

Evictions and housing management: toward more effective strategies

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for the

**Australian Housing
and Urban Research Institute**

Southern Research Centre

June 2004

AHURI Positioning Paper No. 76

ISSN: 1834-9250

ISBN: 1 920941 29 0



Australian Housing
and Urban Research Institute

ACKNOWLEDGEMENTS

This material was produced with funding from the Australian Government and the Australian States and Territories. AHURI Ltd gratefully acknowledges the financial and other support it has received from the Australian, State and Territory governments, without which this work would not have been possible.

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EXECUTIVE SUMMARY

This Positioning Paper sets out the conceptual and theoretical issues surrounding housing evictions in Australia. It discusses the current state of knowledge about evictions in Australia, as reflected in the Australian academic literature, international research, relevant legislation and policy documents.

This Positioning Paper is the first output of a research project examining housing evictions in Australia, with empirical work to take place in South Australia, Tasmania and Victoria. The research project set out to answer four key questions:

1. Who are evictees and what factors – low income, substance abuse, gambling, unemployment or the breakdown of families – resulted in the failure of their tenancy? What is the profile of persons evicted from the public rental sector compared with those displaced from the private rental sector? What are their attitudes to eviction and what, if any, strategies do they engage in to avoid eviction?
2. Where are evictees housed after they have been ejected from their dwelling? Who provides shelter to this group, under what terms and at what cost? To what degree are they forced into temporary accommodation for an extended period?
3. What is the impact of evictions on private rental housing supply and the demand for government-provided housing support? To what extent do evicted persons rely upon government-provided crisis accommodation, publicly provided bonds and other supports?
4. What policy interventions can reduce the frequency and impact of evictions? What steps can public sector agencies take to enhance the sustainability of tenancies, and the robustness of the private rental sector?

The Positioning Paper begins with a discussion of the process of eviction and the respective roles of landlord and tenant. It considers how the relationship between the two is mediated by residential tenancies legislation. Residential tenancies legislation is necessary both to protect tenants and to guarantee the rights and obligations of landlords. Significantly for this research, residential tenancy legislation defines the circumstances under which an eviction can be initiated, it also prescribes the processes for achieving vacant possession. All States and Territories have residential tenancy legislation and there are both substantial commonalities and significant differences across jurisdictions. Both public landlords and private landlords engage in evictions. State Housing Authorities tend to have well-developed and sophisticated policies for dealing with tenants who are in breach of their rental arrangements.

The Positioning Paper considers the evidence base surrounding evictions in Australia. It concludes that:

- There has been relatively little research into evictions in Australia. This gap within the evidence base is made more difficult by difficulties in counting the number of evictions. These difficulties are both of a conceptual nature and practical in their dimensions: as tenants may unwillingly leave their dwelling at a number of stages in the eviction process, it is difficult to count evictions in concrete terms. At a more practical level, statistics relating to the number of evictions are relatively scanty and there is scope for under-enumeration, over-enumeration and misallocation into categories.
- The overwhelming majority of evictions are initiated by landlords because of arrears of rent. Few tenants appear at eviction proceedings, but research suggests that those who do appear are less likely to be evicted.
- Landlords' applications to the appropriate Court or Tribunal for possession may result in a conditional, rather than an immediate, order for possession. This may give tenants a second chance to preserve their tenancy.

- The available evidence suggests that one to two per cent of tenancies end in a bailiff- or police-assisted eviction. Several factors, including a tightening housing market, declining access to public rental housing may have contributed to an increase in the rate of eviction in recent years.

The Positioning Paper discusses the social and economic factors that may account for the incidence of eviction. The available literature suggests that age, mental illness, gambling problems, low income and the state of the housing market all contribute to the risk of eviction. Many evictees are likely to have been evicted on more than one occasion and this may reflect multiple and complex dimensions of disadvantage or pathological behaviour. Gambling addicts, for example, may go through a transition from homeowner to homeless that takes six years on average and which involves eviction from private rental housing on numerous occasions (Antonetti and Horn 2001). Low income is a significant problem, with Burke and Ralston (2003) demonstrating substantial falls in the incomes of public and private tenants over the last 30 years, and significant levels of debt in both rental sectors. Substance abuse and anti social behaviour are also part of the socio-pathology of eviction.

The Positioning Paper finishes with a discussion of the implications of these findings for the wider research project.

1 INTRODUCTION

This Positioning Paper discusses the conceptual and theoretical issues surrounding housing evictions in Australia. It establishes the conceptual framework for the presentation of the empirical components of our research into housing evictions in three Australian states (Victoria, Tasmania and South Australia). This Positioning Paper is specifically concerned with the housing management issues that arise out of evictions. Evictions have not received a great detail of attention within the housing management literature within Australia, or internationally. In part this reflects the public sector focus of much Australian research – with most evictions taking place within the private rental market – but it is also a function of disciplinary boundaries. Evictions are most commonly studied as part of the legal system and, as such, have made a relatively small contribution to housing research in Australia (see Bradbrook, 1975). Internationally, while some research has been published (Nixon, Hunter, Wishart and Smith 1996; Baldwin 1997; Sefton and Wishart 1998; Crane and Warne 2000) differences between legislation and institutional contexts make direct comparisons difficult, although some of the United Kingdom literature provides useful comparators for an Australian study. The Centre on Housing Rights and Evictions (COHRE), for example, monitors evictions internationally, but as an organisation it is focussed on the wholesale clearance of slums in developing nations and pays little attention to events within Western economies. Their recent publication (COHRE 2003) documents evictions in over 20 nations but does not cover Australia, or the United Kingdom, though evictions in the USA are discussed briefly. Evictions therefore receive partial coverage within the research literature and represent an undeveloped field within Australian housing and urban research.

This research sets out to establish an evidence base around public and private sector rental evictions in Australia that will assist in the formulation of policies and strategies that reduce the cost burden of evictions on housing providers and managers. Ideally, it is hoped that a better evidence base will ultimately result in fewer evictions and less disruption within the lives of low income people vulnerable to eviction.

Residential tenancy disputes and housing evictions exert a direct impact on public sector housing management in three critical ways:

1. Evicted persons may be forced into homelessness. Government or non-government agencies carry the cost of meeting their short and medium term housing needs. In some instances persons evicted from SHA dwellings may immediately draw upon further SHA accommodation, or other SHA support such as a bond guarantee. SHAs may find it necessary to over-ride their debt policies so that evicted persons avoid homelessness.
2. There are housing management costs to SHAs in evicting their tenants. Evictions bring direct costs and carry only limited benefit for the management of the public stock. However, failing to evict tenants may generate other problems – such as significant problems with arrears of rent - and this gives rise to a substantial dilemma in housing management: whether to evict or not. Difficult and disruptive tenants within the public rental sector, many of whom have multiple and complex needs, raise other issues regarding eviction and the most appropriate strategies for the management of the public housing stock (Jacobs and Arthurson, 2003; Parliament of South Australia, 2003).
3. High levels of tenancy disputes and evictions within the private rental market may generate a perception of market failure amongst landlords, who then become reluctant to invest in low cost rental housing. A proportion of landlords have always been significantly 'dispute averse'. The 1997 survey of rental investors showed 16 per cent of those intending to sell would do so because of the work and worry involved. This explanation was also given by a similar proportion of investors who

had sold properties during the previous five years. These groups tended to have lower median weekly incomes than their peers, suggesting interests in lower-cost housing (ABS 1997). More recently, landlords have noted with concern the changing profile of tenants in lower-cost private rental, commenting that their own position was becoming unsustainable because 'the government expects us to both run a business and act as social workers' (quoted in Hugo *et al* 2000 6.4). Without the 'social work' input (hardly a traditional investor responsibility), tenants were unable to maintain their tenancies, making capital gains from sale increasing attractive to the investors. If their properties consequently leave the rental market, the result is likely to be higher rents within the private rental sector and an increased demand for publicly-funded housing.

