



Tenancy WA and Shelter WA

Joint submission to the Department of Commerce

Boarders and Lodgers Consultation Regulatory Impact Statement (C-RIS)

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Introduction

Shelter WA and Tenancy WA welcome the opportunity to provide a submission to the Department of Commerce's Boarders and Lodgers Consultation Regulatory Impact Statement (C-RIS). Shelter WA is the peak body for social and affordable housing in Western Australia, also working towards the elimination of homelessness in our State. Tenancy WA is a community legal centre protecting the right to housing for all tenants through advocacy, advice and education.

This response is provided with consideration of discussions from the Boarders and Lodgers Working Group, which is jointly convened by Tenancy WA and Shelter WA. This Group has been meeting since early 2015, to discuss issues and consider options relating to the boarding accommodation sector. It includes members from not-for-profit accommodation providers, community service organisations, university accommodation providers, academics and private developers.

As mentioned in the C-RIS, Western Australia is the only jurisdiction that does not have some form of regulation for rights and responsibilities in the boarding and lodging sector. Shelter WA and Tenancy WA believe there to be no other alternative measures to achieve the policy objectives put forward in the C-RIS, other than by well-considered legislation for the sector. While the C-RIS suggests options relating to how it is incorporated in legislation, Shelter WA and Tenancy WA are more concerned about the adequacy of protections for boarders and lodgers, which must be balanced against the viability of providing this form of accommodation.

Tenancy WA and Shelter WA believe that boarding accommodation must be understood as a means of addressing rental demand from vulnerable people, in the context of housing affordability. Therefore, governments must consider:

- legislation that provides adequate consumer protections, certainty and outcomes for boarders and providers;
- finding ways to encourage new investment in boarding developments and redevelopment of existing stock; and
- examining ways in which new and existing accommodation can best be utilised to address housing affordability pressures.

Response to Paper

4.2 - Option 1 – Status Quo

4.2(a) Do you support maintaining the status quo in relation to regulation of the boarding sector; that is, making no changes to the current laws? If so, why? If not, why not?

Leaving parties to rely on common law rights and remedies, are costly, time-consuming and complex. In addition, owners, providers and boarders all complain of some uncertainty about what is required for compliance with the common law principles, and of the distinction between a tenant and a boarder.

Maintaining the status quo assumes that both parties have bargaining power in these arrangements, but these arrangements are not balanced, as residents have few other housing options. Boarding and lodging is considered a marginal form of tenure, and residents are considered 'homeless' according to the Census¹. Boarders and lodgers are often low income persons, who are disadvantaged and vulnerable residents of the community.

Maintaining the legislative status quo means that evident gaps in legislation will continue to exist. Feedback from providers, residents and community organisations about concerns and issues arising due to these gaps include:

- termination of agreements with very short notice. While this may be necessary in some circumstances, it can be unfair in others;
- no minimum requirements around the form of agreements, leading to enforcement of unfair terms, or issues arising from verbal agreements which didn't cover issues in detail;
- uncertainty about minimum property and room standards, including cleanliness, responsibilities for damage and maintenance;
- no formal requirements for either party to respect another's peace, comfort and privacy;
- disputes over house rules, where parties can't agree on what is reasonable;
- no requirements to lodge a bond, potentially leaving both parties vulnerable if there is a dispute;
- fear among boarders of retaliatory eviction if they enforce their rights;
- uncertainty in the sector as to whether an arrangement will be covered by the RTA or not, due to a lack of clear distinction between a tenant under that Act and a boarder; and
- difficulties retrieving belongings after unilateral eviction.

Tenancy WA and Shelter WA believe new laws are required in WA to address these concerns and secure better outcomes for boarders and lodgers in our State. Better regulation of boarder and lodger arrangements can facilitate the development of innovative affordable housing solutions by the community housing and private housing sector.

4.3 - Option 2 – Modified tenancy legislation

4.3(a) Do you support the introduction of laws based on the Residential Tenancies Act 1987 but modified for the boarding sector? Why or why not?

Shelter WA and Tenancy WA would be supportive of including boarders and lodgers under a modified Residential Tenancies Act 1987.

Victoria, Queensland, Tasmania and the ACT have all introduced laws for boarders by incorporating amendments into the bodies of their existing Residential Tenancies Legislation².

¹ ABS, Census of Population and Housing: Estimating Homelessness, 2011 (2012) ABS, Canberra.

