Final Report

Rooming house futures: governing for growth, fairness and transparency

authed by

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ACRONYMS

ABCB	Australian Building Control Board
ABH	Assisted Boarding House
ABS	Australian Bureau of Statistics
ADHC	Department of Ageing, Disability and Home Care (NSW)
AHC	Australian Human Rights Commission
AHURI	Australian Housing and Urban Research Institute Limited
BCA	Building Code of Australia
CAV	Consumer Affairs Victoria
CHO	Community Housing Organisation
COAG	Council of Australian Governments
GBH	General Boarding Houses
HMOs	Houses in Multiple Occupation (UK)
LGA	Local Government Area
NGO	Non-government organisation
NSW	New South Wales
RAAV	Registered Accommodation Association of Victoria
TUV	Tenants Union of Victoria

EXECUTIVE SUMMARY

The report

This report presents the results of an AHURI Investigative Panel process which examined the challenges and opportunities facing the policy community in Victoria and New South Wales (NSW) in the development of a viable and effective rooming/boarding house sector. It focuses particularly on the development of a regulatory regime, which addresses issues of quality and legitimacy in the rooming/boarding house industry, in the context of recent changes to regulation in the two states.

The principal question framing this project was:

> What are the policy and practical challenges being encountered in the development of a legitimate and viable rooming house/boarding house sector and how might these best be overcome through an improved regulatory regime and other measures to address a range of housing needs?

Market dynamics

There is a lack of objective and verifiable data on rooming house provision[1] in NSW and Victoria. Indeed, official estimates of the number of rooming houses and rooming house residents have been contested and different methodologies have produced different results. This report used data from state-level registers of rooming houses (noting that there were also unknown numbers of unregistered rooming houses) and the views of research participants who were knowledgeable about the sector.

There were distinct segments in the rooming house market, albeit with overlapping clientele in some cases, as well as some differences between Sydney and Melbourne.

→ Traditional rooming houses catered for people who were the most disadvantaged and most vulnerable.

→ Upgraded traditional rooming houses carried a price premium and had a more mixed clientele, including some international students.

→ Student rooming houses were very diverse and some had a mixed clientele.

→ Assisted Boarding Houses (NSW) catered for a small, high need and very vulnerable population.

→ New Generation rooming houses in inner areas of Sydney and Melbourne (either purpose built or in modern buildings) had a very mixed clientele, including some professionals and international students.

→ Small suburban rooming houses accommodated a wide variety of people, including international students, and were spread through the suburbs in conventional established dwellings.

Until fairly recently, the dominant story about rooming houses was one of decline and this still applies to the traditional rooming house and Assisted Boarding House segments of the market. Proprietors have been exiting the business as they aged and many of the properties were in areas with very high land values that could be realised on sale.

There were also clear growth segments of the market, in particular student rooming houses, New Generation rooming houses (particularly in inner Sydney as a result of changed planning regulations) and 'mini rooming houses' in conventional dwellings in suburban areas

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[1] Rooming house is used in this report as a generic term for buildings that accommodate more than a minimum number of unrelated people (the minimum number varies by state).

(particularly in Melbourne). While these trends have resulted in rising standards of provision, such improvements came at the price of rising rents and a declining body of housing affordable to people on the lowest incomes.

Regulatory framework

A traditional view of regulation is that it involves two parties: regulators and regulatees. Regulations are rules or directives that require regulatees (whether individuals or organisations) to act in particular ways and, more generally, aim to shape their behaviour.

A more modern view is that regulation goes beyond a formal or functional account of government and rules to be observed by regulatees. A 'decentred' definition of regulation recognises a variety of economic and civil society actors who are involved in regulation through information gathering, setting standards and in shaping behaviours. This view recognises the economic and social processes that accompany all formal legally-based systems of regulation.

There are two important dimensions to decentred institutional arrangements: diverse actor group membership, and multi-level governance arrangements.

1. Many people and organisations are involved in defining goals of regulation and setting rules and standards as well as the on-going process of checking compliance with regulations. They also attempt in various ways to change behaviours to achieve the goals that underpin the regulations, for example through enforcement strategies, information dissemination and training.

2. Different agencies from all three levels of government in Australia's federal system are participants in the regime of regulation. As in many areas of shared responsibility in the federal system, there are different objectives and limited means for resolving differences in approach. Non-state actors are also actively involved, for example in representing the interests of rooming house owners and operators and rooming house residents.

Much research into regulation argues that regulation should be based on assessments of risk and take into account the motivation of regulatees and their capacity to comply with regulations as well as the resources available to regulators. It also identifies three types of regulation: prescriptive, system-based and performance-based regulation, the latter being concerned with outcomes.

Renewal of NSW and Victorian rooming house regulatory regimes

Rooming house regulatory regimes in NSW and Victoria were changed in 2012 through the *Boarding Houses Act 2012* in NSW and amendments to the *Residential Tenancies Act 1997* and the *Public Health and Wellbeing Act 2008* in Victoria. Both states retained decentred, multi-level regulation in which multiple actors were involved and the nature of these reforms is detailed in the report. The regulatory regime for rooming houses in NSW and Victoria, both before and after legislative changes in 2012, is prescriptive; it involves detailed rules on what regulatees must do and how they must do it.

At the same time, regulation in response to a rights-based agenda driven by the Australian Government sought to extend access for people with disabilities to single room accommodation in rooming houses.

Decentred, multi-level regulation

In both states, many research participants were of the view that, although responsibilities of state and local governments were re-adjusted in 2012, there was not a broader reconsideration of roles and responsibilities in respect of rooming houses. In both cases, state governments took on a larger role (particularly in Victoria), but much of the responsibility for day-to-day compliance remained with local government.

There was broad agreement by the Investigative Panels in the two states that:

→ There is scope for improved coordination between state and local government in both states, a view more pronounced in NSW than in Victoria.

→ State governments should play a greater role in the regulation of rooming houses, again a view more pronounced in NSW than in Victoria.

→ Regulation of rooming houses should be seen more as housing standards regulation and be related more to regulation of other types of housing.

Investigative Panel members in both states indicated problems in complying with disability access requirements, particularly in smaller rooming houses, a sentiment that was particularly strong among Victorian panel members.

Recognition of risk

The major risk to residents in rooming houses was seen as relating to fire hazards. A (bare) majority of Investigative Panel members across the two states supported the view that new state-wide registers had improved rooming house regulation. In both states, there was said to be a considerable number of unregistered and therefore unregulated rooming houses.

Current regulation does not address other types of risks such as exposure to being the victim of criminal activities and experiencing behaviours of other residents consequent to various mental health conditions. These behaviours were thought to be associated with use of rooming houses by government agencies for discharging people from institutions of various types and require approaches other than prescriptive regulation.

Accountability and incentives for effective regulation

Issues of accountability and incentives for effective regulation come to the fore within a context of rather diffusely distributed regulatory responsibilities in the post-2012 environment in both states. Some of the concerns/issues expressed in the research were the lack of incentives for local government to take a more proactive approach to unregistered rooming houses and whether local governments had been given the resources to effectively take on additional regulatory responsibilities.

Standards

The post-2012 regulatory environment is different in the two states in that the Victorian legislation details some specific accommodation safety and amenity standards. In Victoria, a majority of panel members agreed that the minimum standards were the most important part of the reforms introduced in 2012, but there was some disagreement about whether these standards have made a difference in practice. In NSW, there was little agreement among Investigative Panel members as to whether specification of minimum physical and amenity standards by the state government was necessary or unnecessary.

Regulating rooming houses into the future

It appears that, after years of decline, there has been an increase in rooming house accommodation. Given the increase in single person households and the limited choices available to low and low-moderate income single people, it is expected that the market supplying rooming house-type accommodation will continue to grow.

There are a number of implications for policy and regulation of rooming houses.

A forum is desirable, perhaps a Consultative Council on Rooming Houses, to map the issues and commission a program of review and policy development.

A mechanism is required in each state to advance and coordinate policy development. The Investigative Panel highlighted the vital role of local government, and the importance of the state housing agencies (parts of broader human service departments) and social housing regulators, being involved in this process.

A risk-based approach to regulation is required which distinguishes between the risks associated with buildings and the risks associated with housing vulnerable people.

Some segments of the market may be lower risk and market factors may be more effective than prescriptive regulation. Others carry higher risk and may require additional regulation as well as improved inspection and compliance. Some of the risks associated with vulnerable residents may require service interventions rather than a regulatory approach.

Clearer accountability for regulation is important as are financial incentives for effective regulation.

It is important to develop clear objectives for regulation across the entire system, which would enable regular assessment of the performance of the regulatory regime. The costs of regulation should be explicit for different actors and consideration given to how costs and income could be distributed to provide incentives for better regulation.

A strategy for improving rooming house operation is required, with priority given to market segments where there are vulnerable residents.

Current regulation focuses on the safety and amenity of buildings. Options for improving rooming house operation include education/training (as in Victoria) and/or licensing of operators. This would bring rooming houses in line with other areas such as child care and aged care where there are vulnerable clients.

Further work on the development of standards for rooming houses is required.

The outcomes of differing approaches to this issue in Victoria (where there are explicit standards) and NSW (where these were not part of the 2012 reforms) should be explored systematically and in detail with a view to developing clear standards in areas that make a difference to safety and quality of life.

A consolidated approach is needed to identify unregistered rooming houses and ensure that they are encompassed within the regulatory regime.

The report highlights the view of most research participants and panel members that there were a substantial number of non-registered rooming houses. Local government is often best placed to identify these but would require additional resources to follow up with owners/proprietors with a view to either registration or closure.

1 INTRODUCTION

1.1 Overview

This report presents the results of an AHURI Investigative Panel process (detailed below in Section 1.5) which examined the challenges and opportunities facing the policy community in Victoria and NSW in the development of a viable and effective rooming/boarding house sector. It focuses particularly on the development of a regulatory regime, which addresses issues of quality and legitimacy in the rooming/boarding house industry, in the context of recent changes to regulation in the two states.

The principal question, which framed this project, is:

> What are the policy and practical challenges being encountered in the development of a legitimate and viable rooming house/boarding house sector and how might these best be overcome through an improved regulatory regime and other measures to address a range of housing needs?

This question is relevant to governments seeking to protect and enhance the supply of safe, low cost housing and to prevent homelessness, particularly among low-income single people, and for state government housing and consumer affairs agencies directly responsible for regulatory oversight of the rooming/boarding house sector. It is also highly relevant to industry and community strategies to improve the sector's profile and legitimacy.

1.2 Key concepts and terminology

Originally one of several forms of boarding (O'Hanlon 2008),[2] and still known as boarding houses in most Australian states, boarding/rooming houses refer to buildings containing multiple bedrooms or units[3] that are supplied on a furnished basis and provide shared access to communal facilities such as kitchens, bathrooms, laundries and living areas. They are let on a weekly basis to multiple, unrelated residents, with the numbers and letting arrangements the subject of state-specific legislation in Australia's federal system of government.

The term 'rooming houses' is used in Victoria and the term 'boarding houses' is used in NSW, the two state jurisdictions which are the focus of the study.[4] For the sake of simplicity, and since most establishments no longer provide meals integral to the original concept of boarding, this report refers generically to rooming houses and should be taken as including both rooming houses in Victoria and boarding houses in NSW except where required to reference accurately specific legislation/regulation in NSW.

The term 'policy community' is used here as one type of policy network, drawing on a typology of policy networks developed by British scholars, Rhodes and Marsh (1992), to refer to the ways in which policy is developed through a network of committees, civil servants, professions, and interest groups rather than the more overt processes of parliamentary debates and electoral politics. Types of policy networks are distinguished by their membership, the resources available to them and the degree of integration between participants. As summarised by Skogstad (2005), policy communities are at one end of a continuum of policy networks and refer to integrated, stable and exclusive policy networks that come together around a particular policy area. At the other end of the continuum are networks of loosely connected, multiple, and often conflict-ridden membership. Policy communities share a

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[2] A previous study for AHURI by Greenhalgh et al. (2004) distinguished between apartment houses (effectively rooming houses) and boarding houses. The authors also include another category of 'licensed hotels' which provided some accommodation and which were regulated by relevant liquor licensing authorities.
[3] Australian Institute of Health and Welfare, Metadata Online Registry, Boarding house building, viewed 9 March 2015, http://meteor.aihw.gov.au/content/index.phtml/itemId/327408.
[4] Different terms are used in the Anglophone countries: in North America, they are usually known as rooming houses while in the UK they are Houses in Multiple Occupation (HMOs).

common interest in shaping the development of policy in a detailed way (Coleman & Skogstad 1990). At least in Australia's major cities, rooming houses are a particular interest area in which a relatively small number of actors (government, private providers and non-government advocacy agencies) are often well known to each other and have a common interest in ensuring a viable and legitimate sector.

A 'regulatory regime' refers to the systematic interweaving of social and economic relations where the directives found in formal regulations are just one set of factors in the shaping of relations (Black 2007). The regime is evident in the more or less settled and regularised arrangements, practices and norms enacted by owners and managers who provide rooming house accommodation and residents who use and pay for this accommodation. It is also evident in the way that other actor groups have developed an interest in the regulations, are active in providing services to regulatees and have established a status that enables them to speak about the efficacy of regulations (May 2007). The concept of regulatory regimes is further discussed in Chapter 3.

1.3   Rooming houses: a matter of concern for governments

Rooming houses are of particular concern to governments for several reasons. First, they house some of society's most excluded and vulnerable individuals, often on a legally insecure or 'non-tenured' basis. Second, conditions of occupancy can heighten resident safety risks, especially in relation to fire. And third, rooming houses are often high turnover accommodation, and sometimes associated with local disturbance and associated neighbour complaints.

As further explained in Section 1.4, this research has been prompted by recent reforms that sought to strengthen rooming house regulation in NSW and Victoria. However, in both of these states and across Australia there has been a long history of local government engagement with the rooming house sector. In shaping the overarching framework for local authority oversight and intervention, state governments have also played an active role for many years. Before focusing on the backdrop to the recent NSW and Victoria reforms, and to provide a broader context for the Australian research, it is relevant to make brief reference to the recent history of UK private rental housing regulation which has been proceeding somewhat in parallel.

UK terminology equivalent to 'rooming house' or 'boarding house' refers to 'houses in multiple occupation' (HMOs). An HMO is a building occupied by separate households who share amenities (e.g. kitchen or bathroom). Across the UK, the past 15 years have seen increasingly intensive oversight of HMOs (and—albeit to a lesser extent—all private rental housing).

In Scotland, mandatory local authority licensing of *all HMOs*[5] was enacted from 2000, with new enforcement powers and penalties introduced from 2006[6]. Licensing criteria relate to HMO suitability and condition, as well as to whether the licensee is a 'fit and proper person' (Scottish Government 2012). In England, also from 2006, mandatory licensing of larger HMOs (those involving buildings of three or more storeys and occupied by five or more persons) has been imposed nationally. Additionally, where there is concern that ineffective management is problematic for HMO residents and/or neighbours, a council may elect to impose a licensing requirement on smaller establishments[7] (Hughes & Lowe 2008).

