



UNSW
City Futures
Research Centre



Submission to the Senate Standing Committee on Community Affairs

Inquiry into the worsening rental crisis in Australia

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Cover image: advertisement photograph of a one-bedroom granny flat to let in Fairfield, Sydney. Advertised as ‘low maintenance’ and asking \$250 per week, it is the cheapest Fairfield property advertised the week of 17 July 2023, and would cost 50% of a single person’s Jobseeker payment, plus 100% of their Rent Assistance supplement.

Executive summary

The Senate's inquiry into rental housing in Australia is timely. More households are renting, and renting longer into their lives, than at any time in the past 60 years. More households are renting from private landlords, as social housing continues to decline as a share of housing system.

The challenges and problems faced by renters have been mounting for years, but are becoming both more widespread and more urgently in need of attention. Over the past two years, rent increases in the private market have become much larger, and much more common. And, despite recent official pledges for stepped-up investment, the nation's small and run-down social rental sector is under intensifying pressure that results from decades of underfunding.

The policy and regulatory regime around rental housing is increasingly unfit for purpose – if that purpose is properly considered to be ensuring that all Australians have an affordable, secure home in decent condition.

Summary of recommendations

- **The Commonwealth should engage with states and territories to expand social and affordable housing, and to strengthen rental assistance, rent regulation and other residential tenancy legal rights as core elements of an Australian Housing and Homelessness Strategy.**
- **The Commonwealth should engage with states and territories to devise and implement a plan to grow Australia's social and affordable housing sector to meet currently unmet and future need – i.e. a projected additional 950,000 social and affordable dwellings by 2041 – to be financed by capital grants and NHFIC bond aggregator loans, and a committed operational subsidy that meets reasonable operating costs.**
- **The Commonwealth should lead engagement with states and territories to reform Rent Assistance, to be paid to all low-income renters in rental stress, in an amount that, when added to 30% of their other income, covers their rent for a suitable dwelling.**
- **State and territory governments should regulate rent increases during tenancies for affordability. State and territories should amend their residential tenancies laws should be amended to limit rent increases during tenancies (including where the tenancy is conducted as a series of fixed terms) to a certain percentage amount, to be fixed by legislation or calculated by reference to the CPI. The frequency of rent increases should be limited to not more than once in 12 months, and provisions for challenging rent increases excessive to the general market level of rents for comparable premises should be retained.**
- **The ABS should regularly publish statistical analysis of the distribution and amount of rent increases during and at the commencement of tenancies, per the 2023 ABS-RBA analysis.**
- **The National Cabinet should establish a working group of federal, state and territory officers, tenancy law experts and sector representatives, to inform, implement and review the agenda for stronger renters' rights.**
- **States and territories should improve the form and consistency of the Residential Tenancies Acts and residential tenancy agreements.**
- **Residential tenancies laws should better safeguard access to rental housing. Discrimination in the provision of rental housing on grounds of source of income, status as**

a recipient of income support, and status as an applicant for social housing should be prohibited. Registers for landlords should be established with a ‘fit and proper person’ test.

- Residential tenancies laws should better protect tenants’ quiet enjoyment, privacy and household autonomy. Appropriate penalties should be devised for breach of quiet enjoyment, and provision made for compensation for loss of enjoyment. Terms that unreasonably restrict the number of members of the tenants’ household should be prohibited. Consideration should be given to allowing tenants to keep pets and make minor alterations without approval.**
- Residential tenancies laws should clarify and strengthen the obligations of landlords regarding dwelling conditions, repairs and alterations. The requirement to provide and maintain premises in a habitable condition should be clarified in nationally consistent minimum standards (applicable to both social and private rental housing), and augmented by specific additional requirements in identified priority areas for improvement.**
- Residential tenancies laws should strengthen tenants’ security against termination and eviction. Termination by landlords should be allowable on prescribed grounds only; without-grounds termination should be outlawed. Tribunals should be afforded discretion to decline termination.**
- Residential tenancies laws should improve access to dispute resolution and the tribunals. An investigation should be made into how to appropriately balance use of preliminary procedures (including by other executive agencies) that divert from the tribunal, ordinary proceedings in the tribunal, and more formal proceedings that produce written reasons.**
- Residential tenancies laws should appropriately address the tenancy consequences of family and domestic violence. Provision should be made for tenants to give a termination notice on grounds of FDV, certified by an appropriate person, and leave without further liability. Vicarious liability should be qualified such that tenants are not liable where a breach.**

1. Introduction

The Senate's inquiry into rental housing in Australia is timely. More households are renting, and renting longer into their lives, than at any time in the past 60 years. More households are renting from private landlords, as social housing continues to decline as a share of housing system. The challenges and problems faced by renters have been mounting for years, but are becoming more urgent. Over the past two years, rent increases have become much larger, and much more common¹. The policy and regulatory regime around rental housing is increasingly unfit for purpose – if that purpose is properly understood as ensuring that everyone has an affordable, secure home in decent condition.

While the image of Australia as a 'home ownership society' continues to resonate in political discourse, the country's homeownership rate is no longer high by international standards. Having peaked in the 1960s, it has gradually declined over decades, and is now below the OECD average.² Australia's rental sector is relatively large, particularly its private rental sector, but its sub-optimal performance in providing a home for renters has received too little attention from politicians and policymakers.

While this Inquiry is titled 'Rental Housing', we understand that the main intended focus is the private rental sector (PRS). This focus is reflected in our submission, but we also refer to public housing and community housing (collectively, 'social housing') where relevant. The submission is structured under the following headings, which correspond to the Inquiry's terms of reference (ToR) (a)-(d):

- (a) 'The experience of renters and people seeking rental housing';
- (b) 'Rising rents and rental affordability problems'
- (c) 'What governments can do to improve rental affordability' and
- (d) 'Improving renters' rights'.

Reference is also made under those headings to international experience (ToR (f)) and government programs (ToR (g)).

The content draws on Australian research evidence, including our own work published in books, academic papers and reports over the past decade – in particular::

- Martin, C. et al. (2023) *Towards an Australian Housing and Homelessness Strategy: understanding national approaches in contemporary policy*, Final Report No. 401, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/401>
- Martin, C. et al. (2022) *Regulation of residential tenancies and impacts on investment*, Final Report No. 391, Melbourne: <https://www.ahuri.edu.au/research/final-reports/391>
- Morris, A., Hulse, K. and Pawson, H. (2021) *The Private Rental Sector in Australia: Living with uncertainty*; Singapore: Springer

¹ Hanmer, F. and Marquant, M. (2023) New Insights into the Rental Market; Australian Economy Bulletin; Reserve Bank of Australia <https://www.rba.gov.au/publications/bulletin/2023/jun/new-insights-into-the-rental-market.html>

² OECD (2023) Affordable Housing Database – Housing Tenure <https://www.oecd.org/els/family/HM1-3-Housing-tenures.pdf>

- Pawson, H., Milligan, V. and Yates, J. (2020) *Housing Policy in Australia*. Singapore: Palgrave Macmillan.

Before we address the experience of renters and persons seeking to access rental housing (ToR (a)), in the remainder of this Introduction we set out some basic facts about the private rental and social housing sectors within the context of the wider Australian housing system, and the crucial relation between owner-occupier and rental investment.

Australian rental housing in context

Private rental

The PRS houses 26% of Australian households and has been growing relative both to owner-occupation and to social housing since the 1980s. PRS expansion accelerated in the 2000s, increasing at more than twice the rate of household growth 2006–2016³. At the most recent Census (2021), further PRS growth was recorded, but at a more moderate rate: to 25.8%, from 25.1% five years previously.⁴

For growing numbers of Australians, private renting has become a long-term or even perpetual prospect⁵. The PRS is also the site of the worst affordability outcomes in the Australian housing system. The median low-income private renter household (i.e. in the lowest two quintile of the population by income) spent 36% of its income on rent in 2019–20, with 20% of this cohort spending over half of their income on rent⁶.

Private rental dwellings are largely owned by other households, for the most part in small portfolios: almost half of PRS properties are owned by landlords who own a single dwelling; about 90% are owned by landlords who own four or fewer⁷. Landlords have, on average, much higher incomes and much greater wealth than other households⁸. A nascent sector of large corporate landlords has recently begun to emerge, but its growth is inhibited by policies that preference small-holding household-sector landlords, on the one hand, and that make commercial property preferable to residential for institutional investors, on the other.⁹

Beneath the gradual growth trend and persistent small-holding structure, the PRS is a dynamic sector. Over the past 20 years, as shown in Figure 1, the distribution of rental price points in the

³ Hulse, K., Reynolds, M., Parkinson, S., Nygaard, A. and Yates, J. (2019) The supply of affordable private rental housing in Australian cities: short and longer term changes; Final Report no. 323; Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/323>

⁴ ABS (2022) Census of Housing and Population 2021. Tablebuilder TED and LLDD.

⁵ Pawson, H., Hulse, K. & Morris, A. (2017) Interpreting the rise of long-term private renting in a liberal welfare regime context; *Housing Studies* Vol 32(8) pp1062-1084

⁶ Productivity Commission (2022) In need of repair: The National Housing and Homelessness Agreement; Canberra: Productivity Commission <https://www.pc.gov.au/inquiries/completed/housing-homelessness/report/housing-homelessness.pdf>

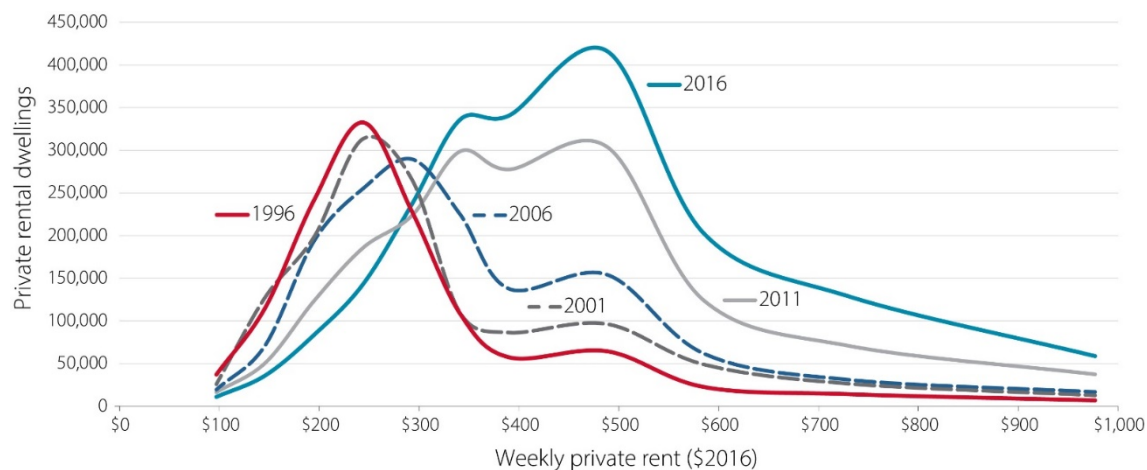
⁷ Martin, C. et al. (2022) Regulation of residential tenancies and impacts on investment, Final Report No. 391, Melbourne: AHURI, <https://www.ahuri.edu.au/research/finalreports/391>

⁸ Hulse, K., Reynolds, M. and Martin, C. (2020) 'The Everyman archetype: discursive reframing of private landlords in the financialization of rental housing', *Housing Studies*, vol. 35, no. 6: 981–1003, DOI: 10.1080/02673037.2019.1644297

⁹ Martin, C. et al. (2022) Regulation of residential tenancies and impacts on investment, Final Report No. 391, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/391>

sector has shifted dramatically up the scale¹⁰. Whereas in 1996, the most common rental price points in the market were around \$200-250 per week (in 2016 dollars), by 2016 the number of properties in the market had not only grown but moved up the scale of real rental prices, with the most common price points around \$450-\$500 per week and many more dwellings than previously renting about that. Hence, despite considerable sector expansion, the shortfall in private tenancies affordable to low-income private renters has deepened.

Figure 1: The changing distribution of private rents, 1996-2016



Note: Derived from analysis of customised matrices from the ABS Census of Population and Housing 1996, 2001, 2006, 2011 and 2016 and refers to all rents paid at these Census years rather than ‘new’ rentals derived from other sources such as state level rental bond boards.

Source: Hulse et al. 2019¹¹, Figure 6, reproduced at Martin et al 2022¹², Figure 1.

Properties and owners churn in and out of the sector rapidly, making housing in the sector structurally insecure for residents. In our recent analysis of linked rental bond data, more than half of rental properties in Sydney and Melbourne were found to be no longer in the sector five years after first observation¹³. A similar proportion of landlords leave the sector at five years¹⁴. However, from other research it appears that many return repeatedly to the sector, in a pattern of purposive investments ranging across locations and jurisdictions¹⁵.

¹⁰ Hulse, K., Reynolds, M., Parkinson, S., Nygaard, A. and Yates, J. (2019) The supply of affordable private rental housing in Australian cities: short and longer term changes; Final Report no. 323; Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/323>

¹¹ Ibid.