² Residential Tenancy Act 1997 (TAS), Part 4A; Residential Tenancies Act 1997 (VIC), Part 3; Residential Tenancy and Rooming Accommodation Act 2008 (QLD); Residential Tenancies Act 1997 (ACT), Part 5A – Occupancy Agreements.

The benefit of this approach in theory is that the law is easy to find and navigate, as it is all ‘under one roof’. In addition, further specific regulation can be introduced by subsidiary legislation, if needed. With this options, care would need to be taken to avoid the risk of an unwieldy Act with crossover between different components.

Tenancy WA and Shelter WA are supportive of legislation establishing minimum rights and responsibilities, and the introduction of standard terms. The mechanism for introducing reforms (eg: a stand alone Boarding Act, reform to the RTA to include boarding arrangements, or regulatory principles) may best be revisited once the principles for the substantive reform are agreed. Once this has occurred the State government will be best placed to consider the most effective way to implement those reforms.

4.3(b) If this option is pursued, what factors/areas of boarding or rooming should be included in the legislation?

Legislation must set out minimum rights and responsibilities for both boarders and lodgers, as well as those who provide this form of accommodation. In terms of fundamental rights and responsibilities, most other jurisdictions have some form of requirements around:

- Paying rent;
- Cleanliness;
- Safety and security;
- Repairs and maintenance;
- Quiet enjoyment;
- Rights to entry / access;
- Prohibitions against using a room for illegal purpose;
- Boarder responsibility for damage caused;
- Observing, disclosing, making and changing House rules;
- Eviction time periods and the process followed; and
- Collection of belongings / abandoned goods.

Boarder minimum responsibilities

Based on existing provisions in the RTA and the provisions adopted by other States and Territories, the following appears to be the appropriate fundamental responsibilities for a boarder:

- Must not use room or common areas for illegal purpose;
- Must allow access to common areas;
- Duty to pay rent;
- Quiet enjoyment – where resident required not to unreasonably interfere with peace comfort and privacy of other residents;
- Maintain room in reasonably clean condition and free of damage and deliver up room in nearly as possible same condition, fair wear and tear excepted;
- Not install fixtures without consent;
- Observe the house rules;
- Duty to report repair or property standards issues to provider; and
- No sub-letting unless provided for in the agreement.

It is recommended the Department of Commerce look to the examples in other jurisdictions to harmonise WA's position where appropriate.

Some members of the Boarders and Lodgers Working Group also mentioned they would support a requirement that a boarder comply with requirements of any programs provided as part of supported accommodation. Other members think this could be addressed through house rules, and taking action on the basis of a breach of house rules.

Provider minimum responsibilities

After consideration of legislation in other states, and the experience of Western Australian providers and boarders, we recommend the following matters are appropriate fundamental obligations for an accommodation provider:

- Premises and room maintained in good repair;
- Must allow reasonable access to room and shared facilities;
- Quiet enjoyment - provider must not unreasonably interfere with the reasonable peace, comfort and privacy of the residents. Provider should also be required to take steps to ensure residents do not unreasonably interfere with quiet enjoyment of others in the property;
- Provider must comply with house rules and give notice of changes;
- Disclosure and display of information – provider must display house rules and give copy;
- Provider must ensure they provide and maintain the premises and locks to ensure premises are reasonably secure;
- Not charge fees or penalties under the agreement, except for services agreed. Nor should a provider charge residents penalty rates when they breach agreement;
- Payment of security bond back to the resident at end of tenancy, less specific costs outstanding (such as costs to clean, repair, outstanding bills); and
- Only evict a boarder in accordance with the grounds and procedure available in new regulation.

It is recommended the Department of Commerce look to the examples in other jurisdictions to harmonise WA's position where appropriate.

4.4 – Option 3 – Occupancy principles

4.4(a) Do you support the introduction of occupancy principles to regulate the boarding sector? Why or why not?

In ACT legislation there are a set of 9 occupancy principles that decision-makers must have regard to when considering a matter or dispute relating to an occupancy agreement. While the terms of occupancy agreements can vary in that Territory, they should be consistent with these principles³. Where there is a dispute, an aggrieved party can apply to the relevant tribunal for relief.

³ Residential Tenancies Act 1997 (ACT), s 71E

Tenancy WA and Shelter WA would be supportive of introducing occupancy principles to assist in regulating the boarding and lodging sector. As stated previously, Tenancy WA and Shelter WA are supportive of legislation establishing minimum rights and responsibilities, and the introduction of standard terms, but considers the vehicle to deliver new reforms less important than the actual introduction of standardised rights and responsibilities. Our preference is for the core rights and responsibilities to be mandated in statute, with a prescribed form (which may be optional rather than mandatory), rather than the introduction of occupancy principles alone.