The above developments have emerged within a context where the traditional single-minded regulatory focus on HMO resident welfare has been increasingly paralleled by official anxiety about the impact of HMOs on neighbours. A specific concern has been the local impact of

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[5] Although Scottish legislation defines an HMO as a building occupied by 'three or more persons from three or more families'.

[6] Non-registration is subject to a fine of up to £50 000 ($100 000).

[7] Increasingly, English local authorities have also used landuse planning measures which can, within a defined area, mandate landlords to obtain planning permission for conversion of a dwelling house into an HMO (Jarman 2014).

concentrated student populations in suburbs close to universities. Increasingly, therefore, regulation seeks to 'responsibilise' landlords for tenant conduct (Carr et al. 2007).

This counter-antisocial behaviour dynamic is also embodied within recent regulatory measures relating to the broader private rental market that has seen some English local authorities choosing to enact discretionary powers to impose blanket licensing requirements for all rental housing in their locality[8]. In a further 'responsibilising' development, 2014 UK legislation requires that private landlords check the immigration status of new tenants to ensure they have 'the right to rent'[9] (CIH 2014).

1.4   Issues prompting the research

Periodically some regulatory actors will seek to reset the key features of a regime. This was the case in the 1990s when campaigns by community organisations in both NSW and Victoria highlighted the neglect of rooming house residents' interests. More recently, statutory inquiries in both states following deaths of rooming house residents attributed these fatalities to regulatory failure (see, e.g. Mohummadally 2009 and NSW Ombudsman 2011). In the late 2000s these dynamics led to inquiries aimed at renewing the (state level) regulatory systems and resetting the assignment of oversight responsibilities among regulatory agencies (NSW Interdepartmental Committee on Reform of Shared Private Residential Services 2011; Rooming House Standards Taskforce (Vic.) & Foley 2009). In NSW the formal outcome was the *Boarding Houses Act* 2012 and in Victoria it was amendments to the *Residential Tenancies Act* 1997 and the *Public Health and Wellbeing Act* 2008 that gave effect to a number of reforms. Nevertheless and unsurprisingly processes of collaboration and conflict continue.

Further, while these changes were being promoted, discussed and enacted in relation to the traditional rooming house sector, it appears that—following decades of decline—the rooming house sector once again began to grow. This needs to be seen within the context of structural change in the private rental market. While single person households (including international students) have formed an expanding population component, rental affordability and opportunities for this group have declined. On the supply side, investment by small-scale investors has surged; and professional management of rental housing has increased (Hulse et al. 2012).

As regards the rooming house submarket, two trends are of particular significance here. First, the apparent increase in the proportion of larger, suburban houses in the rental stock, some of which is used for multiple occupancy and appear to be providing rooming house accommodation. The growth in rooming house accommodation, sometimes described as the 'new model' or 'mini' rooming houses has been in houses or apartments converted into rooming houses. The owner/manager lets the bedrooms on a room-by-room basis. Conversion may include the creation of additional rooms through partitioning. Often these dwellings are not easily identified as rooming houses and they may not be registered as such. They are also geographically dispersed. Second, in both Sydney and Melbourne, recent years have seen the emergence of new, purpose-built studio apartment or micro-flat developments, sometimes badged as rooming/boarding houses. This has been particularly the case in Sydney where changes to NSW planning provisions have facilitated this phenomenon, as discussed further in Chapter 2.

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[8] In 2013, justified mainly on the grounds of controlling antisocial behaviour, the London Borough of Newham introduced a licensing scheme covering all its privately rented housing—estimated as totalling 36 000. Vigorous enforcement during the first year of the new framework saw 30 000 licences issued, but also included hundreds of landlord prosecutions and arrests, the banning of landlords from local operation and the uncovering of large-scale fraud and tax evasion. In early 2014, one other English borough had emulated Newham and several others were planning to do so (Jarman 2013, 2014).

[9] A landlord accommodating a tenant lacking suitable residency status is subject to a fine of up to £3000 ($6000).

All Australia's states and territories have legislation governing registered rooming houses. In Victoria and NSW the recent reforms provide a stronger framework for the delivery of rooming house accommodation and clearer statements about owners/manager and resident rights and responsibilities. Regulations in both states now require owners/managers to register rooming houses with councils. In the case of NSW, the regulations refer to rooming houses that accommodate five or more paying residents. In Victoria, state regulations apply to rooming houses having one or more rooms available for rent, and where residents total four or more.

As acknowledged by the architects of the new NSW and Victorian regulatory regimes, the resulting oversight frameworks face significant challenges. These include identifying and registering relevant establishments; accommodating increasing diversity within the sector; enhancing the regulatory capacity of local government; identifying connections with Federal Government responsibilities; encouraging best management practice; and linking residents to services.

The key groups forming the rooming house policy community in Victoria and NSW are: consumer affairs, housing, health and disability agencies; regulatory agencies including ombudsmen, auditors-general, guardianship board and planning; local government; rooming/boarding house providers; non-government organisations (NGOs) in the tenancy advice, health and disability areas and community housing providers. Further, Federal Government agencies have policy interests in homelessness, international students' welfare and disability.

1.5   Overview of 2012 reforms

The 2012 reforms differed in NSW and Victoria but, as indicated in Table 1 below, there was some consistency between the elements of regulatory reform legislated in the two states. These changes are described in greater detail in our state-specific discussion papers, as already published.[10]

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[10] Pawson, H, Dalton, T & Hulse, K, 2015, *Rooming house futures: governing for growth, transparency and fairness—New South Wales Discussion Paper*; AHURI, Melbourne, and

Dalton, T, Hulse, K & Pawson, H 2015, *Rooming house futures: governing for growth, transparency and fairness—Victorian Discussion Paper*; AHURI, Melbourne.

Table 1: Summary of NSW and Victorian regulatory reforms*

Measure	NSW	Victoria
Rooming house registration	Establishment of state-wide 'boarding house' register managed by Dept. of Fair Trading, distinguishing between 'Assisted Boarding Houses' (ABHs) and 'General Boarding Houses' (GBHs).	Consolidation of local government rooming house registers into state-wide register managed by Consumer Affairs Victoria
Enhanced resident occupancy rights	Rooming house residents conferred with formal occupancy rights—albeit inferior to residents' rights in mainstream rental housing (under the Residential Tenancies Act).	
New standards of provision		Rooming house owners required to comply with newly prescribed minimum standards for rooms, facilities and common areas
Enhanced regulatory powers	Enhanced powers for regulatory enforcement as regards ABHs	Enhanced local authority powers for assessing rooming house compliance with standards and registration.

Note: * Under NSW Boarding Houses Act 2012 and Victoria Residential Tenancies and Other Consumer Acts Amendment Act 2012

1.5.1 Creation of state-wide registers

In both jurisdictions state-wide registers of authorised establishments were created. In Victoria, however, this was achieved through combining existing listings held by local authorities whereas the new NSW register was initially populated through direct applications by rooming house proprietors. In NSW the administrative procedures associated with registration included an expectation that the relevant local authority would undertake an initial 'compliance inspection' for each newly registered premises.

1.5.2 Differentiating rooming house categories

In NSW registered establishments were also differentiated between 'Assisted Boarding Houses' (ABHs) and 'General Boarding Houses' (GBHs). The former were defined as those catering for 'persons with additional needs'; that is, the shrinking number of premises accommodating vulnerable people displaced through the de-institutionalisation programs of the 1980s and 1990s. While ABHs account for only a very small proportion of all registered premises (24 of 774 in August 2014), the nature of the client group means that these have continued to form the focus of the state government's regulatory concerns.

Under the new regimes in both states the responsibility for rooming house regulatory inspection and enforcement has remained located primarily at the local authority level. An exception to this rule in NSW has related to ABHs where the Department of Ageing, Disability and Home Care (ADHC) has continued to mount regular inspections in collaboration with the relevant local authorities. In Victoria, associated with its responsibility for register management, Consumer Affairs Victoria (CAV) has actively collaborated with local councils on rooming house inspection and compliance. In contrast, the absence of additional resources for reform implementation in NSW has meant that the state's register-holding Department of Fair Trading has played no such role.

1.5.3 Residents rights

As shown in Table 1 above, the NSW reforms included enhancing the legal status of rooming house residents, previously subject only to common law protection. Such new rights included

an entitlement to have disputes with proprietors heard by the NSW Civil and Administrative Law Tribunal, as well as the creation of clear rules around the treatment of security deposits ('bonds').

1.5.4 Minimum standards of provision

Included in the Victorian reforms was a set of defined standards of provision; prescribed rules over and above those already applicable—such as under the Building Code of Australia (BCA). Responding to advocacy lobbying, these new standards included requirements on locks, storage and resident safety. In contrast, the 2012 NSW reforms included no provisions of this kind. In NSW, therefore, regulators have continued to rely on the rather broadly drawn *Local Government Act* 1993 expectations as well as—especially in the case of Class 3 buildings—fire safety regulations contained in the Building Code of Australia (BCA).

A potentially challenging aspect of 'premises standards' applicable to rooming houses across both states relates to the 'building access' requirements of the *Disability Discrimination Act* 1992 (Building Professionals Board 2011; Victorian Building Authority 2014). Under this Australian Government legislation, rooming houses are defined as a form of 'short term accommodation', which must be capable of catering for physically disabled people. With Disability Discrimination Act premises standards now having been incorporated within the Building Code of Australia, they are applicable to Class 1a residential houses being converted into Class 1b rooming houses—a development regarded by some as problematic.

1.6 Undertaking the research

The research methodology comprised secondary analysis of administrative data; field research (interviews and focus groups), which examined the implementation of the new regulatory systems in NSW and Victoria; and an Investigative Panel Process that included a modified Delphi survey approach.

1.6.1 Secondary analysis of administrative data

An analysis of secondary data drawn from the Victorian and NSW state level rooming house registers was conducted. Although these registers differed somewhat in the data they collected and their procedures for updating data, they did enable analysis of the geographic location of rooming houses and the identification of the proprietors and the number of properties they own, as well as data on broad classification of rooming houses (which varied by state).

1.6.2 Field research

A modest program[11] of interviews and focus groups was undertaken with members of the policy community in both states. These comprised semi-structured interviews with individual rooming house owners and proprietors (11) and local government regulators (6). A focus group was held with state government officials in Victoria who were members of a task force implementing new minimum standards legislation. Interviews were also conducted with state government policy-makers in both states (5) and organisations focused on tenants (2). A focus group was also held in each state comprising a number of NGO service providers who assist low-income and marginally housed people find and maintain housing. The interviews and focus groups provided very valuable, and differing, insights into the implementation of new rooming house regulation and its outcomes.

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[11] The original research design had a larger research component but this was scaled back as the project was funded primarily for an Investigative Panel process.

1.6.3 Investigative Panels

Investigative Panels are an approach taken by AHURI to produce research that is 'highly policy relevant, generates active engagement with senior policy-makers, other key stakeholders (including the community and commercial sectors) and researchers'.[12]

There was one panel in each state with a diverse membership drawn from the key actor groups forming the rooming house policy community in each state and who had experience in contributing to rooming house policy work. As shown in Table 2 below, there were 12 panel members in both the NSW and Victorian Investigative Panels.

Table 2: Investigative Panel membership

State	Local government	State government	NGO	Rooming house owners	Academics*	Total
NSW	1	4	4	1	2	12
Victoria	1	4	3	2	2	12

Note: *Other than research team members and the independent facilitator.

State government departments represented included Family and Community Services, Fair Trading and Planning in NSW, and Consumer Affairs, Human Services and Building in Victoria.

There were two main inputs to the Investigative Panels:

1. The detailed results of the research discussed above were made available to panel members and subsequently in two published discussion papers, one for NSW (Pawson et al. 2015) and one for Victoria (Dalton et al. 2015).

2. A modified Delphi technique in which an on-line survey of panel members was conducted before the panel meetings. This was customised for each state and had 25 questions in NSW and 31 in Victoria. It enabled a composite picture of the views of panel members on key issues via a series of scaled survey questions. The results of the survey were provided to panel members at their meetings. This assisted panellists to understand the type and range of expert views on key issues of rooming housing regulation implementation.[13]

The panel face-to-face meetings were held on Thursday 4 December 2014 (Melbourne) and Friday 5 December 2014 (Sydney). The same independent facilitator, a retired departmental secretary in the federal public service who had extensive experience of housing issues, facilitated both.

The panel meetings were conducted according to the Chatham House rule and were supported by two members of the research team in each case. The panels addressed three themes outlined in the Discussion Papers and online survey questions: the regulatory regime (in each state), the implementation of regulation and future development of regulation—see Appendix 1 for the specific questions put to the panels on each of these themes.

After the panel meetings, the participants were again asked to complete a short on-line survey as part of the adapted Delphi methodology. This enabled the researchers to identify any change in response as a result of the panel meetings. This time there were identical questions for one of the three themes, the future of regulation, which also enabled some comparison across panels.

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[12] AHURI, *Best Practice for Investigative Panel*, undated.

[13] Developed by the Rand Corporation in the US, the Delphi method is a means of obtaining views of an expert panel (Goodman 1987) while preserving participant anonymity so that people can express their views without any repercussions (Linstone & Turoff 2002). Originally designed as a means of developing consensus among panel members, the Delphi method has also been used to illuminate differences in views, which can then be discussed by experts.

The research team was responsible for the fieldwork and resultant data analysis, support for the Investigative Panel meetings, and subsequent analysis of panel discussions and the on-line survey as well as writing this Final Report.

The research procedures were approved by the Human Research Ethics Committee of RMIT University (the lead university) and endorsed by ethic committees of the University of New South Wales and Swinburne University of Technology.

1.7   Structure of the report

In this Final Report, the aim is to take a broader view to complement the detailed discussion in the two Discussion Papers (which are available on the AHURI web site http://www.ahuri.edu.au/publications/projects/p53033). It proceeds as follows:

→ *Chapter 2* discusses market dynamics in the rooming house sector in the two states and identifies different market segments as well as making observations on market trends.

→ *Chapter 3* provides a framework for considering regulation. It discusses why governments regulate, types of regulatory regime, accountability and regulation and some of the implications of a decentred regulatory regime.

→ *Chapter 4* presents an assessment of the renewal of NSW and Victorian rooming house regulatory regimes that have developed since the changes in legislation in 2012. It considers the types of regulation implemented, the challenges of decentred multi-level regulation and whether a more risk-based regime would be desirable.

→ *Chapter 5* considers future directions for rooming houses in the context of both trends in regulation and broader issues of social policy.

2   THE ROOMING HOUSE MARKET

This chapter examines trends in the rooming house market in the context of broader housing market and demographic changes. It is based on an analysis of the state-level registers of rooming houses in NSW and Victoria, other secondary data sources and stakeholder assessments of market trends elicited in the fieldwork and during the Investigative Panels.

2.1   Historical context

Whereas once they provided accommodation for men and women in a range of circumstances, rooming houses began a long period of decline in the decades after World War 2 (Centre for Urban Research and Action (CURA) 1979; O'Hanlon 2002b, 2002a). This decline reflected a series of demand and supply factors.