It is the goal of this research to generate knowledge about evictions and evictees that can be used to inform policies that reduce the cost burden of evictions on public housing providers and managers. The research also sets out to consider strategies for reducing evictions in the private rental sector in order to generate more positive attitudes amongst private providers to rental housing.

Evictions are a significant problem for public policy generally and public sector housing management more specifically. Earlier research found that evictions in South Australia alone stood at approximately 6,000 per year, of which 1,000 required the services of a bailiff to eject the tenant (Slatter and Beer 2003). These data suggest that approximately six per cent of all tenancies end in eviction and that one per cent end in bailiff-assisted eviction. Other research suggests the level of disputes within the private rental market has increased considerably over the last decade (Slatter *et al* 2000), particularly in the private sector. The majority of evictions are initiated by landlords because of arrears of rent (Slatter and Beer 2003). However, eviction proceedings can be initiated for a range of other reasons including tenant breaches such as damage to the property or disrupting the neighbourhood or alternatively, the landlord's changing needs, such as sale of the property or redevelopment.

All Australian jurisdictions have procedures for dealing with failed tenancies. In some States and Territories a body such as a Residential Tenancy Tribunal adjudicates on landlord/tenant disputes (SA, Victoria, New South Wales) while elsewhere these matters are dealt with by the Magistrates Court (for example, Tasmania, Queensland). Moreover, all State Housing Authorities and community housing bodies (housing associations and co-operatives) have policies and procedures for dealing with evictions. There are strong commonalities in the way different States and Territories deal with evictions, but the differences can be significant: long term caravan park residents in South Australia, for example, are not covered by residential tenancies legislation and therefore do not have recourse to the Residential Tenancies Tribunal if threatened with eviction. In Queensland they are covered by the equivalent legislation and have more extensive rights.

Four key research questions are addressed in this research project:

- Who are evictees and what factors – for example, low income, substance abuse, gambling, unemployment or the breakdown of families – resulted in the failure of their tenancy? What is the profile of persons evicted from the public rental sector compared with those displaced from the private rental sector? What are their attitudes to eviction and what, if any, strategies do they engage in to avoid eviction?
- Where are evictees housed after they have been ejected from their dwelling? Who provides shelter to this group, under what terms and at what cost? To what degree are they forced into temporary accommodation for an extended period?
- What is the impact of evictions on private rental housing supply and the demand for government-provided housing support? To what extent do evicted persons rely upon government-provided crisis accommodation, publicly-provided bonds and other supports?

- What policy interventions can reduce the frequency and impact of evictions? What steps can public sector agencies take to enhance the sustainability of tenancies. How can the robustness of the private rental sector be strengthened?

In undertaking this research we anticipate that it will identify a range of factors that predispose tenancies to fail. It is likely that non-housing factors will be associated with evictions – such as unemployment, drug or other substance abuse, gambling or psychiatric disability or household break-up – as well as housing factors such as limited previous experience renting, a record of prior evictions and high housing costs relative to income. The relative importance of these hypothesised factors is unknown.

This Positioning Paper contributes to the broader goals of this research project by clarifying what we mean by the term ‘eviction’ and how our understanding of an eviction is pivotal to any attempt to enumerate evictions. Our definition of an eviction also shapes the policy challenges within both the public and private sector, as some types of eviction present more acute demands on public housing managers and the tenancy regulatory system than others. The Positioning Paper goes on to document the regulatory environment for tenancies in all States and Territories, for both the public and private sectors. This audit of current practice adds to the evidence base on evictions and provides a platform for understanding how evictions arise, and are dealt with, on a jurisdiction by jurisdiction basis. The Positioning Paper then turns to consider the factors that may contribute to eviction. It examines the role low income, youth, gambling, psychiatric disability et cetera play in making a household vulnerable to eviction.

2 UNDERSTANDING EVICTIONS

Any examination of evictions within the residential sector must begin with an understanding of the landlord/tenant legislation, as it is now legislation that provides the legal framework for repossession and eviction. Kennedy *et al* (1995) identify the ancient origins of the legal regulation of tenancies, which can be seen as early as 1235. However, the common law that developed between the thirteenth and twentieth centuries remained grounded in the rural England of its origins. It became increasingly inappropriate to modern Australian urban residential arrangements. In 1975 the Commonwealth Commission of Inquiry into Poverty in Australia published two Reports (Bradbrook 1975; Sackville 1975) that detailed why and how the law governing residential tenancies should be reformed to provide a modern regulatory regime. The aim was to strike a new and appropriate balance between the rights of landlords and tenants in a form that was clear, coherent, easy to locate and simple to enforce by both parties (Slatter 2002). The perception of the tenant as the 'consumer' of 'housing services' in an essentially contractual arrangement that conferred substantial rights as well as duties was central to the Commission's recommendations (Kennedy *et al* 1995, 5). Current residential tenancy legislation in all States and Territories follows the broad pattern suggested by Bradbrook and the Sackville Report.

This section considers the definitional, process and legal issues surrounding the term eviction and the parties to an eviction. In the discussion that follows, the terms 'landlord' and 'tenant' are used for the parties to a residential tenancy agreement; 'tribunal' is used as the general term for the forums where possession actions concerning residential tenancies are heard (this therefore includes both a formal 'Tribunal' and Magistrate Courts). 'Tribunal' is used only with reference to specific institutions.

2.1 Eviction: The Landlord's Initiative

An eviction is the removal of a tenant from premises so that the landlord may resume possession. It is the most acute manifestation of the landlord's interest in, and rights in, the property. An eviction reflects the landlord's decision: an eviction does not take place at the tenant's initiative.

Eviction: Physical and 'Formal'

The residential tenancy legislation of each State and Territory prescribes the circumstances in which a landlord can seek vacant possession. It also sets out the process that must be followed. The term 'eviction' is often reserved exclusively for the final act of this process: the forceful exclusion of recalcitrant tenants by a bailiff or the police after an Order for Possession has been obtained against them. However, once a landlord has indicated that the process is to be set in train, many tenants may quit the premises in anticipation of an Order. Alternatively they may leave the property when the Order is granted without the intervention of bailiffs or the police. It is important to recognise that the legislative frameworks directly shape the eviction process, with respect to timing, cost and implementation. Direct action by a landlord to eject a tenant is illegal.