¹² Martin, C. et al. (2022) Regulation of residential tenancies and impacts on investment, Final Report No. 391, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/391>

¹³ Ibid.

¹⁴ Wood, G. and Ong, R. (2010) Factors Shaping the Decision to Become a Landlord and Retain Rental Investments, Final Report no. 142, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/142>

¹⁵ Martin, C. et al. (2022) Regulation of residential tenancies and impacts on investment, Final Report No. 391, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/391>

Table 1: Properties no longer in the PRS, Sydney and Melbourne, 2000-2020

	First observed Q1 2000	First observed Q1 2005	First observed Q1 2010	First observed Q1 2015
<hr/>				
No longer in the PRS	Sydney			
5 years later	31.7%	53.8%	63.2%	54.7%
10 years later	43.7%	68.6%	77.7%	
15 years later	48.6%	75.3%		
20 years later	54.0%			
<hr/>				
No longer in the PRS	Melbourne			
5 years later	42.4%	49.3%	49.3%	51.4%
10 years later	51.8%	58.4%	65.4%	
15 years later	56.6%	66.8%		
20 years later	65.4%			

Source: Martin et al 2022, based on special request NSW and Victorian rental bonds data.

Social housing

Australia’s social rental sector—public housing, community housing and Indigenous controlled housing—nowadays houses just 4% of all households, down from over 6% in the mid-1990s. The annual number of lettings generated by the sector has declined from 52,000 to 29,000 – a nominal reduction of 44%, but pro rata to population, down by over 60%¹⁶.

Although always the third sector in Australian housing (after owner-occupation, and private rental), in its mid-twentieth century heyday public housing¹⁷ was a significant force in the planning and construction of Australian cities and towns. Funded via Commonwealth-State Housing Agreements (CSHA), public housing authorities built just under 250,000 dwellings over the quarter century to 1970, mainly for low-moderate-income working families and the aged, and sold 100,000 of them to households on favourable terms.¹⁸ Criticised at that time for housing too few poor households,¹⁹ public housing would subsequently become targeted to very low-income and, later, high-needs households and single persons. With public housing also criticised for its high-handed and paternalistic approach to planning and tenancy management, some governments from the mid-

¹⁶ That is, in terms of the annual number of lettings per 10,000 population – see Pawson, H. and Lilley, D. (2022) *Managing Access to Social Housing in Australia: Unpacking policy frameworks and service provision outcomes*; CFRC Working Paper; Sydney: UNSW City Futures Research Centre https://cityfutures.adu.unsw.edu.au/documents/686/Waitthood_Final.pdf

¹⁷ At that time Australia’s only form of ‘social housing’.

¹⁸ Pawson, H., Milligan, V. and Yates, J. (2020) *Housing Policy in Australia: A case for system reform*; Singapore: Palgrave; Flanagan, K., Martin, C., Jacobs, K. and Lawson, J. (2019) *A conceptual analysis of social housing as infrastructure*, Final Report No. 309, Melbourne: AHURI <http://www.ahuri.edu.au/research/final-reports/309>

¹⁹ Jones, M. A. (1972) *Housing and Poverty in Australia*. Melbourne: Melbourne University Press; Henderson, R. (1975) *Poverty in Australia: first main report*, April, 1975. Canberra: Australian Government Publication Service

1980s began fostering not-for-profit community organisations as alternative providers of social housing (i.e. non-market rental properties targeted to very low income households).

In the mid-1990s the Howard Government drastically reduced CSHA funding and since then, except for the 2008–10 Social Housing Initiative economic stimulus and occasional boosts from state and territory governments, funding has continued at the level of a ‘starvation ration’.²⁰ The sector’s income from rents is also increasingly constrained. Social landlords charge income-related rents and having increased the proportion of income charged over the 1990s and 2000s, the low incomes of their target cohort—98% of whom are in the lowest decile of incomes—are now tapped out.

At the same time, an ageing and under-maintained portfolio has seen maintenance costs tending to rise. Although the extent of this liability is not publicly disclosed by state and territory governments, ABS statistics indicate that 22% of social housing households live in a dwelling with a major structural defect—twice the rate of all households.²¹ Moreover, in 2021 nearly a quarter (24%) of all public housing was in ‘unacceptable condition’, up from 19% in 2014²². In NSW this was true for almost a third (31%) of public housing in 2021, up from 24% in 2014.

As a result of their costs and revenue mismatch, public housing systems operate persistent deficits, and keep afloat through deferral of non-urgent repairs and stock sales.²³ Community housing’s additional revenue earned from capturing Commonwealth Rent Assistance (CRA) paid to their tenants typically generates small surpluses over and above operational expenditures²⁴, potentially sufficient to support the financing costs of some new development, albeit on only a very limited scale. These projects, plus stock transfers from public housing, have seen community housing grow, as the overall social housing sector’s share of total housing stock has declined.

Over the past decade, annual social housing construction has been typically running at only around 3,000 dwellings across Australia²⁵; barely enough to even offset sales and demolitions in the sector. Simply to keep pace with population growth – that is, to maintain (rather than increase) social

²⁰ Martin, C. and Pawson, H. (2017) Australia needs to reboot affordable housing funding, not scrap it; The Conversation 20 February <https://theconversation.com/australia-needs-to-reboot-affordable-housing-funding-not-scrap-it-72861>

²¹ ABS (2022) Housing Mobility and Conditions 2019-20. <https://www.abs.gov.au/statistics/people/housing/housing-mobility-and-conditions/2019-20>

²² These figures, published in the Productivity Commission’s annual Report on Government Services (ROGS), originate from a periodic social housing tenant survey by the Australian Institute of Health and Welfare (AIHW). Participants are asked about the structural condition of their home and the functionality of its basic amenities. As a rough proxy for ‘unacceptable condition’, this is defined as affecting homes where there are less than four ‘working facilities’ (for washing people, for washing clothes/bedding, for storing/preparing food, and sewerage) and three or more major structural problems.

²³ NSW Auditor-General (2013) Performance audit: making the best use of public housing. NSW Auditor-General’s Report, Performance Audit. Sydney: Audit Office of New South Wales <https://www.audit.nsw.gov.au/our-work/reports/making-the-best-use-of-public-housing>

IPART (2017) Review of rent models for social and affordable housing. Final report. Sydney: Independent Pricing and Regulatory Tribunal <https://www.ipart.nsw.gov.au/Home/Industries/SpecialReviews/Reviews/Affordable-Housing/Review-of-Social-and-Affordable-Housing-Rent-Models>

²⁴ Pawson, H., Martin, C., Flanagan, K. and Phillips, R. (2016) Recent housing transfer experience in Australia: implications for affordable housing industry development, AHURI Final Report no 273; Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/273>

²⁵ Pawson, H., Martin, C., Thompson, S., Aminpour, F. (2021) ‘COVID-19: Rental housing and homelessness policy impacts in Australia’ ACOSS/UNSW Poverty and Inequality Partnership Report No. 12, Sydney <https://bit.ly/3nTsZld>

housing representation in the housing system – would require constructing somewhere in the region of 10,000 units per year. However, while this may sound like a relatively large figure, it would represent only about 5% of all housebuilding. As a reference point, in the period 1945-70, public housing construction typically accounted for 16% of the all-tenure total²⁶.

Housing investment – the connection between owner-occupation and rental

In many respects, policies shaping the rental sector – particularly private rental housing – are not directly about the sector, but instead are about housing more widely.

For decades, Australian governments have sought, at least ostensibly, to promote homeownership. Primarily, they have done so through preferential tax treatment. At the national level, this preferential treatment comprises the income tax exemption of owner-occupiers' imputed rental income (i.e. the value of the housing service produced by their housing asset) and capital gains. At the state/territory level, the preferential treatment is the exemption of an owner-occupier's principal place of residence from land tax. Further preferential treatment is given through the exclusion of owner-occupied housing from the national Age Pension asset test, and the first home buyers grants and concessions offered by both levels of government.

The general effect is to encourage owner-occupiers with spare money, or spare credit, to spend it on their own housing as a store of untaxed wealth. The preferential treatment does not, however, favour *home ownership* so much as *existing homeowners*, who can lever their untaxed housing wealth to invest in additional properties held in the PRS. Rental investment does not directly receive the same preferential treatment, but because properties trade between sectors, rental investors benefit from the capitalisation of owner-occupiers' preferential tax treatment. Rental investors are also subject to favourable tax settings in relation to investment incomes that entail a different set of preferential treatments, and these shape private rental housing provision and management in particular ways.

The first of the preferential tax arrangements regarding investment incomes is the tax deductibility of interest payments and other investment costs, including where they exceed investment income and are deducted against non-asset income. This is negative gearing, which helps asset owners bear larger losses than they otherwise would—and hence take on higher levels of debt than they otherwise would, and pay higher prices than they otherwise would, in order to hold an asset in anticipation of capital gains. This arrangement has been part of Australian tax law for almost a century, but its application to rental property investment became prominent in the 1980s—ironically, in the course of a short-lived reform to restrict it.²⁷

The second preferential tax treatment is the 50% tax discount for income from nominal capital gains, which means that when an investor is taxed on asset gains -at the point of sale - they pay at only half the rate that would otherwise apply to their income. This arrangement was introduced in 2000, replacing an indexation arrangement that discounted an amount attributable to CPI movement from taxation. The 50% discount has proved to be substantially more generous. In combination with

²⁶ Pawson, H., Milligan, V. and Yates, J. (2020) *Housing Policy in Australia; A case for system reform*; Singapore: Palgrave

²⁷ Hulse, K., Reynolds, M. and Martin, C. (2020) 'The Everyman archetype: discursive reframing of private landlords in the financialization of rental housing', *Housing Studies*, vol. 35, no. 6: 981–1003, DOI: 10.1080/02673037.2019.1644297

negative gearing it is estimated that their cost to government (consequentially uncollected tax revenue) totalled \$8.5 billion, a figure projected to rise to \$20.4 billion, annually by 2033-34²⁸.

As a result of these two tax arrangements, policy settings that ostensibly prefer owner-occupation have driven a rise in private rental investment, particularly from individual income earners prepared to tolerate relatively low rental yields in pursuit of capital gains. The effects of both negative gearing and the capital gains tax discount are greater the higher the marginal tax rate, so those with higher incomes, and with higher levels of gearing, get greater financial advantages²⁹. This, in turn, means more investment in higher value properties, while lower value properties are more likely to be passed over by investors and fall out of the rental sector, and the relative few remaining properties become less cheap to rent.³⁰

The orientation of rental investment to capital gains is at least part of the story behind the frequency of property churn, as individual landlords judge it a good time – according to movements in the housing market, or their own circumstances – to realise gains. Also, because this pattern of investment has also tended to hold residential rental yields below the level prevailing in other property sectors, it is generally more profitable for developers to sell properties to individuals than to develop so-called build to rent (BTR) operations. For the most part, this is not because the ‘mums and dads’ are treated preferentially to other investors (although it is true that land tax settings, in particular, prefer small-holding investors over large). Rather, it is because of the capital advantage of owner-occupied housing relative to other assets, and the cashflow advantage of investors relative to would-be homeowners. This is the story behind the long growth of small-holding household sector landlords and the historic absence of large corporate landlords from the Australian PRS.

Landlords acquiring properties to be rented out are investing in assets that are valued and traded beyond the rental market. The close integration of the PRS and other housing sectors – particularly the owner-occupied sector, but also increasingly the tourism and second homes sectors, through short-term letting – is a key policy effect. Crucial here are the inter-sectoral dynamics of the PRS and its continual flow of properties. These flows constitute the PRS as a site in which housing assets may be held, or can be re-deployed, according to investors’ own circumstances and their assessment of opportunities and constraints emanating elsewhere.

²⁸ Janda, M. (2022) Negative gearing and capital gains tax discount set to cost the budget \$20 billion a year within a decade; ABC News; 3 November <https://www.abc.net.au/news/2022-11-03/negative-gearing-and-capital-gains-tax-budget-cost/101612854>

²⁹ Hulse, K., Reynolds, M. and Martin, C. (2020) ‘The Everyman archetype: discursive reframing of private landlords in the financialization of rental housing’, *Housing Studies*, vol. 35, no. 6: 981–1003, DOI: 10.1080/02673037.2019.1644297

³⁰ Wood, G., Stewart, M. and Ong, R. (2010) *Housing Taxation and Transfers: Final Report—Research Study for the Review of Australia’s Future Tax System*, Canberra: Australian Government

2. The experience of renters and people seeking rental housing – ToR (a)

The private rental and social housing sectors operate very differently, and renters very have different experiences in each. In this section we address the two sectors in turn – and in each turn we begin with issues of accessing a tenancy, and then tenure security (and insecurity) and dwelling conditions. Of course, cost is also a crucial aspect of the experience of rental housing, but we address that in the next section, on ‘Rent increases and rental affordability’.