5.2 - Magistrates Court or State Administrative Tribunal

5.2(a) If there is to be regulation of boarders in Western Australia, should jurisdiction for disputes remain with the Magistrates Court or should they be dealt with in the SAT? Why?

A key consideration when introducing new law is where disputes, breaches and offences will be heard and resolved. The Magistrates Court in WA is provided with powers to hear tenancy matters and generally hears them in the minor case stream. This means that the rules of evidence and procedure are somewhat relaxed, lawyers are generally restricted from appearing and it is generally a no costs jurisdiction.

Despite this, many tenants who attend Court in relation to a dispute still encounter problems. Some people still find the Court process overwhelming, particularly when self-representing, and find that the Court process can be slow in resolving a dispute.

Currently, boarders are required to make application under the minor or general case procedure in the Magistrates Court, which is more expensive than the residential tenancies stream. It would appear there is some confusion within the sector as to which stream in the Magistrates Court has jurisdiction, with some providers and boarders mistakenly filing residential tenancy applications, which may then be dismissed by the Court. In addition, some boarder disputes filed as a residential tenancy application are not always dismissed by the Court, which doesn't help to clarify the situation.

The Court process shouldn't operate as a barrier to justice where people are having a dispute under a boarding agreement. An environment where boarders and providers feel that they have a cheap, accessible and efficient means to resolve disputes should be encouraged.

The most likely body to achieve this in WA would be the State Administrative Tribunal. All other States and Territories, excluding Tasmania, have moved residential tenancy matters out of the Courts and into Tribunals. While the culture and practice of Tribunals vary across the country, they generally can provide a less formal process, where people may feel more comfortable to talk for themselves. However, we would recommend that there is a risk of conflicting decisions if residential tenancy matters and boarding and lodging matters are dealt with in different jurisdictions.

5.2(b) What would be the costs and benefits of your preferred option? Please provide evidence (including quantification) if possible. Are you able to identify costs and benefits of your non-preferred option?

Tribunals tend to approach the disputes with greater consideration of the social issues between the parties, rather than primarily considering the issue as a matter of contract law, which is the natural approach of the Magistrates Court in deciding RTA matters.

The SAT already holds jurisdiction for other tenancy areas, including retirement villages, caravan parks and commercial tenancies (retail shops), but not residential tenancies⁴. It may be advantageous for the SAT to have jurisdiction to deal with all tenancy related matters in the future.

Hon Justice Michael Barker, current Federal Court Justice and former president of the WA SAT, highlights several potential reasons why a tribunal may be preferred to a Court for hearing particular disputes, including:

- Members may have specialized knowledge of the subject-matter;
- More informal in its trappings and procedure;
- Might be better at applying flexible standards and exercising discretionary powers;
- Might be cheaper, more accessible and more expeditious⁵

Applications to SAT are currently more expensive than tenancy ones. If the SAT were to be given jurisdiction of disputes, the cost of access to dispute resolution should be a consideration. It may be possible to subsidise applications through the Rental accommodation fund, if boarders/providers were required to lodge bonds, as is the case for residential tenancy matters.

Giving the SAT jurisdiction to hear boarding disputes will bring WA in line with other jurisdictions, many which already give tribunals the power to hear disputes relating to tenancy and boarding house agreements. In some other states the relevant Tribunals have adopted quick decision making processes for urgent boarding matters.

This will likely improve outcomes in disputes. As SAT members begin to deal with more matters, they will develop their expertise in relation to boarding issues. In addition, the SAT publishes its decisions, which promotes consistent decision making and transparency.

There is a serious risk that if residential tenancy matters and boarding matters are dealt with in different jurisdictions, then there may be conflicting decisions, particularly about the definition of who is a boarder and or a tenant, and this would be extremely counterproductive as one of the key objectives of the current reform is to provide certainty about the obligations of the parties and certainty about whether an agreement is a tenant or a boarding agreement.

Many boarder disputes require quick resolution, particularly when relating to evictions involving safety or violence. While the Magistrates Court can do some proceedings urgently (such as VROs), if boarder disputes continue to be heard at the Magistrates many would need to be given priority in some circumstances for quick resolution.

We recommend the State government explore the feasibility of moving residential tenancy matters and boarding and lodging matters to a tribunal. If this is considered best as a medium to long term option, we would recommend keeping the two jurisdictions together, rather than moving just boarding and lodging matters.