Table 2-1: Schematic Representation of The Eviction Process

<i>Life of Tenancy</i>	<i>Outcome</i>	<i>Eviction Stage</i>
Tenancy Commences		
↓		
Dispute Between Landlord and Tenant	Tenancy Fails as Tenant Leaves	Stage 1 The Early Leaver
↓		
Landlord Seeks a Hearing and Tenant Notified of Dispute	Tenancy Fails as Tenant Leaves	Stage 2 The Proceedings Shy Tenant
↓		
Hearing listed in Tribunal or Magistrates Court	Tenancy Fails as Tenant Leaves	Stage 3 The Tribunal Shy Tenant
↓		
Hearing takes place. Order Granted by Tribunal		
1. Unconditional possession order granted or 2. Conditional order granted: tenant relieved and can stay as long as conditions observed	Tenancy Terminated: Tenant Leaves	Stage 4a The Ordered Departure
3. Order made in favour of Tenant	Tenancy Terminated if condition breached: Tenant Leaves	Stage 4b The Delayed Departure
↓		
Order for Possession Enforced by Bailiff or Police	Enforced Termination of Tenancy	Stage 5 The Forced Departure

Table 2-1 presents the eviction process in schematic form. Significantly, there are a number of stages to the process of eviction. In Stage 1 tenants may be seen to have been prompted or encouraged to leave the dwelling by the onset of the dispute with the landlord, while in Stage 5 a bailiff or police officer removes the tenant from the dwelling and organises to change the locks to the property. We argue that tenants who are prompted to leave their dwelling by imminent or actual proceedings, at any of the five stages identified, have been evicted. There are therefore a number of exit points available to the tenant. From the landlord's perspective eviction can be a time consuming – and therefore costly – exercise. Research in South Australia showed that on average it took eight weeks to achieve a bailiff-assisted eviction. This was roughly twice the maximum period for which the landlord could protect themselves by taking a

bond, as prescribed by legislation (Slatter and Beer 2003). We should also recognise that tenants do have rights and that not all tenancy disputes are decided in favour of the landlord. Moreover, evidence from the Residential Tenancy Tribunal in South Australia suggests that tribunals are reluctant to grant unconditional orders for possession and are more likely to award a conditional order (Slatter and Beer 2003).

Data on the number of bailiff- (or police-) assisted evictions suggest that they are merely the tip of an iceberg. Reliable statistics are difficult to unearth on this topic: some of the reasons for this are discussed below. Such data as have been explored are instructive. For example, data from South Australia's Office of Consumer and Business Affairs and the South Australian Housing Trust show that a total of 55,000 tenancies ended during the year to 30 June 2001. During the same period there were 7,593 hearings in the State's Residential Tenancies Tribunal, of which 5,546 appear to be applications for possession (OCBA 2001, p. 18). There were also 1075 bailiff-assisted evictions (Slatter and Beer 2003, p. 21). Inevitably, some of those evictions will relate to Orders made in the previous recording year. However, it is clear that the vast majority of tenancies, whether public or private, ended 'naturally', without any use of formal process. While the proportion ending with physical eviction doubled over the period July 1997 - June 2001, this should be kept firmly in perspective by noting the increase was from 1 per cent to 2 per cent of all terminating tenancies.

The remaining 54,000 terminations may plausibly include cases where the tenants left before they were ejected but nevertheless only because a possession action had been begun, or intimated, by their landlord. Whether this occurs, and if so why, are two of the issues the current study is designed to investigate.

For the purposes of this work, therefore, we include as 'evictions' (i) situations where tenants leave *in response to* the landlord obtaining a formal order of possession against them and (ii) situations where tenants leave *in anticipation of* the landlord obtaining or enforcing a possession order. Broadly categorised, these may be termed 'physical' and 'formal' evictions respectively, or 'eviction' and 'eviction by anticipation'.

This spectrum captures more accurately the extent of moves by residential tenants made at the landlord's initiative, and permits a more revealing exploration of the context and outcomes of those moves.

Enumerating Evictions

Quantifying the incidence of eviction from available data poses considerable challenges within and across jurisdictions.

- Eviction assisted by bailiffs or police
 - Official statistics may be obscured as 'enforcement of a judgement' rather than an eviction being recorded.
- Eviction achieved in response to an Order for Possession
 - Where an unconditional order for possession is granted it is reasonable to deduce that the tenant will leave; re-negotiation of the tenancy at that point would be highly unusual, although not impossible
 - Only a minority of Orders may be unconditional. Where the claim is based on arrears of rent, a conditional Order may be granted irrespective of the form of application. The impact of conditional Orders is ambiguous. If the tenant observes the conditions, they cannot be evicted. Some conditional orders will be self-executing, entitling the Landlord to possession without more formality if the condition is breached. Unless assistance is required, an eviction in such a case is 'invisible'.

- Similarly 'invisible' are cases where the tenant leaves voluntarily after breaching conditions even though, formally, the order is not self-executing but requires re-application to the tribunal to confirm the landlord's rights.
- Problems are compounded by the priority attached to applications over Orders in standard data collection systems.
- Eviction achieved in anticipation of Order/lodgement of proceedings
 - The number of evictions of this nature cannot safely be deduced from data. Simply to equate this group with, for example, 'successful claims against bonds' is unreliable because those statistics themselves, if available, are highly ambiguous.

2.2 Regulating Eviction: Legislation, Policies and Procedures

Eviction is regulated in each State and Territory by jurisdictionally-specific residential tenancy legislation. These various Acts define the situations in which landlords have the right to seek possession from their tenants, a search that may result in eviction. The Acts also prescribe the process by which possession is to be obtained, including bailiff- or police-assisted evictions. In other words, the legislation regulates 'when' and 'how' a landlord may lawfully take action to move the tenants out. In all States and Territories the legislation covers the termination of both private rental tenancies and public rental tenancies.

The Acts, of course, do not oblige landlords to evict; they merely provide the parameters within which a landlord may decide to do so. They set the bounds for the exercise of discretion. Private landlords, and the agents whom many of them employ, may be guided in such decisions by experience formulated into practice or informal policy. Australia's residential rental market has been described as a 'disparate and fragmented "cottage industry"', dominated by small, non-professional landlords (Berry and Hall, 2001, p.5). This complicates any attempt to generalise about the use of possession actions or eviction in the private rental market and studies to date have been cautious in drawing any conclusions (Slatter and Beer 2003, p.42). This is an aspect of interest to this research, which from its focus on tenants' experiences may also disclose some patterns in landlords' practice.

Unlike private landlords, State Housing Authorities have generally well-developed and articulated policies and procedures relating to debt management, tenancy management and eviction that shape the exercise of their discretion within the statutory parameters. This provides a second tier of regulation in respect of public housing tenancies. Decisions made with reference to such policies may be challenged through the various Public Housing Appeal facilities established in compliance with the requirements of clause 29 of the Commonwealth State Housing Agreement 1989. These policies are of intrinsic relevance to this Study, particularly those of the three states, South Australia, Tasmania and Victoria, in which the fieldwork is to be undertaken.

2.3 Regulating Eviction: A Consumer Focus

It is of interest that both sources of regulation, legislation and policy, have described themselves as adopting a 'consumer' approach, with the tenant as the primary 'consumer'.

In advocating a 'consumer' approach to residential tenancy legislation in the mid-1970s, Bradbrook argued that landlords and tenants were all jeopardised by the anachronistic state of the existing law (Bradbrook 1975:1). Tenants' rights were inadequate; landlords' more extensive rights were often rendered illusory by the difficulties of enforcement. All concerned would benefit from law that was clear, coherent and easy to locate. Rights would become real, rather than merely theoretical, if they could be quickly, cheaply, and fairly enforced. It was acknowledged that changes to the substantive law would primarily advantage tenants and improvements in process would

primarily benefit landlords: reducing the costs (in time, money and uncertainty) of the action for possession was the principal incentive for landlords to accept reform. A further aspect of the proposed reforms that strongly reflected the consumer protection orientation was the importance given to providing information, publicity and education to ensure a broad awareness of the new law and how to use it.

