The chapter will also consider the types of marketplace issues that can occur as a result of the relationship between market participants.

Supply issues

Current stock estimates

It is difficult to confidently estimate the numbers of boarding and lodging houses in Australia because of the lack of a consistent definition and means of reporting such stock. To obtain some idea about the size of the sector in each state and an idea about the relative scale of the sector, a very rough estimate was gleaned from existing tables.

National Shelter's report⁴¹ (2000) outlined the source of the figures used to compile Table 2. Information was mainly obtained from registration lists held by local government authorities and/or Census data from the ABS. An additional problem cited in obtaining accurate estimates of boarding and lodging house stock is the failure by some local government authorities to respond to requests for information.

Table 2: Estimates of the Quantity of Boarding and Lodging Houses by State, mid 1990s

Location	Number of boarding and lodging houses	Number of beds available
New South Wales	1000	20 000
Queensland	1000	20 000
Victoria	350	10 000
Western Australia	50	2000
Northern Territory	50	2000
South Australia	100	1000 ⁴²
Australian Capital Territory	10	1000
Tasmania	30	500

Although the exact numbers are difficult to quantify, there is a definite trend across the states, which indicates that the stock of boarding and lodging houses is declining. The reasons for the decline in stock were discussed on pages 13-15.

⁴¹ Luxford, Lyn (2000), op. cit. pp. 15.

⁴² Estimate supported by study conducted by Anderson et al (2003), *It's No Palace – Boarding Houses: the sector, its clientele and its future*, Research Paper (Electronic Version). Retrieved July 2005, pp. 17

Ownership structures

For profit (private)

The premises can either be owned by, or leased from, a (commercial) landlord for the purpose of operating a boarding or lodging house. The owner or lessor of the boarding or lodging house could be an individual (or partnership), organisation or company. Traditionally, many boarding and lodging houses were family businesses and such premises may have been passed to children through estates.

In this sector, premises may or may not be registered. Private operators may take boarders or lodgers into private residences to supplement household income. A caretaker is legally required to remain at registered premises. Further information about the registration requirements for lodging⁴³ houses in WA will be examined on pages 44-45.

Government

Governments may directly own and operate boarding/lodging houses, particularly in response to the decline in supply of boarding and lodging houses and the (relative) lack of commercial incentives for private operators to enter or remain in the industry.

Not for profit (community sector)

This sector includes the groups outlined below⁴⁴.

- Church groups may provide temporary crisis accommodation, rehabilitation or other medical services to substance abusers, the deaf and mentally ill.

An example of such a group is the Salvation Army.

- Non-government organisations are generally funded by government to operate premises for a specific purpose.

For example, the Commonwealth government funds the Aboriginal Hostels Limited to run, or fund other organisations through a grants program that run, hostels for Aboriginal and Torres Strait Islander groups.

Another example is the Commonwealth/State funded program, the Supported Accommodation Assistance Program (SAAP) that provides funds to non-government organisations that assist the homeless or people at risk of homelessness with the provision of shelter.

⁴³ Note: Note: the term “lodging house” is used as this is the terminology used and defined in the *Health Act 1911* and the various local laws.

⁴⁴ Comfort, J op. cit., pp. 38-44.

- Other community groups

For example, the Perth Inner City Housing Association (or City Housing) is a not-for-profit community housing association that develops and manages permanent rental housing in Perth for low income people. Housing ranges from studios, detached housing and single rooms in lodging houses. The Association is funded mainly through rents (but also receives some government assistance).

Boarding and Lodging Houses in Regional WA

It appears that boarding and lodging houses are predominantly a city phenomenon, however, it is noted that boarding and lodging houses that cater specifically for the aged, students, tourists and Aboriginal population are located in regional areas, including Kalgoorlie-Boulder, Augusta/Busselton, Broome and Geraldton.

Demand issues

Some of the benefits of boarding and lodging house living as opposed to other forms of access to housing (such as renting and owning) are listed below.

Boarding and lodging house accommodation is generally associated with (relatively) lower up-front costs (than renting or owning) as a security bond is generally not required and rental costs are generally lower.⁴⁵

Boarding and lodging house living offers flexibility to residents, particularly in relation to notice periods required to terminate an agreement to occupy a boarding or lodging house.

Boarding and lodging houses generally provide accommodation for a number of residents within single premises, which allows residents to meet and socialise.

Boarding and lodging houses are often located in the inner city, which provides residents with good access to transport, facilities and services generally.

Profile of residents

In 2001, ABS Census data indicates that there were approximately 22 877 residents who live in boarding and lodging houses (or “lodges”) as their principal place of residence in Australia⁴⁶. This adjusted figure is based on the number of “non-private dwellings” in the Census and applies certain rules (based on typical characteristics of boarding and lodging house residents) to exclude visitors, staff, hotels, hospitals and also to exclude accommodation associated with the aged, education and welfare (such as SAAP services). Indigenous people make up approximately 7 per cent of boarding and lodging house residents in Australia.⁴⁷

⁴⁵ Luxford, L (2000), op. cit. pp. 18.

⁴⁶ Chamberlain and MacKenzie (2001), op. cit. pp. 25-32.

⁴⁷ Chamberlain and MacKenzie (2001) op.cit, pp. 5-8.

As noted on page 10 and demonstrated in Table 3 below (for Sydney and Melbourne), men still make up the majority of boarding and lodging house residents. Table 3 was taken from a report by the Australian Housing and Urban Research Institute (from Australian Bureau of Statistics data in 1994⁴⁸), regarding characteristics of boarding house residents.⁴⁹

In addition, it seems that more people are staying in boarding and lodging houses for longer periods of time. Table 3 supports the view that boarding and lodging houses are being used as longer term accommodation in Melbourne and Sydney. The report by National Shelter also uses statistics from South Australia and Brisbane that suggest this trend (of residents staying longer in boarding and lodging houses) is also occurring in other states of Australia.⁵⁰

Table 3: Selected Characteristics of Boarding and Lodging House Residents, Sydney and Melbourne 1994

	SYDNEY (%)	MELBOURNE (%)
AGE		
15-44 years	48.2	45.1
45 years and older	51.8	54.9
SEX		
Male	74.2	85.9
Female	25.8	14.1
TIME IN CURRENT BOARDING/LODGING HOUSE		
Less than one year	43.8	45.1
One year or more	55.5	52.2
Not known	0.6	2.6

In addition, a large proportion of residents of boarding and lodging houses have disabilities, including psychiatric illnesses. To the extent that such residents generally face difficulties in maintaining work, household and family relationships, these difficulties can also be challenging for owner/operators when managing premises⁵¹. As noted earlier, many boarding and lodging house operators in the not-for-profit sector have special programs to cater for such residents.

⁴⁸ Note: The ABS study surveyed 287 residents of boarding houses in Sydney and Melbourne and provides an estimate of characteristics of boarders. Only boarding houses that accommodated 15 or more occupants were selected for inclusion in the study.

⁴⁹ Greenhalgh et al, (2004a). Boarding Houses and Government Supply Side Intervention: Positioning Paper (Electronic version) Retrieved June 2005, from the Australian Housing and Urban Research Institute website, www.ahuri.edu.au p.6-9.

⁵⁰ Luxford, L (2000), op. cit. pp. 42.

⁵¹ Greenhalgh et al, (2004), op cit, p. 11.

Increasing demand

The reasons for the increase over time in the demand for low cost housing (including boarding and lodging house accommodation) are:

the proportion of low-income households has increased over time and hence there have been increases in the number of eligible people who are seeking crisis accommodation and/or waiting to be allocated public housing;

the government has pursued a policy of deinstitutionalisation of people with disabilities since the 1970's and hence such people are now reliant on the private market for housing⁵².

In addition to the increase in demand for low cost housing, there has been a reduction in the availability of housing substitutes, which is attributable to:

- a decline in the stock of low cost private rental housing, especially as much of the low cost rental stock is occupied by tenants who could afford to rent more expensive properties⁵³;
- little increase in the stock of public housing; and
- rising property prices (which affects people's ability to afford to buy their own property).

As a result of the above trends, more people on low incomes are residing longer in boarding and lodging house accommodation as they lack other choices.

In addition, as has occurred in the Eastern States, it is expected that the demand for aged rental and student accommodation will increase⁵⁴. Such sectors, particularly aged care, seem to develop innovative marketing strategies that may challenge coverage under existing regulatory regimes.