On the demand side, rising community standards meant that many single people wanted self-contained accommodation rather than shared facilities. Rising real incomes and, in particular, the entry of single women into the workforce, increasingly gave single people the financial resources to rent self-contained accommodation without the need to share kitchen, bathroom and other facilities with other residents. The advent of strata titling, and the apartment boom of the 1960s and 1970s, provided opportunities for single people to rent or buy smaller, self-contained accommodation in areas close to transport and facilities. Rooming houses became progressively associated with an economically marginalised population and less clearly distinguished from the lodging houses that had always housed the poor and disadvantaged. The de-institutionalisation of residents of large institutions from the 1970s increased the social and economic marginalisation of rooming house residents (Greenhalgh et al. 2004), as did their subsequent use to house people exiting from state care (Johnson et al. 2010) and criminal justice institutions, as well as their role as emergency housing for people referred by homelessness and welfare agencies.

On the supply side, the gentrification of inner cities from the 1970s, and associated higher land prices, put pressure on owners of rooming houses to sell or obtain a better return on their investment. Sales and demolitions contributed to the decline in rooming house numbers while others were converted to higher value use such as backpacker hostels, single family residences, luxury apartments and tourist accommodation (Greenhalgh et al. 2004, pp.9–10). Many rooming houses had been run by women, as one of the few opportunities prior to the 1970s for single women to have some financial independence. Increased access to education and employment from the 1970s provided other, more attractive, options for women to become financially independent (O'Hanlon 2002a; Spearritt 2000).

While the trajectory of rooming houses can be explained in terms of changes in demand and supply, there was also a clear difference in the role of state governments in NSW and Victoria in relation to rooming houses.

The Victorian Government, concerned about decreases in supply of rooming houses and their state of repair, with consequent risks for residents, purchased a boarding house in Hawthorn owned by the Melbourne and Metropolitan Board of Works and provided grants and loans to some owners to repair selected rooming houses in 1979–80 (Carter 1988, p.254). Somewhat akin to the 'municipalisation' of low quality private rental housing by some UK local authorities in the 1970s (Kemp 2004), the Victorian Government subsequently purchased older style rooming houses. In the mid-1980s Victoria funded the 'first custom-built boarding house in Melbourne for decades' in the City of Box Hill (Burke 1988, p.236).[14] By the end of 1987–88 as a result of this Rooming House Program, 43 rooming houses were owned by the Victorian Ministry of Housing and Construction and managed by community organisations, providing 818

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[14] Using funding from the Local Government and Community Housing Program introduced in the 1984 Commonwealth State Housing Agreement.

beds (Carter 1988, p.255). Some of these rooming houses were extensively renovated as part of this program to improve resident safety and comfort but also driven by a desire to preserve buildings with considerable heritage value.

In NSW, unlike their counterparts in Victoria, successive state governments eschewed direct involvement in rooming house conservation, ownership and management arrangements. In recent times, however, relaxation of planning regulations has appeared to have triggered a wave of 'New Generation boarding house' construction in the City of Sydney and some neighbouring local authority areas as we discuss later in this chapter (Section 2.3.5).

While reasons for the historic decline in rooming houses have been well documented (Greenhalgh et al. 2004), little attention has been given to the more recent growth in rooming houses in the context of structural changes in the private rental market. In cities like Sydney and Melbourne, single people (including the burgeoning numbers of international students), have faced growing challenges in affording self-contained accommodation. On the other hand, many small-scale investors want to invest in various types of rental accommodation and there has been growth in smaller self-contained accommodation in large cities (studio and one-bedroom apartments) as well as some segments of the rooming house market.

In this context, rooming houses have become diverse in terms of their built form including old large late 19th and early 20th century houses, buildings that were previously used as hotels and motels, new purpose-built rooming houses, apartments in new apartment blocks, and suburban residential houses of various ages and styles in which all bedrooms and sometimes living areas are let on an individual room basis with access to shared facilities.

The long-standing assumption of ongoing decline of the rooming house sector has to be reviewed in the context of these housing market dynamics. There is no doubt that the rooming house sector is changing and, in addition to housing vulnerable people, may (again) play a positive role in housing people, particularly single people, who either cannot afford or do not want to live in self-contained accommodation.

2.2 The registered rooming house market

2.2.1 Registered and unregistered rooming houses

It is difficult to say how many rooming houses, and rooming house residents, there are in Australia. The Australian Bureau of Statistics (ABS) estimated that there were 17 221 people living in rooming houses nationally on Census night in August 2011. This figure was higher than in 2006 but lower than in 2001, although observations about trends have to be qualified by substantial changes in the ABS methodology. The ABS data for 2011 suggests that rooming house residents were predominantly male (75%) and older than the rest of the 'homeless' population (46% were aged 45 years and above) (ABS 2012a, p.4). The ABS definition includes all residents of identifiable rooming houses, both registered and unregistered but acknowledges the practical difficulties involved in locating such establishments and in enumerating their residents (ABS 2012b, pp.21–22).

Detailed work in Melbourne by Chamberlain (2012) has challenged census-derived estimates of rooming house numbers. Using an alternative methodology (local council records and site visits), Chamberlain found that the number of rooming houses, and their residents, in Melbourne had been increasing rather than decreasing. He identified 1451 rooming houses in metropolitan Melbourne in 2011 (1276 registered by local government and 175 unregistered). Chamberlain thus estimated the 2011 resident population of rooming houses in metropolitan Melbourne as 12 568; far above the census-derived estimate of 3700. Further, most of the growth in the rooming house population was in suburban Melbourne (Chamberlain 2012, p.12, Table 5).

In this section, we use official state government records of registered rooming houses, noting that in both Sydney and Melbourne, interviews with council staff, not-for-profit organisations

and rooming house proprietors indicated that there were also non-registered rooming houses in their areas which were not counted in these figures.

2.2.2 How many rooming houses?

New South Wales

In August 2014, there were 774 boarding house establishments in NSW registered as such with the NSW Department of Fair Trading.

→ Seven hundred and fifty were 'general boarding houses' (GBHs).

→ Twenty-four were 'assisted boarding houses' (ABHs), establishments specifically catering for 'people with additional needs'.[15] Formerly known as Licensed Residential Centres, these premises are also licensed by the NSW Department of Family and Community Services (Ageing, Disability and Homecare division—ADHC).

Although substantially larger than the 2011 government state-wide estimate of 455 establishments, it is only around two-thirds of the comparable number for Victoria—a smaller state both in terms of population and residential dwellings.[16]

The figures above refer only to rooming houses registered with the NSW Government's Fair Trading office. The research suggests that there are additional rooming houses registered with the relevant local authority, but not (yet) entered on the state-wide database. The number of establishments being operated as rooming houses, but entirely unregistered at either the state or local authority level, is also believed to be substantial (Pawson et al. 2015).

Victoria

In Victoria, at June 2014 there were a total of 1131 registered rooming houses listed on the Consumer Affairs Victoria on-line register of rooming houses.[17] As this is a public register of rooming houses drawn from local government (a different approach to that in NSW), state and local government records should be consistent in Victoria (other than due to any delay in processing). As in NSW, however, non-registered rooming houses were not included in this figure and many Victorian research participants suggested that a substantial number of rooming houses remained unregistered.

2.2.3 Where are registered rooming houses?

Registered rooming houses in NSW were predominantly a Sydney phenomenon, with Greater Sydney accounting for 82 per cent of registered premises in NSW. In June 2014, registered rooming houses in Greater Sydney were concentrated in a small proportion of local authorities bordering on or close to the City of Sydney itself, which had more than a quarter of all NSW rooming houses, as shown in Figure 1 below. Outside of the metropolitan area, only Newcastle (49) and Wollongong (19) had substantial numbers of registered rooming houses.

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[15] Such as an age-related frailty; a mental illness and/or an intellectual, psychiatric, sensory or physical disability, and needs support or supervision with daily tasks and personal care such as showering, preparing meals or managing medication (NSW Fair Trading website, - http://www.fairtrading.nsw.gov.au/ftw/ Tenants_and_home_owners/Boarding_houses.page

[16] NSW Interdepartmental Committee on Reform of Shared Private Residential Services (2011), *Boarding house reform discussion paper*, https://www.adhc.nsw.gov.au/__data/assets/file/0019/250417/ Boarding_House_Reform_Discussion_Paper_Nov2011.pdf

[17] This is less than the 1276 rooming houses identified by Chamberlain (2012) in his study of metropolitan Melbourne based on council records.

Figure 1: Distribution of registered rooming houses: metropolitan Sydney LGAs 2014
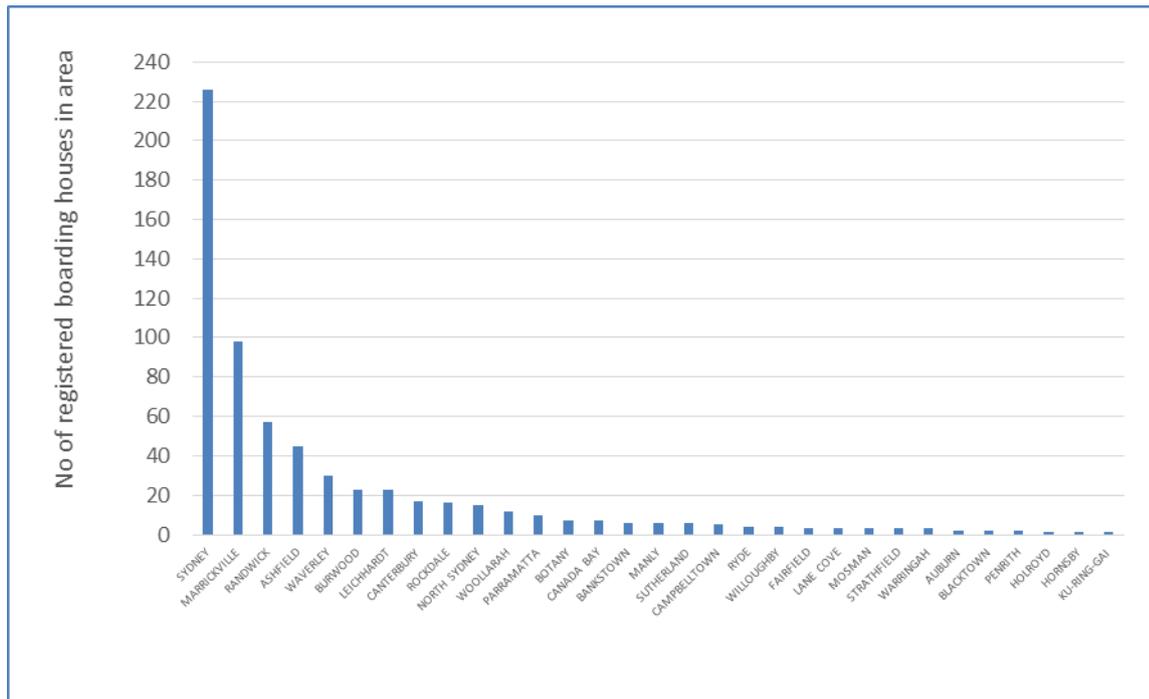
Source: NSW Fair Trading boarding house register dataset (as at August 2014). Note: LGAs with zero scores excluded.

The geographic distribution of rooming houses in Victoria is similar to that of NSW in that rooming houses are heavily concentrated in Greater Melbourne (89%), with only Greater Geelong and Ballarat having substantial numbers of registered rooming houses (68 and 29 respectively). However, there are significant differences in the location of registered rooming houses between Melbourne and Sydney. The greatest proportion of rooming houses, 25 per cent, is located in the south eastern suburbs of Melbourne, with Inner Melbourne having 18 per cent and the inner eastern suburbs 14 per cent of all registered rooming houses. The Local Government Areas with the largest number of rooming houses, Whitehorse, Monash and Greater Dandenong, are in the east and south east of Melbourne, as shown in Figure 2 below.

Figure 2: Distribution of registered rooming houses: metropolitan Melbourne Local Government Areas (LGAs) 2014
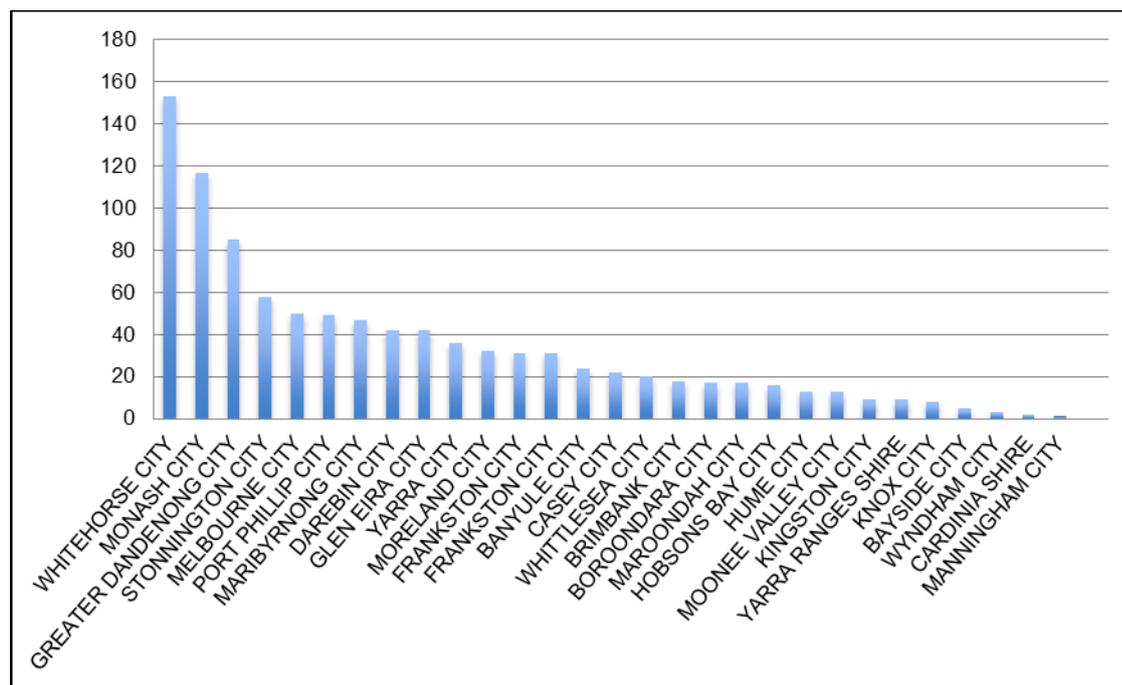
Source: Consumer Affairs Victoria, Register of Rooming Houses, as at 30 June 2014. Note: LGAs with zero scores excluded.

In brief, there were more registered rooming houses in Victoria than in NSW; rooming houses were heavily concentrated in Sydney and Melbourne; and rooming houses were concentrated in the City of Sydney and adjoining municipalities to a greater extent than in Melbourne.

2.3 The rooming house stock

On a national basis, the Building Regulations 2006 distinguish between smaller rooming/boarding houses with up to 12 unrelated occupants (Class 1b)[18] and larger rooming houses with more than 12 unrelated occupants ('Class 3' residential buildings).[19] Rooming houses are only one type of Class 3 residential buildings which can also include other types of accommodation for unrelated people such as guest houses, hostels, lodging houses or backpackers' accommodation. Class 3 residential buildings have additional requirements in terms of fire safety (Australian Building Codes Board 2014). State registers do not distinguish between these two types of rooming houses.