In the wave of legislation that followed, beginning with South Australia's *Residential Tenancy Act* 1978, Bradbrook's proposed pattern was adopted and adapted. Like Bradbrook, the 1995 Report on *Minimum Legislative Standards for Residential Tenancies in Australia* highlighted the importance of balancing rights, providing effective dispute resolution and resourcing appropriate information and education strategies (Kennedy *et al* 1995, p.84) encouraged consistency as States and Territories continued to consider residential tenancy reform. Subsequent legislation has in fact tended to follow Bradbrook's broad pattern, although each Act has distinctive features.

In developing policies within the legislative framework, State Housing Authorities (SHAs) have been required to address the changing context of public housing provision and their unique position as landlords of last resort. The particular challenges are succinctly identified in the Queensland Department of Housing document *Improving People's Lives Through Housing* as 'diminishing resources, an ageing housing portfolio and growing and changing housing need'. For most SHAs, the necessary response means 'revisiting the underlying way we do business' (QDH 2000, Forward). In particular, shifting the focus firmly onto the client/tenant: a 'consumer' focus. This fundamental shift has been seen widely across the States and Territories. There is now a growing emphasis on supporting tenants in successfully maintaining their tenancies, avoiding the so-called 'revolving door' of households who experience failed public tenancy-eviction-homelessness/housing crisis-public tenancy-failed public tenancy' *ad infinitum* (Gale 2003a, p.2; 2003b, *passim*). This includes identifying tenancies-at-risk, developing early intervention strategies, liaising with tenants and across services and developing collaborative inter-agency and cross-sectoral service partnerships. Consequently, there has been a widespread recognition of the need for public landlords to develop tenancy management and support capacities as well as the more traditional property management/debt management skills. This has provoked debate about the propriety of staff exercising both functions. It is also resulting in a changing attitude to eviction: eviction is now more clearly the remedy of last resort for some of these landlords of last resort. The South Australian Housing Trust, for example, halved the numbers of evictions among its tenants between July 2000 and June 2002 as a result of adopting its Successful Tenancies policy (SAHT 2002:17). This Study will query whether evictees' experience endorses the approaches adopted and how far they could be usefully translated into the private rental context.

2.4 Regulating Eviction: Security of Tenure

'Security of tenure' may be a somewhat slippery phrase (Minnery *et al* 2003: ii). However, in the legal context of landlord-tenant relationships it reflects the degree to which the tenant is able to control the length of time they remain in the premises. For residential tenants, this technical sense of the phrase is beautifully captured in *Improving People's Lives Through Housing*

(i)deally, our home is a place where we control our environment – a place that is ours for as long as we choose to stay. A sense of security is not about whether you move or stay: *it is the ability to make that choice for yourself*' (emphasis added) (QDH 2000, p. 3).

Renting is an inherently limited (and vulnerable) tenure. The two principal types of tenancy in Australia are the fixed-term lease, with a stated limited duration at the outset, and the periodic tenancy, which may continue indefinitely. Both are less than ownership. Both are precarious, although the periodic tenancy is more vulnerable than the fixed term lease.

The degree of vulnerability comes from the product of the landlord's rights to seek possession (what circumstances are recognised as entitling an application) and the capacity and willingness of the parties to pursue their rights through the statutory process. For example, if there are many circumstances when the landlord is entitled to apply for possession and landlords are able and willing to use the necessary paperwork and to plead in the tribunal but tenants are not, then the potential assault on security of tenure is considerable. On the other hand, if the right to apply for possession is heavily restricted and tenants are aware and confident in defending their rights through the formal process, their security of tenure is much stronger. There is a spectrum of security that is affected by a number of variables acting in conjunction. Policy and resource decisions are important in locating a system of regulation on that spectrum, striking a balance between the rights and interests of landlords and tenants. This Study will explore those variables as they apply in the Australian jurisdictions. In particular it will focus on the responses of tenants and the explanations for them.

Not surprisingly, striking a balance between the tenant's interest in security of tenure and the landlord's interest in exercising control over the property has been one of the most contentious issues faced in reforming tenancy regulation.

The patterns of private rental investment and the role of the rental sector in Australia exacerbate the difficulty of striking a satisfactory balance. Residential landlords mostly own only one, or at most two, rental properties (ABS 1997). A study for the National Housing Strategy found that '(t)he issue of control seems to be particularly important to the small, equity-driven landlord, the major suppliers of low to moderately priced rental accommodation' (Elton 1991, p.91). Burke, also commenting on the consequences of the supply-side profile, has characterised Australian private rental as 'a complement, or as a residual, to home ownership'. Investment in the sector is not based on the rental return alone but on the possible capital gain, whose level and rate are driven by what happens in the owner occupied housing market. This means that residential tenancy legislation 'must accommodate itself to the right of the landlord to make decisions as to whether his or her property is to be used for owner occupation or rental' (Burke 1998, p.10).

However, if the profile of rental investment has remained constant, the same cannot be said of renting. Over the last three decades the tenant profile in both private and public rental has changed significantly. Private rental is no longer such a transient tenure: households are increasingly long-term renters (Wulff and Maher 1998, p.5). The private rental market now 'is really two distinct sub-markets, a largish and relatively successful sector of choice for those who have adequate incomes and a sizeable low cost low income sector for those who cannot access anything more affordable or appropriate.' (Hulse and Burke 2000, p.3). A large proportion of private tenants live in housing stress. Many, including many on waiting lists for public rental housing, require bond assistance to access the market at all (Slatter and Crearie 2003, p. 3). Access to public rental has contracted. The number of public rental dwellings has declined. Segmented waiting lists have been introduced, limiting access to State housing to those in greatest need, including a substantial proportion who cannot access or sustain private rental.

The original aim of the residential tenancy reforms was to establish a regulatory regime that was fair, clear, widely understood and easily enforced by both parties. The thirty years since the original template was proposed have seen considerable social change, market change and a changed view of regulation (Ogus 1994, *passim*). Nevertheless, the model of 1975 is still clearly recognisable in today's residential tenancy regulation. A question that underlies this research project is how far the provisions regulating security of tenure remain appropriate in this changed environment.

2.5 Regulating Eviction: The Right to Possession

Eviction, although originally a direct self-help remedy, has never been available lawfully to the landlord at will. This section highlights the situations when landlords can currently apply to terminate tenancies, leading to the possible eviction of the tenants.

All leases

Breaches of tenancy: Tenants prejudice their security of tenure if they commit breaches of the tenancy agreement. The tenancy is a contract under which the tenant is subject to a range of obligations. Breach of any tenancy obligation potentially exposes the tenant to an action of possession, irrespective of the type of lease. The landlord's right to terminate the lease and seek possession for breach applies equally to breaches of fixed-term leases and periodic tenancies. All jurisdictions allow the tenant time to remedy the breach. However, if this is not done the landlord may then pursue possession. To succeed it is necessary to satisfy the tribunal on two matters. First, as a matter of fact, that the alleged breach occurred and has not been remedied. Secondly, that it is reasonable in the circumstances for the tribunal to order possession. The landlord's claim is thus subject to external scrutiny on fact and merits. This provides opportunities for the tenant to challenge and defend, and possibly defeat, the landlord's action and thereby avoid eviction.

The vast majority of actions for possession are actions for arrears of rent. This appears to be a pattern across jurisdictions (Tenants Union of Victoria 1988, p.3; Ramsay 2000, p. 8; Slatter and Beer 2003, p.31). It may be misleading to take this at face value, since arrears claims are relatively straightforward to prove and may be used to mask other problems that prompt the landlord to end the tenancy. Nevertheless, if this is the case such problems must be in addition to rent arrears for an application to succeed.