Issues

On page 19, some of the benefits of boarding and lodging house living were outlined. This section considers some of the issues that could arise within boarding and lodging house accommodation, particularly given the vulnerable profile of boarding and lodging house residents. Some of these issues were raised in the case studies in the introductory chapter on pages 5-7.

⁵² Luxford, L (2000), op. cit. pp. 9-11.
See also Greenhalgh et al, (2004), op cit, p. 9.

⁵³ National Association of Tenant Organisations (2003), Submission to the Productivity Commission Inquiry into First Home Ownership, Retrieved 21 March 2005 from Tenants Union New South Wales www.tenants.org.au pp.1-2.

⁵⁴ Residential Tenancies Authority (2005), Discussion Paper: *Review of the Residential Services (Accommodation) Act 2002*, pp.1.

- A boarding and lodging house owner/operator could impose unreasonable house rules and/or unfairly enforce such rules amongst residents.
- A resident may not have access to his/her room or facilities at certain times of the day.
- The terms of an agreement to reside in a boarding and lodging house may create uncertainty about the legal status of occupants.
- A resident may not observe fire and safety regulations, such as smoking in their rooms, which may endanger the safety of other residents.
- A boarding and lodging house may not be adequately maintained and repaired by an owner/operator, especially given the high wear and tear to which such accommodation is subject.
- A resident may not be given receipts for rent, security bond, utility and other payments and/or may be subject to unfair fees and charges.
- If an owner takes a security bond, the bond is not required to be lodged with the Bond Administrator and a resident could be vulnerable if there is a dispute about the condition of the room upon leaving.
- A resident may not be given a copy of an agreement to occupy premises and such agreements may not be in writing so that any terms of an agreement are difficult to prove and enforce.
- A boarding and lodging house owner/operator may unreasonably interfere with the reasonable peace and quiet enjoyment of a resident.
- A boarding and lodging house owner/operator may seek to terminate an agreement to occupy premises unreasonably and may fail to care for any items left on the premises by a resident.

Conclusion

This chapter examined the relative size of the boarding and lodging markets in the various states of Australia. The estimates presented are only a rough guide, as there is no standard definition of a boarding or lodging house. Regardless of the exact size of the sector, much evidence exists that the sector is declining in all states of Australia.

Alongside the reduction in supply is evidence of increasing demand for low cost housing, including boarding and lodging houses, as the number of low income households increases and as a result of policies such as deinstitutionalisation and the minimisation of public sector housing stock. The increase in demand for low cost housing is expected to be particularly evident in student and aged care accommodation.

Many of the issues that arise from living in a boarding and lodging house are related to close proximity living and the high degree of vulnerability of many residents. The next section will examine how the various states of Australia have tackled boarding and lodging house issues in law.

THE LAW – BOARDING AND LODGING HOUSES IN AUSTRALIA

Introduction

Residents and owners of boarding and lodging houses are subject to many rules originating from the agreement itself, and also from rules made by local, state and national governments. The applicability of laws to boarding and lodging houses depends on the purpose of such laws and how the various laws define a boarding or lodging house.

The Accommodation Contract (Common Law)

In Australia, agreements to occupy premises in boarding or lodging houses may be made orally or in writing. As explained on page 8, such agreements may be made between:

- a boarding/lodging house owner (or owners) and a resident (or residents); or
- a tenant or tenants (with permission of the registered owner/s) and a resident.

Such contracts are enforceable using common law. The common law is a system of law that is developed by judges deciding cases in the courts and applying the principles derived from such cases to similar future cases.

From precedents set in the courts, the following elements are important in determining whether a contract constitutes a boarding or lodging situation or a tenancy.⁵⁵

Exclusive Possession

It appears that exclusive possession is still the key to determining whether a person has a lease or a residential licence. The test of exclusive possession is only used once an agreement between the parties or their intention has been examined.

In the recent case of *City of Rockingham v PMR Quarries Pty Ltd* [2001] WASCA⁵⁶ 317, the Court affirmed the decision of *Lewis v Bell*⁵⁷. They said at [54] “It follows from this review of the decided cases that the Land Valuation Tribunal was correct in its determination at para20 of its reasons that the critical test is that of exclusive possession, that is to say, the test for determining whether the relationship created by the relevant documentation is one of lessor and lessee is whether the grantee was given the rights to exclusive possession of the premises.”

⁵⁵ Seelig & Weddell (1996), *All Above Board? Tenancy Law and Boarding Houses*, Tenants’ Union of Queensland in association with the Boarding House Action Group, pp. 17-31.

⁵⁶ *City of Rockingham v PMR Quarries Pty Ltd* [2001] WASCA⁵⁶ 317

⁵⁷ *Lewis v Bell* (1985) 1 NSWLR 731

A tenant receives exclusive possession of premises. However, it should be noted that an agreement or statute that gives an owner a right to enter the premises for matters such as repair, inspection or emergencies is not inconsistent with the grant of exclusive possession.

Owner's control over rooms and access ways

Related to the issue of exclusive possession is the degree of control that an owner exerts over the premises. In the case of *Noblett & Mansfield v Manley*⁵⁸, 'control' of the rooms, as well as means of entry and exit were important considerations in determining whether an occupier is a licensee or tenant. A tenant has the right to exclude or permit entry to premises, including the owner (subject to repair, inspection etc), as noted above.

Part of the owner's requirement to enter and exit and therefore "control" the use of rooms is the provision of services provided to the resident, such as meals, linen or cleaning. The provision of such services, which requires entry to a room by an owner, is consistent with a boarding/lodging situation.

Owner's residence on premises

The situation where an owner resides on premises (that are not self-contained) and the owner grants a right of occupancy to another or others suggests a boarding or lodging situation. A boarding or lodging situation is indicated because it can be argued that the owner retains control over the entire premises.

Seelig and Weddell⁵⁹ quote the case of *Honig v Redfern*, where it was stated: "The general test which has been laid down for many years is that if the owner of a house who allows other people to live in it lives on the premises and manages the premises himself, or if the owner has a servant resident on the premises to manage them on his behalf, the other people living in the house are lodgers; whereas if he does not live in the house but lets the whole house out to various people it is a letting out of the house in tenements and the person occupying the tenements are not lodgers but tenants."

Agreement between the parties

The agreement between the parties will still play a large role in determining whether a lease or licence has been created. However, as pre 1996, the Court will look to the substance of an agreement rather than the form (or terms used in an agreement) to determine what kind of relationship is created.

In the judgement of the House of Lords in *Street v Mountford*⁶⁰, it was noted that "Both parties enjoyed freedom to contract or not to contract...But the consequences in law of the agreement, once concluded, can only be determined by consideration of the effect of the agreement."

⁵⁸ *Noblett & Mansfield v Manley* [1952] SASR 155

⁵⁹ Seelig & Weddell (1996), op. cit, pp. 24.
See also *Honig – v – Redfern* (1949) 2 All ER 15, p17

⁶⁰ *Street – v – Mountford* [1985] Templeman 1 AC at 819

So, an agreement that uses the term “tenant” and “landlord” and refers to consideration as “rent” may be considered a boarding or lodging situation by the courts rather than a tenancy if non-exclusive possession was granted (for example), regardless of the terminology used in the agreement.

3. Intention

Another consideration is the intention of the parties to be legally bound to create a valid contract. Where there is no express agreement between the parties, the Court may imply what arrangements were made between the parties. The Court will do this by examining what the intentions of the parties were and what type of relationship was intended to be created.

For example, agreements between families may not constitute a tenancy, even where a relative has exclusive possession of premises as a Court may find that the parties did not intend to be legally bound. Seelig & Weddell⁶¹ quote the case of *Errington v Errington* in which a father gave his son exclusive possession of his home if the son paid the mortgage instalments. The court deemed the son to be a licensee as it was determined that the parties did not intend to be legally bound.

In addition, it is necessary to consider whether the parties intended that exclusive possession of the premises be granted. As stated by Windeyer, J in *Radaich v Smith*⁶² in the High Court of Australia, “Whether the transaction creates a lease or a licence depends upon intention....the nature of the right which the parties intend the person entering upon the land shall have in relation to the land....And how is it to be ascertained whether such an interest in land has been given? By seeing whether the grantee was given a legal right of exclusive possession of the land for a term or from year to year or for a life or lives. If he was, he is a tenant.”