Beyond the official categorisation of rooming houses (general and assisted boarding houses in NSW and Class 1b and Class 3 in Victoria), stakeholder accounts as documented in the research indicated a number of distinct sector segments or submarkets. These were distinguished partly by their building type, partly by their resident group and partly by their physical condition, quality and facilities.

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[18] Class 1b applies specifically to rooming houses with a total floor area not exceeding 300 sqm when measured over the enclosing walls of the building and not located above or below another dwelling or another class of building other than a private garage.

[19] Class 3 refers to various types of residential buildings with a total floor area exceeding 300 sqm and the owner must have an Occupancy Permit suitable for the use of the building. Additional fire regulations apply to Class 3 buildings.

2.3.1 Traditional boarding houses

As suggested by the name, these were establishments that had been trading for many years—in some cases since the immediate post-war housing shortage when, following a lengthy lapse in housing construction, Australia's cities needed to accommodate large numbers of returning servicemen, as well as an influx of domestic and international migrants (O'Hanlon 2005). Many of these were medium to large establishments catering largely for the 'traditional boarding house' clientele—single men on low incomes. Having experienced relatively little modernisation investment, such buildings provided mainly shared facilities. Some of these remain in inner Sydney where rents are typically $150–$200. Chamberlain (2012, p.15) found 33 rooming houses operating in inner Melbourne that had 20 or more bedrooms during his site visits. Some were single dwellings while others comprised two or three large houses being operated as a rooming house.

2.3.2 Upgraded traditional 'boarding houses'

Distinct from the main body of 'traditional' boarding houses, but originating from it, was the cohort of establishments long serving this function but in which owners had made significant modernisation investment in the relatively recent past (i.e. the last 10–20 years). In these buildings there were sometimes new floors and kitchenettes. There was less sharing of facilities. Since somewhat higher standards commanded significantly higher rents, the clientele for this sub-group was also slightly different—for example, including some (international) students. At inner Sydney values, a room in such an establishment might cost a tenant $200–$250 per week. In inner Melbourne, a significant number of such establishments had rents set as a percentage of the resident's income as a consequence of ownership and management by not-for-profit organisations as we discuss next.

In Victoria, 95 registered rooming houses were run by not-for-profit bodies (21% of all registered establishments). Mainly situated in Melbourne's inner suburbs, these were managed by community housing organisations (e.g. Yarra Community Housing; Port Phillip Housing Association). This is a legacy of the Victorian Government's rooming house acquisition program of the 1980s (see Section 2.1). Over time, some of the titles were also transferred to the managing organisations. Some were subsequently substantially upgraded, for example, using Nation Building funds, [20] but not all.

In NSW, there is no direct equivalent of the substantial Victorian community housing organisation involvement in rooming house management as described above. However, a small program of 'New Generation boarding house' construction by community housing organisations (CHOs) has recently been initiated in NSW.

2.3.3 Student rooming houses

A third subsector in both cities encompassed rooming houses specifically catering for (mainly international) students. This expanding cohort, however, also contained substantial internal diversity. On the one hand, there were the mainstream houses and flats being effectively used as boarding houses for this client group, usually without official approval. This arrangement sometimes involved a head tenant subletting rooms or bed spaces to others, possibly members of the head tenant's ethnic or national group. On the other hand, there was the growing body of custom-developed (or converted) premises specifically designed as student accommodation, often involving larger buildings, and in which owners had sometimes invested significant sums.

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[20] In response to the Global Financial Crisis (200–09), the Australian Government implemented a major economic stimulus package, $42 billion for the National Building and Jobs Plan announced in February 2009. This included a number of measures including a Social Housing Initiative which provided $5.6 billion for new social housing and maintenance/upgrading of existing social housing.

2.3.4 Assisted boarding houses (NSW only)

Assisted Boarding Houses were a NSW phenomenon (see Section 2.2.2) and subject to a distinct regulatory regime involving the NSW Department of Ageing, Disability and Homecare and Disability (ADHC), as well as the Department of Fair Trading and relevant local authorities. While this contracting cohort of people is a heavily regulated market segment, other work points to unlicensed boarding houses housing residents with mental health and substance use problems in Sydney and the Illawarra, although sourcing owners and managers of such accommodation is difficult for obvious reasons (Deane et al. 2012).

2.3.5 'New Generation' boarding/rooming houses

This was a new build element of the sector recently expanding fast in certain parts of Sydney, and generally catering for low to moderate income working adults. This development has been facilitated by the planning relaxations introduced under the 2009 NSW Affordable Housing SEPP (State Environmental Planning Policy). [21] Local council interviewees reported New Generation boarding houses as proliferating in the City of Sydney and in neighbouring localities. Such schemes carry the 'boarding house' designation for the purposes of planning approval, since this enables their exemption from standard requirements; such as on room size and car parking provision. In practice, however, they are quite different from traditional 'boarding house' accommodation because dwelling units are generally fully self-contained with no shared facilities. Effectively, they are blocks of small 'studio apartments' or even in some cases one-bedroom apartments with separate bathroom and kitchenette. From a regulatory viewpoint, they are technically exempt from the requirement to be registered with Fair Trading if—as was reportedly often the case—they were let unfurnished (or, otherwise, where no bed was provided by the landlord).[22]

Tenants of New Generation boarding houses paid substantially higher rents than the norm for traditional boarding house accommodation. One inner Sydney local government officer interviewee estimated these as often above $300 per week in his locality, sometimes as high as $400. While typically paying a considerable premium over and above rents for traditional rooming houses, however, New Generation scheme tenants were typically benefiting from professional management and custom-designed dwellings in good condition thanks to their recent construction.

While not stimulated by changes in planning regulations as in NSW, research participants in Victoria indicated that there were also some New Generation rooming houses in inner Melbourne, catering for a diverse group of residents ranging from international students to health professionals wanting to live near major education institutions and hospitals. These establishments were said to include a small number of purpose-built establishments in which residents had at least their own en suite facilities and groups of apartments in new, high rise apartment buildings which were effectively let as rooming house accommodation.

2.3.6 Small suburban rooming houses

These were particularly a feature of Melbourne where, as indicated in Figure 2 above, rooming houses were spread around the south eastern and eastern suburbs. According to Chamberlain (2012, p.16), 93 per cent of rooming houses found in the outer suburbs of Melbourne in 2011 were small (with four to nine bedrooms) along with a handful of medium-sized properties with 10–19 bedrooms. Many of the smaller rooming houses were conventional 3–4-bedroom houses in which each room other than the kitchen and bathroom/s was used as a bedroom,

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[21] NSW Planning (2010), *Affordable Rental Housing SEPP Review Technical paper*, http://www.planning.nsw.gov.au/Portals/0/StrategicPlanning/4.%20Boarding%20Houses.pdf

[22] It is understood that, in drafting the legislation, it was never intended that the status of a premises in terms of being 'registrable' should be dependent on the provision of beds.

with some larger rooms partitioned into two. Some of these were used as a rooming house pending demolition (Chamberlain 2012, p.16).

In summary, there were distinct segments in the rooming house market, albeit with overlapping clientele in some cases, as well as some differences between Sydney and Melbourne.

→ Traditional rooming houses cater to people who are most disadvantaged and most vulnerable.

→ Upgraded traditional rooming houses carry a price premium and have a more mixed clientele, including some international students.

→ Student rooming houses are very diverse and may have a mixed clientele.

→ Assisted Boarding Houses (NSW) have a small, high need and very vulnerable population.

→ New Generation boarding houses are particularly prevalent in Sydney where they have been facilitated by changes in planning legislation, but are also evident in some inner areas of Melbourne.

→ Small suburban rooming houses cater for a wide variety of people, including international students, and are spread throughout the suburbs in conventional established dwellings.

2.4   Patterns of ownership

Consistent with the broader private rental sector (Hulse et al. 2012), ownership of registered rooming houses appears to be quite fragmented in both states.

In NSW, most rooming houses were in the possession of an operator owning only one such establishment, although this may be a remnant of a larger enterprise from which other premises have been sold in the past. The traditional 'boarding house' sector in NSW was reported to have been experiencing a 'cohort effect' with the ageing of longstanding owners, and some establishments being handed down from one generation to the next within a family. A key trigger for rooming house sale (possibly precipitating closure), therefore, was the retirement of an owner without a willing family successor.

As perceived by NSW local government officers, the expanding part of the sector—that is purpose-built multi-unit student accommodation and other New Generation boarding houses— involved a new set of players. These included property companies with an interest in the wider apartment market and seeing this niche of the housing market as offering a good business opportunity.

In Victoria, individuals operated 60 per cent of rooming houses and organisations operated 40 per cent. For-profit organisations appeared to operate 79 per cent of registered rooming houses, with 21 per cent run by not-for-profits. Closer analysis of the state government register showed that:

→ Individual operators typically had small portfolios and among the individual operators there was a pattern of family names with different first names perhaps indicating that family members combined to operate a small number of rooming houses.

→ Organisational operators generally also had small portfolios although the largest operator had 34 registered rooming houses in June 2014.

It should also be noted that an 'operator' in the Victorian context can be the owner of the building who does the day-to-day management; the person who has leased the building and operates it as a rooming house; or an agent or 'head tenant' employed by the owner.

In Victoria, there was an industry-based move to promote best practice rooming house management through the formation of an association, the Registered Accommodation Association of Victoria (RAAV). With the support of Consumer Affairs Victoria, RAAV published *Running a better rooming house: a best practice handbook for operators* (2011). It sought to

improve rooming house operations; extend operator knowledge of social and legal issues; raise the standard of the rooming house sector; and encourage the growth of the sector. Not all registered rooming house operators, however, were members of the Association. There was no evidence of any equivalent industry-based improvement process in NSW.

2.5   Rooming house residents

Over more than two decades, boarding/rooming house residents have been considered to be homeless in terms of Chamberlain and Mackenzie's (1992) cultural definition of homelessness. As Chamberlain and MacKenzie (2008) note, the ABS classifies people living in boarding houses as part of the 'tertiary homeless' population when it enumerates homeless people on census night. However, there is increasing evidence that, in addition to those arguably classed as 'homeless', residents of rooming houses also come from a more diverse and broader socio-economic background.

On one hand, there are what has come to be seen as typical rooming house residents. They include very low income and vulnerable households, including those exiting from various types of institutions. In the case of NSW, this includes the remaining residents who were moved out of large state-run institutions closed in the 1980s and 1990s. They include people whose lives have been affected by drug and alcohol problems.

On the other hand, rooming houses also accommodate domestic and international students, low-waged workers seeking cheaper accommodation such as those starting out in trades, those affected by family breakdown such as divorced men, travellers who have decided to stay in a place for a while, people moving from the country or interstate, and some residents on higher incomes living in New Generation rooming houses seeking flexible accommodation near to their place of work (e.g. hospital workers).

It appears that there are a number of means by which people find a room in a rooming house, although there is little systematic evidence on this point and different means of access to attract different types of residents. Tertiary education institutions sometimes refer students to known rooming houses in their catchment area when their own accommodation is full. NGOs refer some people to rooming houses as a form of emergency housing if there are no other options available. Other operators advertise their vacancies on Internet sites to a variety of people including intentional students and backpackers (e.g. on Gumtree).

2.6   Summary: trends in rooming house provision

There is a lack of objective and verifiable data on rooming house provision in NSW and Victoria. Indeed, as indicated above, official estimates of the number of rooming houses and rooming house residents have been contested and different methodologies have produced different results. However, drawing on available information and the views of research participants, there appear to be a number of significant trends.

Until fairly recently, the dominant story about rooming houses was one of decline. This seems to be the case for the closures of traditional rooming houses and the ABH sector in Sydney. The reasons for closures were seen as more around ageing owners wanting to exit the sector and realising what in some cases had become a very valuable asset, due to rapidly escalating land values. More than 80 per cent of ABH establishments had closed in the period 1994–2010—down from 187 to only 31. This decline was officially attributed to growing compliance, operational and maintenance costs, the rising value of the underlying land, and the ageing of owners.[23] Resident advocates and support services often welcomed closures in the ABH sector

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[23]   NSW Interdepartmental Committee on Reform of Shared Private Residential Services (2011), *Boarding nouse reform discussion paper* , https://www.adhc.nsw.gov.au/__data/assets/file/0019/250417/ Boarding_House_Reform_Discussion_Paper_Nov2011.pdf

since the NSW government had committed to rehousing residents, often in better accommodation with better linkages with support services.

In some cases, rooming house owners had reduced the scale of their operations in response to regulatory expectations; specifically, the fire safety standards applicable to Class 3 premises under the Building Code of Australia. More assertive policing of these standards by some local councils was believed to have prompted some owners to reduce building capacity to the 12-bedspace threshold below which an establishment is classed as a Class 1b property and is, as such, bound by lesser fire safety requirements.

There also were clear growth segments of the market, in particular student boarding houses, New Generation boarding houses, particularly in inner Sydney, and mini-rooming houses in conventional dwellings in Melbourne's suburbs. Some of the research participants believed that there was net expansion of the sector with the scale of new development more than offsetting ongoing closures in the traditional (including ABH) sector. Others perceived that a historic trend of traditional sector contraction had levelled out in the past 5–10 years—perhaps reflecting a growing tendency for older establishments to be upgraded or redeveloped with New Generation boarding houses rather than being closed without replacement. However, while these trends were resulting in rising standards of provision, such improvements came at the price of rising rents and a declining body of housing affordable to people on the lowest incomes.

3 REGULATING ROOMING HOUSES: ANALYTICAL FRAMEWORK

3.1 Introduction

The discussion of rooming house system governance in both Victoria and NSW typically focuses on particular regulations and the agencies with responsibility for administering the regulations. In this context, this chapter seeks to present a framework for thinking about rooming house regulation more generally. This is important for a discussion of rooming house regulation, following more than two years of implementing legislative and regulatory change in both NSW and Victoria, within a system where responsibility for enforcing regulations is shared across state and local government agencies. There is therefore scope for taking a step back and considering broader arrangements with the potential for providing public policy reference points. It could assist in the on-going inter-governmental and inter-agency discussion about regulation and assignment of responsibilities.

This chapter presents the framework for analysis in five sections. The first responds to the questions 'what is regulation?' and 'why regulate?' The 'what' of regulation is defined by referring to the idea of rules, regulators and regulatees. The why of regulation is answered by referring to the phenomena of the 'governing at a distance' in western industrialised societies, especially within the context of formerly state-provided services latterly outsourced to non-state actors. The second section presents the idea that there are different types, or styles, of regulation that contribute to the development of broader oversight systems or regimes. The third section distinguishes between the different forms of accountability that can be found within these different regimes. The fourth section focuses on who is being regulated, regulatees, and suggests that it is useful to distinguish different types of regulatees. The sixth and final section draws attention to the fact that responsibility for a body of regulation may be distributed across many agencies and organisations and levels of government. In other words, there may be no centre.