In practice, therefore, tenant breach is the greatest threat to security of tenure.

Breaches of tenancy render any tenancy vulnerable but eviction is not the inevitable result. The breach may be remedied. An action may be successfully defended. The tribunal may grant a reprieve by making a conditional order. However, tenants may move out before engaging with the process when they understand that the landlord means to pursue them. What is not known is the extent to which 'eviction by anticipation' occurs and the reasons for it. These are aspects of evictees' experience that this research will pursue.

Fixed term tenancies

Ending of a fixed term: Fixed terms in Australia are generally six or 12 months. Any length may be negotiated but in practice negotiation is extremely rare. The only threat to the tenant's security of tenure during a fixed term arises if there is a breach of the tenancy. However, at the end of the fixed term there is no automatic right to a further term, although the parties can agree that this will occur. Without such agreement, if the landlord wishes the arrangement to end, this can be achieved. No reason need be given: the expiry of the fixed term is enough.

In principle, therefore, fixed term leases give the tenant a short but reasonably secure period of occupation followed by uncertainty.

If there is no agreement for a new term and no action for possession on the expiry of the original term but the tenant remains in occupation and pays rent, the parties will be deemed to have created a periodic tenancy. This will continue until one of them terminates it.

Periodic tenancies

The tenant's security of tenure is theoretically less in a periodic tenancy because landlords have more opportunities to regain possession. The provisions vary somewhat across jurisdictions.

Termination 'for cause' / 'on grounds': In some states, the landlord can only end a periodic tenancy for breach or 'for cause'. The 'causes' or 'grounds' are specified in the Acts. They are limited. They include the property being sold, or renovated, or the use being changed. In these jurisdictions, the landlord also needs to satisfy the tribunal that termination is reasonable in the circumstances. The application is therefore subject to an external scrutiny of fact and merits. The extent of investigation into the facts may be variable. For example, some concern was expressed in Tasmania when the 1997 Act was under review about applications alleging sale. This type of concern is addressed more by provisions that require the landlord to show a concluded contract of sale.

Termination for no cause: some jurisdictions continue the historic right of the landlord to end a periodic tenancy at any time for no stated cause, so long as the required period of notice is given. This means that the only external review available is a procedural check, unless the landlord also has to satisfy the tribunal that eviction is reasonable in all the circumstances. Where the Act includes a 'hardship' clause, this may provide a basis for merit review, but is somewhat indirect and limited. 'No cause' evictions have been a continuing bone of contention between tenants' advocacy groups and other interests. More recently, debate has focused on the availability of this option to public housing landlords.

Retaliatory evictions: many jurisdictions expressly outlaw applications made by landlords in retaliation for tenants asserting their legal rights, for example to repairs. However, this is not a universal provision, although the problem may be indirectly addressed by a requirement to show that termination and eviction are reasonable. Such a provision opens the door to a tenant disputing and defending such an application.

Eviction by non-landlords: The orthodox legal analysis usually allows only the landlord to apply for the termination of a tenancy and the eviction of the tenant. Only parties to the tenancy agreement are generally accorded the status to dispute or enforce it. In rare cases a third party with a property interest in the premises, such as a mortgagee, may come into possession rights. However, a unique provision in South Australia allows an 'interested person' who need not be the landlord to apply to have the tenancy terminated if the tenant's conduct has been 'unacceptable'. This includes illegal activity, nuisance or unreasonable interference with the peace, comfort and privacy of another person residing in the vicinity of the rented premises. This provision, Section 90, attempts to create a direct remedy for neighbours faced with difficult or disruptive tenants, whether in public or private rental. The section has regularly provided between 1 per and 2 per cent of the Residential Tenancies Tribunal caseload since it was introduced in the 1995 Act (Slatter et al 2000, p.25). It has produced some procedural difficulties that have been difficult to address. For example, since the landlord is not necessarily a party to the application, it has not always been obvious how an eviction can be achieved after the termination order has been granted (Raymond 1998: 225). South Australia is the only jurisdiction to have taken this direction.

2.6 Regulating Eviction: Dispute Resolution Processes

Establishing appropriate structures for dispute resolution between landlords and tenants was a major focus of the reform proposals of the mid-1970s (Bradbrook 1975, p.5). The desire was to establish 'accessible' bodies that would be cheap, speedy, expert and effective, where the parties could present their own cases, landlords and tenants alike, confident that they would be given a fair go. By these means the new balance of rights struck by the law would be given substance. The original proposal, adopted in South Australia, Victoria and New South Wales, was to establish a Tribunal specifically for

residential tenancy disputes. The South Australian Tribunal continues; the other two now exist within larger bodies, as a List of the Victorian Civil and Administrative Tribunal and as a part of the Consumer, Trader and Tenancy Tribunal in New South Wales respectively. Other jurisdictions have developed a possession jurisdiction within the main court structures, although most have a separate List or identifiable residential tenancy forum, mostly in the Small Claims or equivalent jurisdiction, where litigants in person are expected and procedures modified accordingly.

The 1995 Report on *Minimum Legislative Standards for Residential Tenancies in Australia* recounted concern that 'landlords' courts' or 'eviction courts' had developed (Kennedy *et al* 1995: 84). Such material as is available has consistently shown that landlords and their agents are still the primary users and beneficiaries of the tenancy jurisdictions. Possession actions constitute the major part of the caseload. Kennedy *et al* showed landlords' possession and breach of tenancy cases constituting between 70 per cent and 80 per cent of the caseloads of the New South Wales and Victorian Tribunals in the period 1990 -1994 (Kennedy *et al* 1995: 42, 44). Possession actions constituted more than 75 per cent of the South Australian Tribunal's caseload in 2000, while tenant initiated actions had declined from 17 per cent to 9 per cent of the total (Slatter *et al* 2000: 27).

Landlords do not generally present their cases in person. Some jurisdictions prohibit legal representation but this does not prevent real estate agents appearing for landlords. The proportions will vary. In a sample from the South Australian Tribunal, almost 90 per cent of cases were presented by agents or by Housing Trust officers with experience in the work (Slatter and Beer 2003, p. 26). These people are 'repeat players' (Galanter 1974: 96) who appear frequently in possession matters and are familiar with the law and procedures and with the tribunal environment and personnel. They also have a merely professional relationship to the premises. In all these respects they would appear to have strategic advantages over a tenant appearing in person for a unique or occasional hearing, which relates to the future of their home.

At the same time, studies have consistently shown low rates of appearance by tenants as 'defendants' in hearings (Kennedy *et al* 1995, p. 40; Nixon *et al* 1996; Sefton and Wishart 1998; Ramsay 2000, p. 4). Slatter and Beer found that overall, tenants appeared in only 25 per cent of hearings, although public tenants were more likely to take part than private tenants (Slatter and Beer 2003, p. 27). This is significant as research in Victoria in 1988 indicated that the tenant's chance of avoiding eviction and remaining in the premises increased ninefold if they appeared (Tenants' Union of Victoria 1988, p. 2). Overseas studies have found a similar advantage for tenants who attend hearings (Nixon *et al* 1996; Sefton and Wishart 1998). Even in the tenant's absence, the tribunal may give them a reprieve, by making a conditional order for possession. Indeed, this may have been the landlord's true aim all the time. However, without the tenant present it is hard to see how there can be any confidence that the arrangement is sustainable.