⁴ http://www.sat.justice.wa.gov.au/C/commercial_and_civil.aspx?uid=4245-4839-7392-8293

⁵ The Hon Justice Michael Barker, The emergence of the generalist administrative tribunal in Australia and New Zealand, 9-10 June 2005, <http://www.sat.justice.wa.gov.au/files/JBspeechGeneralistAdministrativeTribunal.pdf>

5.3 - Registration of boarding houses

5.3(a) Is registration necessary? Why or why not? If yes, Are the current registration requirements effective? Why or why not?

Registration of boarding houses of over 6 people is already required in Western Australia. However, the degree to which this is complied with by providers is currently unknown. Anecdotally, we understand that there is a proliferation of unregistered or 'illegal' boarding houses that do not comply with minimum property standards.

If new minimum property standards were introduced in WA for boarding houses, it will be imperative that boarding houses continue to be required to be registered in order for the regulator to properly inspect for compliance.

It may also be appropriate to consider introducing new penalties for non-compliance with registration and minimum property standards.

It is important to note that the introduction of any new regulatory or licensing regime should be aimed at improving the property standards of boarding houses rather than closing them down, with the risk of ejecting vulnerable residents into homelessness.

5.3(b) If registration is necessary and the current requirements are not considered to be effective, what should be the registration requirements for boarding houses in Western Australia (i.e. what criteria would determine registration and what detail should be held on the register)?

Shelter WA and Tenancy WA suggest there are two options for registration of boarding houses including 'licensing and registration of operators' or 'requiring registration and compliance, but nothing further'. Currently the Boarders and Lodgers Working Group could be supportive of 'licensing and registration of operators' depending on whether how onerous this process would be.

Licensing and registration of operators will mean an operator has greater degrees of scrutiny by State government as to their suitability to continue running a boarding house. Onerous requirements around licensing may be opposed by operators and might be a barrier for new market entrants. This may result in increased costs for providers, but also improved outcomes for residents. This would mean boarding houses are more likely to be run in compliance with both the law and local government standards. Government agencies will have greater oversight and control over boarding houses under this arrangement.

Requiring registration and compliance, but nothing further is to maintain the status quo. This will keep registration and compliance required under the Health Act 1911, (this could be moved into a Boarder and Lodgers Act or division of the RTA if this provided simplicity). It won't impose undue professional development requirements on boarding house operators, but residents have no guarantee that their operator knows what they are doing. This may be the preferred and simpler approach if the preferred regulatory approach is to simply introduce a regime of minimum rights and responsibilities under boarding arrangements, underpinned by a dispute resolution process.

There may also be merit in considering whether to mandate minimum training for providers as part of the licensing regime, or provide them with free materials that they can use to appropriately skill up. It may be appropriate for the registration process to include recognition of prior learning, so that organisations with social workers on staff, or appropriate existing policies, are not required to complete courses within their existing expertise.

This may be particularly useful for boarding houses that provide accommodation for vulnerable people (e.g. people with mental illness or disability); or support services as part of the accommodation, where a provider will need certain skills to properly manage their residents.

Representatives on the Boarders and Lodgers Working Group agreed there needs to be training on issues such as risk management and mental health training for organisations, but this is likely too onerous for private owners renting a single room. Furthermore, this should depend on the type of provider (e.g. using a tiered approach, with more requirements for larger providers). Registration and training should be easy to access and could be done online.

5.3(d) Do you have any additional comments with regard to registration of boarding houses?

The WA boarding sector is quite diverse, this must be a consideration in the registration of boarding and lodging houses. Some of the different types of providers operating in the sector include:

- registered boarding houses run by private developers;
- registered boarding houses run by community housing providers;
- unregistered illegal boarding houses typically in poorly retrofitted suburban homes;
- boarder(s) residing in the home of a private owner;
- student housing complexes, such as those located on or near university campuses; and
- other forms of accommodation that blur the lines between tenancy and boarding house, including emergency, transitional and supported accommodation. Depending on how such accommodation is structured, it can be difficult to classify it as boarding or a tenancy.

As noted, registration of boarding and lodging could be done on a tiered scale, depending on what form of boarding and lodging accommodation is provided.

5.4 – Other issues

5.4(a) Are there any other matters in relation to the boarding house tenancy arrangements that have not been raised? If so, please provide an explanation of the issue/s and any quantification possible.

Scope of new legislation

It is important to consider the ambit of new reform, given that the boarding sector is very diverse.