3.2 What is regulation and why regulate?

At the most obvious level regulations are rules, or directives, that require *regulatees*, individuals or organisations, to act in particular ways and more generally shape their behaviour. Organisations can be firms or not-for-profit organisations and in this context the aim will be to shape the way that individuals in these organisations do their jobs. The authority enacting and enforcing these rules or directives is found in government legislation and delegated to a *regulator.* A regulator can be a legislative, executive, administrative, or judicial body that has the legal power to create a binding legal norm. Further, statements of public purpose will accompany the development and promulgation of regulations (see Alford & O'Flynn 2013, ch.7; Black 2002; Orbach 2012).

Regulation can also be defined more broadly by going beyond a formal or functional account of government and rules to be observed by regulatees. This broader definition stems from the observation that formal systems of regulation involve actors beyond the regulators and regulatees. As argued by Hutter (2006), there are a 'variety of economic and civil society actors [that] contribute to the information gathering, standard setting and behaviour modification aspects of regulatory control'. This is a 'decentred' definition of regulation that helps in recognising the economic and social processes that accompany all formal legally-based systems of regulation. Black (2002, p.26) sums up this idea of regulation:

> Regulation is an activity that extends beyond the state, thus regulation may on the basis of such a conceptualisation embrace a variety of forms of relationship between state, law and society. It thus enables the identification, creation and analysis of regulatory

arrangements that involve complex interactions between state and non-state actors, and enables each to be identified as both regulators and regulatees.

As will become clear in the following discussion, this multi-actor scenario and the resulting complex interactions approach to understanding regulation is important for understanding rooming house regulation. The way that rooming house regulation has been accepted as a government responsibility and then embedded within government agencies has resulted in the distribution of responsibilities across agencies. The resulting complexity, which also results from Australia's specific structure of inter-governmental relations, has then been amplified through the development of non-state actor group formation and mobilisation.

This broader involvement of many actors in regulatory arrangements is one reason why contemporary societies have been described as 'regulatory states'. This descriptor is used to convey the idea that the reach of regulation has been extended to encompass more areas of social and economic life and that there are more regulators involving more non-state actors. Why has this type of regulation become such a feature of contemporary societies?

At the broadest level, we can recognise that our societies exhibit constant tensions between the idea of sovereign individuals and self-interest and the idea that individuals are shaped by and assisted by their membership and participation in society. This tension has become ever more apparent through the development of industrial societies characterised by large organisations, specialisation, concentrations of power and wealth and natural resource use. Orbach (2012, p.10) sums up this tension and relates it to regulation as a form of intervention that can support a range of goals:

> We live in a complex world of finite resources, in which the pursuit of self-interest often fails the individual and causes harm to others. These imperfections and limitations are the primary motivation for regulation—to promote economic efficiency, environmental sustainability, morality, and the general welfare of the public.

In relation to rooming houses, the idea that regulation relates to broader purposes of health, protection and welfare in urban settings was evident from the beginning. The earliest example of rooming house regulation in Australia was the passing of *An Act for the well ordering of Common Lodging Houses in the Colony of Victoria* in 1854. It set out the public purpose in the 'preamble' where it stated that 'it is expedient for the general health of the community, and the due protection and welfare of a large class of Her Majesty's subjects residing in Victoria that provision should he made for the well ordering of common lodging houses'. The regulators were 'local authorities' and the regulatees were individual 'lodging house keepers'.[24]

Following this specific purpose legislation, both health and building legislation applying more generally to residential housing has largely covered the regulation of rooming houses. From the mid-19th century, health legislation began to be introduced which 'formed the basis of new regulations, which included some attempt to improve housing standards' (Marsden 2000). In Victoria, the health legislation was amended in 1919 to require registration of boarding houses similar to that applying to 'lodging houses' (Marsden 2000, p.29). Building regulations also began to be developed from the mid-19th century and were aimed initially at controlling the spread of fire between buildings and subsequently distinguished different building classes as well as setting standards for room sizes and the provision of facilities such as kitchens and toilets.

3.3 Regulatory regimes

The regime of regulation governing rooming houses in both states before and after the changes to legislation can be described as 'prescriptive' where detailed rules and the

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[24] Similar regulation of common lodging houses commenced in NSW following the passing of the *Public Health Act 1896* (Greenhalgh et al. 2004. p.8).

observance of those rules forms the basis of regulation. This is evident in the way the regulations simply tell the 'regulatees' what they must do and how they must do it. For example, Section 9 (1) of the NSW Act 2012 states:

> A proprietor of boarding premises that are used as a registrable boarding house must notify the Commissioner, in accordance with this section, of the following particulars so as to enable the Commissioner to include information about the boarding house in the Register.

A list of nine required 'particulars' to be supplied by proprietors follows.

Similarly, standards in the Residential Tenancies (Rooming House Standards) Regulations, is very specific about 'prescribed standards for a room in a rooming house'—for example:

> The prescribed standards in relation to a door used for entry to and exit from a room provided to a resident of a rooming house are that the door is fitted with a locking device that (a) is operated by a key from the outside; and (b) can be unlocked from the inside without a key.

This prescriptive approach is quite different to regulation practiced in two other regime types: system-based regulation and performance-based regulation (May 2007).

In system-based regulation, the focus is on the system used to produce goods and services. Regulatory judgments are made about the plan and the quality of production processes, not the observance of particular rules or outcomes. In the case of rooming houses, this regime type is not feasible. Rooming house owners and operators are typically small-scale operators with one or a couple of rooming houses who typically have an iterative and an as-required or responsive approach to management of their rooming houses. In the main, they have not developed formal management systems. Management plans are not feasible in this context.

Performance-based regulation focuses on outcomes or results. In this type of system, it is up to the producers of goods and services to work out how to achieve specified results. The question is asked: Has the desired level of performance been obtained? Again, it is not practical to regulate rooming houses using performance-orientated rules and standards. Such a system of assessment would have to include resident assessments of performance. However, because operators have much greater power than residents, the idea and practice of resident participation in performance assessment is unrealistic. Also performance assessment, like assessment of systems, requires owners and operators to develop formal management systems.

In sum, regulation of rooming houses in both Victoria and NSW is based upon explicit rules about what operators and residents must do to follow rooming house laws. These laws were revised in 2012 following a period of community campaigns and review. In this context, the way regulators apply the rules, and continuing broader discussion of further change, means that it is appropriate to talk about a regime of regulation where there is systematic interweaving of social and economic relations around the formal regulations.

3.4 Accountability and rooming house regulation

There are four principal ways in which accountability is assessed in prescriptive regulatory systems (May 2007).

1. Legal accountability is established through the rules and standards themselves and transparency in the way they are set. In NSW and Victoria this type of transparency was evident in the consultation held during the drafting of regulations and the subsequent formal regulatory impact assessment processes (Department of Human Services 2011; Law and Justice Directorate 2013).

2. Adherence to the prescribed rules is monitored bureaucratically. For rooming houses, this is done through on-site inspections using checklists and recording observations. Judgments and exercise of discretion is an integral part of bureaucratic monitoring.

3. Qualified regulatory inspectors enforce the regulations based on professional judgments. In both NSW and Victoria, this is the responsibility of public health and building inspectors. In Victoria, state government compliance officers from the consumer affairs agency also have a role.

4. Some political accountability is established when residents, often supported by social and community service organisations, make complaints. In both states, these service organisations and groups of rooming house owners also have an acknowledged advisory role. This is an example of the phenomenon of economic and civil society actors establishing a role in information gathering and advising on the formulation and reformulation of regulations (Hutter 2006).

Accountability in any regulatory system will also be shaped by the characteristics of the regulatees and their motivation and capacity to be accountable within the regulatory regime. Black and Baldwin (2012b) based on their review of the research confirm that the behaviour, capacities and compliance motivations of regulatees matters. They suggest categorising regulatees using a continuum that recognises those 'who are well motivated with a higher capacity to comply at the top to those who are less well motivated with a lower capacity to comply at the base'. Figure 3 below presents a typology of regulatees based on this continuum.

Figure 3: Types of regulates

Capacity to comply

Well motivated with high capacity	Well motivated with low capacity
Less motivated with high capacity	Less motivated with low capacity

(Row label at left, rotated: **Motivation to comply**)

Source: Black and Baldwin 2012b, p.136

This type of categorisation of regulatees is often used in 'determining whether a higher risk can be in fact classified as a lower 'net' risk and for the intervention strategy that should be used'. Regulators are constantly faced with resource constraints where the demands to police regulations are greater than the resources available. The problem of regulatory overload is very often present. It is in this context that:

> … the framing of the regulatory task in terms of risk has the potential to have more than a rhetorical effect: it imports particular conceptions of the problem at hand, and leads to the framing of a solution in a particular way. Most notably, 'risk-based regulation' introduces a matrix of assessments which focuses not, or not only, on economic costs and benefits, but on uncertainties, impacts and probabilities. (Black 2005, p.519)

In this context, there is merit in distinguishing between the capacity and the predisposition of regulatees to comply with regulations against a systematic assessment of the arrangements that constitute the entity or activity that is being regulated.

This typology can assist the description and analysis of the rooming house sector. As has already been noted in Chapter 2, this sector is comprised of largely small-scale owners and operators with a single or small number of rooming houses. For most owners and operators there is no formal business organisation with business plans where responsibilities can be

delegated to others. Assessment of the motivation and the capacity for compliance therefore needs to focus on the individual and personal characteristics of the owner or operator.

Factors that could be considered in such assessment processes might be:

→ The record and the capacity of the person directly responsible for managing or running the rooming house. In the context of the small-scale nature of the rooming house industry, the management capacity could be assessed through a focus on training, record of compliance evident in the records of past inspections and history of complaints. Potentially this approach could be developed into an operator accreditation scheme.

→ Transparency of the physical conditions of the rooming houses and their operations through the use of finder and accreditation schemes such as those operating in tourism and some student accommodation markets. They can take into account value for money, affordability, and proximity to major services and display the outcome on an Internet site (Goodman et al. 2013. Appendix 3). Expanding the information provided through state-wide rooming house registers is one way in which this could be done.

→ Distinguishing between market segments in the rooming housing market as another potential dimension for assessment. The basis for this idea is that the rooming house market has become differentiated around the quality of the accommodation and the location. This is similar to the proposal put by some in 1990s UK debates about the regulation of the private rental sector. Some argued for greater reliance on self-regulation at the top end of the market by relying on competition and weeding 'out the poorer quality properties and landlords and letting agents' (Rugg & Rhodes 2003, p.939). The market for rooming houses may be developing sufficient depth for this to be included as a factor in risk assessments.

The level of resources available to government agencies to devote to regulation and the distribution of responsibilities to inspectorates also shapes the level of accountability within a regulatory regime. In both Victoria and NSW the 'front line' responsibility for rooming house regulation has been assigned to local government. The key features in the organisation of the assignment of this responsibility are the following:

→ Regulation of rooming houses is primarily a local government responsibility delegated by state governments to local government through state government legislation.

→ The spatial distribution of rooming houses in each state results in a very uneven distribution of rooming houses between local authorities so that a few local authorities have large numbers to regulate while most have few or none.

→ Regulation by local government is the responsibility of public health inspectors and building inspectors who are authorised respectively by state government public health and building legislation.

→ Rooming houses are just one area of regulatory focus for public health inspectors and building inspectors:

1. Public health inspectors have responsibilities that include nuisance, registration of 'prescribed' premises (including rooming houses), immunisation services and aquatic facilities.

2. Building inspectors have responsibility for regulating all classes of building structures in the municipality in accord with the Australian Building Code.

→ Rooming houses are established primarily through a change of use of existing buildings, principally existing houses and apartments, which can also be disestablished through a subsequent change of use.

→ Owners and operators may create multi-occupancy housing arrangements in dwellings that fit the regulatory definition of a rooming house but not declare them to local government regulators thus creating 'unregistered' rooming houses.

→ Community advocacy and rooming house proprietor and owner organisations interact with regulators through advocacy, training and engagement strategies, much of which is supported through state government grant-in-aid funding.

Finally, it is important, to develop a clearer idea of the range of tools that can be used to regulate rooming houses. Broadly, rooming houses can be considered to be what Black and Baldwin (2012a, p.6) define as 'low-risk sites and activities' where the risks that are present 'are relatively simple, the main characteristics are relatively well-known, the harm is relatively remediable or reversible, and the risk is relatively uncontested'. They propose three main categories of tools.

→ The first is screening and rule-based strategies which are used to determine who should fall within the regulatory regime, and their regulatory obligations. The current system of registration is an example of a screening and rule-based strategy.

→ Monitoring is the second category and uses mechanisms that gain and verify information about compliance. Four main types are identified: direct regulator/regulatee contact, use of proxy indicators, reliance on the business and use of third party monitors.

→ Engagement involves engagement with interested groups such as industry associations, NGOs and local communities. This improves regulatory performance by providing information and designing processes that help achieve regulatory objectives, as well as linking with other agencies that might withhold support for a business depending on compliance required by another regulator.

In summary, responsibility for regulating rooming houses is delegated from state government to local government and responsibility is then divided between two local government inspectorates. Performance assessment is undertaken at a local level. There is no system for aggregating the experience of individual local government inspectorates in regulating rooming houses. All that has been possible in this research is to learn something about the arrangements and experience of a small number of local government authorities in regulating rooming houses. Some discussion of this experience is presented in Chapter 4.

3.5   Decentred regulation

The systematic interweaving of social and economic relations constitutes regimes of regulation where the directives found in formal regulations is only one factor in the shaping of relations. However, regimes also have definite institutional features that are evident in the array and spread of participants in a regime. It is in this context that the idea of 'decentring' has been introduced to the analysis of regulatory arrangements in contemporary government. The analysis starts by recognising that regulation happens within a network where no one actor can control the whole system. Regimes are typically heterarchies not hierarchies (Black 2007, p.279).

There are two important dimensions to these decentred institutional arrangements. They can be denoted using the terms 'diverse actor group memberships' and 'multi- level governance arrangements'.

Regulatory regimes are typically comprised of diverse actor group memberships. As Black (2007, p.259) notes in her analysis of developments in UK Government:

Both regulators and the regulated may be governments, formal or informal associations, firms, individuals, and play other roles: professional advisors, accreditors, auditors, non-governmental organisations, charities, voluntary organisations, and so on.

These participants within a regime are then engaged in three types of activity (Black 2007, p.265). First, there is activity aimed at defining goals and setting rules and standards. Records of this activity can be found in significant episodes in goal formulation and rule-setting often associated with task forces and review committees as well as through ongoing advisory processes. Second, within regimes of regulation there is the on-going process of checking and certifying on compliance with regulations. Regulators employ a number of means to check on compliance. One of these is to draw upon reports of non-government actors. This work is often supported directly by government regulators when they resource non-government organisations to systematically check on the operations of regulatees or operators seeking to avoid regulation. Third, participants are engaged to varying degrees in trying to change behaviour to achieve the goals that underpin the regulations. This will be evident in the way in which regulators interact with regulatees including the way they pursue enforcement strategies including prosecutions. It will also be evident in other practices such as information dissemination and formal and informal training.