A similar reluctance to engage is described in many small debt jurisdictions (Baldwin 1997: *passim*) although little has been written in explanation and contract debtors are not usually in danger of losing their home. Research elsewhere has demonstrated that a variety of factors may contribute to poor engagement by tenants with the eviction process. They include: the design of paperwork connected with hearings; tenants' poor coping skills; absence of clear directions to sources of support and assistance; inconvenient times and places for hearings and the failure of documents to arrive (Tenants Union of Victoria 1988, p. 4; Chamberlain and Johnson 2000, p.18; Ramsay 2000, p. 7). These reflect shortcomings in the 'accessibility' of the dispute resolution process. Metters (2002) highlights the disempowering impact of poverty, the drain on the energy of individual tenants, and the often limited coping capacity of tenants involved in eviction actions. He emphasises that written information alone is unlikely to equip people to protect or pursue their rights: face-to-face support and explanation is

also necessary (Metters 2002:18). While some tenants may have a cavalier attitude to eviction, there are indications that they are not the majority (Cossar *et al* 1977, p.275; Ford and Seavers 1998, p.36). Given the shelter and non-shelter impacts of eviction and of frequent enforced moves (Chamberlain and Johnson 2000, p. 10; McBrearty and Bradley 2000, p.5; Crane and Warnes 2000, p.760; Phibbs 2001, p.3) the issue of tenant engagement or non-engagement with the eviction process merits inquiry. It is an aspect of the evictees' experience that is of especial interest to this study.

2.7 Information and Education Strategies

Together with reform of the law and reform of dispute resolution structures, the provision of information and education was the third major focus of the residential tenancy reform programme of the 1970s. Providing resources so that that landlords, tenants and agents knew and understood their rights and responsibilities was seen as essential to the project. The 1995 Report on *Minimum Legislative Standards for Residential Tenancies in Australia* reviewed and reported on existing systems and encouraged diversity of media and an awareness of equity needs in preparing and disseminating information. It urged care in ensuring that target groups with particular needs were identified and resources developed accordingly. The Report was unusually specific in this context and prescribed best practice across a range of matters, including advice services, publications, school kits, seminars for lessors, videos, access and equity and community education workers. It included a plea for resources for self-managing landlords, whose need for information was largely unmet except by the efforts of Property Owners Associations.

There are currently a variety of resources available to landlords and tenants in addition to the basic information booklet on tenancy law which every jurisdiction requires tenants to be given at the outset of a tenancy. Information and advice is provided by the State and Territory Departments responsible for consumer affairs and in many jurisdictions also by the courts and by a range of community agencies, particularly tenants' advocacy groups. Some departments and agencies have been keen to develop a range of product styles in various media, and have developed extensive web sites and links to related support and assistance. Public tenants' groups have also been facilitated by State Housing Authorities and can provide networks for support and informal advice and information.

One focus of interest in this study is how far evictees were aware of their rights or of sources of information, advice and support. Does their experience point to patterns of best practice for the current rental climate? What impact did their awareness (or otherwise) have on their response to the problem in their tenancy?

2.8 Importance for the Research

In this section we have outlined the definition used for 'eviction' in the study, namely, the tenant's situation of moving in response to actual or imminent possession proceedings initiated by the landlord. We have identified five 'exit points' for the tenant. Possession proceedings represent the limit of 'security of tenure' for residential tenants: they presage a move that is not of the tenant's seeking. However, existing research suggests that in most cases it is the tenant's breach of tenancy conditions that renders them vulnerable and 'insecure'. Tenants – or more specifically their behaviour – therefore plays an active part in creating the circumstances leading to eviction. This study will examine the tenants' experience. Why did they feel they had to move? Especially for those tenants who moved precipitately, before formal action, what factors influenced their decision to move early or wait until the bailiffs arrived? What impact did the move have? Where did they go? Can they identify anything that would have helped to sustain their tenancy?

The section has also identified three major ambitions underlying the original design of the regulatory regime: clear rights and duties for both parties; accessible dispute resolution facilities and appropriate information, advice and support provision. Since the 1970s, when this wave of tenancies legislation was promulgated, the profile of private rental has changed. During the same period, public rental tenancies have been brought within the statutory regime. The research will examine the experiences of evictees for indications of the strengths and weaknesses of this system. For example, existing research indicates very low rates of engagement by tenants with the eviction process. If this is reflected here, can we learn from evictees whether it should be a cause for concern and if so, how it might be addressed? What is the cumulative effect on evictees of the residential tenancy legislation and State Housing Authority policies and procedures? Also, do differences in State and Territory legislation have an appreciable impact on the experiences of evictees? Is the legislative framework significant in shaping the experiences of persons to be evicted, or do other factors – such as the level of service support – exert a greater influence?

These areas of inquiry lead inexorably back to the robustness (or otherwise) of tenancies in public and private rental and the consequences for housing providers and housing policy. The research will identify the policy implications of evictees' experience of the eviction process for both public and private landlords. In turn this will lead to a consideration of strategic responses, founded on the evidence base of the project, designed to assist housing providers and their customers towards more successful tenancies.

3 THE REGULATION OF TENANCIES AND EVICTIONS BY STATE AND TERRITORY

The regulation and control of tenancies is a responsibility of State and Territory governments. While there have been national attempts to sponsor minimum standards in residential tenancy legislation (Kennedy *et al* 1995), significant variations remain between the States in how they deal with tenants and the eviction process. There are also significant differences between State Housing Authorities. In Queensland, for example, tenants evicted from their publicly-provided dwelling cannot secure SHA housing until they have repaid their debt. In South Australia there is no obligation to repay debt prior to rehousing, and access will be determined by the standard needs assessment process.

This section of the report documents the processes and legislation used to control tenancies and evictions in all parts of Australia. It provides a State and Territory breakdown of relevant legislation, dispute resolution procedures, information services to tenants and the policies and procedures of the State Housing Authority.

3.1 Australian Capital Territory

Legislation

The Residential Tenancies Act 1997 regulates private rental and public housing.

- *Termination/Possession*: Landlords have extensive rights to terminate or seek termination by the Tribunal. Self-help eviction is outlawed.
- For a *fixed term tenancy*: for breach of tenancy condition, or if property is not fit for habitation or is not available because of government action. On third breach, landlord does not have to allow opportunity to remedy but can immediately give Notice to Vacate.
- Landlords can also terminate during a fixed term tenancy for no cause giving 26 weeks' notice that must not expire during fixed term.
- For a *periodic tenancy* the landlord can terminate for breach, for no cause, or for cause, namely: if the landlord or an immediate relative intends to live in the property; if a person with close family or personal relationship with the landlord intends to live in the property; if the landlord has a genuine intention to sell the property or if the landlord has a genuine intention to renovate, reconstruct or make major repairs to the property which cannot reasonably be carried out with the tenant in occupation.
- The landlord may also apply for possession in *either fixed term or periodic tenancy* if: the landlord would suffer significant hardship if the tenancy continued; if the landlord's person, family or property has suffered or is likely to suffer injury or damage if the tenancy is not terminated; if the tenancy was part of an employment arrangement which has ended; if the tenant made false or misleading statement as result of which the tenancy was granted.
- If the tenant can satisfy the Tribunal that the application is made in retaliation for exercising the tenant's rights, this may be a good defence.

Dispute Resolution

- The Residential Tenancies Tribunal, established under the 1997 Act, hears all residential tenancy disputes. The Tribunal endeavours to deal with all cases within 14 days of the respondent being served with the Tribunal papers. Parties have an unrestricted right to legal representation, or representation by an agent. However, costs are not often awarded which may be a disincentive.