⁶¹ Seelig & Weddell (1996), op. cit, pp. 22-23.
See also *Errington v Errington* (1952) 1 KB 290.

⁶² *Radaich – v – Smith* (1959) 101 CLR 209, Windeyer J., at 222.

Housing and the Law

Contract law can be modified by laws passed by Parliament. The division of power between the Federal Government and the various Australian States to make laws within Australia is contained in the Constitution.

Although there is no specific section dealing with responsibility for housing, section 96 of the Constitution gives the Federal parliament the discretion to make grants to the states on terms and conditions as it thinks fit. Consequently, a number of Commonwealth-State Housing Agreements (CSHA) has been negotiated to assist the community to obtain appropriate accommodation.

Such assistance is provided as it is acknowledged that the private housing market, if left to operate freely, would not provide an equitable allocation of housing (a necessity for life) amongst the community.

On average, the Commonwealth provides approximately two-thirds of total funding for the CSHA with the remainder being provided by the States and Territories. Current funding is provided under the *Housing Assistance Act 1996* (Commonwealth).

One of the programs under the CSHA is the Supported Accommodation Assistance Program (SAAP)⁶³. The program is subject to the Supported Accommodation Assistance Act 1994 (Commonwealth). This program provides transitional accommodation and support to enable homeless people (or those at risk of homelessness) to achieve some degree of independent living. The program is managed by the various state and territory governments and funding is provided to non-government and other community organisations that deliver services under the program.

Boarding and lodging houses operating within the SAAP are likely to provide accommodation for short periods of time. In addition, operators are subject to scrutiny as a condition of funding and a feature of the SAAP program is to implement a grievance and appeals procedure and to develop a charter of clients' rights and responsibilities. The Act also requires that arrangements are made for such matters as assessment and referral, reporting and accountability.

Building and the Law

The State and Territory governments have also entered into an agreement for the development and management of a national uniform approach to technical building requirements across Australia. The uniform building requirements constitute the Building Code of Australia (BCA).

⁶³ Department of Family and Community Services website, *SAAP – The Supported Accommodation Assistance Program*. Retrieved September 2005 from <http://www.facs.gov.au>

Boarding and lodging houses, when constructed, fall under two possible classifications under the BCA depending on the level (expected level) of usage, namely⁶⁴:

Class 1b:

“a boarding house, guest house hostel or the like with a total floor area not exceeding 300 square metres and in which not more than 12 persons would ordinarily be resident, which is not located above or below another dwelling or another Class of building other than a private garage.”

Class 3:

“a residential building, other than a building of Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including a boarding house, guest house.....etc”

Different standards apply to the two classes, for example, Class 3 buildings have much more stringent fire safety requirements.

The requirements of the BCA must be taken into account in the design, construction and use of boarding and lodging houses across Australia to meet standards of health, safety and amenity.

Residential tenancy law

State and Territory governments can also make laws that directly impact upon the relationship between boarding house owners and residents. Such laws may re-state or modify common law as it applies to a written or oral agreement between the parties to occupy premises.

In enacting such legislation, the various States and Territories have either:

- drafted separate provisions relating to boarding and lodging houses as part of residential tenancies legislation; or
- drafted separate laws dealing with boarding and lodging accommodation (ie. Queensland).

It should be noted that Victoria initially enacted separate legislation relating to rooming houses but this Act was subsequently repealed and the provisions were consolidated (along with provisions relating to mobile homes) into the *Residential Tenancies Act 1997 (Vic)*.

An analysis of the various laws enacted by the states is on pages 23-47.

⁶⁴ City of Sydney (2004), *Draft Boarding Houses Development Control Plan (2004)*. Retrieved July 2005 from www.cityofsydney.nsw.gov.au pp. 7-8

Minimum legislative standards

In 1995, the Commonwealth Department of Housing and Regional Development prepared a report⁶⁵ providing a comprehensive assessment of minimum legislative standards for residential tenancies in Australia. The report was prepared in response to the variation that exists in State and Territory residential tenancy legislation. In outlining minimum legislative standards, an attempt was made to balance the (often conflicting) rights and interests of the relevant parties.

In relation to boarding/lodging houses, the report stated that, despite tenancy agreements being a lease and boarding/lodging agreements being a licence to occupy premises, the provisions of the residential tenancies legislation should apply.

However, the report did indicate that any laws should take into account that:

- boarding/lodging house residency may often be short-term and arrangements may require flexibility;
- boarding/lodging house arrangements generally involve many people living in close proximity; and
- the parameters of the agreement differ, as a room is generally rented, common facilities are provided and services may be offered, such as meals, laundry and personal care.

The report further recommended:

- that standard terms be applied to boarding/lodging house arrangements;
- certain matters are disclosed to residents, such as their rights and responsibilities, fees and charges and house rules;
- specified minimum standards in relation to termination, bond, rent in advance, ability to sub-let and right of association of residents; and
- that boarding/lodging houses providing personal care services be the subject of legislation that is not tenancy related.

This report will now examine the laws that regulate the relationship between the parties to an agreement for accommodation in boarding and lodging houses in the various States of Australia.

⁶⁵ Commonwealth Department of Housing and Regional Development (1995), *Minimum Legislative Standards for Residential Tenancies in Australia*, Commonwealth of Australia, pp. 93-97.

The Law in Victoria

It seems that Victoria (Vic) has the third largest boarding and lodging sector in Australia (behind Queensland and New South Wales). Victoria was the first state to introduce legislation for the boarding and lodging house sector, called the *Rooming Houses Act 1990*. This Act has subsequently been repealed and the provisions incorporated into the *Residential Tenancies Act 1997* ["RT Act (Vic)"].

The RT Act (Vic) makes a distinction in terminology between the various forms of accommodation, as outlined in the following matrix (at Table 4).

Table 4: Matrix of terms used to differentiate different types of tenancies in the RT Act (Vic)

Type of accommodation provision	Term used for "occupant"	Term used for "owner of the accommodation"	Term used for "accommodation"	Term used for the type of agreement
Tenancy	Tenant	Landlord/ Owner	Rented premises	Tenancy agreement: - Fixed term - Periodic
Rooming house	Resident	Rooming house owner	Room in a rooming house	N/A
Caravan park and movable dwellings	Resident	Caravan park owner	Site or caravan on a caravan park	N/A
Common (ie. high density premises: includes 2 or more rented premises)	Resident (includes tenant of rented premises in a high density building)	Manager On-site manager	Managed premises	N/A

Enforcement

Under the RT Act (Vic), the Director of Fair Trading has a role in attempting to conciliate or otherwise settle disputes and can investigate matters referred by the Tribunal or Principal Registrar.

It appears that in relation to rooming house provisions, proceedings for offences under the RT Act (Vic) can only be brought by the Director of Fair Trading or the Police. Penalties for offences range from 5 penalty units (maximum \$512.50) for matters such as a landlord entering a room without good excuse or a resident failing to pay rent after abandoning a room and 20 penalty units (maximum \$2045) for matters such as a landlord attempting to forcibly remove a resident from a room or a resident attempting to re-enter a room after a warrant of possession has been issued.

Either party to an agreement under the RT Act (Vic) can take a matter to the Victorian Civil and Administrative Tribunal (VCAT) for alleged breaches of an agreement. The VCAT has powers to order that:

- a breach be remedied;
- either party is compensated for loss or damage; and/or
- either party must refrain from subsequent breaches of the same nature.

The RT Act (Vic) also provides for a system where a rooming house owner/manager can suspend a resident from accommodation for two days where the resident has committed a violent act or is likely to cause serious injury. Such suspension is in force until an order is made following an application for an urgent hearing at the VCAT or the two days have passed.

However, there are some issues about the resident being informed about any VCAT application by the owner, the payment of rent during the suspension period and the possibility that these provisions may be misused by unscrupulous operators⁶⁶.

Lessons from Victoria

The lessons to be learned from the Victorian experience are outlined below.

- 1. The definition of boarding and lodging houses and exclusions for the purpose of coverage or exclusion under the Act are important considerations and should be frequently reviewed.**

In Victoria, as house prices continue to rise, property owners are becoming more savvy about increasing rental returns by offering rooms for rent rather than whole premises. Such a trend has been particularly noticeable around universities⁶⁷. It has also been noted that more “mainstream” members of society are becoming boarders and lodgers.