Regimes can also have what can be described as a multi-level governance dimension that stems from the involvement of more than one level of government. In the Australian context, there are potentially three levels of government participation and in the area of rooming house regulation, agencies from all three levels of government are participants in the regime of regulation. In some regimes there is also the possibility that global governance will shape regime arrangements. Typically this is through the arrangements that flow from the Australian Government signing an international treaty. This global dimension is also evident in the rooming house regime of regulation following the passing of the *Disability Discrimination Act* 1992 which extends the commitments made by the Australian Government when it became a signatory to international declarations on the rights of people with disabilities. In turn this act has led to access requirements being included in the National Building Code for measures that improve access for disabled people to live and work in buildings.

In the context of rooming house regulation, this decentred understanding of regulation can be described in the following way. First, it is an area of regulation where agencies within all three spheres of government in the federation are 'regulators'. Also. like all areas of shared responsibility in the federation, there are different objectives and limited means for resolving these differences—for example, rooming houses have never been considered within a COAG forum. Second, representatives of these agencies at all three levels are participants in interactions about future rooming house regulation. Some of these interactions are on-going while others are more episodic because they are governed by statutory review cycles, such as disability access requirements. Third, there are non-state actors that represent the interests of rooming house owners and operators and others that represent the interests of rooming house residents. Some of these non-state actor groups are provided with resources that enable them to represent the interests of owners and operators or residents.

4 RENEWAL OF NSW AND VICTORIAN ROOMING HOUSE REGULATORY REGIMES

4.1 Introduction

This chapter presents an assessment of the renewal of NSW and Victorian rooming house regulatory regimes that have developed since the changes in legislation in 2012. It is based on an analysis of the research data gathered through interviews, focus groups, panel discussions and two Delphi surveys of panel participants. As described in the introduction to this report, the field research was deliberately designed to elicit and document the views of participants of the different actor groups that are active and constitute the regimes of regulation. They are found in all three areas of government, state, local and national, in the Australian federation, the rooming house industry and the not-for-profit sector. It is an area of regulation where many different actor groups are present. They are constantly interacting and constitute a regime of regulation where there is evidence of the systematic interweaving of social and economic relations around legislation and regulations.

The principal state government agencies are in the consumer affairs, housing, health and disability domains. The leaders are state government consumer affairs and housing agencies. Other state government regulatory agencies that sometimes become involved include ombudsmen, Auditor-Generals, guardianship boards, building authorities and planning departments. Within local government, the health and building departments within council administrations have primary responsibility. Local government planning departments also have regulatory responsibilities. Australian Government agencies are also involved principally through requirements for buildings, including rooming houses, to meet disability access standards. Rooming house providers have formed associations to represent their interests in both states. NGOs in the tenancy, housing, community services and student services areas are very active in representing the interests of rooming house residents as well as researching issues and advocating for regulatory change.

This chapter presents an analysis of the regimes of regulation using a conceptual framework drawn from Chapter 3. It has four elements:

1. The concept of *decentred multi-level regulation* guides analysis to recognise that the three levels or spheres of government in the Australian federation are involved and that within these three areas there are multiple agencies involved. Further, beyond government there are civil society interests that are involved.

2. The concept of *risk* is used to guide the analysis to recognise the uncertainties, impacts and problems in the provision of rooming house accommodation, which the rules and directives found in various sets of regulations aim to help identify and encourage arrangements that mitigate the problems.

3. The concept of *accountability and incentives for effective regulation* recognises that different actors groups are involved and want to know what the effect of the regulations is on accountability and how actor groups relate to regulations and incentives.

4. The concept of *expectations of standards* establishes a focus on what the regulations are expected to achieve in shaping the way in which rooming house accommodation is provided and the social and economic relations between providers and residents.

4.2 Decentred multi-level regulation

4.2.1 How decentred regulation applies in this setting: overview

In Chapter 3 the regime of regulation governing the rooming house sector in both states was described as 'decentred'. Figure 4 below illustrates the regime with general names that

generically identify the main agencies and actor groups in both NSW and Victoria. The regime's 'decentred' nature is evident in the following three characteristics:

1. All three spheres of government have agencies with regulatory responsibilities and sets of objectives that guide their regulatory responsibilities.

2. Agencies and actor groups interact in processes where they seek to adjust responsibilities and the way the regime works.

3. There is civil society involvement in the regime through NGOs and owner/operator organisations that have a status and presence in many processes.

Figure 4: Schema of rooming house decentred regime of regulation
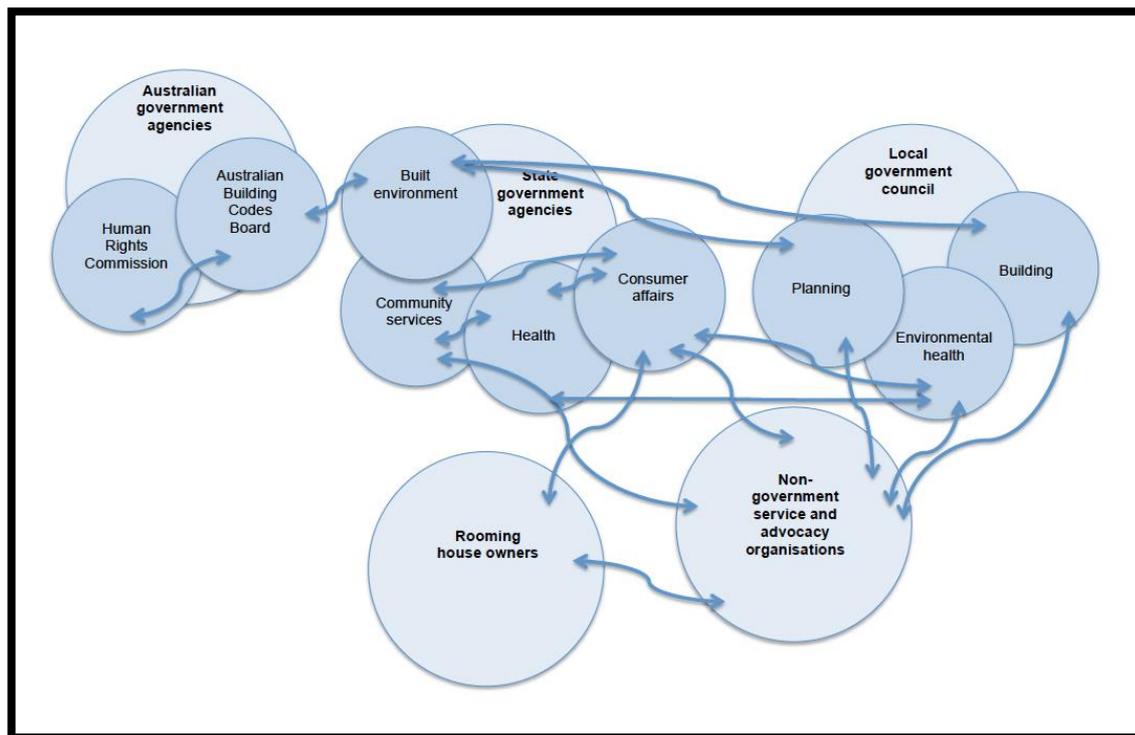
The issue addressed in this section is: Do the decentred arrangements help or hinder the realisation of the goals for more transparency, fairness and growth in the sector that underpinned the 2012 changes in legislation in both states? There is no prior presumption that centralised regimes are preferable.

4.2.2 Relations between state and local government actors

In both states, local government officers are the front-line regulators of rooming houses. They have responsibilities for both the public health and building standards. The evidence from the research is that, especially in NSW, the division of responsibilities and exercise of powers by state and Australian Government agencies weakens rooming house regulation undertaken by local government officers. Much of this stems from the way that regulations divide responsibilities for overseeing different elements of rooming house built structures, physical conditions, and management standards between regulators.

In Victoria, the focus was on the division of responsibilities between Consumer Affairs Victoria (CAV) for minimum standards under the *Residential Tenancies Act* and local government responsibilities under the *Public Health and Wellbeing Act* and the BCA. A local government health surveyor summed it up in these terms:

> … we have our cousins over in Consumer Affairs, who seem to have a lot of the amenity things, that deal with probably more of the health and wellbeing stuff … either our stuff should be with them or their stuff should be with us.

In NSW, the key local and state government relationship issue was the assignment of responsibility for rooming house registration. Before 2012, responsibility rested solely with local government. Then the 2012 *Boarding Housing Act* required owners and operators to apply to register with the Department of Fair Trading. This department does no more than receive and log registrations. Local government regulators reported that there was no apparent relationship between this process with registration and enforcement processes at the local government level. A local government official responsible for rooming house inspection in a Local Government Area (LGA) with multiple establishments responded to an interviewer's question about contact with Fair Trading: 'Minimal, never. Neither before, or now'. Another local government officer responded: The Boarding House Act has made no impact on inspection practice in [this municipality].

A Victorian local government officer summed up the context for the assignment of responsibilities at the time of the 2012 changes. The key point is that assignment was a matter of adjusting responsibilities rather than a broader reconsideration of roles and responsibilities. This officer stated that the arrangements were:

> … a result of decisions that have been made at a [state] government level for which agency is best placed to meet that problem, not necessarily because at a policy or theoretical level they were the right agency but where the agency's best placed at that time. And I agree that the government's quite schizophrenic in its view about rooming houses. …. you could perceive the problem, if we're going to talk about the problem of rooming houses, making them run well, and keep to a good standard, that could be cast as a housing problem to be regulated if housing was a regulator.

In NSW, there was a similar view that limited consideration had been given to the assignment of responsibilities at the time of the new legislation. In NSW, responsibility for the implementation of the *Boarding House Act* rested with the Ageing, Disability and Home Care division in the Department of Family and Community Services. This stemmed from its responsibility for regulating Assisted Boarding Houses that constitute only a very small proportion of rooming houses in NSW (see Section 2.2.2).

Another means for assessing the assignment of responsibilities for rooming house regulation to local and state government is provided by Investigative Panel member responses to survey questions following the respective panel meeting. These are presented in Table 3 below and the following observations can be made:

→ There was a broad agreement that there is scope for improved coordination between state and local government in both states. In NSW this view is more pronounced than in Victoria.

→ In both states there was a view that state governments should play a greater role in the regulation of rooming houses. In NSW this view is more pronounced than it is in Victoria.

→ In NSW there was a strong view that arrangements between state and local government around the registration of rooming houses are in need of improvement.

→ In both NSW and Victoria there was a view that regulation of rooming houses should be seen more as housing standards regulation and be related more to regulation of other types of housing.

Table 3: Panel views on state and local government roles, Victoria and NSW (%)

Victoria	Agree	Neutral	Disagree
The new system suffers from a lack of coordination with local government	67	22	11
Coordination between state and local governments about regulation of rooming houses is much improved under the new regime	33	33	33
Local government should be given overall responsibility for rooming house regulation to streamline regulatory oversight	0	22	78
Regulation of rooming houses would be more effective if it was a state government responsibility	56	33	11
The regulation of rooming houses should be conducted in conjunction with the regulation of other types of housing for disadvantaged and marginalised people.	67	22	11
NSW	**Agree**	**Neutral**	**Disagree**
Inconsistency between the state-level register and council-managed local registers is not an important concern.	9	0	91
The division of responsibilities between the relevant state government departments makes sense and works well.	0	20	80
As regards regulation of general boarding houses, the new system suffers from a lack of coordination between state and local government.	91	9	0
There is a need for the state government to be more active in ensuring adequate general boarding house regulation by local councils.	100	0	0
The regulation of boarding houses should be conducted in conjunction with the regulation of other types of housing for disadvantaged and marginalised people.	80	10	10

Note: Rows may not add to 100 per cent due to rounding.

In addition to discussion of formal assignment of roles there was also some recognition that effective regulation also relied on shared understandings, skills and collaboration of officers. Coordination extended beyond the design of formal structures. This was evident in Victoria where collaboration between state and local government officers during the early implementation of new legislation when CAV enforcement officers put considerable effort into working with local government officers. A local government officer noted that state and local government officers worked in a 'shared regulatory space' and:

> … in some councils we were really successful at building really fantastic relationships, in other councils it was harder, and, you know, there's a lot of turnover at the EHO level at councils, and so that relationship building's really hard.

Outside of government the assignment of responsibilities for rooming house regulation was also of concern, particularly in Victoria. This observation came from a representative of the Residential Accommodation Association, the association representing owners and operators who noted that 'yes we've got very good minimum standards, but they are spread out everywhere'. A representative of an NGO that supports residents similarly observed: 'What they [residents] see is a problem and trying to figure out, trying to play the pea and shell game about who's the right regulator for my problem'.

4.2.3 Intersection with Australian Government regulations on disability access

Another area where arrangements within the decentred regime were seen as problematic related to the Australian Government's anti-discrimination legislation applying to short-term accommodation. As noted above (see Section 1.5.4), the effect of this legislation is to require owners and operators to observe 'access to premises standards' for any new rooming house. This applies to all newly-created rooming houses, both Class 1b and 3a, whether they are new purpose built or conversion of existing structures. Where the provision is seen as problematic is in relation to rooming houses created by converting an existing Class 1a dwelling into a Class 1b dwelling. Here a number of Victorian research participants noted that the costs of observing the 'access to premises' standard' was having a broader effect on the regulation of rooming houses.

The response to the proposition in the survey that 'the regulation requiring disability access for new 1b rooming houses created by changing the use of existing 1a houses is difficult to comply with' (see Table 3 above) indicates that there is an issue. In NSW, 50 per cent agreed with this proposition while 38 per cent were neutral and 12 per cent disagreed. In Victoria, where regulators have paid much greater attention to the conversion of dwellings into 1b rooming houses, agreement was much stronger: 88 per cent agreed, none were neutral and 12 per cent disagreed.

In Victoria research participants described the implications of the 'access to premises standards' when creating a 1b rooming house from a 1a private rental or owner occupied dwelling. RAAV noted that it has 'stifled the growth of rooming houses where rooming houses are converted from existing 1as to 1bs'. Others stated that it led to increased non-compliance with registration requirements. One local government officer reported that their council had established a modus operandi, prior to the application of the 'access to premises standards', where operators complied with regulations. Typically, compliance with standards would cost them between $5–7000, as estimated by this interviewee. However, the new requirements led to greater costs and regulatory non-compliance.

> What happened when the disability legislation came in, they could no longer get these occupancy permits just for that five to seven grand buy-in. Now you're looking at … ramps … safety barriers … upgrade the toilet and shower facilities … adequate kitchen facilities, so the costs started getting quite huge … Now it didn't mean they [rooming house operators] were stopping the business, they just stopped telling us about it. So then it drove it back underground.

In sum, there has been an intersection of regulations governing rooming houses. On one hand, there has been a renewal of regulation managed by local and state governments aimed at improving safety and amenity in rooming houses. On the other hand, there has been new regulation in response to a rights-based agenda that seeks to extend access for disabled people to single room accommodation in rooming houses. An unintended consequence is the disruption of the agenda for the renewal of local and state government regulation of rooming houses.