Private rental housing – accessing a tenancy

Australia’s large private rental market usually generates a substantial annual flow of lettable vacancies. At least at a superficial level, this might be understood as creating conditions in which consumer choice is possible. In practice, though, the rental house-hunting experience is unlikely to be experienced as an exercise of free choice – even by more affluent households.

In the period since the COVID-19 outbreak in early 2020, Australia has seen a sharply reduced supply of properties advertised to let, and sharp increases in the asking rents sought by landlords and agents. In the first half of 2023, for example, new listings were 15% below the 5-year average³¹, and the median national asking rent was 10% higher than a year previously – which was itself 9% higher than the median at the first quarter 2021.

The shortage of available rental properties affordable to low-income earners seeking a home is captured in a conceptually simple way by Anglicare’s annual snapshot survey of national listings. Of the 46,000 homes identified in Anglicare’s 2023 survey, only 99 (or 0.2%) were priced at a level equating to less than 30% of the estimated income of a couple household with two children, where both parents were receiving Jobseeker payments. On the same basis, only 345 listed homes (0.8%) were within the budget of a single person earning the minimum wage.

Whilst the following quotations come from research undertaken before the post-2020 escalation in market pressure, they graphically illustrate the challenges faced by low-income Australians seeking a place to live in Sydney’s private rental market.

Gina (low-rent area Sydney, married with two children) described her property search in a low-rent area in Sydney after a forced move. Her difficulty was related to her low income and having young children:

Well, when you go [looking], like we found one house that we really liked in Rooty Hill [a low-income suburb in Sydney]. We got there and there was so many people. There were 30 applicants for the house. And the thing is like they were advertising it at say \$480 a week, but it was with so much interest, people are willing to say, “Well I’ll pay an extra \$50 or \$100” ... and they’re not allowed to do that, but they do it. And you know everyone else loses out, but I can’t afford to offer that.

Families with school-age children are usually keen to stay in their present area. This compounded difficulties for Gina:

There’s at least more than 10 people every time we go to look at a property. We were looking at Penrith, but there’s a new estate, Jordan Springs. They’ve got nice new homes, but then my kids don’t want to leave their school and that’s the thing. The kids, they don’t want to change school. My son, he’s in Year 10, he’ll be going to Year 11 next year and I’m willing to make the travel but, ... it’s just, yeah, they want to stay in the area.

³¹ CoreLogic (2023) Housing Market Update June 2023 <https://tinyurl.com/yth465sw>

The last two properties Tracey, a single parent in outer Sydney had rented, had been sold forcing her to vacate. Finding a place for herself and three children was stressful:

Yeah, a lot of stress and the rental market's horrible even out here in piddly old Mount Druitt. There are 25 applicants per house. It's huge. The rental market is as fierce as hell and so naturally any landlord just picks the most attractive, highest income earner. What else would you pick ...

Extract from: The Private Rental Sector in Australia: Living with uncertainty³²

What applicants apply for is a tenancy for a short fixed term: in practice, almost always six or 12 months, which may be terminated or continued at the end of that fixed term. This arrangement suits the sector's small-holding household sector landlords, because it keeps open options for using the property in some other way. Despite occasional suggestions to the contrary, short fixed terms also suit renters, at least as the private rental sector is currently structured. When they commence a tenancy, renters typically know very little about the dwelling (just what they've seen on a 15-minute inspection with multiple other prospective tenants), and nothing about the landlord. Australia's small-holding household sector landlords do not trade on their reputations, and systems for 'customer reviews' such as are common in the tourist accommodation sector are unlikely to work considering the longer length of tenancies and the frequency of landlord departures from the sector. The only qualification to become a landlord in Australia is possession of a dwelling to let. It is appropriate that renters should want to keep their options open, without the liability of a long-term lease.

Australian residential tenancies legislation contains two main sets of provisions regulating access to rental housing. The first relates to payments at tenancy commencement. All jurisdictions limit how many weeks rents may be required to be paid in advance, and the amount that may be required as a bond or security deposit. Most other fees and charges in connection with tenancy applications and commencements are unlawful. These provisions of residential tenancies legislation are longstanding and generally appropriate but there is a need to ensure that they remain effective as rental sector practice changes, particularly with the increasing use by landlords and agents of third-party intermediaries in the application process. For example, the property portal operator 2apply was soliciting applicants part way through the tenancy application process to pay for a 'tenancy check' that could increase the rating given to their application. It appears that the lawfulness of this practice varies between jurisdictions, depending on whether their prohibitions on application fees apply to landlords and agents only, or more widely.³³

The second set of provisions relates to the processes used by agents and landlords for determining applications and allocating tenancies. In all jurisdictions, these include rules on the use of residential tenancy databases (RTDs). These rules are the result of an unusually co-ordinated reform effort in the 2000s, and are fairly strong. This is appropriate to the access problems RTDs can cause – as demonstrated in the previous period, when RTDs were largely unregulated. However, there are gaps in current regulatory frameworks in this respect. These particularly relate to databases that collect information from tenants themselves (rather than from landlords and agents), and databases that monitor existing tenants (as distinct from checking new applications). Aside from the RTD rules,

³² Morris, A., Hulse, K. and Pawson, H. (2021) *The Private Rental Sector in Australia: Living with uncertainty*; Singapore: Springer

³³ Siebert, B. (2022) Rental applicants across the country pressured to pay for their own background checks, ABC News 3 November 2022. <https://www.abc.net.au/news/2022-11-03/renters-pressured-to-pay-for-background-checks/101600796>

though, residential tenancies legislation does little to regulate the application process. Victoria has recently introduced provisions to regulate the information that may be sought by landlords and agents from prospective tenants through the application process, including prohibitions on requests for bank statements with daily transactions and questions about past tenancy disputes.

Aside from the RTD provisions, there are some important regulatory interventions, mostly outside the RTAs, directed at agents' and landlords' decision-making. Discrimination in the provision of rental housing on grounds of race, sex, disability, age and certain other attributes is prohibited by federal and state anti-discrimination legislation. Notably, protected attributes do not include a person's status as an applicant for, or recipient of, social security payments and other social services, including social housing. The standard tenancy application form published by the Real Estate Institute of NSW asks whether the applicant has also applied for social housing.

Another significant, if little remarked on, safeguard is the regulation of credit reporting information under Part IIIA of the *Privacy Act 1988* (Cth). This restricts real estate agents and landlords from accessing credit reports, ratings and scores about applicants and tenants. Although this restriction was an impetus for the development of the RTDs, it remains an important safeguard.

Private rental housing – (in)security

Private renter households are more mobile than households in other sectors. Most moves are initiated by tenants for their own reasons. However, the minority of moves initiated by landlords is substantial – about 20%, with some vulnerable groups experiencing much higher rates of involuntary moves: e.g. 42% of moves by private renters aged over 65s are landlord-initiated³⁴.

Data about the reasons for landlord-initiated tenancy terminations are scarce. Many terminations would be motivated by the landlord seeking to exit the dwelling from the rental market – by sale, or by using it for other purposes – which, as we saw in the Introduction, occurs frequently.

Another portion of landlord-initiated termination proceedings would arise from an alleged breach of the tenancy agreement by the tenant, such as failure to pay rent. Whether arising from the landlord's own motives or alleged breach, most of these tenancy terminations would be effected by the landlord giving a termination notice and the tenant leaving without further proceedings in a tribunal for an eviction order. Formal eviction proceedings, therefore, are the tip of an iceberg of tenancy terminations initiated by landlords. From the limited data available, we have calculated that the number of eviction proceedings in New South Wales in 2016-18 was equivalent to 3.2 per 100 tenancies, and in Victoria in 2015-2018 was equivalent to 3.8 per 100 tenancies. The NSW and Victorian eviction rates are somewhat more than half the rate for all the United States calculated by Eviction Lab and cited as marking an 'eviction crisis' in that country.³⁵

The real experience of insecurity is understated by mobility statistics, and even by eviction statistics, because neither account for all the tenancies that are on foot but where the tenants do not know whether or how much longer the landlord will allow the arrangement to continue. The insecurity of private rental housing is experienced differently by different private tenant cohorts. Our own research has found little concern among higher income younger adults without children, which may reflect the 'normalisation' of housing insecurity for people in their 20s and 30s, and the resort that many younger persons may have to family resources – including housing – in times of need. For

³⁴ Productivity Commission (2019) Vulnerable private renters: Evidence and options
<https://www.pc.gov.au/research/completed/renters>

³⁵ Martin, C. (2021). Australia's incipient eviction crisis: No going back. *Alternative Law Journal*, 46(2), 134–140.
<https://doi.org/10.1177/1037969X21990940>

older people, single parent families and people with disabilities, it is a very different story. For many among these groups, worries about forced moves are intense and incessant.³⁶

The insecurity of Australian private rental housing derives from the structure of the sector, and from residential tenancies law. We set out the structural problems in Section 1 of this submission: the dominance of small-holding household sector landlords holding properties for capital gain, and churning properties through the rental sector, such that half of properties leave the sector within five years of entering. The legal problem is that residential tenancy laws are highly accommodative of landlords' interest in taking vacant possession of their properties when it suits them. All Australian states and territories provide for the ready but orderly termination of tenancies by landlords: 'ready' in that the circumstances in which a tenancy may be terminated are relatively broad and the process relatively quick and straightforward; 'orderly' in that tenants may be forcibly evicted only by order of the tribunal executed by an authorised officer.³⁷

All jurisdictions provide for tenancy terminations without grounds – except the ACT, which amended its laws earlier in 2023. Tasmania and Queensland limit without-grounds termination to the end of fixed term tenancies (so a tenancy that continues as a string of fixed terms is continually subject to without grounds termination), and Victoria limits without-grounds termination to the end of the first fixed term of a tenancy. Without-grounds terminations have been a prominent issue in recent law reform reviews and is an area of increasing divergence in legislation across Australia.

All jurisdictions also provide for termination on various specified grounds. These differ between jurisdictions but those most in common are breach by the tenant (all jurisdictions), frustration because the premises have become uninhabitable (all jurisdictions except Tasmania) and sale of the premises requiring vacant possession (all jurisdictions except the NT, and not during the fixed term of a tenancy). Numerous other grounds, such as the landlord or a family member requiring the premises for their own housing, are prescribed in Queensland, SA, Tasmania, Victoria and the ACT. In the other jurisdictions, these and other reasons for seeking termination are implicitly encompassed by the permissibility of without-grounds terminations. The scope of the grounds in Victoria and Queensland, as recent 'without-grounds' reformers, is notable: both provide for termination where a landlord is merely preparing to sell the property (contrast the more common 'sale' ground, which in most jurisdictions requires *a contract for sale with vacant possession*).

The issue of grounds for termination has overshadowed another issue with important implications for tenants' security: whether the tribunal hearing termination proceedings has discretion to decline termination and, if so, how scope for such discretion is structured. This is a complex issue, with provisions differing between and within jurisdictions' legislation, depending on the type of termination proceeding. The worst are provisions for without-grounds termination proceedings that make termination orders mandatory – as is currently the law in New South Wales, Queensland, South Australia and Western Australia.

In interviews for our 2022 AHURI research, tenants' insecurity was identified by advocates as the biggest problem with residential tenancy law and rental housing generally.³⁸

³⁶ Pawson, H., Hulse, K. & Morris, A. (2017) Interpreting the rise of long-term private renting in a liberal welfare regime context; *Housing Studies*, 32(8), 1062-1084.

³⁷ A sheriff's officer or bailiff; only the NT allows the landlord themselves to be authorised by the tribunal.

³⁸ Martin, C. et al. (2022) Regulation of residential tenancies and impacts on investment, Final Report No. 391, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/391>

Insecurity of tenure is the biggest problem ... For tenants, it would increase their bargaining power, if they didn't have that constant fear of a no-grounds eviction notice being given to them. (TO2)

Probably the biggest [problem] is the ability to terminate a tenancy. (PI2)

Evictions generally. They are used as a behaviour control tool. They are used as the primary interaction between landlord and tenant where there are better outcomes otherwise [available]. It drives landlord behaviour: they are given a specific set of tools, and they use them. (TO1)

Private rental - dwelling conditions

Most Australians (83%) are satisfied with their dwellings, according to the ABS, although levels of satisfaction somewhat lower for private renters (76%).³⁹ Analysis of the Australian Housing Conditions Dataset, which counts social and private renters together, suggests 14% of low-income renters cannot keep their dwelling comfortably warm in winter, and 23% cannot keep it comfortably cool in summer.⁴⁰

The lower standard of private rental housing relative to owner-occupied housing may reflect the connection between the sectors highlighted above. Many dwellings enter the rental sector at a later stage in their 'property life'. In an analysis of Sydney properties entering the rental market for the first time in Q1 2020, we found 30% one-bedroom units, and 5% of three-bedroom houses, were recent developments, the remainder having had a previous life, most likely in owner-occupation.⁴¹

On the other hand, building defects are startlingly common in newly constructed dwellings, particularly in the apartment sector, where a disproportionate number go directly into the rental market: for example, 39% of recently constructed apartment buildings surveyed by the NSW Building Commissioner had serious defects.⁴²

All the RTAs impose obligations on landlords regarding the condition of premises as provided at tenancy commencement, and over the course of the tenancy (therefore requiring maintenance and repairs). More than most aspects of residential tenancies law, landlords' obligations regarding dwelling conditions have been the subject of judicial interpretation by state and territory superior courts and the High Court. The case law is complex, and indicates some shortcomings.