- The police enforce warrants of possession if necessary.

Information

- In addition to *The Renting Book*, authorised by the Commissioner for Fair Trading, there is information on the Tribunal website. Housing ACT has useful fact sheets for public tenants. The ACT Tenants' Union Inc provides advice and information as well as advocacy.

Public Housing

- Housing Manager Specialists work with public housing tenants and applicants with identified complex needs who are not currently receiving the level of support that they require in order to achieve sustainable and stable tenancies. Referrals may be internal or external. The Community Linkages program was announced in the ACT Government's 2001-02 Budget to provide for a service 'broker' to link housing tenants to a range of community and support services. Its scope has since been expanded to also assist community housing tenants. The program provides approximately \$2 million, over four years (until 2005). The primary focus of the program is to link public and community housing tenants to a range of support services. Services funded to date include the Housing Manager specialist position, financial counselling services and the Preventing Eviction Program for public tenants at risk of eviction.

3.2 New South Wales

Legislation

- *The Residential Tenancies Act 1987* regulates private rental and public housing.
- The landlord may seek termination/possession of a *fixed term* agreement for breach. The landlord must give notice if the tenant is to move out at the end of the fixed term. In a *periodic tenancy* the landlord may terminate for breach, for sale with vacant possession and also for no cause. The Tribunal must consider the relative hardship to each party before granting an order.
- The landlord may end the agreement without notice if the premises become unfit for habitation. In addition, the landlord can seek possession without notice if the tenant or guest cause serious damage intentionally or recklessly, or injure or are likely to injure the landlord, agent or neighbours or if the landlord would suffer hardship if the agreement were not ended – compensation may be paid to the tenant in that case.
- If the tenant can satisfy the Tribunal that the application is made in retaliation for exercising the tenant's rights, this may be a good defence.

Dispute Resolution

- Residential tenancy disputes are now heard by the Consumer Trader and Tenancy Tribunal. There is no general right to legal representation. Landlords may be represented by agents. Advisers from Tenants Advice and Advocacy Service (a government funded service) may appear with or for tenants, or may assist them to prepare to present their own case.
- Warrants for possession are enforced by a Sheriff's Officer, with police assistance if necessary.

Information

- Apart from *The Renting Guide*, from the Office of Fair Trading, information is available from the Renting Services phone-line, the extensive network of Tenant Advice & Advocacy Program Services, from the Tribunal and from the Tenants' Union of New South Wales.

Public Housing

- Department of Housing applications constitute approximately 18 per cent of applications to the Tenancy Division of the Consumer Trader and Tenancy Tribunal. The Department is committed to working in partnership with other government and non-government human service agencies to help people with support needs to maintain their tenancy. New programs are regularly developed to progress this aim (Wannan, 2003) Similarly, it is committed to working with appropriate agencies where a person is putting their tenancy at risk (for example, arrears, property damage, or nuisance and annoyance) due to their need for ongoing support (NSW 2003).

3.3 Northern Territory

Legislation

- *The Residential Tenancies Act 1999* regulates private rental and public housing.
- The landlord may seek termination/possession of a *fixed term* agreement for breach or if the premises become uninhabitable. The landlord must give notice if the tenant is to move out at the end of the fixed term.
- In a *periodic tenancy* the landlord may terminate for breach, for use of the premises as a drug house within the *Misuse of Drugs Act* and also for no cause. The Commissioner or the Court must consider the relative hardship to each party before granting an order. The landlord may apply to the Commissioner or Court to terminate the tenancy if its continuation would cause undue hardship, or if the tenant has committed a serious breach of tenancy, or if the tenant's behaviour is unacceptable because of illegal use of the premises, repeated nuisance or unreasonable interference with the peace or privacy of a nearby resident.

Dispute Resolution

- Applications are heard by the Commissioner of Tenancies.
- The police enforce warrants of possession if necessary.

Information

- The Tenancy Unit within Consumer and Business Affairs provides information and advice. It also provides educational services to interested groups. The Department of Justice publishes and distributes *Tenants, Landlord, A Guide to Renting in the Northern Territory*. Advice may be obtained from the Territory's Community Legal Services and Aboriginal Legal Aid Services.

Public Housing

- The Housing Services Operational Policy Manual produced by Territory Housing and publicly available details the approach to be taken within the parameters of the tenancy legislation. Very clear are the conspicuous lengthening of statutory time frames and a pro-active attitude to debt issues as they arise: 'Territory Housing understands that its tenants may, at times, experience financial problems, and is willing to assist tenants where possible. This assistance may include structuring rental payments or referring them to a financial counsellor' (TH 2003: 9.2.2).

3.4 Queensland

Legislation

- *The Residential Tenancies Act 1994* regulates private rental and public housing.
- The landlord may terminate a *periodic tenancy* if they have entered into a contract of sale and also without cause.

- *Fixed term* and *periodic tenancies* may be terminated for breach of the agreement, excessive hardship, actual or anticipated damage or injury caused by the other party; objectionable behaviour of the other party or repeated breaches (more than two in two years) by the other party of a term of the tenancy.
- Retaliatory eviction is expressly prohibited by the Act.

Dispute Resolution

- Disputes relating to vacant possession are primarily heard in the Small Claims Court of the Magistrates jurisdiction.
- Warrants of possession may be enforced by the police.

Information

- Information, support and advice for tenants may be obtained from the Tenants' Advice and Advocacy Service (Qld) which has 25 offices across the state and from the Tenants' Union of Queensland which has two offices. In addition, information about the Act may be obtained from the Residential Tenancies Authority, whose Dispute Resolution Service is available without charge to assist parties in the resolution of tenancy disputes.

Public Housing

- Housing Queensland has since 1999 been reformulating its strategic directions to take into account the current and anticipated future challenges posed by diminishing resources, an ageing housing portfolio and growing and changing housing need. In developing an increasingly client- focused approach, the State's Public Housing Strategy (PHS) 2003-2008 includes the objective of managing 'tenancies in a manner which supports people to maintain their tenancies as required'. The current focus is on 'vulnerable tenancies where households are at risk of eviction (and possibly homelessness) due to their failure to maintain basic tenancy conditions such as rent payments and other issues'. Policy reviews are under way to improve the effectiveness of the public housing system in supporting tenants (PHS 2003:15). Research commissioned into sustaining public tenancies-at-risk has been completed and is now under discussion within the Department (Jones *et al*, 2003). The *Residential Tenancies Act* 1994 sets the broad parameters of the Department's operation, but much discretion resides with the Department as to tenancy management issues and an increasingly responsive approach is evolving. Experience within the State has highlighted the desirability of responsive management: Morrison for example suggested that where elderly tenants fell into arrears after a history of timely and full rent payments 'sending out correspondence containing the words (sic) "eviction" may not be the best first step' (Morrison 2000: 4.6).

3.5 South Australia

Legislation

- The *Residential Tenancies Act* 1995 regulates termination of private and public tenancies. The landlord may seek termination/possession of a *fixed term* agreement for breach. In a *periodic tenancy* the landlord may terminate for breach, for demolition, for repairs or renovations that cannot be done with the tenant in residence, for occupation by the landlord or a member of the landlord's family or for a contracted sale with vacant possession. A periodic tenancy may also be terminated for no cause.