Since the introduction of the consolidated RT Act (Vic), a review was undertaken to consider:

- coverage of the legislation, specifically:
- the minimum number of people accommodated that qualifies a boarding house for coverage under the Act
- application to student accommodation, self-contained units, temporary crisis accommodation and supported accommodation for people with a disability
- application of the Act to shared rooms (following a court of appeal decision)
- fair rent provisions; and
- security of tenure issues, such as the ability to evict without notice and termination provisions where violence is involved.

⁶⁶ Power, C & Mott, P (2003), *Protection for Rooming/Boarding House Residents in Victoria and New South Wales*, Flinders Journal of Law Reform, pp. 144.

⁶⁷ Gough, Deborah (2004), *Students and 'Hard-Timers' Fill New Ghettos*, The Age (Electronic version). Retrieved 2 June 2005 from www.theage.com.au

As a result of the review, a number of amendments were made to the Act⁶⁸.

Specifically, in relation to coverage, shared (or multi-occupancy rooms) should be explicitly included. This issue was the subject of a Court of Appeal matter in Victoria in relation to the (now repealed) *Rooming Houses Act 1990* and also became an issue for South Australia.⁶⁹

2. The ability of market participants to enforce the provisions of the legislation is an important consideration.

The legislation needs to be flexible enough to allow owners to deal with people who may exhibit difficult and unpredictable behaviour (for the benefit of all residents), yet also protect the rights of the individual.

Both parties should have equal access to an independent dispute resolution forum. In addition, to assist market participants who are vulnerable to enforce their rights, a well-funded advocacy system is required.

In addition, part of the disadvantage for boarding and lodging house residents may involve being unable to speak English. The notices to be served under the RT Act (Vic) have the following covering note that is written in eleven different languages, including Somali, Serbian, Arabic and Chinese:

“If you have difficulty understanding English, contact the Translating and Interpreting Service (TIS) on 131 450 (for the cost of a local call) and ask to be put through to an Information Officer at Consumer Affairs Victoria on 1300 55 81 81.”

3. Any legislation in this area must ensure that boarders/lodgers covered are protected against violence or abuse while also ensuring that the section does not act as a loophole for the benefit of owners seeking to evict residents.

⁶⁸ Victorian Government (2002), *Government Response to the Residential Tenancies Legislation Working Group Report* (Electronic version). Retrieved August 2005 from www.tuv.org.au/GovernmentResponse.pdf

⁶⁹ Bradbrook, A J (2004), *Creeping reforms to Landlord and Tenant Law*, Australian Property Law Journal, pp. 164-165.

The Law in Queensland

As previously noted, Queensland (Qld) and New South Wales (NSW) have the biggest boarding and lodging house sectors in Australia.

The legislation in Qld resulted from research and consultation affecting:

- budget accommodation operators, including student accommodation; and
- the residential service industry, including supported accommodation and some aged residential facilities.

The urgency for laws in these areas was highlighted by reported deaths in boarding and lodging houses and fatal fires in backpacker and boarding house premises.⁷⁰

In 2002, two separate pieces of legislation were enacted, namely:

- the Residential Services (Accreditation) Act 2002 (the “Accreditation Act”); and
- the Residential Services (Accommodation) Act 2002 (the “Accommodation Act”).

It is important to note that these laws are separate to the *Residential Tenancies Act 1994 (Qld)*. However, the *Residential Tenancies Act 1994 (Qld)* does apply in relation to such matters as conciliation, administration and enforcement.

In addition, building legislation was also enacted to require budget accommodation buildings, including boarding houses with six or more occupants, to comply with a prescribed fire safety standard to ensure the safe evacuation of occupants during a fire.

The Accreditation Act is administered by the Office of Fair Trading. The Accreditation Act provides for a system of registration and accreditation to ensure both operators and premises are suitable for the delivery of residential services. There are a number of exemptions contained in the Accreditation Act.

The Accommodation Act is administered by the Residential Tenancies Authority, which is part of the Department of Housing and Works. The Accommodation Act regulates the rights and responsibilities of residents and operators in relation to accommodation. The Accommodation Act has been in operation for about two and a half years and is currently under review⁷¹.

Enforcement

The parties to a residential service agreement can apply to the Small Claims Tribunal to resolve a dispute that falls within the scope of the Accommodation Act. Before the Tribunal will hear the matter, however, the parties are required to attempt conciliation through the Residential Tenancies Authority.⁷²

⁷⁰ Greenhalgh et al (2004), op. cit, pp. 21-22.

⁷¹ Residential Tenancies Authority (2005), op. cit. pp. 4-5.

⁷² Residential Tenancies Authority (2005), op. cit. pp. 17.

The Accommodation Act [through the *Residential Tenancies Act 1994 (Qld)*] empowers the Residential Tenancies Authority to investigate alleged breaches of offences. The penalties for offences range from 10 penalty units (maximum \$750) for matters such as failing to issue receipts for rent or failing to keep records of rent to 50 penalty units (maximum \$3750) for agreements that attempt to circumvent the Act.

Lessons from Queensland

The lessons to be learned from the Qld experience are outlined below.

1. The marketplace is adaptable and the legislation must keep pace with market changes.

The legislation must keep pace with developments in the marketplace, particularly in determining the number of boarders/lodgers for application of the act and consideration of exclusions, whether intended or not⁷³.

For example, as Qld has set the lower limit of application of the Accommodation Act to premises occupied or available for four or more people, premises were then made available to a maximum of three people.

The legislation was also designed to cover a new form of self-contained units for rent by aged residents in the marketplace. Such complexes are run privately or by groups of investors with on-site management. These complexes generally do not provide residential care services, although meals and linen may be provided.

2. The marketplace is in decline and policy makers must accommodate this fact in considering solutions for reform in this area.

Before the introduction of the reform package in 2002, there were concerns expressed by operators of boarding and lodging houses that any legislation would accelerate closures. It has been argued that such calls are a “knee-jerk reaction” and any closures following the introduction of legislation would probably have occurred anyway.

However, the reforms in Qld appear to have taken into account the fact that the boarding and lodging house sector is in decline. Specifically, in addition to legislation, the reform package included the following elements, outlined below⁷⁴.

Financial assistance, in the form of a conditional grant or a low cost loan, is available to service providers for improvements necessary to comply with the new laws, particularly the Accreditation Act and building requirements.

A whole of government approach has been taken to ensure government support services are available to residents.

⁷³ Residential Tenancies Authority (2005), op. cit. pp. 8-9.

⁷⁴ Residential Tenancies Authority (2005), op. cit. pp. 2-3
See also Greenhalgh et al (2004), op. cit, pp. 21-22

Part of the strategy to ensure residents can access government services is the development of “significant changes” and “closure” protocols. Such protocols ensure that government services can mobilise to meet resident care and accommodation needs without requiring the resident to initiate such support.

The role of the Tenant Advice and Advocacy Services network has been expanded to provide advice and assistance to residents in relation to the Accommodation Act.

The role of the Office of the Adult Guardian has been expanded to assist residents with impaired capacity.

- 3. Legislation in two parts, administered by two separate departments, may not be the most efficient way to implement reforms in this area.**
- 4. The ability of market participants to enforce the provisions of the legislation is an important consideration.**
- 5. The notice periods to remedy alleged breaches of the legislation are an important consideration.**

The Accommodation Act contains shorter time periods than the *Residential Tenancies Act 1994 (Qld)* for parties to remedy breaches, such as rent arrears. However, in determining notice periods, it is necessary to keep in mind that residents are generally on low incomes and may require assistance in enforcing their rights and meeting their obligations.⁷⁵

⁷⁵ Residential Tenancies Authority (2005), op. cit. pp. 16-17.

The Law in Tasmania and the Northern Territory

Tasmania (Tas) and the Northern Territory (NT) have relatively small boarding and lodging house sectors.

Tasmania

In Tasmania, the *Residential Tenancy Act 1997* ["RT Act (Tas)"] defines a tenancy as: "a right of occupancy of residential premises under a residential tenancy agreement."