One problem is that the obligation is not absolute: it requires the landlord to take reasonable steps to ascertain defects, such as by inspecting the premises before the tenancy commences, and to rectify defects they know or ought to know about, but the landlord is not liable for defects unapparent to a reasonable ordinary person. Also, the obligation is not non-delegable: that is, where

³⁹ ABS (2022) Housing Mobility and conditions 2019-20.

<https://www.abs.gov.au/statistics/people/housing/housing-mobility-and-conditions/2019-20>

⁴⁰ Liu, E., Martin, C. and Easthope, H. (2019) Poor-quality housing and low-income households Review of evidence and options for reform; Shelter Brief no. 63; Sydney: UNSW City Futures Research Centre https://cityfutures.ada.unsw.edu.au/documents/544/poor_quality_housing_report_2019.pdf

⁴¹ Nygaard, C., van den Nouweland, R., Glackin, S., Martin, C. and Sisson, A. (2022) Filtering as a source of low-income housing in Australia: conceptualisation and testing, Final Report No. 387, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/387>

⁴² Construct NSW (2021) Improving consumer confidence: research report on serious defects in recently completed strata buildings across New South Wales, NSW Building Commissioner, Sydney; Crommelin, L., Thompson, S., Easthope, H., Loosemore, M., Yang, H., Buckle, C. and Randolph, B. (2021) Cracks in the Compact City: Tackling Defects in Multi-unit Strata Housing, UNSW City Futures Research Centre, Sydney, https://cityfutures.ada.unsw.edu.au/documents/670/Defects_final_report_for_publication_HSGP9LW.pdf.

a landlord engages an apparently competent person to rectify a defect, they have discharged their obligation (until such time as any deficiency in the repair becomes known to the landlord). Furthermore, there is a shortcoming in remedies for breach of the obligation, because in many cases the tenant's loss will be non-economic, and not compensable. For example, the NT Supreme Court has recently held that a tenant who was without a backdoor to their dwelling for five years had not suffered a compensable loss.⁴³

Another basic shortcoming is that the onus of policing landlords' obligations regarding dwelling conditions falls on tenants. The RTAs prescribe landlord obligations on dwelling conditions as contractual obligations owed to, and enforced by, the tenant. The Tasmanian and Victorian RTAs also make breach of the obligations an offence punishable by a fine, but in practice the onus remains on tenants enforcing agreements. Interviewees in our 2022 AHURI report⁴⁴ highlighted how tenants' insecurity undermined rights and standards regarding dwelling conditions.

Tenants still have their heads down—particularly in this environment [a tight rental market]—they don't feel well-protected, they don't feel like putting their head above the parapet, they don't feel empowered. There is a massive narrative out there about how you really should own your own house—that's what we all aspire to—and there's a feeling that if someone owns your house, whatever they want to do with it, within reason, is fair game. And you should, as a tenant, bend to their will. It is really hard to get people to speak up, both because they are afraid of getting evicted, and because their expectations are so low. They just accept the narrative that we're all prospective homeowners— and even if they don't think that achievable, they buy into the narrative that you shouldn't have much rights. (TO2)

In an interview, a senior government officer reflected that 'there are a lot more rights for tenants on the statute books than most tenants are able to exercise':

[The government] feel that they've done the work to put those rights up, and often in quite a difficult environment to get those things through the House, and yet you know, many, many tenants don't feel that they better ask for that repair—that might be the straw that breaks the camel's back (SG1)

Social rental housing – accessing a tenancy

While Australia's shortfall in private rental dwellings affordable for low-income households has deepened, so has the shortfall in social housing. As also noted in the Introduction, the flow of social housing vacancies has contracted markedly. This means the number of current applicants for social housing has tended to grow. At year end 2021-22, registrations for public housing totalled 175,000 households, up from 141,000 four years earlier⁴⁵.

Eligibility to register for social housing is subject to increasingly stringent income qualification rules⁴⁶. For example, in five jurisdictions – ACT, NSW, Queensland, WA and Tasmania – the 2021 income limit for a single person was below the minimum wage (assuming full-time employment). Moreover, in two states, WA and Queensland, nominal income limits remained static or almost unchanged for

⁴³ *Chief Executive Officer (Housing) v Young & Anor* [2022] NTCA 1.

⁴⁴ Martin, C. et al. (2022) Regulation of residential tenancies and impacts on investment, Final Report No. 391, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/391>

⁴⁵ Productivity Commission (2023) Report on Government Services – Housing (Table A18.5) <https://www.pc.gov.au/ongoing/report-on-government-services/2023/housing-and-homelessness/housing>

⁴⁶ Pawson, H. and Lilley, D. (2022) Managing Access to Social Housing in Australia: Unpacking policy frameworks and service provision outcomes; CFRC Working Paper; Sydney: UNSW City Futures Research Centre https://cityfutures.adu.unsw.edu.au/documents/686/Waithood_Final.pdf

more than a decade: managing social housing demand by effectively tightening applicant eligibility over time. In all states and territories waiting list registrations are also deleted if applicants periodically fail to reconfirm their situation (or cease to be eligible).

Except for applicants classed as having complex and urgent needs (often defined extremely stringently), social housing wait times are lengthy. In NSW, for example, the state government estimates 5-10 year waiting periods for non-priority applicants across much of the state⁴⁷. As a result, many eligible applicants choose not to apply, or allow their registrations to lapse. Thus, a national census-based estimate of social housing-eligible households in housing need put the total at some 437,000 in 2021 – far in excess of the number of actual registrations (175,000). A variant estimate adds in private renters also in rental stress, but with slightly higher incomes (quintile 2 of the income spectrum) and therefore potentially qualifying for affordable rental (but not social rental) housing. When this group is also included, the broader cohort subject to ‘unmet need for social and affordable housing’ in 2021 totalled 640,000⁴⁸. And, when this number is projected out to 2041 (factoring in ‘newly arising need’ during this period) it equates to 950,000 households.

Beyond this, various estimates of the necessary size of Australia’s social housing sector, if calibrated according to need, suggest a case for major expansion. For example, a study applying the Victorian Government’s 2013 eligibility criteria, and working with 2011 census data, found that expanding Australia’s social housing stock to accommodate income-eligible private renters paying more than 30% of income in rent would require a social rental sector equating to 8.4% of all dwellings – in other words, more than double the sector’s current size⁴⁹. Another relevant benchmark here is the OECD norm for social housing as a proportion of total housing: 7.2%⁵⁰.

Social rental housing – (in)security

Social housing has been traditionally regarded as almost as secure as homeownership, and – consistent with its prime function as part of the social safety net – it is certainly more secure than private rental housing. This security is structural, more than legal. Social housing is subject to the same residential tenancies legislation as private rental, including the termination provisions (in fact, some jurisdictions have additional provisions that social housing terminations), but it is not subject to the churn that private landlords generate.

However, the character of the security of social housing has changed over the past two decades. Over that period most public housing authorities, and some community housing providers, have adopted policies to review tenants’ continuing eligibility for public housing, and terminate tenancies where household incomes exceed certain thresholds. The stated rationale is to free up vacancies in public housing, and hence house more applicants. However, these policies create a powerful disincentive for households to increase their incomes, should the opportunity arise. They also impact on other decisions people make, such as whether a boyfriend or girlfriend may move in, or a child in early adulthood remain at home. The continued decline of new social housing allocations suggests that this manufactured insecurity has been counter-productive for social housing landlords and tenants alike.

⁴⁷ NSW Government (2022) Expected waiting times [for social housing]

<https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>

⁴⁸ van den Nouwelant, R., Troy, L. and Soundararaj, B. (2022) Quantifying Australia’s unmet housing need

<https://cityfutures.ada.unsw.edu.au/documents/699/CHIA-housing-need-national-snapshot-v1.0.pdf>

⁴⁹ Groenhart, L. and Burke, T. (2014) Thirty years of public housing supply and consumption: 1981–2011, Final Report No.231; Melbourne: AHURI

⁵⁰ OECD (2022) Social rental dwellings stock <https://www.oecd.org/els/family/PH4-2-Social-rental-housing-stock.pdf>

3. Rising rents and rental affordability problems – ToR (b) and (e)

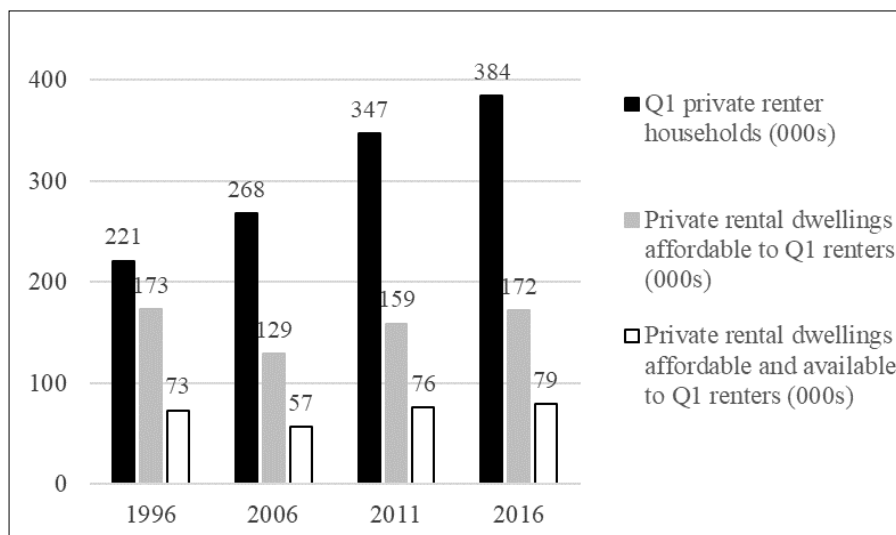
In this section we examine housing affordability problems for Australian renters, both over the long-term, and in the short period of extraordinary rental price movements of the past three years. Our examination of affordability problems over the long term also includes a discussion of residential tenancy law provisions regarding rents and rent increases, and a discussion of Commonwealth Rent Assistance as an affordability measure.

Private rental affordability problems – the long view

In the Introduction, we observed the changing shape of the private rental market over two decades: while the total number of rental dwellings has grown, the market has shifted dramatically up the scale of real rental prices. Because this has outpaced the very moderate increases in earnings or social security payments for low-income households the effect has been to deepen the shortfall of tenancies affordable to this population cohort.

The series of research reports that have produced this picture of the market’s changing shape provide further insights into the problems faced by private renters. It is not only that there are too few affordable private dwellings for all low-income renters (in 2016, 172,000 dwellings affordable for 384,000 households in the lowest quintile of incomes); it is that most of those dwellings are occupied by higher income households (in fact, 93,000 of the 172,000 dwellings are occupied by households with incomes above the first quintile) – see Figure 2. These higher income households can hardly be blamed for this (they are probably trying to save a deposit for home purchase), but for the lowest income households it means the 212,000 shortfall in affordable dwellings blows out further to 305,000 which are either unaffordable or unavailable. This means that about 80% of lowest income quintile private renters were paying unaffordable rents in 2016. As shown in Figure 2, both the ‘affordability’ and ‘availability’ aspects of the problem have worsened over the long term.

Figure 2: Indicators of supply shortage of private rental dwellings for Q1 households: 1996 - 2016



Source: Hulse et al. (2019)⁵¹

For private renter households in the second income quintile, there are notionally more than enough dwellings affordable to them in the market (in this analysis, 491,000 more). However, they too face

⁵¹ Hulse, K., Reynolds, M., Parkinson, S., Nygaard, A. and Yates, J. (2019) The supply of affordable private rental housing in Australian cities: short and longer term changes; Final Report no. 323; Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/323>

an availability problem, with households from other income quintiles occupying many of the dwellings that would be affordable to them. As a result, about 173,000 (36%) of second income quintile renter households were paying unaffordable rents in 2016, up from 24% 10 years previously. In total, this analysis counts 478,000 households in the first and second income quintiles paying unaffordable rents in the private rental sector in 2016.

The 2021 Census data have yet to be analysed in this way. However, a complementary analysis of the 2021 data has calculated the number of quintile 1 and 2 households paying unaffordable rents, plus the number of overcrowded households and homeless households – i.e. households with an ‘unmet housing need’⁵². This analysis forgoes the ‘affordable’ and ‘available’ dwelling breakdown, but refines the quintile classification of households of different sizes. As a result, it finds a total of 640,500 households with an unmet need for social or affordable housing in 2021 (and 636,200 in 2016). So, unmet housing need grew relatively slowly between the most recent censuses, but its scale is (and was) larger than previously estimated.

