



The Boarding House System in Metropolitan Perth

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Table of Contents

1.	Introduction	3
1.1	Background and Methodology	4
1.2	Survey of Boarding House Residents and Managers	4
1.3	Definitions: Boarding, Lodging and Rooming Houses	5
1.4	Definition: Homelessness	6
2	Boarding House Legislation	7
2.1	Minimum Government Standards	7
3	Housing History of Survey Respondents	11
3.1	Why Use Boarding House Accommodation?	12
3.2	Residents' Views	13
3.3	Managers' Views	15
4	Summary and Conclusion	19
5.	Bibliography	21
	Appendix 1: Questionnaire for Boarders and Lodgers	22
	Appendix 2: Questionnaire for Boarding House Managers	25

1. Introduction

The boarding house sector in Western Australia is currently in a crisis situation. Two critical issues have emerged in recent years. Firstly, rising land prices and increasing costs have made operating boarding houses an increasingly unviable operation. As a result, the number of boarding and lodging houses has dwindled: roughly two thirds of the sector has been lost over the last two decades. It would appear that a third of what remains may disappear over the next 18 months.

At the same time, there is a complete absence of any form of consumer protection for boarders and lodgers in Western Australia. Unlike tenants in private rental and social housing, boarders and lodgers are not covered by any comprehensive legislation such as the Residential Tenancies Act. As boarding and lodging houses play a critical role in housing some of our community's most multi-disadvantaged citizens, there is an urgent need to increase consumer protection for this group.

It should be noted from the outset that the issues of consumer protection and falling supply are intimately related. One example is that the acute shortage of boarding house accommodation means that many residents have no effective choice of accommodation, but a choice between one particular boarding house and an indefinite period of homelessness. As a result, many boarders and lodgers now feel unable to 'vote with their feet' and leave boarding houses that provide poor standards or poor management. In the context of dwindling supply, it is therefore critical to ensure adequate levels of consumer protection.

A second example is that many boarding houses operate on very tight margins. Any increase in costs – for instance the cost of complying with new consumer protection legislation or regulation – therefore has the potential to push a number of boarding houses over the edge. This implies that any consumer protection should be designed in such a way that it does not result in further closures of boarding houses.

A final example is that boarding house managers need to strike a fine balance between the rights of individual tenants and their duty to ensure a safe environment for all of their residents. In practice, this implies that boarding house managers need a mechanism by which to remove residents from the premises immediately, for instance if they behave violently towards others. While an ability to evict residents without notice sits uneasily with any form of consumer protection, Shelter WA believes that an appropriate process can be designed that would meet the needs of both boarding house residents and operators.

This paper combines the findings of a literature search and a survey of both residents and operators of boarding house accommodation in metropolitan Perth. Overall, it indicates that the issues confronting boarders and lodgers need to be addressed urgently. At the same time, however, great care needs to be taken that the issues of consumer protection and falling supply in the private sector are dealt with concurrently.

The recommendation put forward in this paper is therefore that the State Government urgently develop a Boarding and Lodging House Strategy. This strategy should address simultaneously the issues of consumer protection and supply.

1.1 Background and Methodology

The boarding house system performs a distinct role in the housing market. It provides accommodation to a significant proportion of the community's most impoverished citizens. Many longer term residents identify affordability, location and companionship as positive factors influencing their choice to stay in boarding houses. However, a large number of people also identify lack of other options as a primary reason.

In contrast to the traditional resident group of single working men, the resident populations now comprise a wider spread of age groups, men and people on very low income. A significant and increasing number of people with disabilities [physical, psychiatric and intellectual] access boarding houses following the implementation of de-institutionalisation policies in Australia.¹

The one defining issue that induces some fierce debates about the future of the sector centres on legislative protection for residents. It is only in the last couple of years that some Australian jurisdictions have put together legislation covering boarders and lodgers. Others have applied minimum standards, where in some cases housing rights for boarders are not explicitly stated. NSW is still in the process of debating its *Boarders and Lodgers Bill 2003*. The lack of urgency into developing and implementing housing rights for Western Australia most multi-disadvantaged citizens still remain an issue.

One of the main reasons why boarding house legislation remains a contentious issue in Australia is that boarding house operators feel that they may be forced to close down in the face of increased regulation. This is understandable: as the boarding house sector provides accommodation to very low income groups, their profit margin tend to be relatively slim and sensitive to any significant impacts.

The project recognises the importance of ensuring a continued supply of boarding and lodging house accommodation. At the same time, it also recognises that residents of boarding and lodging houses have a real need for some form of consumer protection. This implies that consumer protection for boarders and lodgers should be designed in such a way that does not make it impossible for Boarding House operators to manage their Boarding Houses and continues to allow flexible, short-term, simple and low cost accommodation to be available to people in need.

1.2 Survey of Boarding House Residents and Managers

Nineteen residents of boarding houses in metropolitan Perth were interviewed. Thirteen managers and co-ordinators of boarding house accommodation in metropolitan Perth were also interviewed. The interviews focused predominantly on the lack of minimum legislative standards covering boarding housing accommodation in Western Australia. The questions for the residents and managers were similar. Additional questions were used in the residents' survey to gain a better understanding of the residents housing history, and their perspectives of their experiences of boarding housing accommodation.² Boarding house residents were offered reimbursement of \$10 for their

¹ National Shelter, 2000, *National overview of Boarding Houses in Australia*, National Shelter, Sydney.

² See questionnaire in appendix 1

participation on the survey. The interviews were carried out by Bronwyn Kitching, a qualified social worker with work experience in the boarding house system, and Jim Anthony, a qualified researcher with an Honours degree in Sustainable Development.