A residential tenancy agreement "exists where a right of occupancy of residential premises is granted by the owner of the premises to a person for value –

- (a) whether or not the right is a right of exclusive occupation; or
- (b) whether the agreement is express or implied; or
- (c) whether the agreement is oral or in writing, or partly oral and partly in writing; or
- (d) whether or not the agreement is for a fixed period (that is, at least 4 weeks)."

Residential premises are defined as including boarding premises.

The provisions of the RT Act (Tas) therefore apply to boarding premises. The definition of boarding premises is quite broad, being a room and any other facilities provided with the room where –

- (a) the room is occupied as a principal place of residence; and
- (b) any of the bathroom, toilet or kitchen facilities are shared with other persons – but does not include premises located in a building occupied predominately by –
- (c) tertiary students; or
- (d) students within the meaning of the *TAFE Tasmania Act 1997*.

Part 4A of the Act applies specifically to boarding premises and includes provisions in relation to house rules, cost of meals and shared facilities.

Enforcement

Under the RT Act (Tas), the Residential Tenancy Commissioner has a role to conciliate and mediate disputes in boarding premises. The Commissioner can also make orders for the parties to comply with the Act. However, orders can only be made in the Magistrates Court in relation to termination and possession.

The maximum penalty for offences under the Act is \$500.

Northern Territory

The *Residential Tenancies Act* ["RT Act (NT)"] in the NT defines a tenancy as "the right to occupy premises under a tenancy agreement."

A tenancy agreement means "an agreement under which a person grants to another person for valuable consideration a right (which may be, but need not be, an exclusive right) to occupy premises for the purpose of residency."

Section 158 of the Act allows Regulations to be made to (amongst other things) "provisions of this Act do not apply to a specified class of tenancy agreements or a specified class of premises."

Accordingly, clause 4 of the *Residential Tenancies Regulations* (NT) provides that the Act does not apply to tenancy agreements where board and lodging is provided for less than one week and does not apply to premises with less than three boarders or lodgers (who are unrelated to the owner).

Enforcement

The Commissioner of Consumer Affairs (the Commissioner of Tenancies) is empowered to investigate breaches of the Act and to ensure enforcement. In addition, the Commissioner can hold an Inquiry and make orders in relation to disputes, including disputes relating to rent, repairs, vacant possession, termination, and assignment. In addition, the Commissioner can also order compensation for either party in relation to loss or damage. Decisions of the Commissioner can be appealed in the Local Court.

Generally, "minor" offences attract a maximum penalty of \$2 200 under the Act, while the maximum penalty for "major" offences is \$11 000. "Minor" offences include:

- landlords attempting to charge to agree to an assignment of the lease;
- landlords attempting to profit on the on-selling of gas, water or electricity;
- tenants failing to give landlords a key to a lock or security device within 2 business days where such a lock or device has been changed.

"Major" offences include:

- landlords breaching a tenant's quiet enjoyment;
- landlords attempting to take possession of premises without abandonment, a tenant's consent or without an order of a court or the Commissioner of Tenancies.

In addition, Clause 5 of the Regulations provides for the issuing of infringement notices for offences.

Lessons from Tasmania and the Northern Territory

The lessons to be learned from Tasmania and NT are outlined below.

- 1. It is a matter of policy whether boarders and lodgers are differentiated or incorporated as a sub-section of “tenants” at law.**
- 2. It is important to set penalties for offences at a level that will assist to ensure compliance.**

In Tasmania, the maximum penalty for offences under the RT Act (Tas) is \$500 and it is questionable whether this penalty will be sufficient to deter non-compliance. However, the power to issue infringement notices may expedite the process of identifying and taking action for offences, which may promote compliance.

- 3. Consideration should be given to empower a government department to investigate and take action for offences in the Act.**

It is important for a government department to be given express powers to investigate allegations of offences under the Act. However, it is not recommended that the government department, and particularly the Commissioner, is also given an adjudicative role in relation to civil complaints.

It is suggested that the Commissioner be given a clear role in relation to investigation only and that a court or Tribunal be responsible for decision making.

The Law in South Australia

South Australia (SA) has one of the smaller boarding and lodging house sectors in Australia. During 1999/2000, the Residential Tenancies Act 1995 ["RT Act (SA)"] was amended to provide for regulations to be made, including a code of conduct for rooming house agreements.⁷⁶

A rooming house is defined as "residential premises in which rooms are available on a commercial basis, for residential occupation and accommodation is available for at least three persons on a commercial basis."

All other boarding houses, including education institutions, nursing homes, retirement villages, hospitals, motels/hotels, clubs and places offering holiday accommodation are explicitly excluded from application.

As in the cases of the other states where the boarding/lodging provisions are contained in the residential tenancies legislation, terminology is used to distinguish between the different accommodation types. In SA, the type of agreement is a crucial distinguishing term. Table 5 below outlines the various terms used in the RT Act (SA).

Table 5: Matrix of terms used to differentiate the types of tenancies in the RT Act (SA)

Type of accommodation provision	Term used for "occupant"	Term used for "owner of the accommodation"	Term used for "accommodation"	Term used for the type of agreement
Tenancy	Tenant	Landlord	"Residential premises" or "Premises"	Residential tenancy agreement
Rooming house	Rooming house resident	Rooming house proprietor	Rooming house (type of residential premises)	Rooming house agreement

The term "tenancy dispute" has been defined in such a way that it relates to both residential tenancy and rooming house agreements.

The Act contains provisions for regulations (including a code of conduct) to be made in relation to rooming house agreements. Schedule 2 of the Regulations also outlines terms that are implied in all rooming house agreements.

⁷⁶ Tenancies Branch, Office of Consumer and Business Affairs (2002), *Discussion Paper for the Review of the South Australian Residential Tenancies Act 1995*, pp. 11.

Enforcement

The Commissioner for Consumer Affairs has a role in administering the RT Act (SA) and investigating possible breaches of the Act.

In relation to rooming house agreements, the Residential Tenancies Tribunal (RTT) can make orders in relation to the code of conduct (dealing with bond and security matters). Rooming house owners face a maximum penalty of \$1000 and residents face a maximum penalty of \$200 for failing to comply with the code.

In addition, in relation to rooming house agreements, the RTT can order that:

- a party restrain from breaching the agreement;
- payment is required, which may include compensation, under the agreement or for breaching the agreement;
- a party be relieved from an obligation of the agreement; and
- a resident give up vacant possession.

Schedule 2 of the Regulations implies terms of the agreement, including owners' obligation to give a resident quiet enjoyment, access to the premises and to keep the premises maintained. Residents' obligations under the implied terms include the payment of rent, observing house rules, notifying the owner of any damage and giving the owner reasonable access to the premises.

If a party contravenes an RTT order, the maximum penalty is a \$10 000 fine.

The Tribunal can refer a question of law to the Supreme Court. In addition, a Tribunal decision can be appealed in the District Court.

Lessons from South Australia

The lessons to be learned from the South Australian experience are outlined below.

1. Provisions contained in subordinate legislation must be enforceable.

In SA, the RTT has jurisdiction to hear matters in relation to the code of conduct and the agreement (including implied terms). It is not clear how the other provisions in the regulations are enforceable, for example, where a rooming house owner failed to store abandoned goods⁷⁷ for fourteen days or implemented a harsh or unconscionable house rule.

Therefore, if legislation is to be enacted by way of subordinate legislation, it is necessary for the principal Act to contain sufficient powers of enforcement.

⁷⁷ Bradbrook, A J (2004), op. cit. pp. 165.

2. The legislation could include systems that promote compliance.

In SA, there are no prescribed forms for rooming houses and property owners are not required to lodge a security bond with the Residential Tenancies Authority. Such systems as standard forms and mandatory lodgement of bonds may assist the parties to comply with the regulatory regime.⁷⁸

In addition, parties to a rooming house agreement need to be aware of their legal rights and responsibilities. It is important that a strong community education campaign accompanies any legislation, particularly in relation to use and access of the body empowered to resolve disputes (such as a court or tribunal)⁷⁹. As previously stated, consumer advocates also need to be aware of the rights under legislation and resourced accordingly to assist these often disadvantaged members of society.

Rooming house owners should also be provided with assistance (both intellectual and financial) to ensure that such low cost accommodation continues to be available to the community.

⁷⁸ Bradbrook, A J (2004), op. cit. pp. 166.

⁷⁹ Bradbrook, A J (2004), op. cit. pp.