This assessment also takes the long view on affordability forward, in a projection of housing need into the future. On the basis of ABS household growth projections, van den Nouwelant et al. estimate that Australia’s total unmet housing need will reach 940,000 households at 2041.

The reality of living with rental stress comes through in interview testimony recounted in our recent book. One among many similar accounts is included below.

Since the end of her marriage, Michaela (57) had been reliant on private rental. When interviewed, she had been renting the same free-standing house in Sydney’s outer suburbs for 16 years. She had lost her job two years prior to the interview due to poor health. Despite this, she had been denied the Disability Support pension (DSP) and was therefore forced to rely on Newstart and Rent Assistance. Although her rent was very reasonable for Sydney, it was impossible for her to cover essential costs. Fortunately, she received some support from her daughter. When asked if it would be difficult to manage if not for her daughter, she responded:

Very much so because my benefit is \$650 a fortnight and the rent is \$570 [a fortnight] which would leave like \$80. I have electricity, I have gas, food you know ... Right now, I'm with Job Centre Australia. They're trying to find me work that I will be able to do because I just can't manage on you know that money [Newstart]...

I thought I was being hard done by when they put my rent up, but when I look at what properties are going for around the area and I see their rents around \$400, \$500, I guess I'm lucky. It just seemed a lot to me because I'm you know on the Centrelink benefit and it takes the majority of my money. My daughter gives me money to buy food and do all that, pay bills.

Recently Michaela’s daughter had moved out and could no longer assist her. She was extremely worried about managing without her and the possibility of finding herself homeless.

Extract from: The Private Rental Sector in Australia: Living with uncertainty⁵³

⁵² Van den Nouwelant, R., Troy, L. and Soundararaj, B. (2022) Quantifying Australia’s unmet housing need <https://cityfutures.adu.unsw.edu.au/documents/699/CHIA-housing-need-national-snapshot-v1.0.pdf>

⁵³ Morris, A., Hulse, K. and Pawson, H. (2021) The Private Rental Sector in Australia: Living with uncertainty; Singapore: Springer.

Rents and rent increases under residential tenancies legislation

No Australian jurisdiction regulates private rents for affordability. This has been characteristic of Australian residential tenancies legislation from the outset of the era of the Residential Tenancies Acts implemented by all states and territories from the 1970s onwards, and has not been significantly changed – or even discussed – in legislative reviews since then.

No jurisdiction regulates the amount of rent a landlord may seek when letting a property. All allow rent increases after the expiry of a tenancy's fixed term (typically six or 12 months), provided a valid notice is given (the ACT is a partial exception, see below). None limits the amount or rate of an increase, except by providing that a tenant may dispute a notified rent increase as 'excessive'. In resolving these disputes, the primary consideration for the tribunal is the general market level of rents for comparable premises, along with a list of specific factors, e.g. the state of repair of the property.

No jurisdiction prescribes affordability as a consideration (in fact, the RTA NSW expressly proscribes it). The most significant legal development regarding rent increases has been the movement to limit the frequency of rent increases. All jurisdictions now limit increases to once in six or 12 months.

Limits on the frequency of rent increases (and the common use of series of short fixed terms, which amount to a similar limit) mean that rent levels for existing tenancies may lag rent levels set in the market for new tenancies, but the former will tend to rise in line with the latter.

The ACT is the only jurisdiction to include an objective 'guideline' in its excessive rent increase provisions. Contrary to some claims, this is not a firm cap on rent increases. Where a proposed rent increase would be more than 110% of the increase in the rent component of the ACT Consumer Price Index over the relevant period, the landlord must apply to the tribunal and show that the increase is not excessive, considering the general market level of rents for comparable premises. The guideline, therefore, does not determine whether the increase is excessive, but imposes a procedural requirement and external scrutiny on landlords considering above-guideline increases. By the same token, rent increases below the guideline may be challenged as 'excessive', with the onus on the tenant to take proceedings and prove the case. The provision for a guideline has been part of the ACT RTA since it was enacted: originally set at 120% of the CPI rent component, it was reduced to 110% in 2019.

Rental affordability and Commonwealth Rent Assistance

In the absence of legislative regulation for affordability, Australia's primary policy means for improving private rental affordability is Commonwealth Rent Assistance (CRA). CRA is a cash payment to renters in private rental and community housing who also receive certain other social security or family tax benefit payments and whose rent is above certain dollar thresholds. It is paid at the rate of 75 cents for each dollar of rent above the threshold, up to certain maximum amounts.

CRA is a significant program in terms of the total number of persons receiving it (about 1.3 million recipients at March 2023) and total expenditure (about \$4.5 billion annually, based on the March

2023 figures).⁵⁴ Our 2020 AHURI analysis indicates significant shortcomings to CRA as an affordability measure.⁵⁵

First, many low-income renters in rental stress miss out on the payment, because they do not receive another qualifying payment. There were about 246,000 low-income private renter income units in this group in 2017, equivalent to 18% of all low-income renter income units (i.e. the first and second quintiles by income).

Second, of the 933,000 low-income private renter income units who received it, 65%% would be in rental stress without the payment, but even where all of their CRA payment is counted towards the rent still 34% are in rental stress⁵⁶. This is because regularly indexed increases in the maximum amounts have not kept pace with rising rents. The 15% increase in maximum amounts in the 2023 Budget falls well short of that required for realignment – estimated by ACOSS at 50%.⁵⁷

However, there strengths in CRA's design. Our analysis indicates that it mostly does not have an effect on the market level of rents: i.e. it is not merely captured by landlords in higher rents. It should be said that the econometric modelling does suggest some impact in disadvantaged locations: equivalent to six cents in each dollar of CRA in moderately disadvantaged locations, and 32 cents in the dollar in severely disadvantaged locations – but even so, recipients still get most of the benefit of the payment. The lack of CRA flow-through to higher rents contrasts with the experience of housing assistance payments in other countries, particularly the US. We suggest that the fact that CRA is a cash payment to tenants, not to landlords, is a significant factor in this difference.

Private rental affordability problems – the short view

The three years following the outbreak of the COVID-19 pandemic in early 2020 have seen extraordinary developments in housing markets, not least in the private rental market. We do not yet have all the combined data about rental prices and renter incomes that informs the long view of Australia's rental affordability, but the available rental prices and other data indicates that in mid-2023 we are seeing remarkably strong rent increases that exacerbate long-running affordability problems.

In the years just prior to 2020, the Australia-wide median asking (advertised) rents for new tenancies, and the capital city CPI rent component for existing tenancies, had been rising slowly – not slowly enough over long enough to significantly erode the affordable rental deficit, but relatively low growth in rents, nonetheless. In 2020, the COVID-19 emergency removed a large factor of rental demand from the largest capital cities – international students and workers – and disrupted CBD economic and social activity, and asking rents for new tenancies in Sydney and Melbourne declined: in Sydney, by 12% to their lowest in October 2020; in Melbourne by 12% to their lowest in May 2021. Across the other capitals (with the brief exception of Hobart) and the regions, asking rents grew throughout the early lockdown period, and accelerated thereafter. At December 2020, the national median asking rent was up almost 7% on the previous December, and at June 2021 it was

⁵⁴ Department of Social Services (2023) DSS Benefit and Payment Recipient Demographics - quarterly data, March 2023. <https://data.gov.au/dataset/ds-dga-cff2ae8a-55e4-47db-a66d-e177fe0ac6a0/details>

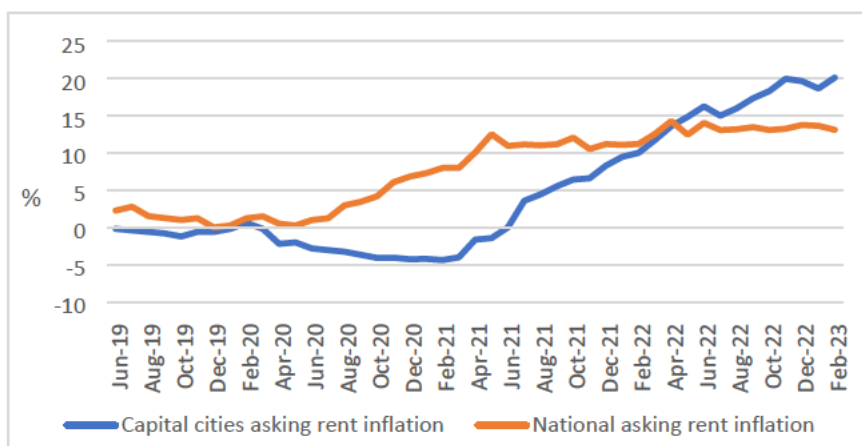
⁵⁵ Ong Viforj, R., Pawson, H., Singh, R. and Martin, C. (2020) Demand side assistance in Australia's rental housing market: exploring reform options, AHURI Final Report No. 342, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/342>

⁵⁶ Ibid.

⁵⁷ ACOSS (2023) Submission to the Senate Inquiry into the extent and nature of poverty in Australia. <https://www.acoss.org.au/wp-content/uploads/2023/03/PovertyInquiry-sub.pdf>

up almost 12% on the previous June – see Figure 3. With Sydney and Melbourne asking rents increasing again through 2022, the national median asking rent at December 2022 was up almost 15% on the previous December. In the most recent quarter (June 2023) shows slower growth, but still national median rent up just over 10% on the previous June.

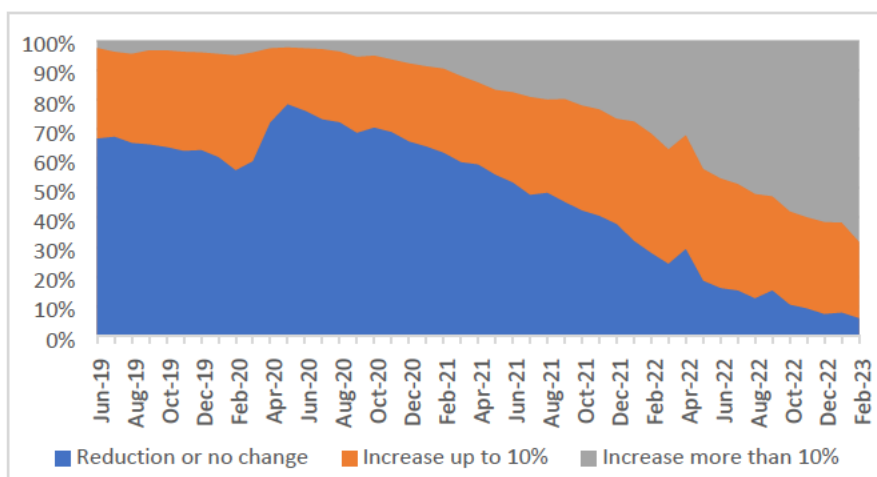
Figure 3. Median asking (advertised) rent inflation (change from 1 year previously (%))



Source: SQM

Another perspective on the new tenancy market is given by a recent detailed analysis by the ABS and RBA of a new dataset derived from a rent payments platform.⁵⁸ The analysis shows that in the low-growth year prior to 2020, about a third of rental properties relet to a new tenant were priced at a higher rent, a third at a lower rent, and a third at the same rent as paid a year previously under the previous tenancy. During the early lockdowns, the share of properties relet for a higher rent dropped (to 22%) and the share for relet for less rose (to 53%). Since then, however, the rate of higher rent relets has grown steadily, such that by mid-2021 the majority of relets were for higher rents and, at February 2023, almost all relets (94%) were at higher rents than had been charged to the previous tenant a year earlier. In fact, more than 68% of February 2023 relets were at rented at more than 10% higher than a year previously (by contrast, just 4% of relets in 2019 were for 10% higher rents) – see Figure 4.

Figure 4: Rents for relet properties (change from 1 year previously)



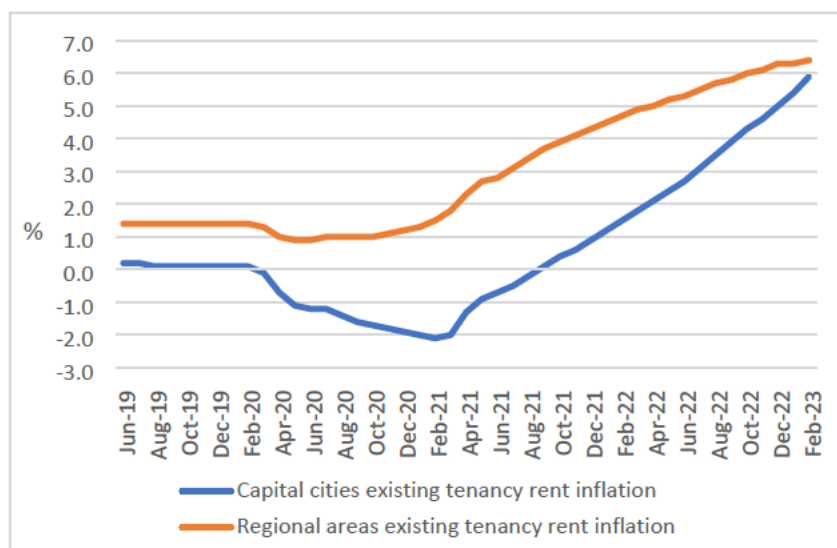
Source: Hanmer and Marquardt 2023⁵⁹.