Boarding houses were selected as the site for interviews. This required a process of informing the managers and residents, by mail, email or phone, of the research background, aims and expected outcomes and seeking permission to carry out the interviews on hostel premises. Specific time schedules were arranged between the manager and researchers so that the interviews were conducted in a nominated place and time in the hostel premises and during supervisory working hours. Ethical and safety considerations were an important part of the interview process. As a result the interview methodology was guided by considerations related to gender, age and ethnicity in their selection of tenants. Hostels were selected from a representative sample across the boarding and lodging house sector in metropolitan Perth. Those included:

- Women's Refuges;
- Youth Accommodation Services;
- Single Men's Accommodation
- Single Women's Refuge's;
- Family Refuges
- Indigenous Refuge Accommodation;
- Psychiatric Hostels; and
- Department of Housing and Works Hostels.

The main aim of the survey was to:

- Gather and document information from residents and managers in metropolitan Perth about the boarding housing system in Western Australia.

And from this identify some key issues related to:

- Concerns which residents have with WA's boarding house system;
- The advantages and disadvantages to boarders and managers of regulation covering boarding houses;
- The lack of resident rights in the boarding house system and;
- Managers and residents views about potential impacts that minimum government regulation could have on the boarding house system in WA.

1.3 Definitions: Boarding, Lodging and Rooming Houses

There is not one agreed definition of what constitutes a boarding house. The terms "rooming houses" "boarding houses" and "lodging houses" are often used loosely and interchangeably.³ At the same time a distinction is commonly made between the provision of 'room only' and 'room plus other services'. For instance;

"A boarding house is a form of accommodation where rent is collected for the use of a single room, where other facilities such as a kitchen, toilets and living area

³ Anderson, P., Hume, A., Rogers, N., and Stephenson, T., 2003. *Boarding Houses: The sector, its clientele and its future*, Department of Human services, Adelaide City Council, Adelaide.

*may be shared. The single room may be provided on a single shared basis. Meals and other services such as laundry may or may not be Included “.*⁴

Lodging and Rooming houses generally provide accommodation only. Boarding houses are usually privately owned and operated: however some properties are publicly-owned by State Housing Authorities. In metropolitan regions which are more densely populated [i.e. Central Perth and Fremantle], community housing organisations play a major role in the provision of affordable short-term accommodation for homeless persons.⁵ Boarding houses is probably the most common term used in the metropolitan regions in Perth, and is therefore use throughout this report as a generic term.

1.4 Definition: Homelessness

In Australia, debates surrounding homelessness definitions have subsided. Most Australian jurisdictions have now adopted the definition, first formulated by Chamberlain and Mackenzie, and now applied by the Australian Bureau of Statistics as the Australian cultural definition of homelessness.⁶ This definition distinguishes between primary, secondary and tertiary homelessness:

- *Primary homelessness:* Includes all people without conventional accommodation, such as people living on the streets, sleeping in parks, squatting on derelict buildings, or using cars or railway carriages for temporary shelter;
- *Secondary homelessness:* Includes all people staying in emergency or transitional accommodation.⁷ Also includes people residing temporarily with other households because they have no accommodation of their own and ;
- *Tertiary homelessness:* Refers to people living in boarding housing on a medium to long-term basis, operationally defined as 13 weeks or longer. They are homeless because their accommodation does not have the characteristics identified in the minimum community standard.⁸

This definition has been adopted by the National SAAP Coordination and Development Committees which are the group of senior administrators for each Australia State and Territory government responsible for the strategic management of the SAAP programs, Australia's main policy response program to homelessness.⁹ This project also adopts the Chamberlain and McKenzie definition described above.

⁴ Ibid, Page 8.

⁵ Greenhalgh E, Minnery J, Miller A, Gurran N and Jacobs J, 2004, *Boarding houses and government Supply Side Intervention*. AHURI, Queensland.

⁶ Greenhalgh E, Miller A, Mead E, Jerome K and Minnery J, 2004, *Recent International and National Approaches to Homelessness*, AHURI, Queensland.

⁷ The Supported Accommodation Assistance Programmes [SAAP] is a joint Commonwealth and State Government programme which provides funds to not for profit agencies to help people who are homeless or at risk of homelessness including as a result of domestic violence, Department of Community Development, 2005, *Support Accommodation Assistance Programme Service Standards, 2002*, DCD, Perth.

⁸ The minimum community standard is a small rental flat-with a bedroom, living room, kitchen, bathroom and an element of tenure security-because this is the minimum that most people achieve in the private rental market. The minimum is significantly below the culturally desired option of an owner occupied house, Chamberlain C and McKenzie D, 2004, *Counting the Homeless 2001 Western Australia*, RMIT, Swinburne University.

⁹ Mackdacy L, Lennings C, Wood H, Randolph B, Winstanley J and Buck B, 2005, *Sustaining Housing After Homelessness: Final research report to the national SAAP coordination and development committee*, DFaCS, Canberra.

2 Boarding House Legislation

There is no single Act that provides a regulatory framework for boarding house tenants in Western Australia. Regulation pertaining to the physical and health conditions of buildings is covered by the *Health Act Local Laws*. Boarding and lodging houses are required to be registered with the local government authorities under their *Health Acts*.¹⁰

Boarding houses are also used as crisis accommodation. This is funded by the Commonwealth and State government's Supported Accommodation Assistance Programme. Specific SAAP standards relating to direct service provision, client rights, service networks to support clients, service management and health and physical safety, all require compliance by supported accommodation providers for them to be able to access SAAP funding.

