

## Boarding Houses

*Carolyn Sappideen*

### Introduction

This chapter gives a brief overview of privately provided boarding houses and the rights and obligations of proprietors and long-term residents (lodgers, boarders)<sup>1</sup> for whom the boarding house is their home. Boarders/lodgers are not tenants and are not protected by residential tenancy provisions.<sup>2</sup> The Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria (but not Western Australia) have introduced special boarding/rooming house provisions. The Northern Territory and Tasmania apply residential tenancy legislation with restrictions. Previously, boarders were in a precarious position with little practicable remedy to force landlords to provide clean and secure accommodation. Boarders risked eviction without notice or good reason. In contrast to tenants under a lease, boarders or lodgers do not have a right to exclusive possession,<sup>3</sup> even if they exclusively occupy a room. This is because the provider retains general control and cannot be excluded from the premises.<sup>4</sup>

Boarders/lodgers rights are enforceable only against the landlord and are not transferrable property rights,<sup>5</sup> which are enforceable against any person interfering with their occupation. Boarders may share rooms and access to common facilities such as bathrooms, kitchens and other common areas.<sup>6</sup> Food and other services may

1 The distinction between boarders (room and meals) and lodgers (paying guest in owners home), is unimportant except where the provider lives in: see definition of 'boarding house' under 'Terminology' below.

2 **ACT:** s 6E(1)(b). **NSW:** s 8(1)(c). **NT:** ss 6(1), 4 'residential premises', 'tenant', a 'tenancy agreement', not excluding rooming houses, need not give exclusive rights; Regulations, reg 4. **Qld:** s 32, note s 18 (opting into residential tenancy agreement, overriding s 32). **SA:** s 3(1) 'residential tenancy agreement' excludes rooming house agreements. **Tas:** 'residential premises' includes boarding premises, s 3(1) 'residential premises', 'boarding premises'; special rules for boarders. **Vic:** s 94 (tenancy agreement if exclusive occupancy). **WA:** *Residential Tenancies Act 1987*, s 5(1)(d) (excludes boarders); boarders common law rights only but councils may impose minimum standards.

3 *Radaich v Smith* [1959] HCA 45; 101 CLR 209; *Swan v Uecker* [2016] VSC 313 (Airbnb letting a sublease). Note **Vic:** s 94 (exclusive occupancy).

4 AJ Bradbrook, 'Creeping Reforms to Landlord and Tenant Law: The Case of Boarders and Lodgers' (2004) 10 *APLJ* 157.

5 **Vic:** s 93.

6 **ACT:** s 71C. **NSW:** s 4(1) 'boarding premises'. **Qld:** ss 15, 433. **SA:** s 3(1) 'rooming house agreement'. **Tas:** s 3(1) 'boarding premises'. **Vic:** s 92.

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