⁵⁸ Hanmer, F. and Marquardt, M. (2023) New Insights into the Rental Market; Australian Economy Bulletin; Reserve Bank of Australia <https://www.rba.gov.au/publications/bulletin/2023/jun/new-insights-into-the-rental-market.html>

⁵⁹ Ibid.

Rents for existing tenancies have followed a similar trajectory. In the early pandemic lockdowns, the income shock to households prompted governments to implement temporary restrictions on evictions and, in five jurisdictions, a 6-month freeze on rent increases. Some renters also negotiated reductions or deferrals in rent payment obligations. As shown in Figure 5, the CPI rent component went negative during this period – but this reflects the experience of the capital cities only. The ABS-RBA analysis shows existing tenancy rent inflation beyond the capitals never went negative, and was growing in the second half of 2020 (2023 Figure 6). By mid-2021 state-wide median existing tenancy rents were increasing, with only inner-city locations still negative, but they too joined the growth trend by the end of 2021. The rate of growth increased through 2022 and by February 2023 median existing tenancy rents in capital city and regional locations were all up about 6% on the previous February.

Figure 5: Median existing tenancy rent inflation (change from 1 year previously (%))

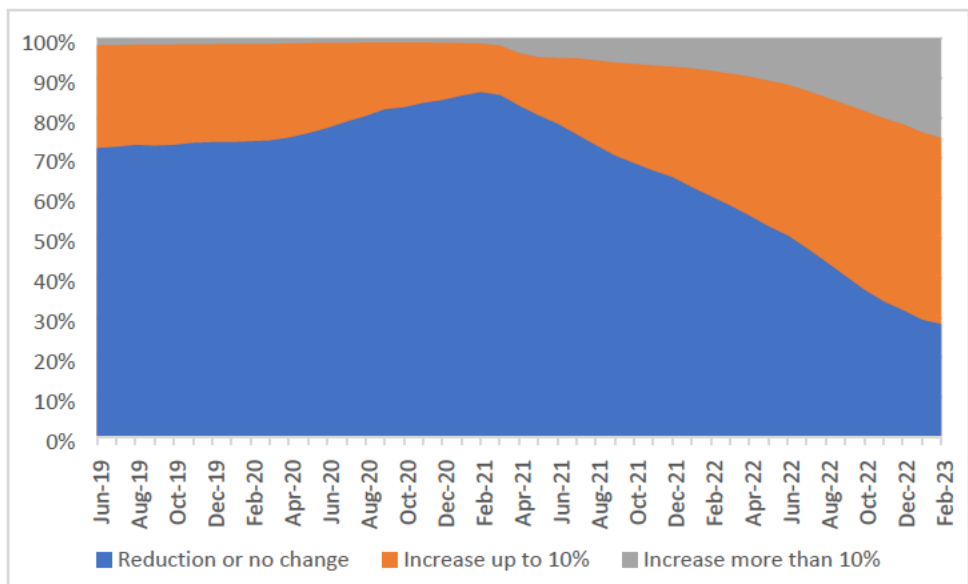


Source: Hanmer and Marquardt 2023⁶⁰.

The ABS-RBA analysis gives further insights into how much larger and more common rent increases for existing tenancies have been recently, compared to previously. In the low-growth period prior to 2020, on average about 60% of existing tenancies paid the same amount of rent as 12 months previously (and 10% paid less). That rate grew slightly through 2020, but since 2021 has declined steadily, while the rate of tenants paying an increased rent has grown – especially those paying an increase of more than 10%. At February 2023, almost a quarter of existing tenants have had a rent increase above 10% in the previous year.

⁶⁰ Ibid.

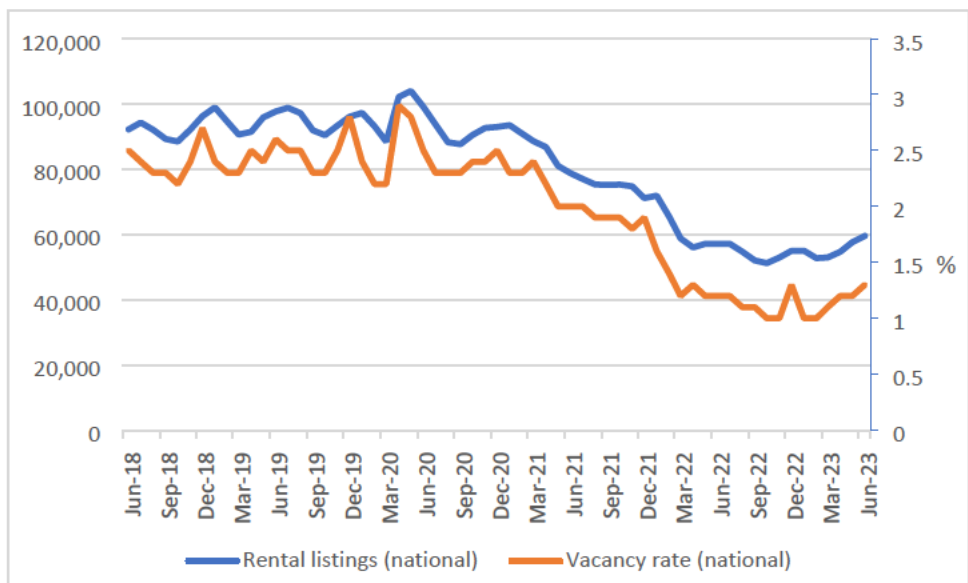
Figure 6: Rent changes of different sizes - existing tenants, annual, share of properties



Source: Hanmer and Marquardt 2023⁶¹.

The market context for these rent movements has been steady declines in the number of properties advertised to let and the estimated rate of vacant rental properties, from early 2020 through to late 2022. Both those metrics have recently turned upwards but are still well under their pre-COVID levels.

Figure 7. Rental listings per week, and vacancy rates (monthly averages), national



Source: SQM.

A range of factors for the extraordinary increases in rents have been put forward by researchers and commentators; these are discussed below:

- **Household change has increased demand.** The RBA has highlighted evidence of increased formation of smaller households during the pandemic: from a new analysis of the ABS

⁶¹ Ibid.

Labour Force Survey, average household size increased during the first 2020 lockdowns (to 2.55 persons per household), but has declined since then, reaching 2.48 persons per household in mid-2022.⁶² The reduction in average size implies an increase in the number of households of about 2.8%. In a case study of Melbourne, which experienced a population decrease in 2021, Helm estimates that the simultaneous reduction in average household size effectively absorbed two-thirds of the excess available supply.⁶³ Other survey data cited by the RBA shows a marked decrease in the number of share households over 2020-2022 – leading the Deputy Governor to quip that ‘On the question of who you would rather be locked down with, at least some Australians have voted with their removalists’ van, by moving out of their share house and in with their partner.’⁶⁴ We should not assume, however, that the post-2020 shift to smaller households is driven by renters, or that the shift has created much spare capacity in the distribution of the current rental stock. The 2021 Census shows private renters remain much more efficient users of housing than owner-occupiers, with 51% of private renter households having a spare bedroom (contrast 82% of owners) and 30% having no room to spare (contrast 12% of owners).⁶⁵

- **Property use change has decreased supply.** There is evidence of significant changes in the use of properties resulting in reduced supply to the rental market. This may be related to more properties changing hands: nationally, the number of property ownership transfers (mostly sales) jumped in 2020 and remained very high through to 2022: the average for the two years 2020-21 was 20% higher than the average for the eight previous years. It would seem that this reflected household decisions to place dwellings on the market to take advantage of an ongoing price boom. An upsurge in renovation activity also commenced mid-2020, with the total value of commenced dwelling renovations up 50% between Q2 2020 and Q2 2021, from \$2.1b to \$3.2b. In Q2 2022 the total renovation value stood at \$2.6, still 23% up on two years previously. Dwelling demolition approvals increased almost 16% between Q2 2020 and Q2 2021, and a further 7.3% in the year to Q2 2022.
- **Interest rates – a contested role.** The RBA began increasing interest rates in May 2022 – well after rents metrics began increasing strongly (two years, for the national median asking rent, one year for regional existing tenancy rents, six months for capital cities existing tenancy rents). While landlords often claim that they increase rents to pass on interest rates, the RBA’s housing model posits that interest rate increases put downward pressure on rents in the short term, by reducing household sector consumption spending and hence the incomes of some renters.⁶⁶ This is, in our view, a brutal way of reducing rental demand – i.e. by removing renters from the market, to shared housing or homelessness – but suggests rents may have increased more but for the RBA’s interest rate increases. There is, however, a question about whether high levels of debt are such a common factor among Australian landlords – about 80% of rental properties have associated interest payments, according to

⁶² Agarwal, N., Bishop, J. and Day, I. (2023) A New Measure of Average Household Size, RBA Bulletin 16 March 2023. <https://www.rba.gov.au/publications/bulletin/2023/mar/a-new-measure-of-average-household-size.html>

⁶³ Helm, T. (2023) Melbourne’s pandemic rental dynamics: an (un)natural experiment in excess supply. Prosper Australia, Melbourne. https://www.prosper.org.au/wp-content/uploads/2023/05/Prosper_Pandemic-Rental-Dynamics_MAY2023_web.pdf

⁶⁴ Ellis, L. (2022) Housing in the Endemic Phase: Keynote Speech to the UDIA 2022 National Congress Sydney – 25 May 2022. <https://www.rba.gov.au/speeches/2022/sp-ag-2022-05-25.html>

⁶⁵ ABS (2022) Census of Population and Housing. TableBuilder TENLLD Tenure and Landlord Type by HOSD Housing Suitability.

⁶⁶ Saunders, T. and Tulip, P (2019) A Model of the Australian Housing Market: Research Discussion Paper – RDP 2019-01. <https://www.rba.gov.au/publications/rdp/2019/2019-01/full.html>

landlords' declarations to the ATO – that they effectively co-ordinate landlords, enabling them to move the market. The RBA housing model also posits that interest rate increases will reduce investment in new housing construction, and hence supply to the rental sector in the long term. All of these implications highlight the need for policy instruments to reduce inflation in a more sectorally sensitive way than the blunt tool of interest rates.

- **Real estate agent practice.** An often-overlooked fact of the Australian PRS is that while it is owned by about two million small-holding landlords, it is managed by a much smaller number of real estate agents, whose rent rolls number in the hundreds, and sometimes thousands of properties. The potential for agents to co-ordinate the rental market, despite its diverse ownership, warrants further research.

Rental affordability in social housing

By the standard benchmark for rental affordability, social housing is virtually always affordable. While social housing dwellings are formally let at market rents, low-income tenants are entitled to a rent rebate that effectively reduces the amount of rent paid to about 25% of the household's income.⁶⁷

However, our recent research⁶⁸ shows that even in social housing, one in six (16%) report that household income absorbed by rent normally leaves them with insufficient funds for food, clothing or other basic essentials. This confirms earlier research findings⁶⁹ that a significant proportion of tenants in public and community housing are subject to (income-geared) rents that are too high or incomes that are too low to maintain a basic living standard.

These findings suggest that if the aim is to ensure affordability in social housing, the standard formula (charges set at 25-30% of household incomes) produces rents that are too high. At the same time, other research⁷⁰ demonstrates that, even at this level, rental revenue collectable by public housing authorities is insufficient to fund essential management, maintenance and tenant support —let alone new housing provision. This points to the need for enhanced social security benefit rates and/or additional public subsidy for the provision of social housing.

⁶⁷ Some sources of income are subject to concessional treatment and attract a lower rate. In New South Wales, households with incomes above a 'moderate' thresholds pay on a sliding scale 25%-30%.

⁶⁸ Pawson, H. (2021) Low income renters pushed into further into rental stress; in: Baker, E. and Daniel, L. (Eds.) (2020). Rental Insights: A COVID-19 Collection; Melbourne: AHURI <https://www.ahuri.edu.au/research/research-papers/rental-insights-a-covid-19-collection>

⁶⁹ Burke, T., Stone, M. and Ralston, L. (2011) The residual income method: a new lens on housing affordability and market behaviour, Final Report No. 176; Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/176>

⁷⁰ Independent Pricing and Regulatory Tribunal New South Wales 2017, Review of rent models for social and affordable housing. Final Report, Special Reviews. Sydney, New South Wales. [https://www.ipart.nsw.gov.au/files/sharedassets/web_site/shared-files/pricing-reviews-section-9-publications-review-of-social-and-affordable-housing-rent-models/final-report-review-of-rent-models-for-social-and-affordable-housing-july-2017-\[w172737\].pdf](https://www.ipart.nsw.gov.au/files/sharedassets/web_site/shared-files/pricing-reviews-section-9-publications-review-of-social-and-affordable-housing-rent-models/final-report-review-of-rent-models-for-social-and-affordable-housing-july-2017-[w172737].pdf)

4. What governments can do to improve rental affordability – ToR (c), (f) and (g)

Considering the persistent, deepening failure of the private market to provide affordable rental housing, particularly for low-income households, we submit that Australian governments must intervene more decisively. They can do so in three broad ways:

1. Provide more social and affordable housing;
2. Reform financial assistance for private renters; and
3. Regulate rents for affordability.