Finally, there are observations to be made about the nature of debate and discussion about the rooming house regulatory system or regime. First, there is some scrutiny of the system. In NSW, the *Boarding Houses Act 2012* contains a requirement for the legislation to be reviewed against its objectives after five years. This is being led by the Ageing, Disability and Home Care division in the Department of Family and Community Services (Australian Building Codes Board 2008). There is also an up-coming five-year review of the Premises Standards in the National Building Code that will provide an opportunity to examine the unintended consequences of the application of the standards in rooming house regulation. There is also this research examining the regimes of regulation in NSW and Victoria. However, there is as

yet no context for a broader discussion about the broader institutional arrangements, distribution of power and development of regulatory capacity.

4.3 Recognition of risk

4.3.1 Factors contributing to risk in rooming houses

Given that it consists of multi-occupied buildings and houses a significant proportion of vulnerable people, the rooming house sector has been traditionally recognised as a site of significant risk. In the main, this relates to rooming house tenants, but also—potentially—to neighbouring residents. Historically, and today, prime among anxieties around resident safety are fire hazard concerns.

Albeit of a slightly lower order, living in a rooming house is liable to expose a resident to significant risks in relation to crime victimisation and ill-health. Exemplifying the first of these, a Victorian research participant noted NGO worker safety concerns in relation to those providing direct assistance to rooming house residents:

> [NGO X] won't go into the rooming houses …. If clients in a rooming house want assistance with food from [NGO X], they have to meet them in McDonalds or somewhere because they won't go into the rooming houses. They're just too fearful.

Such anxieties are largely founded on the way that the rooming house sector forms a resource for accommodating 'difficult' people. NGO research participants emphasised the potentially problematic mix of rooming house residents compounded by the procedures of various government agencies as regards institutional discharge:

> … we've got mental health institutions that put people into rooming houses … We've got people … straight from prison … the Justice department, the police put them straight in …. It is, it is a dire mix of people. When you get there, they've all got their own set of issues and huge problems … mental health is the biggest. Drug and alcohol, and you've got all this mix of people. They've all been put in by agencies and [it has therefore been asserted that] Boarding houses are run on a system of mutual dishonesty. The rooming houses' operators don't disclose the state of their rooming houses, and agencies aren't disclosing the state of the people that they're putting into them. (NGO, Victoria)

4.3.2 Towards risk-based regulation?

'Minimum standards [in rooming houses] primarily target risk of adverse events' (panel participant in Victoria), but such standards are useful only if they are both appropriately defined and actively policed by a regulatory body. How far do the recently reformed regulatory frameworks for rooming houses in NSW and Victoria incorporate appropriate recognition of risk?

As introduced in Chapter 3, the concept of risk-based regulation is about an efficiency-oriented approach to minimising the regulatory burden for both regulators and regulatees. 'Risk-based regulation is a way for us to prioritise our use of resources and plan how to engage with [regulatees] through further scrutiny, engagement and intervention' (Scottish Government 2012, p.7). To the extent that it involves a distinction between establishments in relation to residents' vulnerability, the separate identification of Assisted Boarding Houses and the more intensive attention focused on ABHs under the NSW regulatory framework could be seen as consistent with a risk-based approach. However, this was mainly a codification of existing practice rather than a reform, as such. And while individual councils may well apply risk-based regulation principles in their oversight of local establishments, the 2012 state-level regulatory frameworks do little to promote practice of this kind.

4.3.3 Risks for unregistered rooming house residents

As highlighted by our research, a prime focus of stakeholder concern remains the risk exposure of residents in unregistered premises effectively operating as rooming houses but under the radar of the local authority because of lacking planning approval for such activity. Eighteen out of 20 Investigative panellists participating in our post-panel online survey (90%) agreed with the proposition in relation to their home state:

> The current system is ineffective in picking up what appear to be a significant number of unregistered rooming houses.

Buildings being used to accommodate foreign students were a particular focus for associated anxieties. Being unregistered, establishments of this kind are without the remit of regulatory oversight.

> … isn't it desirable to treat [unregistered establishments] as effectively boarding houses and therefore subject to the level of inspection and regulation that goes with that? (NGO representative, NSW)

Especially in NSW, many research participants lacked confidence that recent regulatory reform had improved matters in this respect. At the NSW Government level it had been anticipated that making provision for a $7000 fine for unregistered rooming house operation (2012 Act) would have a significant impact in discouraging such practice. For reasons discussed in Section 4.4, however, this expectation did not appear to have been realised.

NSW local government interviewees cited instances where they had been made aware of previously unknown rooming houses due to operators gaining registration on the new state-wide register. This was a matter of concern because of the view that a registration application should be accepted only after confirmation by the relevant council that the premises in question had already gained local planning approval. Overall, nevertheless, it was generally seen that the advent of state-wide registers had done little to enhance the comprehensiveness of regulatory oversight. Hence, across the two states, only 12 out of 20 investigative panellists participating in our post-panel online survey (60%) agreed with the proposition that the new state-wide register had improved rooming house regulation.

4.3.4 Balancing resident risks and social benefits

In contributing to the governance of a sector providing for low-income and otherwise disadvantaged people, regulators face an inevitable need to balance risks to residents (and possibly neighbours) with the social benefit delivered by operators making available accommodation at relatively modest prices. In NSW, for example, there was a government view that local councils remained reluctant to use regulatory powers because of worries about the precarious business position of many operators. With rooming houses increasingly valued as a precious form of 'affordable housing' councils are motivated to avoid imposing demands that would risk pushing establishments out of business. Thus, as acknowledged by a NSW council interviewee who reported that where an established BH is discovered to have been operating for a long time without proper authorisation 'we sometimes say let's help get a development application and get it over the line'.

4.4 Accountability and incentives for effective regulation

As emphasised in Section 4.2, the recently reformed systems for rooming house regulation in NSW and Victoria involve a range of state level players as well as the local council tier of government. Especially within this context of rather diffusely distributed regulatory responsibilities, issues around accountability and incentives come to the fore. While state governments may enact legislation creating powers and responsibilities for local government, what mechanisms or levers exist to incentivise the effective use of these powers?

Relevant here is the concern expressed by many NGO research participants and some state government officials that, when it comes to rooming house regulation, local government has continued to operate in a largely responsive (rather than proactive) mode:

> Boarding House reform was also supposed to get boarding houses onto the agenda of local government, but it hasn't really yet done so. (NGO representative, NSW)

A prime concern here (as discussed in Section 4.3) is the perception that local councils could do more to seek out (and bring under scrutiny) unregistered operators. As revealed through our research, in NSW the absence of any local authority enforcement action against unregistered providers under 2012 Act powers has been found puzzling by state government (ADHC) staff:

> And what we've been grappling with for the last two years is why [no actions have been initiated]. Now if there's a problem I haven't been able to get to the bottom of what the problem exactly is. Is it a resource issue? Is it because we don't want to kick people out and make them homeless? There's a real lack of clarity …

However, while anxieties around pushing operators out of business might provide part of the answer, the lack of any clear incentives for such action could be a more important consideration. But recognising that there was currently little motivation for such action on the part of local government, it was seen in NSW that:

> … maybe there's some financial incentives to actually go and work with … [Councils where boarding houses are located] … And then you could just provide incentive[s] to those councils … through the Department of Fair Trading to … actually go and check those boarding houses and get them registered. (local government representative)

Arguably, the need for such incentives was particularly acute under the NSW system where the designated register-holding department at state level (Fair Trading) was invested with no active operational role in policy implementation. This contrasted with the situation of the Fair Trading counterpart department in Victoria, Consumer Affairs, which had been tasked with an 'active collaboration' role in relation to local government rooming house inspections. In part, this contrast results from the different decisions of the two governments on resourcing. Whereas the Victorian Government designated some additional funding to support implementation of 2012 reforms, this had not been so in NSW. Here, new responsibilities had been placed on local government unaccompanied by any new funding.

One concrete suggestion for incentivising local authority enforcement action that emerged in the course of the Panel discussion was the proposal that, rather than being wholly remitted to the state government, penalty fines for unregistered operation as imposed by local councils should be paid to and retained by the relevant council.

Another suggestion considered in the panel discussions in both Victoria and NSW was to make operators more accountable through licensing. In other words, in addition to a focus on buildings there would also be a focus on the persons who are responsible for managing and operating rooming houses. A member of the Victorian panel expressed the case for focussing on rooming house operators in the following terms:

> [The] other big issue about the register, [is] about who is the registrant … there were provisions put in to try to deal with this issue … to make sure that the operator was correctly identified [in the register]. In our view that's just not working. It's still almost impossible to identify who the proper operator of some rooming houses is.

This has led to some arguing that what is required is a system for licensing rooming house operators. Participants on the Victorian and NSW panels indicated considerable support for the licensing idea. In Victoria, 56 per cent supported the idea while 44 per cent were neutral; in NSW, 67 per cent supported the idea and 33 per cent were neutral. Associated with this support for licensing there was also support for operator training and education indicated by responses to the proposal that 'better rooming house management is best promoted through

education and training of operators'. Support for this was greatest in Victoria with 78 per cent agreement, 11 per cent neutral and 11 per cent disagreement. In NSW, 50 per cent supported the proposition, 30 were neutral, and 20 per cent were opposed.

4.5   Expectations of standards

The community campaigns in both NSW and Victoria made improving the standards in rooming houses a priority for the revision of legislation. New regulations were seen as a way of increasing the quality of rooming house accommodation by simply requiring a set level of amenity for rooms and common areas, utilities and improving the standing of residents in their dealings with rooming house owners and operators.

In NSW. this position was supported by government officers from eight government agencies who were members of the NSW Interdepartmental Committee on Reform of Shared Private Residential Services (2011, p.10). Their report supported prescriptive regulation when it stated:

> Standards could be introduced for all boarding houses for matters such as accommodation and boarding house operations, for example, fire safety, power of entry and food safety and standards for those providing meals.

Subsequently the Interdepartmental Committee recommendation was not reflected in the draft legislation (Shelter NSW 2012, p.6) or the final legislation.

This has made the enforcement of standards difficult. A local government regulator observed that: 'the Boarding House Act was a missed opportunity to define what is required of an owner to run a compliant boarding house'. Instead, local government officers had 'to continue to rely on the requirements specified in the Local Government Act, [which] are very general and must be interpreted locally'. NGOs also think that there is a problem. A representative of the Tenants Union note that 'without those very clear minimum standards about, I think overcrowding, but then also property conditions, that's going to continue to be a problem, and it's a problem with the *Boarding Houses Act*'.

It appears, however, that opinion about the need for more specific standards is more divided. NSW panel members responded to the proposition that: 'more precise specification of boarding house minimum physical and amenity standards by the state government is unnecessary' by indicating that 46 per cent agreed, 46 per cent disagreed and 9 per cent were neutral.

In Victoria, the Rooming House Standards Taskforce (Vic.) & Foley (2009, p.16) found that 'rooming houses operate in a context where providing a safe living environment is important and difficult to achieve'. It endorsed a prescriptive approach to specifying standards for rooming houses through amendments to the *Residential Tenancies Act* 1997, which were subsequently included in the Act. A CAV officer summed up what the agency thought had been achieved:

> … we found we've increased the safety and that is a type of amenity. The safety's increased by having circuit breakers, earth leakage detection, gas and electrical safety checks, having a screen door with a peep hole so if someone undesirable comes to the front door you don't have to let them in.

Moreover, this specification and implementation of minimum standards is in advance of what applies in the private rental market where dwellings are not inspected for compliance with building standards. In rooming houses:

> … those safety improvements are way above what standards are … for all other rental properties in Victoria. So I don't think these standards are minimum. I think these standards are a very good example that may even carry on to the rest of the rental industry.

In Victoria, panel members agreed with the CAV position that the minimum standards were 'the most important part of the reforms introduced in 2012'. A majority of panel members (56%) supported this statement while 33 per cent were neutral and 11 per cent disagreed. However, when panel members responded to the proposition that 'minimum standards have made little difference to the quality and amenity of rooming houses' the response was more polarised. Again 56 per cent agreed but 33 per cent disagreed and 11 per cent were neutral.

In practice, the enforcement of standards is difficult because there are rooming houses that remain unregistered and are not being inspected for compliance to standards required by regulations. The extent of this regulatory avoidance is unclear. One municipal health inspector estimated: '180 approved from council; there's probably about 200 illegal ones, unauthorised ones'. In NSW, the Tenants' Union of New South Wales (2014) sought to estimate the level of avoidance through a 'snapshot' analysis of room share advertisements on the Gumtree website. The conclusion was that 'a large part—if not the largest part—of the premises to which the *Boarding Houses Act 2012* applies is not complying with the requirement to register'. This led to a question 'as to whether these premises are not complying with other requirements of the *Boarding Houses Act 2012* and other laws'. There has been no similar survey in Victoria. However, there was broad agreement among research participants in Victoria that unregistered rooming houses are operating and standards in these premises is an issue of concern. It appears that a reason for operators and owners failing to register is that they do not meet the standards.

5 REGULATING ROOMING HOUSES INTO THE FUTURE

Previous chapters have reviewed the nature of the rooming house market and current trends; presented an analytical framework for understanding the concept of regulation and ways of regulating in the rooming house market; and a themed discussion of key features of the Victorian and NSW systems of rooming house regulation. This chapter considers future directions for rooming houses in the context of both trends in regulation and broader issues of social policy. It does this by framing the discussion using the four themes developed in Chapter 4: the decentred multi-level system of regulation, risk, accountability and incentives for effective regulation, and expectations of standards.

The discussion is based on the assumption that rooming house living is an important element of the Australian system of housing provision. It is clear, based on available research evidence and statistics derived from the rooming house registers that the sector has grown in recent years. There is also strong evidence that there are many more rooming houses that are operating outside of the regulatory system. In other words. rooming house accommodation is more extensive than the official counts. Further, given changes in household formation, and the limited choices available to low and low-moderate income people in the rental housing market, particularly single people, it is expected that the market supplying rooming house accommodation will continue to grow.

5.1 The decentred multi-level system of regulation

There has been some reform in the systems of rooming house regulation in NSW and Victoria. However, there is a broad consensus within the policy community in the two states, as evidenced in the interviews and panel discussions undertaken for this project, that there is scope for further change. However, discussion of change in this system is episodic and fragmented. There are, it seems, a number of significant disconnects in the way that agencies relate to each other that makes informed policy discussion difficult to conduct.

Three features stand out.

1. There is no one actor or agency that is able to command the attention of the other agencies and establish a program of analysis and develop further proposals for reform.

2. There is little or no involvement by state government housing agencies. Rooming house accommodation and regulation is viewed primarily through the frames of consumer affairs and health and safety.

3. Local government councils that have primary responsibility for rooming house regulation do not systematically consider the issues in day-to-day regulation and bring them into policy discussions.

In this context, there is a case for considering a forum, perhaps a consultative council, which meets periodically to map the issues and commission a program of review and policy development.