2.1 Minimum Government Standards

The first major attempt at promoting a universal approach to boarding house legislation across all Australian State and Territories was undertaken in 1996 by the Commonwealth government's Department of Housing and Regional Development.¹¹ The authors of the report found that:

"In general terms, there is no reason why most provisions of residential tenancies legislation should not have application to boarding houses. The nature of boarding houses is not considered sufficiently different to general private rental tenancies to warrant the lack of application of the basic rights and responsibilities embodied in tenancy law."¹²

The report recommended that all Australian governments apply minimum legislation standards to their respective boarding house systems. Table 1 highlights the States which have been proactive in the area of boarding house legislation. It reveals some of the main features of the different boarding housing Acts in operation in different States.

Table 1 reveals that the different Acts show some convergence in that they cover some of the more fundamental aspects of housing legislation. The Table also indicates some divergence in relation to the legislative framework which each Act uses. For example, in Victoria, its *Rooming House Act* was incorporated into its RTA, providing boarders with a range of rights under its main housing Act. In contrast, the Northern Territory has legislated for a set of 'minimum rights' for boarders. However, these are not explicitly stated and are open to interpretation.¹³ The NSW government has proposed a separate Act and the Queensland government has implemented a separate Accommodation Act.

¹⁰ Town of Vincent: Guidelines for Lodging Houses, www.vincent.wa.gov.au.

¹¹ Commonwealth Department of Housing and Regional Development, 1995, *Minimum Legislative Standards or Residential Tenancies in Australia*, DHRD, Canberra.

¹² Ibid, Page 93.

¹³ Commonwealth Department of Housing and Regional Development, 1995, *Minimum Legislative Standards or Residential Tenancies in Australia*, DHRD, Canberra.

Table 1: Comparison of Boarding /Lodging House Legislation

	Boarders and Lodgers Bill 2003 [NSW]	Residential Tenancies Act 1997 [Vic]	Resid Services [Accommodation] Act 2004 [Qld]	Resid Tenancies Act 1995 [SA]	Resid Tenancies Act 1997 [Tas]	Resid Tenancies Act [NT]
<i>Act Arrangements</i>	Proposed separate Act	<i>The Rooming Houses Act</i>	Separate from Queensland RTA 1994	Extended protection for rooming housing tenants in Jan 2000	Part 4A of the RTA applies to Boarding premises	Part 17, of RTA, provides limited cover for 'special class' tenancies and specified class' of premises
<i>Health covered by other act</i>	yes	yes	yes	yes	yes	no
<i>Crisis Acc covered by other Act</i>	yes	yes	yes	no	no	yes
<i>Boarders right to reside</i>	yes	yes	yes	no	no	no
<i>Boarders pay rent</i>	yes	yes	yes	yes	no	no
<i>Owners/Boarders repairs/damage</i>	yes	yes	yes	yes	yes	yes
<i>Owners right of entry</i>	yes	yes	yes	no	yes	yes
<i>Contract-standard agreement</i>	yes	yes	yes	yes	yes	yes
<i>Rental bond & rent advance</i>	yes	yes	yes	yes	yes	yes
<i>Reasons given for termination & notice periods</i>	yes	yes	yes	yes	yes	yes

Sources: National Shelter; 2000, ¹⁴ Department of Justice [Northern Territory], 2005 ¹⁵ Department of Justice, Tasmania, 2005, ¹⁶ Residential Tenancies Act Vic, 1997. ¹⁷

There are clearly disadvantages and advantages in relation to how a new Act is structured. For example, ease of interpretation, if the Act is a separate document. This does not appear to be a critical issue from the perspective of developing and implementing minimum standards. What appears to be important however, are that only those provisions of the main legislation which are clearly unsuitable for boarding houses should be varied.¹⁸

Table 1 demonstrates that the boarding housing legislation enacted by some States and Territories has some similarities in relation to basic rights and duties for tenants and boarding house managers. For example:

¹⁴ National Shelter, 2000: *National Overview of Boarding Houses in Australia*, National Shelter, Melbourne.

¹⁵ www.nt.gov.au/justice.

¹⁶ www.justice.tas.gov.au.

¹⁷ www.vcat.vic.gov.au.

¹⁸ Ibid.

- Allows legislative protection and a minimal security of tenure for boarders and lodgers;
- In NSW the Residential Tribunal gives orders and defines procedures which have to be adhered to in regards to termination of agreements and evictions;
- Provides the boarder with reasonable termination notice. In non-regulated jurisdictions the notice normally given by licensees to tenants is 2 days;
- Allows regular scrutiny and regulation of boarding houses physical conditions and general health standards. In Western Australia this is carried out by local government officers under the Health Act Local Laws;¹⁹

What are the disadvantages?

- Financial viability: may induce shrinkage of available housing and a reduction of supply - if the regulatory framework is too stringent and costly on Boarding House owners;
- May impact adversely on the flexible and short-term stay arrangements, which are popular with licensees and some tenants and;
- Payment of bonds and rents in advance - the majority of boarding house residents are on very low incomes.

For many decades boarding house operators have resisted attempts to introduce a legal framework covering boarders' rights. Their main argument tends to gravitate towards a debate about the impacts of regulation on their long-term viability and profit margins. Some commentators have suggested this is more about political manoeuvring and an attempt to generate leverage for the industry.²⁰ It moves any argument for increasing standards away from consideration of tenant outcomes and increased safety to the industry.²¹

In addition, there has been a significant decline in boarding houses in some States which have negligible boarding house legislation. For example, in Metropolitan Perth, the number of boarding-houses reduced from 143 in 1973, to 82 in 1984. By the mid 1980's lodging houses had declined by over two thirds [75%], in comparison to the stock numbers in the 1970s.²² Between the 1996 and 2001 Censuses, the proportion of people living in boarding houses and private hotels declined by more than 15%, from 1,923 to 1,631.²³

¹⁹ City of Perth, Health Act Local Laws

²⁰ Greenhalgh, E., Minnery, J., Miller, A., Gurrin, N., and Jacobs, K., 2004, *Boarding Housing and Government Supply Side Intervention*, AHURI, Queensland.