These approaches are not mutually exclusive; indeed, they are necessary complements. Reversing the decline in social and affordable housing will take years. Reforming financial assistance will be quicker, but also take some time. Rent regulation is the approach that can be implemented most quickly.

In this section, we will briefly discuss options under the first two approaches, and the third – rent regulation – in more detail.

A wider strategy of policy reform is also required to gear the housing system towards providing adequate housing for everyone. Social and affordable housing, rental assistance, rent regulation and other residential tenancy law reforms⁷¹ should be regarded as core areas for immediate policy reform under an Australian Housing and Homeless Strategy. We have outlined such a strategy in our most recent AHURI research⁷².

- **Recommendation: The Commonwealth should engage with states and territories to expand social and affordable housing, and to strengthen rental assistance, rent regulation and other residential tenancy legal rights as core elements of an Australian Housing and Homelessness Strategy.**

Social and affordable housing

As discussed in the previous section, there are currently about 640,000 Australian households who need – but are not getting – what social and affordable housing delivers: rental housing that is affordable and secure for lower income households. This level of unmet need is projected to grow to about 950,000 households in 2041.

Australia should, therefore, look to set its social and affordable housing sector on a path of very substantial growth. The future social and affordable housing sector Australia needs is three-and-a-half times as large as the current sector, implying an average annual rate of growth of 6.5%, or 47,000 dwellings. This is ambitious but doable. Even to simply halt the decline in social housing as a percentage of all housing Australian governments would need to facilitate construction of around 10,000 social rental dwellings per year – far in excess of the 3,000 per year typically achieved over the past decade⁷³.

⁷¹ Other tenancy law reforms are discussed in the next section of this submission.

⁷² Martin, C., Lawson, J., Milligan, V., Hartley, C., Pawson, H. and Dodson, J. (2023) Towards an Australian Housing and Homelessness Strategy: understanding national approaches in contemporary policy, Final Report No. 401, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/401>

⁷³ See Table 6.1 in: Pawson, H., Martin, C., Thompson, S., Aminpour, F. (2021) COVID-19: Rental housing and homelessness policy impacts in Australia; ACOSS/UNSW Poverty and Inequality Partnership Report No. 12, Sydney <https://bit.ly/3nTsZld>

The simplest and most cost-efficient means of financing this growth is demonstrated in our 2018 AHURI research⁷⁴: a social housing provider borrows from NHFIC's bond aggregator program such an amount as can be covered by the project's rental income net of operating costs, with the rest of the cost of project development covered by a capital grant from government. In most cases this grant will be the larger part of the total expenditure on development; in some circumstances, it might be reduced by an equivalent contribution of public land⁷⁵. According to our analysis this is more cost-efficient than paying an operating subsidy for social housing development financed entirely by debt or by private equity; it is an exemplary case for public finance by the Australian Government.

- **Recommendation: the Commonwealth should engage with states and territories to devise and implement a plan to grow Australia's social and affordable housing sector to meet currently unmet and future need – i.e. a projected additional 950,000 social and affordable dwellings by 2041 – to be financed by capital grants and NHFIC bond aggregator loans, and a committed operational subsidy that meets reasonable operating costs.**

Increased financial assistance for private renters

We analysed options for CRA reform in our 2020 AHURI research.⁷⁶ There are two broad approaches that would improve on the modest effectiveness of the current payment: 1) increasing maximum payment rates for recipients still in rental stress (i.e. lifting the caps) and 2) changing eligibility to pay all low-income renters in rental stress (i.e. breaking the link to receipt of another social security payment).⁷⁷ The second is the more effective approach.

This would mean all low-income renters paying more than 30% of their income in rent would be eligible for assistance, and the assistance would be paid in an amount that, when added to 30% of their other income, is sufficient to cover the rent. Changing eligibility also opens up the prospect of removing from eligibility persons who currently receive CRA but who are not in rental stress. This is a sizeable group: 330,000 income units in 2017 – more than the group who are in rental stress but miss out on CRA. We estimate that implementing both eligibility changes would result in a net reduction of total CRA expenditure. The second group are not, however, high-income households and it may be preferable to maintain their current level of payments, either through grandfathering or making adjustments to their other payments (in particular, Family Tax Benefit). In any event, a reformed Rent Assistance payment should continue to be paid in cash to tenants, not landlords.

However, a Rent Assistance payment that is not tied to receipt of another social security payment is beyond the current constitutional power of the Commonwealth. The social security payments power at s 51(xxiiiA) is narrow, specifying the types of payment that may be made, and a stand-alone housing assistance payment is not among them – hence CRA's supplementary form. Reform to create a payment with wider eligibility will likely require the participation of the states, either by

⁷⁴ Lawson, J., Pawson, H., Troy, L., van den Nouwelant, R. and Hamilton, C. (2018) Social housing as infrastructure: an investment pathway, Final Report No. 306, Melbourne: AHURI
https://www.ahuri.edu.au/data/assets/pdf_file/0025/29059/AHURI-Final-Report-306-Social-housing-as-infrastructure-an-investment-pathway.pdf

⁷⁵ Randolph, B., Troy, L., Milligan, V. and van den Nouwelant, R. (2018) Paying for affordable housing in different market contexts. AHURI Final Report no. 293. Melbourne: AHURI
<https://www.ahuri.edu.au/research/final-reports/293>

⁷⁶ Ong Viforj, R., Pawson, H., Singh, R. and Martin, C. (2020) Demand side assistance in Australia's rental housing market: exploring reform options, AHURI Final Report No. 342, Melbourne: AHURI
<https://www.ahuri.edu.au/research/final-reports/342>

⁷⁷ There is a third possible approach to reform – lowering the initial threshold – but this is not supported. It would increase CRA's already large targeting problem by increasing payments to recipients not in rental stress, still leave recipients paying high rents in stress and do nothing for the many who currently miss out altogether.

referral of powers to the Commonwealth or as administrators of funds granted by the Commonwealth for the purpose. Moreover, in the absence of reforms to resolve the social housing operating subsidy issue, any reform of CRA would need to remediate negative impacts for the community housing sector whose finances and viability are dependent on the treatment of the payment as effectively a supply subsidy.

- **Recommendation. The Commonwealth should lead engagement with states and territories to reform Rent Assistance, to be paid to all low-income renters in rental stress, in an amount that, when added to 30% of their other income, covers their rent for a suitable dwelling.**

Rent regulation

We have investigated rent setting regulations and practices in numerous countries.⁷⁸ Australia can do better than the largely hands-off approach it has taken in recent decades.

We submit that the simplest and best approach is to limit rent increases during tenancies by a certain percentage amount. Residential tenancies legislation could fix this amount at, say, 3% per annum (i.e. the upper end of the RBA's inflation target), or provide for it to be calculated by reference to change in the CPI over the previous year. The frequency of rent increases should also be limited, as most jurisdictions already do, to not more than once in 12 months (including where the tenancy is renewed as a series of fixed term agreements). Also, current provisions allowing tenants to challenge rent increases as excessive to the general *market level* of rents for comparable premises should be retained.

This simple model of rent regulation is along the lines of the models used for years in most Canadian provinces, and recently adopted in Scotland. It would protect tenants from high rent increases that might otherwise put their housing at risk, while more or less maintaining the real value of the landlord's return on their investment.

Significantly, our proposed model of rent regulation would not seek to regulate rents for tenancies when they commence. These would continue to be set by the market, with only subsequent increasing during the tenancy to be regulated as above. There are two reasons for restricting rent regulation to rent increases during a tenancy.

First, it means that the new tenancy market would generate price signals for the supply of housing. In a market where there is high demand, high asking rents would signal to property owners to bring more housing supply to the market. Crucially, this supply should come from outside the existing rental housing stock: i.e. new construction, unused dwellings, second homes and Airbnb dwellings. Our current lack of rent regulation means that new tenancy market price signals are transmitted to the existing rental stock, in rent increases that may price existing tenants out of their homes. This brings those properties to the market, but also adds the former tenants to the numbers of those seeking housing. Regulation of rent increases for existing tenancies helps transmit new tenancy market price signals to sources of genuinely additional housing supply.

⁷⁸ Pawson, H., Martin, C., Aminpour, F., Gibb, K., Foye, C. (2022) 'COVID-19: Housing market impacts and housing policy responses - an international review' ACOSS/UNSW Sydney Poverty and Inequality Partnership Report No. 16, Sydney https://povertyandinequality.acoss.org.au/wp-content/uploads/2022/03/COVID-19-housing-market-impacts-Poverty-and-Inequality-Partnership-report-16_v1.pdf
Martin, C., Hulse, K. & Pawson, H. (2018) The changing institutions of private rental housing: an international review; Final Report no. 292; Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/292>

The second reason for regulating rent increases during tenancies only is its legal and administrative simplicity. All that is required is an amendment to the RTA to the effect that a purported increase beyond the limit for the relevant period is unlawful and invalid. There should be provision for a penalty, but mostly the regulation would be carried into effect by the contracts between landlords and tenants. By contrast, a regulation of new tenancy rents would be difficult, requiring the authorisation of some agency to determine new tenancy rents, including where the dwelling has not been let before; new records recording rents so determined; and investigations and enforcement processes where no contract yet exists between parties.

The model we propose could be combined with a temporary rent freeze, as has been recently proposed by some parties – simply set the limit to 0% for an initial period. As noted above, the notion of such a freeze in ‘emergency conditions’ is far from alien to Australia; the height of the COVID-19 pandemic saw such action implemented across much of the country. In the circumstances prevailing at the time of this Inquiry – the extraordinary rent increases seen over the past three years – there is some justification for arguing that a different kind of housing market emergency is indeed ongoing. We note too that the current limits on the frequency of rent increases impose, in effect, a mini rent freeze after every rent increase.

However, the more important reform is an enduring regime of percentage limits on rent increases. As more fully discussed in the next section of this submission, the enhancements of renter security is also a pressing priority for action in Australia – but also a necessary element of effective rent increase regulation. This is because any regime to restrict rent increases during tenancies while allowing the market to set rental prices between tenancies must also prevent tenants being evicted during periods of market pressure by landlords seeking to avoid regulation.

- **Recommendation: State and territory governments should regulate rent increases during tenancies for affordability. State and territories should amend their residential tenancies laws should be amended to limit rent increases during tenancies (including where the tenancy is conducted as a series of fixed terms) to a certain percentage amount, to be fixed by legislation or calculated by reference to the CPI. The frequency of rent increases should be limited to not more than once in 12 months, and provisions for challenging rent increases excessive to the general market level of rents for comparable premises should be retained.**
- **Recommendation: the ABS should regularly publish statistical analysis of the distribution and amount of rent increases during and at the commencement of tenancies, per the 2023 ABS-RBA analysis.**

The following briefly reviews the literature on rent regulation, which is the subject of a substantial body of theoretical commentary and empirical research. In textbooks, essays and pamphlets, economists from Hayek and Friedman to Myrdal have criticised ‘rent control’, usually by reference to the hard limits on rents introduced by many countries in the First and Second World Wars, and partially continued by some in the post-war period (Arnott 1995; Slater 2020). These ‘first generation’ rent controls typically froze rents in nominal terms, or allowed administered adjustments according to an historic benchmark that kept rents below the market level. The near-universal criticism is that they suppress new investment, discourage property maintenance and,

where partially applied, distribute benefits inequitably among tenants and provoke sharp practice and outright violence by landlords to oust tenants and properties from protection⁷⁹).

In a 1995 review of theoretical commentary, Arnott criticised the literature for focusing on these ‘first generation’ rent control, and for not keeping up with the different and diverse ‘second generation’ regulations implemented by numerous jurisdictions from the 1970s onwards. More recent writers similarly emphasise the heterogeneity of second generation rent regulations, which range from the relatively weak protection of sitting tenants from rent increases that are excessive to market levels, to provisions that limit rent increases during and between tenancies according to a contemporary moving benchmark (such as CPI or a percentage cap).

Rent regulation is also the subject of a substantial body of econometric research, much of it from the United States, and much of it finding negative consequences, particularly in terms of distribution of benefits and under-investment⁸⁰. However, the assumptions made in at least some of these studies as to the negativity of effects are questionable: for example, the above-cited research characterises reduced mobility by tenants in rent-controlled premises as an inefficient form of insurance against rent increases, rather than a welcome respite from moves⁸¹; while another US study, observing that a partial rent control indirectly suppressed the market value of non-controlled properties, characterised this as a cost, rather than a reduction in housing costs⁸².