The states and territories vary in their scope of regulation. NSW for instance, provides legislation for boarding houses, assisted boarding houses, but not for other private boarding arrangements. Whereas, the ACT simply has occupancy principles intended to apply to a broader range of occupancies, including boarding and caravan accommodation.

In WA, there are distinct types of boarding accommodation operating, including boarding houses with multiple residents (ranging from six residents to over 100), assisted boarding houses (where support services are delivered in conjunction with the accommodation) and private household arrangements between individuals, where boarder(s) reside in an Owner's home.

Reforms will require clear definition which should incorporate each type of accommodation and give sufficient clarity around when an arrangement will be considered a boarding agreement. Specific definitions may be required for different types of accommodation (such as boarding houses with support programs).

It is important not to inadvertently bring other types of accommodation under the scope of new reforms where doing so isn't appropriate. For example, other jurisdictions provide specific exceptions for hotels/motels, nursing homes, self-contained mini apartments, backpackers and some forms of student accommodation (e.g. high school boarding houses).

In addition, it is understood that many accommodation providers are exploring new ways to develop accommodation for short-stay residents and it is likely that any new regulation needs to be flexible/specific enough to either incorporate or exclude these types of developments.

The Boarders and Lodgers Working Group believes areas already dealt with under existing legislation should not be covered (such as residential tenancies, residential parks, retirement villages). In addition, members believe the following should not come under the scope of new laws: private hospitals, backpackers / holiday makers (such as AirBnB, hotels) and non-tertiary school accommodation provided as part of schooling (e.g. high school boarders).

Members are still consulting with the relevant sectors to determine if, and how, the following should be included: approved aged care and mental health facilities, disability services group housing, employee housing, women's refuges, carers staying with clients.

Transitional/Crisis accommodation

Currently, crisis, transitional and supported accommodation providers offer a range of different programs. Some of the accommodation options are clearly boarding, some clearly tenancies under the current RTA, and some an uncertain combination. There can be difficulties when providers seek to deliver supported accommodation programs under the RTA. It may be appropriate for regulation to provide that prescribed supported accommodation providers have greater powers for more frequent inspection of tenancies under the RTA (to allow for support workers to identify issues early and intervene to sustain the tenancy). Some community housing providers have raised the proposal for shorter notice periods for termination of supported accommodation, but the working group is yet to reach consensus on this issue.

Those crisis, transitional and emergency accommodation services with boarding accommodation should be included under the scope of new reforms. The Department of Commerce should consider further the question of which supported/transitional/crisis accommodation should be covered by the proposed new boarders and lodgers regulations, and which accommodation programs should remain covered by the RTA (with new regulations to provide for more inspections). This could be addressed by detailed definitions or the Minister prescribing providers into categories.

Notwithstanding the above, some forms of supported accommodation cannot rightly be considered a boarding arrangement, and there is a public policy tension between ensuing effective supported accommodation programs, and reducing security of tenure for the most vulnerable members of our community. This requires careful balancing.

Definitions

The definition of boarders and lodgers must be paramount in legislation, to provide clarity for providers, and from a legal perspective. For a person to be considered a boarder in most other jurisdictions there can be:

- renting of a room as principal place of residence;
- may have shared facilities or services that are provided by Lessor;
- not a tenancy agreement (as defined by Acts) in place; and
- a minimum number of rooms for the premises to be considered a boarding house (and requiring registration), noting that no jurisdiction requires less than 4 rooms.

In terms of harmonising Western Australia with the rest of the country and reducing confusion around operation of the law, it may be appropriate for WA to adopt both a definition for a boarder agreement and boarding house that is sufficient to cover the main types of boarding accommodation in this State.

It will be necessary to ensure that definitions adequately distinguish a boarding arrangement from a tenancy.

It is important that this distinction is made to prevent unscrupulous owners and providers from trying to avoid responsibilities under the RTA or any new boarding laws. This will require revisiting the broad definition of 'residential tenancy agreement' under the RTA, and the narrow definition of 'lodging house' under the Health Act 1911.

If new regulation introduces different levels of regulation, depending on the type of boarding accommodation, it will be necessary to have clear definitions to distinguish between them.

Minimum property standards

The priority for reform is introducing standards for minimum rights and responsibilities for boarding agreements, but there is merit in considering what level of reform may be required to introduce new minimum property standards for boarding accommodation. This provides an opportunity to review the regulation provided by the Health Act, which is quite antiquated.