²¹ Ibid.

²² Ibid

²³ Australian Bureau of Statistics, *Expanded Community Profile Western Australia (STATE 5)*, Cat No 2005.0, Commonwealth of Australia, 2003 and Chamberlain C, 1996, *Counting the Homeless: Implications for Policy Development 1999*, Australian Bureau of Statistics, p.44

In response to the decline in supply of boarding houses in highly populated urban centres in Metropolitan Perth, community housing organisations have emerged as major players in the sector.

Nonetheless, this paper recognises the issues surrounding long term viability. Previous research has supported some of the concerns put forward by the industry about financial viability. One report found that operators were very sensitive to changes in prices or costs, indicating that a reduction in rent of \$10 per client per week would result in them leaving the industry.²⁴ There is no doubt that any consideration of developing consumer protection for boarding house residents should take account of the possible impacts on boarding house supply and is therefore worthy of further research.

²⁴ Ibid

3 Housing History of Survey Respondents

The number of male participants involved in the survey was significantly higher than the females, 14 males as opposed to 5 females. Table 2 indicates that the majority of those interviewed, approximately two thirds, have lived in boarding houses for greater than 12 months. The length of overall stay for these residents ranged from just over 1 year to a maximum of 20 years. Nearly 1 in 3 of the survey respondents has lived in boarding housing accommodation for 15 to 20 years.

This relatively large number of long term residents would appear to indicate that boarding houses provide a way of life to a substantial proportion of residents. This was confirmed by comments made by these long term residents during the surveys, which indicated that the benefits of boarding houses included a sense of companionship and opportunities for social interaction. As argued in Shelter WA's submission to the Review of the Residential Tenancies Act (WA, 1987), this makes consumer protection important.²⁵

Table 2: Normal and overall length of stay in boarding houses

Length of stay	Normal length of stay		Overall length of stay	
	[N]	[%]	[N]	[%]
<i>Less than one month</i>	3	15.8	2	10.5
<i>1-3 months</i>	5	26.3	2	10.5
<i>3-6 months</i>	1	5.3	0	0
<i>6-12 months</i>	2	10.5	0	0
<i>Greater than 12 months</i>	4	21.0	12	63.0
<i>N/A</i>	4	21.0	3	16.0
TOTAL	19	100%	19	100%

Source: Shelter WA, 2005, Boarding house Survey

There was also some variation in regards to the normal period spent in boarding housing accommodation. The maximum length of stay for eight of the survey respondents was 3 months. The number of hostels used by these respondents ranged from two to seven, which indicates a significant amount of housing transience experienced by tenants over short-term periods.

The length of stay in boarding houses is influenced by the different sets of rules and regulations applied by different operators. Some of these have maximum time limits on length of stay. In addition individual circumstances related to mental health, drug use, alcoholism and financial pressures all contribute to poor housing options. This is discussed next.

²⁵ Karel Eringa, *A Balanced Act: Submission to the Statutory Review of the WA Residential Tenancies Act 1987*, Shelter WA, April 2002

3.1 Why Use Boarding House Accommodation?

As would be expected from a survey of a diverse range of accommodation types, a wide range of reasons were provided by the participants for their use of boarding houses. Some residents indicated that the social interaction and a sense of being part of community were important to them. One respondent remarked that:

“people here are nice ... there is community spirit here. I've gotten used to shared facilities like big TV room, dining room and shared garden”.

Interestingly companionship was identified as a positive aspect of boarding housing life by a similar but much larger survey of residents in South Australia.²⁶

Table 3 reveals that financial convenience was cited by fifteen out of the nineteen participants [79%] as the main reason for using boarding housing accommodation. Many tenants referred to the financial convenience of boarding house accommodation in the context of not having to pay up-front costs, such as bonds. Boarding Houses' provision of furnishings and in some cases meals were also seen as affordability advantages by some of the residents.

One in four of the boarders and lodgers in the study used boarding house accommodation for personal issues, including mental illness or substance addictions. Tenants with mental health issues were staying not only in psychiatric hostels, but were also residing in boarding houses that were not specifically aimed at this group.

Table 3: Most Cited Reasons for using Boarding Houses by Respondents

Reasons	Number of times cited by different respondents
Financial convenience and unable to afford other accommodation	15
Personal issues [i.e. mental illness, alcoholism, drug addiction]	5
To be part of a community	4
Total	24

Source: Shelter WA, 2005, Boarders and Lodgers survey.

The use of unstable and insecure accommodation, aside from boarding houses, for example, sleeping rough, appeared to be the only options for many of the respondents. Staying for short periods in hostels and moving from secondary homelessness to primary homelessness and back again, was a distinctive feature of the survey group. Nearly one in two respondents [42 per cent] had lived in at least one of these situations. Most of the boarders summarised their reasons for using hostels in a few sentences:

“Low income could not afford private rental. Circumstances needed me to move quickly, got nowhere else to go”.

²⁶ Anderson, P., Hume, A., Rogers, N., and Stephenson, T., 2003. *Boarding Houses: The sector, its clientele and its future*, Department of Human services, Adelaide City Council, Adelaide.

"I've got nowhere else to live, would otherwise be on the street".

"I was on the street due to drug use".

"Drug addiction makes it difficult to stay stable and keep tenancy".