In a scathing review of the theoretical and empirical literature, another writer describes the majority of it deliberately obscuring the diversity of rent regulation and the plausible benefits of well-designed regimes, including the encouragement of investment in additional rental housing (because that is how property owners could increase rental incomes, rather than simply increasing rents on existing properties)⁸³. More equably, Gibb, Soaita and Marsh conclude from their recent, wide-ranging review of the research that ‘rent control can have a negative, positive or neutral effect on one or more aspect of housing and related markets, depending on your modelling assumptions’⁸⁴.

⁷⁹ Gibb, K., Soaita, A. and Marsh, A. (2022) Rent control: A review of the evidence base; Glasgow: Collaborative Centre for Housing Evidence <https://housingevidence.ac.uk/wp-content/uploads/2022/02/220215-Rent-control-web-ready.pdf>

Arnott, R. (1995) Time for revisionism on rent control? *Journal of Economic Perspectives*, 9(1), pp. 99–120

⁸⁰ Diamond, R, McQuade, T. and Qian, F. (2017) The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco; NBER Working Paper https://www.nber.org/system/files/working_papers/w24181/w24181.pdf

⁸¹ Ibid.

⁸² Autor, David H., Palmer, C. and Pathak, P. (2014) Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, Massachusetts; *Journal of Political Economy* 122 (3):661–717

⁸³ Slater, T. (2020) ‘Rent control and housing justice’, *Finisterra*, vol. LV no. 114: 59–76.

⁸⁴ Gibb, K., Soaita, A. and Marsh, A. (2022) Rent control: A review of the evidence base; Glasgow: Collaborative Centre for Housing Evidence <https://housingevidence.ac.uk/wp-content/uploads/2022/02/220215-Rent-control-web-ready.pdf>

5. Improving renters’ rights (ToR (d) and (f))

As well as only lightly regulating rent increases (as discussed in the previous section), Australian residential tenancies law is only lightly protective of tenants’ interests generally, when compared with other countries. We discussed some aspects of deficient regulation in Section 2 of this submission, regarding tenants’ experiences of accessing tenancies, security and insecurity, and dwelling conditions.

In the present section, we briefly give some further evidence of growing divergences and deficiencies in Australian residential tenancies law reform. This is at least partly to result of states and territories reviewing and reforming their laws without national co-ordination. We then set out some key topics for a national tenancy law reform agenda. Finally, we address the issue of the impacts of law reform on rental investment and disinvestment, and refute the oft-made claim that improving renters’ rights will cause a disastrous flight of investors from the sector.

Australian residential tenancies law: divergences and deficiencies

We made a detailed review of Australian residential tenancies laws in our 2022 AHURI report⁸⁵. The table presents the topics and key problems identified.

Topic	Problem
The RTAs and residential tenancy agreements	The RTAs differ significantly in form, coverage and terminology. Some are now large, complex pieces of legislation that are difficult to navigate.
Access to rental housing	A range of old and new issues affecting access to rental housing are not addressed in residential tenancies legislation, particularly around the information requirements of tenancy application processes.*
Rent and other costs	Provisions regarding rents and other costs have developed little. All jurisdictions allow rent increases to be challenged where excessive to the market—a simple principle that is hard to determine in practice – and do not regulate for affordability.**
Tenants’ quiet enjoyment, privacy and household autonomy	The right to quiet enjoyment is prescribed in all jurisdictions, and not much developed by legislative reform. The consequences for breach are limited. Recent reforms relating to pets and alterations have had divergent outcomes.
Dwelling conditions, repairs and alterations	The ‘minimum standards’ introduced recently in several jurisdictions largely restate the existing obligation to provide and maintain habitable premises, with some minor additions. Other problems in the general obligation remain unaddressed.*
Termination and eviction	All jurisdictions provide for ready but orderly termination of tenancies by landlords, including without grounds, although some limit the use of the latter. There are substantial differences between jurisdictions in notice periods, grounds, arrears, and tribunal discretion.
Dispute resolution and the tribunals	Relatively quick and informal dispute resolution is provided by the Civil and Administrative Tribunals, but matters involving interstate landlords are not within their jurisdiction, and must go instead to the lower courts.
Family and domestic	All jurisdictions have addressed the tenancy consequences of FDV

⁸⁵ Martin, C. et al. (2022) Regulation of residential tenancies and impacts on investment, Final Report No. 391, Melbourne: AHURI, <https://www.ahuri.edu.au/research/finalreports/391>

violence	differently: some provide for survivors to give a certified notice and move out, others require court or tribunal proceedings. Some have also qualified tenants' vicarious liability
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A national agenda for tenancy law reform

It is now almost 50 years since the Australian Government, through the reports of the Commission of Inquiry into Poverty, set the agenda for the law reform processes that eventually produced the residential tenancies legislation currently operating in all states and territories. It is time to pursue a new national agenda for residential tenancies law reform. This time the starting point is not the same sort of legal disarray found by the Poverty Inquiry reports, and there is more legislative experience, expertise and material at the level of the states and territories that can be productively drawn on. However, co-ordination is needed, as is accountability for the consequences of inadequate legal protection of housing rights.

The decision of the National Cabinet, announced in April this year, to task state and territory housing ministers with developing a law reform agenda that strengthens tenants' right is very welcome. We submit that the reform process requires a dedicated working group, comprising federal, state and territory officers, tenancy law experts and sector representatives, to inform the agenda, carry it through to implementation, and review the reforms.

- **Recommendation: The National Cabinet should establish a working group of federal, state and territory officers, tenancy law experts and sector representatives, to inform, implement and review the agenda for stronger renters' rights.**

Jurisdictions could take the lead on researching, consulting and developing proposals on different topic areas. We recommend the following directions for reform in each topic area:

- **Recommendation: States and territories should improve the form and consistency of the Residential Tenancies Acts and residential tenancy agreements.** Work should be done on a more consistent format for standard form residential tenancy agreements and, more importantly, for the RTAs themselves. A consistent modern definition of boarders, lodgers and other categories of renters excluded from the mainstream provisions should be agreed, and broad occupancy principles established for those categories without specific regulatory regimes. Whether fixed terms should be abolished should be investigated.
- **Recommendation: Residential tenancies laws should better safeguard access to rental housing. Discrimination in the provision of rental housing on grounds of source of income, status as a recipient of income support, and status as an applicant for social housing should be prohibited. Registers for landlords should be established with a 'fit and proper person' test.** Consideration should be given to landlord qualifications and banning orders, and to a prescribed standard form for tenancy applications. A watching brief should be maintained on developments in information technology in rental housing, particularly involving third party intermediaries who might not otherwise be covered by provisions directed at landlords and agents.
- **Recommendation: Residential tenancies laws should regulate rent increases during tenancies for affordability. Limit rent increases during tenancies to a certain**

percentage amount. **Limit the frequency of rent increases to not more than once in 12 months. Ensure tenancies subject to a series of fixed terms are covered by the limits. Allow challenges to rent increases where excessive to the general market level of rents for comparable premises.**

- **Recommendation: Residential tenancies laws should better protect tenants' quiet enjoyment, privacy and household autonomy. Appropriate penalties should be devised for breach of quiet enjoyment, and provision made for compensation for loss of enjoyment. Terms that unreasonably restrict the number of members of the tenants' household should be prohibited. Consideration should be given to allowing tenants to keep pets and make minor alterations without approval.** The scope of prescribed reasons for landlords accessing the premises should be investigated, as should schemes for bargaining over access and compensation for loss of enjoyment when a property is advertised for sale.
- **Recommendation: Residential tenancies laws should make clearer and stronger the obligations of landlords regarding dwelling conditions, repairs and alterations. The obligation of landlords to provide and maintain premises in a habitable condition should be clarified in consistent minimum standards, and augmented by specific additional requirements in identified priority areas for improvement (e.g. electrical safety devices and energy efficiency standards).** Consideration should be given to increasing and clarifying the standard of conduct required of the landlord in detecting and monitoring for defects, and to clarifying whether and how their liability may be delegated to others.
- **Recommendation: Residential tenancies laws should strengthen tenants' security against termination and eviction. Termination by landlords should be on prescribed grounds only; without-grounds termination should be abolished. The tribunals should be afforded discretion to decline termination.** How this discretion is most appropriately structured (e.g. by factors for specific consideration) should be investigated. The appropriate scope of the prescribed grounds, and the notice required for each, should be investigated.
- **Recommendation: Residential tenancies laws should improve access to dispute resolution and the tribunals. An investigation should be made into how to appropriately balance use of preliminary procedures (including by other executive agencies) that divert from the tribunal, ordinary proceedings in the tribunal and more formal proceedings that produce written reasons.** The tribunals' lack of jurisdiction in matters involving interstate landlords is difficult to reform, because of its constitutional basis. Consideration should be given to requiring landlords to disclose to prospective tenants if they reside interstate and the jurisdictional consequences thereof. Whether tenants subject to eviction proceedings should have a right to legal representation from appropriately funded tenants advice and advocacy services, along lines of 'Right to Counsel' programs in the US, should be investigated.
- **Recommendation: Residential tenancies laws should appropriately address the tenancy consequences of family and domestic violence. Provision should be made for tenants to give a termination notice on grounds of FDV, certified by an**

appropriate person, and leave without further liability. Vicarious liability should be qualified such that tenants are not liable where a breach.

The overarching principle of a national law reform agenda should be to unapologetically centre the rights of tenants to affordable housing, in decent condition, that supports autonomy and secure occupancy.

Regulation, investment and disinvestment

A persistent feature of discussions about residential tenancies law reform are claims by landlords and their representatives that improving the law for tenants will be counterproductive, because reforms will cause landlords to disinvest, resulting in less rental supply and higher rents.

The long-term growth of private rental investment over the RTA era tends to contradict this claim. In our 2022 AHURI research, we tested the claim quantitatively, using a ‘difference-in-differences’ analysis of trends on rental bond lodgements and refunds around law reform episodes in New South Wales (the commencement of the Residential Tenancies Act 2010 (NSW)) and Victoria (the start of the Victoria’s laws reform review in 2015). We found no statistically significant increase in properties exiting the Sydney and Melbourne sectors around those events: in fact, the Sydney property exits trend was slightly lower after the New South Wales reforms. The Melbourne properties entries trend was slightly lower after the commencement of the 2015 review, consistent with some investors pausing for ‘due diligence’. But there was no ‘disinvestment’ effect.⁸⁶

The same research found consistent results in a survey of just under 1,000 landlords. A significant portion (44%) said tenancy laws were a ‘very important’ consideration in their decision to invest; however, of landlords who had disposed of a property, only 14% nominated dissatisfaction with tenancy laws as ‘very important’ to their decision – placing tenancy laws last among a range of possible factors in disinvestment decisions. By far more commonly cited ‘very important’ reasons for disposing of a rental property were ‘it was a good time to sell and realise capital gains’ (50%) and ‘I wanted money for another investment’ (47%).⁸⁷

In previous international comparative research for AHURI, we reviewed key aspects of PRS regulation in Australia and nine comparator countries; in seven of these countries the PRS is on a growth trend, while in another (Germany), private rental is not growing but is the majority tenure.⁸⁸ We found that the view of tenancy regulation as “red tape” is out of step with the recent experience of most countries studied, because none of the recent growth in their PRS had been prompted or unleashed by deregulation. This finding was consistent with that of Whitehead et al., who examined in 11 European countries the relationship between PRS size and growth and the degree of regulation: they concluded that there is ‘no clear relationship’.⁸⁹ A literature review by Short reaches the same conclusion.⁹⁰

While claims about recent law reforms causing disinvestment are not supported by evidence, it is arguable that stronger law reforms may have such an effect. In other words, it may be that past

⁸⁶ Martin, C. et al. (2022) Regulation of residential tenancies and impacts on investment, Final Report No. 391, Melbourne: AHURI <https://www.ahuri.edu.au/research/final-reports/391>

⁸⁷ Ibid.

⁸⁸ Martin, C., Hulse, K., and Pawson, H. (2018) The changing institutions of private rental housing: an international review, AHURI Final Report No. 292, Australian Housing and Urban Research Institute Limited, Melbourne. <https://www.ahuri.edu.au/research/final-reports/292>

⁸⁹ Whitehead, C., Markkanen, S., Monk, S., Scanlon, K., and Tang, C. (2016) The Private Rented Sector in the New Century: A Comparative Approach, Cambridge, University of Cambridge: 69.

⁹⁰ Short, P. (2018) Residential tenancy law and residential rental investment, Tenants Queensland, Brisbane.

reforms have been too modest, and that were governments to implement reforms less accommodating of landlords, some may make good on their habitual threat to disinvest. We submit that this should not be taken as a threat, but as a good thing: that is, the incapable and the unwilling exiting the sector, and thereby opening up prospects instead for new owner-occupiers or for differently oriented landlords—especially non-profit rental housing providers. On the same reasoning, were higher standards and expectations to discourage new private landlords from entering the sector, there would be more scope opened up for new owner-occupiers and investors less inclined to churn properties and households.