The Law in New South Wales

As indicated on page 17, it is likely that NSW and Qld have the largest boarding and lodging house markets in Australia. Like WA, NSW does not have any specific statutes dealing with boarders and lodgers and relies mainly on common law. In addition, local councils may also have rules about the minimum size of rooms, fire regulations and registration of boarding houses.

Like WA, the *Residential Tenancies Act 1987* (NSW) defines a residential tenancy agreement as: “any agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence:

- (a) whether or not the right is a right of exclusive occupation,
- (b) whether the agreement is express or implied, and
- (c) whether the agreement is oral or in writing, or partly oral and partly in writing, and includes such an agreement granting the right to occupy residential premises together with the letting of goods.”

“Tenant” means the person who has the right to occupy residential premises under a residential tenancy agreement, and includes the person’s heirs, executors, administrators and assigns.

Section 6(1) (d) states “this Act does not apply to a residential tenancy agreement if the tenant is a boarder or a lodger.”

As definitions of a boarder and a lodger are not provided in the Act, there is some uncertainty about who is covered and who is excluded from the Act’s provisions.

Proposed reforms

The Boarders and Lodgers Action Group (BLAG) which comprises non-government organisations, legal services and community organisations, is lobbying for legislative reforms for NSW.

It appears that there have been a number of attempts to legislate in relation to boarding and lodging houses. In 1991, the New South Wales Parliament considered a *Boarding Houses and Lodging Houses Bill* but the Bill lapsed on two separate occasions⁸⁰. In 2003, the *Boarders and Lodgers Bill* was introduced into the Legislative Council. No legislation has yet been passed.

In addition, BLAG drafted a *Boarders Bill 1999* as a standalone bill [that is, separate to the *Residential Tenancies Act 1987 (NSW)*]. A breakdown of the Bill’s provisions is provided at Attachment 1.

⁸⁰ Power, C & Mott, P (2003), op. cit. pp. 151-152.

Under the terms of the Bill:

- Standard agreements would be adopted;
- Refuge, crisis accommodation and immediate family would be exempt;
- enforcement would be undertaken by the Consumer, Tenancy and Trader Tribunal (CTTT) of NSW;
- the Tenancy Commissioner would have a role in investigating complaints, providing conciliation and advice in this area.

Penalties under the Bill range from one penalty unit (maximum \$110) for failing to provide disclosure material to 50 penalty units (maximum \$5500) for matters such as contravening a CTTT order in relation to rent and trying to obtain possession of the premises without a CTTT judgement.

Conclusion

As outlined in this chapter, most Australian States and Territories have enacted legislation in relation to the boarding and lodging house sector. It is evident that much variation exists amongst the states in regulating the sector, including coverage, exemptions and the system of regulation (for example, as a standalone statute or provisions incorporated into the residential tenancies legislation). It is necessary that the legislation in this area is capable of being regularly reviewed as the market is dynamic.

Other key factors that must be considered in establishing a legislative regime in this area is the degree to which market participants are aware of the laws and supported to enforce their rights, the extent to which market participants access the dispute resolution process and the degree to which enforcement processes deter non-compliance.

THE LAW IN WESTERN AUSTRALIA

The role of the State Government

An amendment to the Constitution gives the Commonwealth and the States a role in the provision of health. The *Health Act 1911* was enacted by the Western Australian Parliament and includes provisions dealing with lodging houses as this form of shared housing, if not properly managed, could affect public health.

Under the *Health Act 1911*, a lodging house is defined as “any building or structure, permanent or otherwise, and any part thereof, in which provision is made for lodging or boarding more than 6 persons, exclusive of the family of the keeper thereof, for hire or reward; but does not include:

(a) premises licensed under the publican’s general licence, limited hotel licence, or wayside house license, granted under the *Licensing Act 1911* (which has been repealed);

(b) residential accommodation for students in a non-government school within the meaning of the *School Education Act 1999*; or

(c) any building comprising residential flats.”

The *Health Act 1911* requires lodging house owners to keep a register of residents and outlines particular offences relating to the supply of accommodation in which an infectious person is, or has been, residing. The *Health Act 1911* also outlines a role for local government authorities (subject to the *Local Government Act 1995*) in the development and enforcement of regulations dealing with various public health aspects of lodging houses in their districts.

The *Health Act 1911* is currently being reviewed by the Health Department. A discussion paper has been circulated and appears to advocate the retention of legislation in relation to lodging houses, but to simplify the provisions so that practices considered a “risk to health” can be included in the scope of the Act. Submissions regarding the *Health Act 1911* closed on 30 November 2005.⁸¹

⁸¹ Department of Health WA (2005), *New Public Health Act for Western Australia: A Discussion Paper* (Electronic version). Retrieved September 2005 from <http://www.newpublichealthact.health.wa.gov.au>

The role of local government authorities

As explained above, the *Health Act 1911* empowers local government authority to regulate and enforce certain aspects of lodging houses that impact on public health, such as:

- establishing a system of registration of lodging houses;
- regulating and enforcing specified matters in lodging houses that may have health implications, for example, determining the maximum number of residents in any lodging house and outlining minimum maintenance standards.

Proceedings for offences under the *Health Act 1911* can be initiated at the state or local government level.

It appears that the various local government authorities in WA have adopted relatively uniform by-laws (called “local laws”) relating to lodging houses.

The by-laws refer to such matters as:

- construction of lodging houses complying with the BCA;
- fire prevention and control;
- maintenance of rooms by lodgers and keepers (owners);
- provision of facilities, including kitchen, laundry, bathroom and lounge room; and
- the keeping of a register of lodgers and a caretaker on the premises.

The by-laws state that a lodging house “includes a recreational campsite, serviced apartment and short-term hostel.”

Enforcement

In 1977, Comfort⁸² suggested that that the Perth City Council was in an awkward position in relation to its role in maintaining standards in lodging houses. She indicated that lodging houses, being subject to high wear and tear, would often require maintenance and repairs but there was reluctance amongst owners (and lessees) to spend the money to undertake the necessary work due to the uncertain future of lodging houses (especially given the possible alternative uses).

Council inspectors therefore had to decide whether to issue work orders when such action might accelerate the closing down of lodging houses. Such action would then displace residents, which would potentially create difficulties for council as residents might be forced into primary homelessness (that is, sleeping rough) in an effort to find alternative low-cost accommodation. Comfort⁸³ argues that the Perth City Council was seen to have adopted a *laissez-faire* approach in relation to lodging houses in response to this dilemma.

⁸² Comfort, J (1977) op cit. pp. 54-61.

⁸³ Comfort, J (1977) op cit. pp. 59-60.

It is expected that such a dilemma still exists for all local government authorities that have lodging houses in their area.

Comfort⁸⁴ also suggests that some by-laws (or local laws) might be inappropriate for lodging houses. For example, she cites the requirement for lodging houses to provide a lounge room with furnishings for residents as inappropriate as such rooms are prone to being abused and furniture destroyed.

Other Laws

The RT Act (WA) deals with agreements between tenants and owners in relation to accommodation for hire in return for reward. The RT Act (WA) defines a residential tenancy agreement as “any agreement, whether express or implied, under which any person for valuable consideration grants to any other person a right to occupy, whether exclusively or otherwise, any residential premises, or part of residential premises, for the purpose of residence.”

In addition a “tenant” is defined as “grantee of a right of occupancy under a residential tenancy agreement.”

As there is no distinction made in the RT Act (WA) between a lease or licence holder, it could be argued that in relation to boarding or lodging house accommodation:

- an agreement exists that is express or implied;
- valuable consideration is given in exchange for a right (or licence) to occupy part of premises;
- the boarder/lodger does not obtain exclusive possession of the premises

and therefore such agreements can be considered to be residential tenancy agreements for the purposes of the RT Act (WA). However, section 5(2)(d) of the Act states that “the Act does not apply to any residential tenancy agreement where the tenant is a boarder or lodger.”

Unfortunately, the terms “boarder” and “lodger” are not defined under the Act so there is some uncertainty about how to distinguish between “boarder”/“lodger” on the one hand and “tenant” on the other hand for the purposes of coverage under the Act.

It seems that the exclusion of boarders and lodgers was consistent with the RT Act (SA), upon which the Western Australian legislation was based. South Australia was the first state in Australia to introduce residential tenancies legislation.