The majority of the respondents used boarding houses due to financial convenience. The survey also indicates that a raft of personal issues such as mental illness and alcoholism appears to underpin the use of marginal accommodation for a significant proportion of boarders.

3.2 Residents' Views

Respondents were asked to provide views about the possible benefits and impacts of any form of consumer protection covering boarding houses. Respondents were also asked to consider how they thought other changes to the boarding house system could impact on their tenancy rights and boarding house experience. Figure 1 below reveals that out of the 19 boarding house resident's interview, a total of 15 brought up the issue of tenancy agreements. In other words, when asked what would be the most important benefit to them of the implementation minimum boarding legislation, over two out of every three respondents [79%], cited the right to sign up to a tenancy agreement

One of the respondents from an Aboriginal Hostel claimed that:

"A written agreement is preferable to avoid misunderstanding and also provides clarity about rules"

A respondent from a youth support service had this to say:

"I can refer back to written agreement if a disagreement about conditions occurs"

One of the respondents from a men's hostel made an insightful comment about financial transparency:

"Signing up to an agreement means that you have conditions to adhere to ... provides proof for Centrelink to pay me rental assistance"

A written agreement, which enable the tenant and manager to turn to in times of disagreements, provided an indication that boarders are concerned with this apparent lack of accountability in the boarding house system.

Figure 1 reveals that nearly one in every two residents [47%] thought that legally enforceable consumer protection would lead to an improvement in physical conditions of boarding house premises. A similar proportion were of the view that legislation would provide them with the right to have tenancy fees explained upfront, enhanced room privacy and greater legal independence. Here are just some of the reasons given by boarders from various accommodation types:

"Would gain privacy and limits on night entry to my room by boarding house manager": comments from a resident of an Aboriginal Female Hostel

“Financial benefits [i.e. stricter control of housing costs] overall”: comments from a resident of a men’s hostel.

“Could improve internal environments of hostels. Could set good physical standards”, comments from a resident of a SAAP funded youth hostel.

There were also some tenants that had reservations about the possible impacts of consumer protection; some of these concerns echoed the managers concerns which are discussed in the next section. For example:

“Minimum government standards might produce access issues through higher up front costs”: Resident of a men’s hostel.

“Would affect supply but push quality up...cost okay if better quality accommodation supplied”: comments from boarder at a residential drug and alcohol treatment service.

As a result of the de-institutionalisation of mental hospitals over the last two decades, many mental patients now rely on SAAP funded accommodation to provide them with support and links to other support services.²⁷ Others are left to find accommodation in the shrinking private boarding house accommodation in metropolitan Perth. This makes the task more difficult for SAAP and non-SAAP funded hostels to perform their primary function of providing shelter to some of the communities most vulnerable and impoverished individuals. One of the residents of the private hostel involved in this survey made this very point:

“Disadvantaged individuals especially those suffering mental illness need their housing rights protected. This will ensure that they have security of tenure in their accommodation”: comment from a boarder at a private boarding house.

Interestingly, over a third of respondents [42%] stated that consumer protection would not only provide them with some form of legal coverage, but would also lead to tenants upholding respect for other residents tenancy rights, and being more responsible for their actions. Here are some of the resident’s comments:

“Residents in boarding houses need to have respect for other residents... courtesy of shared facilities...therefore reasonable restrictions are okay”: comments from a male boarder at a Psychiatric Hostel

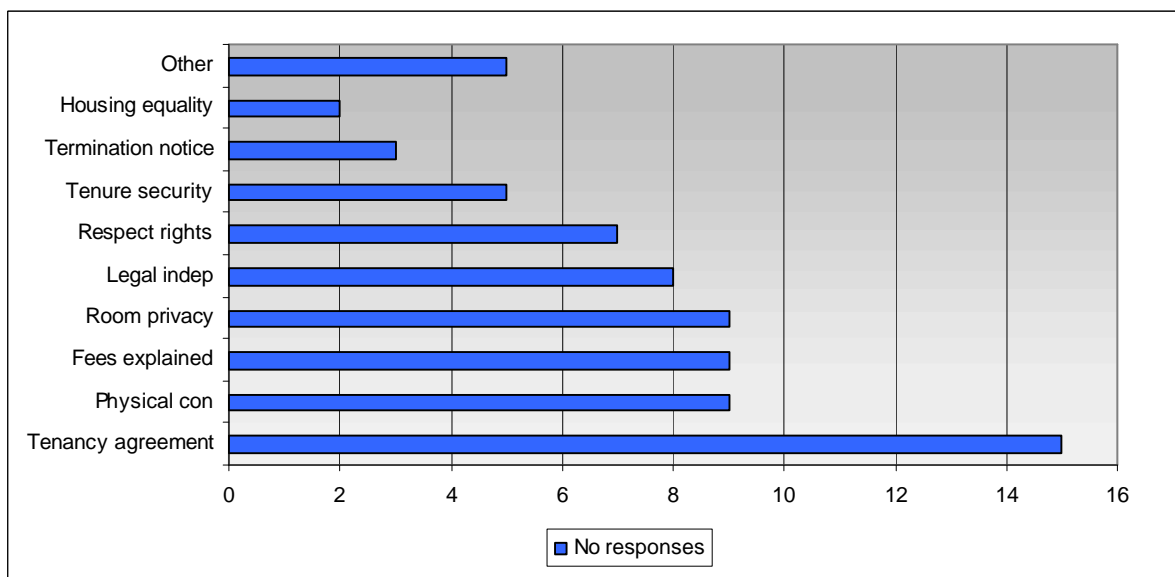
“Respect for others in shared accommodation requires conditions which lead to ‘higher functioning’ and therefore can cope with improved rights and respect responsibilities”., comments from a male boarder at a residential drug and alcohol treatment service.