5.2 Risk in the system of regulation

The concept of risk is useful for understanding what can go wrong and to prioritise the way regulatory resources are used to scrutinise what is going on. It is also useful to engage with those providing rooming house accommodation and intervene when the regulations are being contravened. It is evident from the interviews and the panel discussions that the concept of risk is actively used in the way that regulators go about their work. However, it also appears that there has been little formalisation of the risk assessment frameworks used by the regulators. Further, there has been little harmonisation or systematic bringing together of risk assessment frameworks. This is evident in local government where both building and health professionals work alongside each other with separate regulatory responsibilities in respect of rooming

houses. It is also evident in local government and state government agency relationships. The concept of risk has also not been developed in relation to the issue of some rooming houses accommodating people who do not have skills or capacities required to look after themselves and interact and harmoniously share common spaces with other residents.

In this context, there is a case for:

→ Developing a shared risk framework for local government and state government agencies that together are responsible for regulating rooming house properties, recognising that there are now a number of distinct market segments in rooming house accommodation provision.

→ Considering less resource-intensive regulation of risk in some segments of the rooming house market by extending the function of public registers to include descriptions of accommodation, prices and opportunities for customer ratings thereby reducing the need for inspections through increased market transparency.

→ Recognising that the current system of rooming house regulation is failing in circumstances where residents do not have the skills and capacities to look after themselves and live harmoniously with others in shared spaces and consider an extended role for other service systems, especially the mental health service system.

5.3   Accountability and incentives for effective regulation

Accountability in the system of rooming house regulation is established through the setting of transparent rules and standards; bureaucratic monitoring of adherence to the rules through inspections; enforcements based on judgments by qualified professionally-trained inspectors; complaints by residents or their representatives; and involvement in civil society organisations in information-gathering and advising on changes to regulation. However, within this system there appear to be two gaps. First, there is no overall system of reporting with performance objectives and indicators that would support regular assessment of the way the system of regulation is performing. Second, there has been no systematic consideration of the system of incentives, such as the collection of fees and fines underpinning the current system and how they might be reworked to provide incentives for more effective regulation.

In this context there is scope for:

→ Developing a project that considers agency reports about the system and how they might be consolidated to report on performance against objectives and inform discussion about the efficacy of the regulatory regime.

→ Consider the costs of rooming house regulation in different agencies and the forms of income, including fees and fines, and assess how the mix of costs and income might be better designed to provide an incentive for better regulation.

→ Consider whether the focus of regulation, which is currently on buildings and exchanges between residents and operators, should be expanded to include a licensing system based on the capacities of operators evident in their qualifications or a fit-and-proper person assessment.

5.4   Expectations of standards

The idea that the standard of rooming house accommodation had to improve was central to the campaigns that led to the decisions to up-date the regimes of regulation in NSW and Victoria. The reviews conducted by government demonstrated support for a tighter and more prescriptive approach to setting and enforcing standards. In Victoria, this support resulted in legislation and regulations that set out new standards and required enforcement. In NSW, the new legislation did not include revised standards and requirements for enforcement. Local government was left with general statements about standards requiring local interpretation and discretion. However, the enforcement of standards, either the Victorian prescriptive standards

or the NSW locally interpreted standards, is only possible in registered rooming houses. There is considerable evidence that there are many, and possibly a growing number, of rooming houses that are unregistered. The level of risk experienced by residents in these rooming houses is unknown but of concern.

In this context, there is scope for;

→ Reconsidering the NSW system for setting standards and, based on a review of the Victorian experience with standard setting, develop a more explicit set of prescriptive standards and the means for enforcing them

→ Developing state-wide systems for supporting and rewarding local government to detect unregistered rooming houses and the development of a best practice guide for processes that test them for compliance and subsequent registration or closure.

REFERENCES

ABS 2012a, *Census of population and housing: estimating homelessness, Cat. No. 2049.0*, Australian Bureau of Statistics, Canberra.

—— 2012b, *Methodology for estimating homelessness from the census of population and housing, Cat. No. 2049.0.55.001*, Australian Bureau of Statistics, Canberra.

Alford, J & O'Flynn, J. 2013, *Rethinking public service delivery: managing with external providers*, Palgrave Macmillan, London.

Australian Building Codes Board 2008, *Regulation impact statement for proposal to formulate disability (access to premises—buildings) standards and amend the access provisions of the building code of Australia (RIS2008-02—as amended),* Australian Building Codes Board, Canberra.

—— 2014, Building code of Australia', *National construction code series*, Australian Building Codes Board, Canberra.

Black, J. 2002, 'Critical reflections on regulation', *Australian Journal of Legal Philosophy*, Vol. 27, pp.1–35.

—— 2005, 'The emergence of risk-based regulation and the new public risk management in the United Kingdom', *Public Law*, Autumn, pp.512–48.

—— 2007, 'The decentred regulatory state?', in P Vass (ed.), *2006–2007 CRI regulatory review*, Centre for Regulated Industries, Bath, UK.

Black, J. & Baldwin, R. 2012a, 'When risk-based regulation aims low: a strategic framework', *Regulation & Governance*, Vol. 6, No. 2, pp.131–48.

—— 2012b, 'When risk-based regulation aims low: approaches and challenges', *Regulation & Governance*, Vol. 6, No. 1, pp.2–22.

Building Professionals Board 2011, 'Commonwealth premises standards in NSW', *Practice advice PS 11-001*, NSW Government, Sydney.

Burke, T. 1988, 'Public housing and the community', in R Howe (ed.), *New houses for old: fifty years of public housing in Victoria 1938–1988*, Ministry of Housing and Construction, Melbourne.

Carr, H., Cowan, D. & Hunter, C. 2007, 'Policing the housing crisis', *Critical Social Policy*, Vol. 27, No. 1, pp.100–127.

Carter, R. 1988, 'A commission for reform: policy innovation and organisational change in the fifth decade', in R Howe (ed.), *New houses for old: fifty years of public housing in Victoria 1938–1988*, Ministry of Housing and Construction, Melbourne.

Centre for Urban Research and Action (CURA) 1979, 'Landlords and lodgers: a study of rooming houses in Melbourne', Centre for Urban Research and Action, Fitzroy.

Chamberlain, C. 2012), 'Are boarding houses disappearing?', Department of Families, Housing, Community Services and Indigenous Affairs, Canberra.

Chamberlain, C. & Mackenzie, D. 1992, 'Understanding contemporary homelessness: issues of definition and meaning', *Australian Journal of Social Issues*, Vol. 27, No. 4, pp.274–97.

—— 2008, 'Counting the homeless 2006, ABS Cat. No. 2050.0', *Australian Census analytic program,* Australian Bureau of Statistics, Commonwealth of Australia, Canberra.

Chartered Institute of Housing (CIH) 2014, *Practical implications of immigration checks on new lettings*,

http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Practical%20implications%20of%20immigration%20checks%20on%20new%20lettings.pdf

Coleman, W. & Skogstad, G. (eds) 1990, *Policy communities and public policy in Canada*, Copp Clark Pitman, Toronto.

Dalton, T., Hulse, K. & Pawson, H. 2015, *Rooming house futures: governing for growth, transparency and fairness – Victorian Discussion Paper*, Australian Housing and Urban Research Institute, Melbourne.

Deane, F., Tweedie, R., van der Weyden, C. & Cowlin, F. 2012 'Unlicensed Boarding House Managers' Experiences and Perception of Need in Residents with Mental Health and Substance Use Problems', *International Journal of Mental Health Addiction,* Vol 10, No 6, pp.862–876.

Department of Human Services 2011, *Proposed residential tenancies (rooming house standards) regulations: regulatory impact statement*, Government of Victoria, Melbourne.

Drake, G., Blunden, H., Newton, K. & Lentini, E. 2014, *Boarding Houses Act 2012 evaluation report 1*, University of Western Sydney, Sydney.

Goodman, C. 1987, 'The Delphi technique: a critique', *Journal of Advanced Nursing*, Vol.12, No. 6, pp.729–734.

Goodman, R., Nelson, A., Dalton, T., Cigdem, M., Gabriel, M. & Jacobs, K. 2013, *The experience of marginal rental housing in Australia*, Australian Housing and Urban Research Institute Final Report, No.210, Melbourne.

Greenhalgh, E., Miller, A., Minnery, J., Gurran, N., Jacobs., N & Phibbs, P. 2004, *Boarding houses and government supply side intervention*, AHURI Final Report, No. 54, AHURI, Melbourne.

Howe, R. (ed.) 1988, *New houses for old: fifty years of public housing in Victoria 1938–1988*, Ministry of Housing and Construction, Melbourne.

Hughes, D. & Lowe, S. 2008, *The private rented sector: regulation or deregulation*, Ashgate, London.

Hulse, K., Burke, T., Ralston, L. & Stone, W. 2012, *The Australian private rental sector: changes and challenges,* Positioning Paper no. 149, Australian Housing and Urban Research Institute, Melbourne.

Hutter, B.M. 2006, *The role of non-state actors in regulation*, ESRC Centre for Analysis of Risk and Regulation, Discussion Paper, No. 37, The London School of Economics and Political Science, London.

Jarman, R. 2013, *The private rented sector: how effectively is it regulated?* Housing Quality Network, York.

—— 2014, *Overseeing the PRS in England: recent developments*, Housing Quality Network, York.

Johnson, G., Natalier, K., Mendes, P., Liddiard, M., Thoresen, S., Hollows, A. & Bailey, N. 2010, *Pathways from out-of-home care*, Final Report, No 147, Australian Housing and Urban Research Institute, Melbourne.

Kemp, P.A. 2004, *Private renting in transition*, Chartered Institute of Housing, Coventry.

Law and Justice Directorate 2013, *Regulatory impact statement: draft boarding houses regulation 2013,* Department of Family and Community Services, Sydney.

Linstone, H. & Turoff, M. 2002, *The Delphi method: techniques and applications*, Online book viewed 10 June 2015, http://is.njit.edu/pubs/delphibook/.

Marsden, S. 2000, 'The introduction of order', in P Troy (ed*.), A history of European housing in Australia*, Cambridge University Press, Cambridge.

May, P.J. 2007, 'Regulatory regimes and accountability', *Regulation & Governance*, Vol.1, No.1, pp.8–26.

Mohummadally, A. 2009, 'A view from within the Coroners Court: the need for effective rooming house regulation', *Parity*, Vol. 22, No. 5, pp.4–5.

NSW Interdepartmental Committee on Reform of Shared Private Residential Services 2011, *Boarding house reform, discussion paper*, Version 1.0, Department of Family and Community Services, NSW.

NSW Ombudsman 2011, *More than board and lodging: the need for boarding house reform*, NSW Ombudsman, Sydney.

O'Hanlon, S. 2002a, *Together apart: boarding house, hostel and flat life in pre-war Melbourne*, Australian Scholarly Publishing Pty Ltd, Kew, Victoria.

—— 2002b, 'All found' they used to call it': genteel boarding houses in early twentieth-century Melbourne, *Urban History*, Vol. 29, No. 2, pp.239–253.

—— 2005, 'Full board and lodging, hostels for migrant workers in early postwar Melbourne', *History Australia*, Vol. 2, No. 3, 88.1-88.15.

—— 2008, 'Boarding and lodging houses', *The Encyclopedia of Melbourne*, viewed 9 March 2015, http://www.emelbourne.net.au/biogs/EM00206b.htm.

Orbach, B 2012, 'What is regulation?', *Yale Journal on Regulation Online*, Vol. 30, No. 1, pp.1–10.

Pawson, H., Dalton, T. & Hulse, K. 2015, *Rooming house futures: governing for growth, transparency and fairness, New South Wales*, Discussion Paper, Australian Housing and Urban Research Institute, Melbourne.

Rhodes, R. & Marsh, D. 1992, 'Policy networks in British politics', in R. Rhodes & D. Marsh (eds), *Policy networks in British Government*, Clarendon Press, Oxford.

Rooming House Standards Taskforce (Vic.) & Foley, Martin 2009, *Chairperson's Report*, Rooming House Standards Taskforce, Victorian Government, Melbourne.

Rugg, J. & Rhodes, D. 2003, 'Between a rock and a hard place': the failure to agree on regulation for the private rented sector in England, *Housing Studies*, Vol. 18, No.6, pp.937–46.

Scottish Government 2012, *Licensing of houses in multiple occupation: statutory guidance for local authorities,* Scottish Government, Edinburgh.

Shelter NSW 2012, *Shelter NSW submission: NSW exposure draft boarding houses bill 2012*, Shelter NSW, viewed 24 October 2012, http://www.shelternsw.org.au.

Skogstad, G. 2005, *Policy networks and policy communities: conceptual evolution and governing realities*, Workshop on 'Canada's contribution to comparative theorizing' annual meeting of the Canadian Political Science Association, June 2. University of Western Ontario, London, Ontario, viewed 23 March 2015, http://www.cpsa-acsp.ca/papers-2005/skogstad.pdf.

Spearritt, P. 2000, *Sydney's century: a history*, University of New South Wales Press, Sydney.

Tenants' Union of New South Wales 2014, *Registrable boarding houses and the roomshare market: a snapshot analysis of potential registrable boarding houses advertising on Gumtree*, Tenants' Union of New South Wales, Sydney.

Victorian Building Authority 2014, *Access to buildings for people with a disability*, Practice note No. 14, Victorian Government, Melbourne.

Victorian Government 2012, *Residential tenancies (rooming house standards) regulations 2012*.

Appendix 1: Themes for Sydney Investigative Panel meeting (5 December 2014)

Regulatory regime

1. To what extent, if at all, has regulatory reform in 2012 and, in particular, the introduction of minimum amenity standards for rooming houses improved living conditions?

2. Is further adjustment required to the new minimum amenity standards after considering recent experience of regulation?

3. Is the register fit for purpose and what improvements, if any, could meet the needs of various users?

4. How could state and local government (and intra-local government) responsibilities in consumer affairs, building standards and health be streamlined to enable a more efficient and effective system of regulation?

Implementation of regulation

5. How can detection and follow-up of unregistered rooming houses be improved and who is best placed to follow this up?

6. How could implementation of inspections be improved to address multiple visits by different agencies with separate responsibilities?

7. How does the regulation requiring disabled persons access for new 1b rooming houses perform in terms of meeting the needs of people with disabilities and the future supply of rooming houses?

8. How well does the follow up to inspections work and in what ways could this be improved?

9. How should the costs of regulation be counted and how should these costs be met?

Future development

10. To what extent does the regulatory regime cover developments in the rooming house market and how could it be improved to reflect these without discouraging innovation and diversity?

11. Is there a role for regulation to be conducted in conjunction with the regulation of other types of housing for disadvantaged and marginalised people?

12. What other measures are required to improve *management* of rooming houses and support for residents and what would be the most effective means of achieving this?

13. What other measures could assist the development of the sector, such as aspects of housing, planning and community welfare policies and programs?

AHURI Research Centres

AHURI Research Centre—Curtin University

AHURI Research Centre—RMIT University

AHURI Research Centre—Swinburne University of Technology

AHURI Research Centre—The University of Adelaide

AHURI Research Centre—The University of New South Wales

AHURI Research Centre—The University of Sydney

AHURI Research Centre—The University of Tasmania

AHURI Research Centre—The University of Western Australia