Issues – RT Act

Unscrupulous operators can exploit the lack of clarity in the boundaries of the coverage of the Act. Consumer Protection has recently prosecuted a landlord who, amongst other things, misrepresented the nature of accommodation as lodging when it was a tenancy. The particular landlord had a number of rental properties around Perth and targeted vulnerable international students to live in the properties⁸⁵.

⁸⁴ Comfort, J (1977) op. cit. pp. 58-59.

⁸⁵ Granath, Natasha (29 June 2005), *Students fleeced by city’s worst landlord* in *The West Australian* pp. 43.

The above case was extreme, but there are instances where the distinction between a lease or a licence is less clear and it is difficult for the parties to determine their rights and responsibilities in relation to the accommodation. In such circumstances, it is also difficult for advocates and assisting organisations to provide definitive advice.

In addition, the area of aged care may also require legislative clarity. TAS is aware that lifestyle villages operating in WA may not be covered by statute as:

- although marketed at pensioners, no up-front fees or entry contributions appear to be required;
- residents pay ongoing rent;
- residents may not have exclusive possession of the premises they occupy as a caretaker provides meals and linen; and
- no direct medical care appears to be provided on site.

The area of aged care is also an important one for the protection of potentially vulnerable people.

Common Law and current status

From time to time, DOCEP receives complaints from boarders and lodgers and attempts are made to conciliate such complaints, where possible⁸⁶. Where there is uncertainty about the legal status of a complainant, consumers are encouraged to access the Magistrate's Court for a determination. There is a filing fee for applications made to the Court.

Stamfords Report

In 2002, a review of the RT Act (WA) was carried out by independent consultants, Stamfords Advisors Consultants for DOCEP. The review involved consultation with the public (responding to a Discussion Paper) and a series of public forums, focus groups and individual meetings.

The Stamfords Report recommended that:

- boarders and lodgers are defined in the Act (including the minimum number of boarders/lodgers residing in premises) and that coverage of the RT Act be extended to this group;
- provisions relating to boarding and lodging take into account the Commonwealth Minimum Legislative Standards (see page 28);
- further research and consultation is undertaken to ensure the workability and appropriateness of legislative provisions to this sector.
- Should legislation be contemplated in this area, it would also seem reasonable that there be some consistency between the RT Act (WA) provisions and the existing law in this area. This will assist operators to comply with the provisions, assist enforcement and minimise disruption to the sector.

⁸⁶ Conciliation is undertaken in accordance with the powers conferred under the *Fair Trading Act 1987* (WA)

Conclusion

In WA, there are a number of issues with the current legislative framework dealing with the boarding and lodging house sector.

First of all, the current registration system, administered by the various local government authorities, is difficult to enforce because imposing work orders may cause closures. However, boarding and lodging houses perform a vital role in the provision of low cost housing to often vulnerable people who might otherwise be forced into primary homelessness.

Secondly, unlike most states of Australia, WA has no legislation that directly regulates the relationship between boarders/lodgers and owners. Therefore, market participants must rely on common law in relation to such matters as bond lodgement, abandoned goods and contractual disputes generally.

Thirdly, the RT Act (WA) explicitly excludes boarders and lodgers from its coverage, although there is no definition of what constitutes a boarder or lodger. Lack of clarity in this area can be exploited by unscrupulous operators.

There appears to be a need for reform in this area.

OPTIONS FOR IMPROVING THE BOARDING AND LODGING HOUSE SECTOR IN WESTERN AUSTRALIA

Introduction

From the information contained in the preceding sections, a matrix has been constructed to highlight the areas of the boarding and lodging house sector in WA that can be improved upon and the areas of concern that require attention.

<p>Boarding and Lodging House Sector (Status Quo)</p>	<p>STRENGTHS:</p> <p>Low cost form of accommodation (that attracts high demand).</p> <p>Flexible form of accommodation (where people can come and go anonymously).</p> <p>All boarders and lodgers (that are not tenants) are treated in the same way at law regardless of the number of rooms available for occupation.</p>	<p>WEAKNESSES/THREATS/ CONSTRAINTS:</p> <p>Confusion exists about who is a “boarder” / “lodger” and “tenant” at law: lack of clarity can be exploited by unscrupulous operators.</p> <p>Residents are vulnerable – may lack education and ability to enforce their rights.</p> <p>There is currently little security of tenure for residents.</p> <p>The sector is small and declining (supply side) and existing stock is on valuable land but limited returns as a boarding/lodging house due to low income clientele.</p> <p>Gentrification and rising land values (especially in the inner city areas).</p> <p>Waiting lists for public housing are high (that is, there are few low cost housing substitutes available).</p> <p>Policy of de-institutionalisation (for those with mental illness) increases the demand for low cost housing.</p> <p>Community organisations to assist residents to enforce their rights are under-resourced.</p>
	<p>OPPORTUNITIES:</p> <p>Boarding and lodging houses can be sources of vibrancy in the inner city.</p> <p>Community agencies may be able to manage the most vulnerable resident groups in a supportive environment.</p> <p>It is likely that government services to support residents already exist, just need to be co-ordinated.</p> <p>Legal clarity may reduce some of the demand for support services by residents to enforce their rights eg. test cases.</p> <p>Dealing with the problem now may prevent closures and minimise social displacement of residents.</p>	

Analysis and recommendations

From the matrix above it is evident that maintaining the status quo will lead to the continued imbalance in demand for, and supply of, boarding/lodging house accommodation. Therefore, the following recommendations are outlined below (in order of priority).

1. The various tiers of government could work collaboratively to increase the supply of boarding and lodging houses in WA.

The lack of supply of boarding and lodging houses in WA is a key issue. The private market (by way of profit motive and price signals) is not applicable to this sector because the clientele of such accommodation are unable (often through disability) to pay the premiums required to keep this sector viable. Generally, such clientele also require services other than accommodation to participate fully in society.

It is the responsibility of government to address this market failure through the promotion of such supply-side strategies as building, purchasing housing stock for conversion to boarding/lodging accommodation, grants and concessions to existing and new boarding/lodging house operators. Such strategies should also include allocating money to repair and upgrade existing boarding and lodging houses.

2. The state (and local) governments could develop a system to “package” existing government services (currently spread out over a number of departments), such as health, guardianship, housing/utilities and transport.

The packaging of government services would provide a one-stop service information point for boarding and lodging house operators and residents. In addition, the co-ordination of service delivery to residents, incorporating the identification of individual needs, could be facilitated at this one central point.

Boarding and lodging house operators, residents and local governments could also contact this central government agency to advise about possible closure or downgrading of services to residents to trigger a whole of government response to minimise disruption to residents.

3. Legislative clarity is required in relation to boarding/lodging house.

The following are options for legislative reform of boarding and lodging houses.

Option 1: Amend the RT Act (WA) to provide clarity about the types of boarders and lodgers that are excluded.

For example, a definition of a “boarder”, a “lodger” and a “sub-tenant” could be incorporated into the RT Act (WA) and the current definition of a “residential tenancy agreement” could be amended in relation to non-exclusive occupation.

Pros:

- Achieving this outcome would not require many resources.
- This option may reduce some of the demand for support services (such as tenancy advocates) as participants are clearer about their rights and obligations at law.
- This option would require minimal drafting.
- This option may delay closure of some boarding and lodging houses as operators are concerned about the impact of legislation in this area.
- Depending on the definition adopted, it is likely that boarders and lodgers will be treated equally at law, regardless of the number of rooms available for occupation.

Cons:

- This option may discourage boarders and lodgers from taking action against unscrupulous operators.
- The option is not consistent with the recommendations of the Stamfords Report and the Commonwealth Minimum Legislative Standards Report: it does not address issues such as security of tenure, an independent dispute resolution process and minimum agreement standards for boarders and lodgers.
- Despite being a licence rather than a lease, there is no reason why boarders and lodgers should not be afforded similar protections to tenants at law.

Analysis

This option would clarify the position for boarders and lodgers and is preferable to the status quo. However, the option is not recommended because it does not provide boarders and lodgers with some standards in relation to such matters as eviction, a dispute resolution process and the types of fees and charges allowable under the agreement.

Option 2: Amend the RT Act (WA) to specifically INCLUDE boarders and lodgers in its coverage.