Such comments were espoused by a significant proportion of the respondents. This indicates that boarders and lodgers feel the effect of their lack of housing rights, compared to the rest of the community. This is an interesting finding as this has implications for all those involved in using and running boarding houses, and policy

²⁷ National Shelter, 2000, *National Overview of Boarding Houses in Australia*, National Shelter, Sydney.

makers as well. This indicates that boarders are aware that tenants occupying private and public rental accommodation are delegated housing rights, yet boarders' tenancy rights are non-existent under the Western Australia RTA. This clearly leads to legal inequality based on tenure and may be affecting the behaviour and attitude of boarders accessing boarding house accommodation. It is beyond the scope of this research to elaborate on this issue, but it appears to merit some further research.

Figure 1: Boarder's views on Enforceable Consumer Protection and other Aspects of the System [a]



Source: Shelter WA Boarders and Lodgers Survey, 2005.

[a] The data refer to the number of times the various issues were mentioned by the respondents when asked the question of how the respondents think they would benefit from minimum boarding housing legislation. In other words tenancy agreement was mentioned on 15 occasions by 19 of the respondents

Interestingly, tenure security was not given the same level of importance as other perceived benefits of consumer protection. Nevertheless this issue was still mentioned by one in four respondents as being a beneficial housing arrangement related to government legislation.

3.3 Managers' Views

Thirteen boarding house managers took part in the interviews. The interviews sought views from managers and owners on the potential benefits and impacts of the consumer protection covering boarding houses in Western Australia. The thirteen managers operate and manage a diverse range of accommodation types. Four of the respondents managed SAAP youth accommodation. Three managed the Department of Housing and Works boarding houses. One manager run the Bridge House Drug and Alcohol Rehabilitation Programme, one managed the St Bartholomew's Men's hostel and one owned and operated a Private boarding house. The other managers run a Psychiatric hostel, an Aboriginal hostel and a Women's refuge.

The survey encountered a wide range of views from managers and the sole owner/operator. This was expected, given the different accommodation types involved in the survey. The managers also espoused some common concerns about the impacts of minimum legislation standards. As Figure 2 reveals, 11 out of the 13 respondents [85%] expressed views about boarder's legal rights. This appeared to be a defining issue with a majority of managers. The legal distinction between rental tenants on the one hand and boarders and lodgers on the other is an important element in defining boarding house accommodation.

The distinction between a lodger and a tenant was explained in *Street v Mountford*:

An occupier of residential accommodation at a rent for a term is either a lodger or a tenant. The occupier is a lodger if the landlord provides attendance or services which require the landlord or his 'servants' to exercise unrestricted access to and use of premises. A lodger is entitled to live in the premises but cannot call the place his own.

*If on the other hand residential accommodation is granted for a term at a rent with exclusive possession, the landlord providing neither attendance or services the grant is a tenancy*²⁸

In short, tenants have a legal interest which entitles them to possession of the premises whereas boarders and lodgers hold no legal interest in their premises, merely a contractual right to enter and reside there.²⁹

According to the majority of the managers, shifting from a contractual right to exclusive possession would have significant impacts on their role as accommodation managers. Two key issues perturbed the managers. The first pertains to the effects of enhanced rights on the shared resource arrangements within boarding house accommodation. As one boarding house manager put it:

"Delegating boarders and lodgers with the same possession rights as rental accommodation tenants would impact on others because of the shared accommodation in boarding houses...there is an apparent need to balance individual rights with peace and comfort of the whole household".

The other key issue related to restrictions that delegating legal rights to boarders could have on a manager's ability to evict boarding house residents. One boarding house owner-operator commented that:

"My main concern [with delegating legal rights to boarders] would be the removal of a difficult [drink or drugs] tenant – I would have to give a breach notice if a tenant is in arrears, followed by a 'notice of termination' if they don't pay or refuse to leave – it is a nerve wracking experience to call the mental health services for assistance – I could not do it alone"

The unique nature of boarding houses compared to other forms of rental accommodation means that the boarding house system needs specialised support and

²⁸ *Street v Mountford* [1985] AC 809

²⁹ *Ibid.*

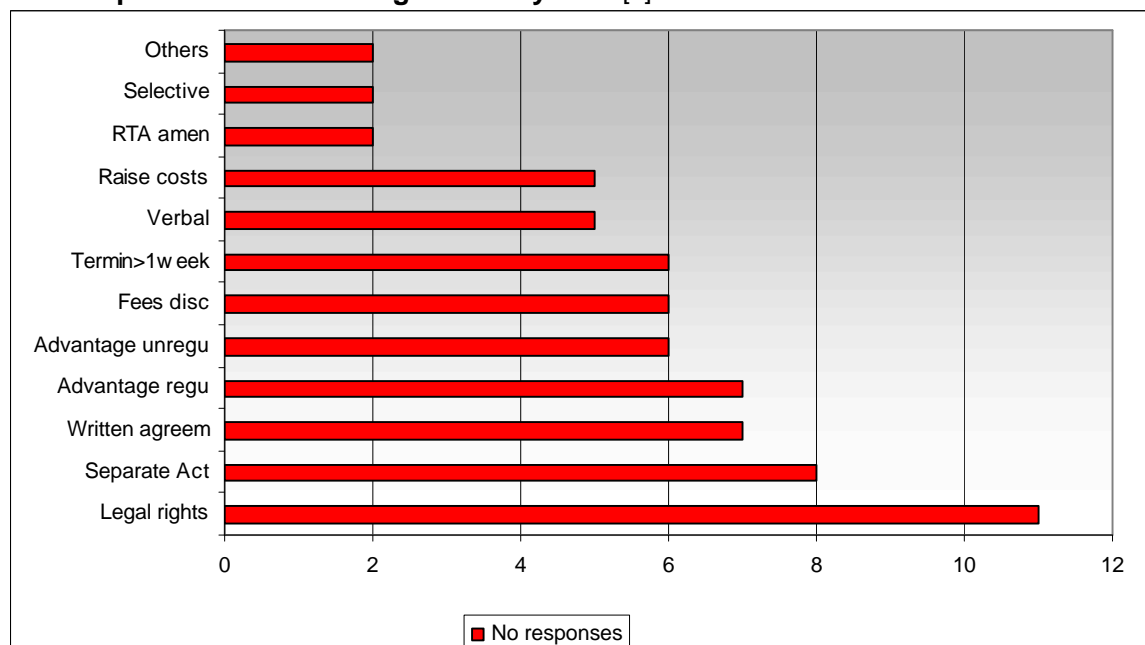
government funding to provide affordable accommodation and to tend to a range of complex human needs. It is not surprising that burdened with such responsibility, managers relay some concerns about the potential impacts that the provision of exclusive possession within any form of consumer protection, could have on their capacity to run their boarding house operations.