One alternative to a comprehensive set of requirements would simply be to require providers to comply with all relevant health, safety and building requirements under any other written law. This is the requirement under the RTA for lessors.

There is also argument that accommodation providers, in ensuring appropriate standards of accommodation, should be required to make modifications to accommodate boarders with a disability. This is in line with recent recommendations of the Senate Standing Committees on Economics housing affordability report⁶, and the

⁶ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Affordable_housing_2013/Report

intent of the Commonwealth Disability Discrimination Act 1992. Again, consideration would need to be given as to whether this is an appropriate requirement for all types of boarding arrangements.

Notice of inspections

For the purposes of inspections, providing services under the agreement, doing repairs, showing prospective residents through, or complying with a requirement under Act or agreement, providers should be required to give between 24 and 48 hours' notice in writing.

There is also an argument that some form of notice could be required for access to the common areas, where caretakers are not normally present on site, however it should be far less than that required under the RTA. Some jurisdictions do not require notice for an Owner to inspect common areas.

The time of day for the inspection should be reasonable, to ensure providers aren't unduly interrupting the residents.

The periods outlined above reflect the position in most other states and territories and should be sufficient to give providers enough flexibility to enter a room.

Providers should retain the right to enter without notice in an emergency.

Terminating agreements

There is a need to include notice periods within legislation with regards to termination. The Boarders and Lodgers Working Group intends to discuss this further to reach consensus on a recommendation.

In the interests of upholding security of tenure for boarders, it may be preferable to have prescribed minimum notice periods, in line with other jurisdictions where possible, with the flexibility for the parties to negotiate extended periods if desired. Well defined notice periods will likely reduce the number of disputes that are encountered when trying to terminate an agreement.

Without grounds terminations

Some members of the Boarders and Lodgers Working Group consider 'without grounds' provisions unnecessary if there are appropriate grounds to cover areas where termination would be required, as above. Other members consider a without grounds provision appropriate as a useful catch-all – but acknowledge that longer notice period may be required where such notice is given. The Group generally agrees there needs to be a mechanism to remove a boarder quickly who represents a safety risk to other residents.

Right of review of termination

While providers require the flexibility to be able to evict problem boarders, where they are disrupting other residents, the law must afford these boarders some form of procedural fairness. This is necessary to ensure that providers do not unfairly enforce termination provisions, particularly where termination can be effected immediately.

Security bonds

A security bond serves as one of the best forms of protection for the parties to an agreement when it is coming to an end. It is money that is held in trust, to be returned to the Tenant less any specific costs that they are liable under the agreement. There are currently no requirements in Western Australia for security bonds for boarding accommodation.

All other jurisdictions allow for the payment of a security deposit. However, most jurisdictions do not allow a payment in excess of 2-4 weeks rent. It is suggested that, given most boarders in WA are low income earners, that bond be restricted to a maximum of 2 weeks bond.

Disclosure requirements

New laws should include requirements that an incoming boarder be provided with a copy of their agreement (if in writing), house rules and any condition report if relevant. Boarders should also be given a sufficient guide to their rights, as developed by the Department of Commerce in consultation with the community sector and providers.

A provider must also be required to inform the boarder about any fundamental terms of the agreement, particularly any relevant notice periods, rent increases and how they will occur, if these are different to those prescribed (where reforms allow for this flexibility).

House rules

All jurisdictions allow for the creation of house rules in boarding accommodation. Some, like Queensland, provide greater protection in the form of restrictions on the types of rules that can be made, and how they can be validly changed.

Adequate protections will ensure house rules are not unfair or discriminatory, and are validly enforced. There also needs to be consideration given to how a provider may change house rules, amidst feedback from residents that providers can do this unilaterally and usually to the detriment of the boarder.

There may also be merit in considering a prescribed class of house rules for registered boarding houses. The position adopted in Queensland and Victoria provides a useful foundation for the draft provisions in WA (which provide a means for changing rules and appealing unfair or unreasonable house rules, or house rule changes).

Conclusion

Tenancy WA and Shelter WA appreciate the opportunity to respond to the Department of Commerce's Boarders and Lodgers Consultation Regulatory Impact Statement (C-RIS). Tenancy WA and Shelter WA are supportive of legislation establishing minimum rights and responsibilities for boarding and lodging arrangements, and the introduction of standard agreements— and recommends that the mechanism for implementing the reforms is revisited once the scope of the substantive reforms agenda is determined.

Tenancy WA and Shelter WA hope to continuing working with the Department of Commerce on introducing these minimum rights and responsibilities for boarders and lodgers in Western Australia.