Pros:

- The option is consistent with the recommendations of the Stamfords Report and the Commonwealth Minimum Legislative Standards Report: it can address issues such as security of tenure, an independent dispute resolution process and minimum agreement standards for boarders and lodgers.
- A specific section of the RT Act (WA) can be used to apply only to boarders and lodgers, such as house rules, use of facilities etc.
- Using the existing RT Act (WA) will minimise the amount of drafting required.

Cons:

Adding provisions to the RT Act (WA) will make it longer and more time consuming to read, review and amend.

- Depending on the definition, not all boarders and lodgers will be covered by the legislation and there may be some confusion about who is or is not covered at the margins.
- Legislation will require resources to draft, enforce and support (such as advice, education and advocacy programs).
- This option may speed up closure of some boarding and lodging houses as operators are concerned about the impact of legislation in this area.

Analysis

This option does provide boarders and lodgers with some standards in relation to such matters as eviction, a dispute resolution process and types of fees and charges allowable under the agreement. However, it is a concern that new provisions in the existing RT Act (WA) will make this statute more cumbersome and difficult to amend.

Therefore, this option is not preferred for reforming the boarding and lodging house sector.

Option 3: Draft provisions in the RT Act (WA) to make Regulations and/or a Code of Conduct in relation to boarders and lodgers.

Pros:

- The option is consistent with the recommendations of the Stamfords Report and the Commonwealth Minimum Legislative Standards Report: it can address issues such as security of tenure, an independent dispute resolution process and minimum agreement standards for boarders and lodgers.
- The Regulations/Code of Conduct can be tailored to matters specific to boarding and lodging houses.
- Amendments to subsidiary legislation can be made more quickly, which is important as this sector appears to be very dynamic.
- Being subsidiary legislation, it may be easier for the public to read and interpret.

Cons:

- Depending on the definition, not all boarders and lodgers will be covered by the legislation and there may be some confusion about who is or is not covered at the margins.
- Legislation will require resources to draft, enforce and support (such as advice, education and advocacy programs).
- This option may speed up closure of some boarding and lodging houses as operators are concerned about the impact of legislation in this area.

Analysis

This option would provide more clarity in relation to the legal position of boarders and lodgers than present. In addition, this option addresses such matters as a minimum number of days before termination of an agreement, a dispute resolution process and types of fees and charges allowable under the agreement.

Subject to robust enforcement provisions being drafted in the RT Act, the greater flexibility to amend Regulations is a desired feature and makes this option the preferred scenario for legislative reform in this area.

Should this option be adopted, it is further recommended that:

- the Commissioner's⁸⁷ functions are expanded to enable the Commissioner to investigate complaints and instigate proceedings for offences in relation to breaches of the Code of Conduct and/or Regulations;
- the Commissioner is empowered to instigate or defend proceedings between parties to a boarding/lodging house agreement that are considered to be in the public interest;
- the penalties for non-compliance with the Regulations and Code of Conduct act as a sufficient deterrent from committing breaches by market participants;

⁸⁷ Note: Commissioner, or delegate, as defined under the *Residential Tenancies Act 1987 (WA)*.

- careful consideration (and consultation) be undertaken to ensure that the time allowed for residents to remedy breaches takes into account that residents are generally disadvantaged members of the community;
- the new regime is accompanied by an ongoing education program that is targeted to the needs of residents, including:
- a toll-free number where residents can get information about their rights and responsibilities;
- multi-lingual pamphlets and prescribed notice that includes the telephone number for the Telephone Interpreter Service;
- more resources for advocates who assist boarders and lodgers to understand and enforce their rights.

Option 4: Develop separate legislation for boarding and lodging houses.

Pros:

- The legislation will pertain specifically to boarding and lodging houses, which will be easier for the public (including advocates) to look up the rights and responsibilities of boarders and lodgers.
- The process of review and amendment of the legislation is easier and less time consuming than if these provisions were incorporated into the RT Act (WA).
- The option is consistent with the recommendations of the Stamfords Report and the Commonwealth Minimum Legislative Standards Report: it can address issues such as security of tenure, an independent dispute resolution process and minimum agreement standards for boarders and lodgers.

Cons:

- It will take longer to draft and it will require further resources to enforce and support (such as advice, education and advocacy programs).
- Depending on the definition, not all boarders and lodgers will be covered by the legislation and there may be some confusion about who is or is not covered at the margins.
- This option may speed up closure of some boarding and lodging houses as operators are concerned about the impact of legislation in this area.
- Separate legislation creates an “artificial” distinction between lease and licence holders.

Analysis

This option would provide similar advantages to using the existing RT Act (WA) but drafting a separate piece of legislation would require more work to draft. The statute, being primary legislation, would be more difficult to amend and therefore less responsive to changes in the marketplace.

Consequently, this option is not as desirable as creating Regulations that are enforceable through provisions in the (existing) RT Act (WA).

Option 5: Develop a mandatory accreditation scheme for boarding and lodging houses.

A mandatory accreditation system is a process whereby a professional society, a non-governmental body, or government agency evaluates the performance of a service provider against measurable standards. Generally, accreditation (or certification that a provider has met the standards) is awarded for a period of time and re-accreditation is subsequently required.

The system is designed to scrutinise outcomes and ensure that systems are in place for quality service delivery and continuous quality improvement.

Pros:

- An accreditation system could be tailored to the particular requirements of the boarding and lodging house sector.
- An accreditation system would assist to improve standards of boarding and lodging houses.
- An accreditation system would provide information to consumers about the standard of accommodation at boarding or lodging houses.

Cons:

- The option is not consistent with the recommendations of the Stamfords Report and the Commonwealth Minimum Legislative Standards Report: this option does not address issues such as security of tenure, an independent dispute resolution process and minimum agreement standards for boarders and lodgers.
- An accreditation system duplicates the registration system already in place and enforced by local councils.
- An accreditation system would be time and resource intensive to enforce and keep current.
- This option may speed up closure of some boarding and lodging houses as operators may need to upgrade facilities to comply.
- Depending on the definition, not all boarders and lodgers will be covered by the legislation and there may be some confusion about who is or is not covered at the margins.

Analysis

This option would not provide more clarity in relation to the legal position of boarders and lodgers than present. In addition, this option does not address such matters as a minimum time period for eviction, a dispute resolution process and types of fees and charges allowable under the agreement. An accreditation system would also largely duplicate the existing registration system under the *Health Act 1911*.

Consequently, this option is not considered preferable to the status quo.

Option 6: Develop a voluntary accreditation scheme and/or code of conduct for boarding and lodging houses.

Pros:

- Voluntary acceptance of a system of accreditation and/or code of conduct may act as an information signal about operators for prospective boarders and lodgers.
- The peak body overseeing such a voluntary system would likely specialise in boarding and lodging issues and could take on an independent dispute resolution role amongst members.

Cons:

- Compliance would be likely from operators who are least likely to treat boarders and lodgers unfairly.
- It would require an education campaign so that the community was aware of the scheme and its aims and yet with lack of alternative low cost housing, people may be not be able to exercise effective choice.
- This option does not address the lack of legal clarity that exists between a “boarder,” “lodger,” and “tenant.”

Analysis

The voluntary basis of both a code of conduct or accreditation scheme would make these options less preferable to the status quo. It is likely that such a scheme would be embraced by the operators who are least likely to treat boarders and lodgers unfairly.

CONCLUSION

Recommendations

The following recommendations are made to ensure a vibrant boarding and lodging sector in WA that provides (a much needed) low cost housing option for the community.

- 1. The various tiers of government could work collaboratively to increase the supply of boarding and lodging houses in WA.**
- 2. The state (and local) governments could develop a system to “package” existing government services (currently spread out over a number of departments), such as health, guardianship, housing/utilities and transport.**

The following recommendations are made to ensure that an “equal” power relationship exists between residents and owners when residents contract to access housing.

- 3. The RT Act (WA) is amended to incorporate Regulations and/or a Code of Conduct in relation to boarding and lodging houses.**

The legislation should provide (a) clear definition/s regarding the boarding and lodging houses that are covered by the law and such (a) definition/s should provide the most vulnerable boarders and lodgers with legislative coverage.

- 4. The legislation should deter non-compliance, take into account the vulnerable nature of residents, and include an education program incorporating more funding for advocates.**

Legislative clarity should not result in boarding and lodging house closures if accompanied by appropriate supply-side initiatives.

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