A significant proportion of boarding house managers stated that for any form of consumer protection, to be effective, it should be implemented as a stand alone piece of legislation. Almost two thirds [61%] were convinced that a separate boarding house Act would be the most appropriate framework in which to administer the boarding house system. In contrast, only 2 out of the 13 responses thought that amendments to the current RTA would provide an appropriate legislative framework.

The diversity of boarding house accommodation, the need to take account of these unique differences with regards to their general role within the system and the various challenges the sector faces every day in having to manage the complex needs of their residents, were cited as the main reasons why a separate Act would be more appropriate.

Figure 2 reveals that boarding house managers provided a considered response to the issue of tenancy agreements. One in every two respondents [54%] thought that a written agreement would best serve tenants and managers alike in a boarding house system covered by legislation or regulation aimed at fostering consumer protection.

Figure 2: Managers Views on Proposed Enforceable Consumer Protection and other Aspects of the Boarding House System [a]



Source: Shelter WA Boarders and Lodgers Survey, 2005.

[a] The data refer to the number of times the various issues were mentioned by the respondents when asked the question of how the respondents think minimum boarding housing legislation would affect their boarding house operations. In other words the provision of greater rights to tenants was mentioned on 11 occasions by the 13 managers interviewed.

The responses also indicated a broad understanding of the apparent advantages and disadvantages which consumer protection could offer the sector. Nearly two out of three respondents [61%] viewed legal consumer protection as having the potential to produce a mutually beneficial arrangement for managers and tenants. The manager of a psychiatric hostel suggested that the benefits would lead to four distinct improvements in the sector:

“I think legislation would benefit the system through promoting more education and awareness; higher standard of living for residents; policies setting clear boundaries and consistent application of rules”

On the other hand, less than half [46%] thought legal consumer protection in the context of being detrimental to the system.

4 Summary and Conclusion

Boarding and lodging houses are home to some of the most disadvantaged people in our community. It is therefore surprising that in Western Australia, there is no legislation that provides legal rights for boarding house tenants. The only piece of legalisation which applies to boarding houses is *The Health Act Local Laws* which covers the built and health conditions of boarding house premises.

All Australian States and Territories, with the exception of WA and the ACT have some form of boarding house legislation. New South Wales has formulated a *Boarders and Lodgers Bill*, but it has as yet not been implemented.

Boarding house legislation used by some Australia jurisdictions shows some similarities in that it delegates basic housing rights to tenants. Some jurisdictions provide boarders with a basic package of explicit legal rights, others provide the bare minimum and in some cases these rights are not open to ease of interpretation. Some governments have incorporated their Acts within the main rental tenancy Act; others have formulated their legislation as a separate document. Whether the Act is a stand alone document or incorporated in the main Act does not appear to be a critical issue, what is important is the Act specifies the unique differences between boarding house accommodation and other types of rental accommodation.

There are some advantages and disadvantages related to boarding house legislation. For boarders, it provides a plethora of fundamental housing rights [i.e. right to reside, right to a written agreement etc]. In the case of boarding house accommodation the main concern appears to be that more regulation may lead to tighter profit margins and therefore impacting on boarding house viability. This also has implications for boarding house supply.

The survey of boarding house residents found that a significant proportion of boarders (1 in 3) had lived in boarding house accommodation for 15 to 20 years with nearly two thirds of the residents using boarding house accommodation for more than 12 months. The survey also highlighted a significant level of transience amongst the boarding house population with eight respondents using between 2 and seven hostels within a 3 month period.

Fifteen of the nineteen boarders [79%] cited financial convenience and inability to afford other accommodation as their main reasons for using boarding house accommodation. One in four of the respondents had addiction and mental health problems. Nearly one in two boarders [79%] stated that their housing history was typically unstable, moving from primary homelessness to secondary homelessness, over short time spans.

The survey sought some views from tenants and boarders in regards to proposed boarding house legislation. Two out of three tenants thought that the right to sign up to a lease agreement would be one of the significant benefits they would gain as a result of legislation. Nearly one out of two participants [47%] believed legislation would lead to an improvement in physical conditions. The same figure thought that legislation would lead to greater boarding house transparency [i.e. fees explained upfront] room privacy arrangements and greater legal independence.

The survey of boarding house managers also picked up on a wide range of views relating to proposed boarding house legislation. Eleven out of the thirteen management responses [85%] espoused some concerns about the introduction of greater legal rights for boarders. The difference between the current system which applies a contractual arrangement between tenants and managers and the Western Australian RTA which offers legal possession for the tenant is significant. In this context it is not surprising this was a defining issue with the majority of the managers.

Interestingly, almost two thirds [61%] of the managers were convinced that a separate boarding house Act would be the most appropriate framework in which to administer the boarding house system. The unique differences between boarding house accommodation and other rental types [i.e. shared facilities and their growing role in accommodating persons with complex needs] were some of the reasons cited by the managers for their preference for separate legislation. Given the choice, over half the respondents thought that a written agreement would best serve tenants and managers in a system upheld by some form of regulation.

Overall the management responses indicated a broad understanding of the apparent advantages and disadvantages of proposed legislation. Nearly two out of three participants [61%] viewed proposed legislation as having the potential to produce a mutually beneficial arrangement for managers and tenant. In contrast, less than half of the managers [46%] analysed proposed legislation in the context of having some problematic outcomes.

In conclusion, this paper suggests that consumer protection and a lack of supply are the two most pressing issues facing the boarding house sector. As argued above, to some extent these issues are different sides of the same coin. Certainly, it is not possible to address one issue without simultaneously addressing the other. In terms of supply, a strategy needs to be developed to attract private investment into the sector. Such a strategy would likely include financial incentives and planning incentives.

With regard to consumer protection, different options need to be investigated to ensure some level of protection for these vulnerable consumers. It was of interest that the survey that was conducted as part of the research of this paper revealed a substantial level of support for consumer protection amongst both boarding house operators and residents. However, it was equally clear that any form of consumer protection should be designed carefully to ensure that:

- it does not further reduce supply,
- it benefits both operators and consumers,
- it does not significantly add to the administrative burden faced by boarding house operators, and
- it is sufficiently flexible to allow boarding house operators to provide a safe environment for all of their residents.

Recommendation:

That the State Government develop a Boarding and Lodging House Strategy as a matter of urgency. This strategy should address simultaneously the issues of consumer protection and supply.

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Appendix 1: Questionnaire for Boarders and Lodgers

Name:

Type of Boarding House Accommodation:

Suburb:

Made contact on:

<p>1. <i>Is this your first stay at a Boarding House?</i></p> <p><i>If not, how many Boarding Houses have you stayed in?</i></p>	
<p>2. <i>How long do you normally stay at one Boarding House?</i></p> <p><i>[i.e. is it short-term, 2-3 weeks, medium-term, 2-3 months or long-term > 6 months]</i></p> <p><i>In total, how long have you been using Boarding House accommodation?</i></p>	
<p>3. <i>What are some of reasons behind your use of Boarding Houses as either [a] short-term, or [b] medium-term or [c] long-term accommodation?</i></p>	
<p>4. <i>Why do you use Boarding House accommodation?</i></p> <p><i>[i.e. financial, convenience i.e. full furnished accommodation etc]</i></p>	
<p>5. <i>When you have finished your stay at a Boarding House, what has been the normal notice period given to you?</i></p>	
<p>6. <i>Did you choose to leave, were you asked to</i></p>	

<p><i>leave, were you evicted, or were you given a termination notice?</i></p>	
<p><i>7. What aspects of Boarding Houses could be improved as a result of the enforcement of minimum standards?</i></p> <p>[for example, improve health standards and physical conditions]</p>	
<p><i>8. How do you think minimum government standards would affect the availability of beds or vacancies in Boarding Houses?</i></p> <p>[for example, may improve conditions, but costs may lead to higher accommodation costs and supply issues]</p>	
<p><i>9. As a resident, what benefits you think you would gain from some form of regulation of Boarding Houses?</i></p>	
<p><i>10. Do you think that being supplied with a written agreement is necessary for your stay at a Boarding House?</i></p>	

<p><i>11. When you have stayed at a Boarding House has the manager explained fees and charges such as electricity and gas in your Boarding House payments?</i></p>	
<p><i>12. How would you like your fees and charges to be explained, as part of your accommodation payments, or as a separate bill?</i></p>	
<p><i>13. How do you think you would benefit, if you were given greater legal control of your living arrangements in Boarding Houses?</i></p> <p><i>[i.e. greater accommodation security]</i></p>	

Appendix 2: Questionnaire for Boarding House Managers

Name
Type of Boarding House Accommodation
Suburb:
Made contact on:

<p><i>1. If minimum government standards for Boarding Houses were introduced, what impacts do you think this would have on the Boarding House sector?</i></p>	
<p><i>2. If you understood that oral agreements as well as written agreements were written into the legislation, would you find minimum standards more acceptable?</i></p> <p>Why would you find this more acceptable?</p>	
<p><i>3. Given your experience as a Boarding House Manager what do you think is a reasonable termination notice to be given to boarders for them to plan for alternative living arrangements?</i></p>	
<p><i>4. Legislative standards may require Boarding House managers to disclose utility fees [i.e. electricity consumption] to boarders; could this potentially be an issue?</i></p>	
<p><i>5. If boarders and lodgers were given similar possession rights as rental accommodation tenants, would this be an issue?</i></p>	

<p><i>6. Are there any key legislative requirements you would like to see incorporated into proposed legislation covering Boarding Houses?</i></p>	
<p><i>7. Given the different characteristics of residential tenancy and Boarding House tenancy, do you think a separate Act would be more appropriate for the Boarding House sector?</i></p> <p><i>If so, what are your reasons?</i></p>	
<p><i>8. Are there any main advantages you think the current unregulated Boarding House sector could have over a minimum regulated sector?</i></p>	
<p><i>9. Can you list some of the advantages, which Boarding Houses could gain from minimum government legislation?</i></p>	