- The Tribunal may end the agreement if the tenant or a guest has intentionally or recklessly injured the landlord, agent or a person in the vicinity or has damaged the premise or if the landlord would suffer undue hardship if the agreement were not ended – compensation may be paid to the tenant in that case.
- The Tribunal may also end the tenancy if the landlord or a third party satisfies it that the tenant has used the premises for an illegal purpose, or has caused a nuisance or an interference with the reasonable peace, comfort or privacy of someone living in the immediate vicinity. This provision is unique in allowing someone other than the landlord to apply.

Dispute Resolution

- The Residential Tenancies Tribunal hears cases under the Act. Legal representation is highly restricted. Landlords may be represented by agents.
- Warrants can be enforced by a Tribunal bailiff if necessary.

Information

- The Tenancies Branch of the Office of Consumer and Business Affairs publishes an information brochure that must be given to tenants at the outset of the lease. It also has numerous fact sheets and a telephone inquiry service for information and advice.

Public Housing

- When the Housing Reforms were introduced in March 2000, the South Australian Housing Trust adopted a strong early intervention focus in its tenancy management and relegated eviction to a remedy of last resort. Trust evictions were almost halved in the two years to June 2002. The two principal causes of termination are still debt and disruptive behaviour. Debt management practices developing more early intervention/tenant support strategies are being investigated and the Trust is currently reformulating its 'difficult and disruptive' tenant policy, developing a repertoire of response including prevention, predictable intervention as well as enforcement (SAHT 2003, p.18).

3.6 Tasmania

Legislation

- The Residential Tenancies Act 1997 regulates public and private rental.
- For *fixed term tenancies* the landlord may evict for breach. For *periodic tenancies*, the landlord may also terminate where the property has been sold or the landlord is going to renovate the property or requires the property for another purposes. There is provision for two failures of rent during any 12 month period to be forgiven as long as arrears are paid within the 14 day notice period after a Notice to Vacate has been served. The notice will then be void. A third arrears situation in any 12 months however, is not retrievable by the tenant unless the owner agrees.
- There is no express prohibition of retaliatory evictions but if an owner seeks an order for possession, the Court must be satisfied that the preceding notice to vacate was 'genuine or just'

Dispute Resolution

- Applications for Orders of Possession are heard by the Small Claims Court, a jurisdiction of the Magistrates Court.
- Warrants for possession may be enforced by the police.

Information

- Free information for 'owners' and tenants is available from Consumer Affairs and Fair Trading, a Division of Tasmania's Department of Justice and Industrial Relations.
- Tenants may also obtain information from Housing Tasmania and free advice and information from the Tenants' Union of Tasmania, and from Community Legal Centres.

Public Housing

- The Tasmanian government's Affordable Housing Strategy Framework, released in December 2003 recognised that 'housing stress is a complex problem that requires whole of government and community response'. 'Long-term, secure and stable' social housing tenancies feature as one aspect of this, supporting public housing tenants 'in sustaining their tenancies through improved service co-ordination'. Liaison workers are planned within Housing Tasmania for tenants with complex needs (AHSF 2003, p.8) and a three-pronged approach to enhancing access to and maintenance of tenancies in the private rental market includes the provision of Intensive Tenancy Assistance Packages including financial support and counselling and long-term skills development and access to a support worker for people with special needs to assist in establishing or maintaining private rental (AHSF 2003, p.12)

3.7 Victoria

Legislation

- The Residential Tenancies Act 1997 regulates private and public tenancies.
- The landlord may seek possession without notice of a *fixed term* or *periodic tenancy* if the property has been destroyed or damaged maliciously. A *fixed term tenancy* can otherwise only be ended for breach. A *periodic tenancy* may be ended for cause: namely change of use, occupation by the landlord or a close relative, sale with vacant possession, or repair or renovation which cannot be reasonably undertaken with the tenant in possession. A periodic tenancy can also be ended for no cause.
- Victoria is notable for having introduced the 'Alternative Procedure' for possession actions based on rent arrears. This is an expedited procedure by means of which the action is compressed and is decided without a hearing and in the applicant's favour unless the tenant promptly lodges an Objection to the claim.
- Retaliatory evictions are forbidden.

Dispute Resolution

- Possession actions are heard by the Residential Tenancies List of the Victorian Civil and Administrative Tribunal.
- Parties are generally encouraged to present their own cases but in possession actions they may be represented by a 'professional advocate', a phrase that includes lawyers and also people with experience as an advocate in residential tenancy proceedings. This would include real estate agents and tenant advocates.
- Warrants for possession are executed by the police.

Information

- The Tribunal and the Department of Consumer Affairs produce comprehensive information and material. The Department funds a statewide network of consumer and tenant services to provide advice to public and private tenants and information

for landlords. Recently a review of consumer advice services has led to the introduction of some mobile services in regional Victoria and to strategies to increase face-to-face consultation and advice, especially for vulnerable and disadvantaged consumers and tenants (Lenders, 2004) The Tenants' Union of Victoria also publishes information explaining the effect of the legislation and suggesting practical ways for tenants to ensure that their tenancy operates within the Act.

Public Housing

- The Housing and Community Building (HCB) Business Plan 2003-4 includes as Strategic Priority 5: 'Build sustainable, well-managed and efficient services that are timely, accessible and help to create successful tenancies' (HCB 2003: 2). The Plan later elaborates this by outlining its commitment to sustainable tenancies. "Sustainability" is a goal which is achieved through integrating better assessment, earlier intervention and sound property management and referral approaches, to minimise the risk of tenancy failure and to promote community connection through supportive and planned initiatives' (HCB 2003: 25). One of the many diverse strategies adopted has been the development of the role of Specialist Housing Officer, whose role is to build the capacity of housing teams to sustain tenancies. The position resembles that of Housing Support Co-ordinators in the South Australian Housing Trust. HCB is committed to project funding for a further 14 such positions during 2003-4.

3.8 Western Australia

Legislation

- *The Residential Tenancies Act 1987* regulates public and private tenancies.
- The landlord can end a *fixed-term tenancy* for breach, or if the property is destroyed or if the tenant maliciously damages the property. Applications based on undue hardship from continuing the tenancy may also be made. A *periodic tenancy* may also be ended if the property is sold with vacant possession or for no cause.

Dispute Resolution

- Applications for possession are heard in the Small Disputes Division of a Local Court. Legal representation is very restricted.
- Warrants for possession are enforced by the police.

Information

- Information and advice is available from the Department of Consumer and Employment Protection; from Tenants Advice Service WA Inc and from Local Service Units.
- *Public Housing*
- The *Evictions Report* of 1996, which explored 'early support strategies in working towards a reduction in public housing evictions' urged significant changes in Homeswest's policy and procedures relating to eviction (Mansveld 1996: *passim*). More recently, numerous modifications have been made to Homeswest policy in the wake of a major report on debt recovery policies by Shelter WA. As in other jurisdictions, there is an increasing focus on early intervention and management to support tenants in sustaining their tenancies.

3.9 Implications for the Research

This section has briefly outlined the regulatory environment of each State and Territory. It has also identified broad strands of policy currently influencing the approach taken by State Housing Authorities to tenancies-at-risk among their holdings. Even this very skeletal outline indicates areas of broad similarity and distinctively different detail.

This research has the opportunity to compare the experiences of evictees from three jurisdictions: South Australia, Tasmania and Victoria. These three States obviously differ in population size, distribution, demography and rental markets. Each has its own legislation and each State housing authority has developed its own policies and procedures that may relate to tenancies that end in eviction. In addition, there are significant differences of procedure.

South Australian possession actions are heard by the Residential Tenancies Tribunal, a body exclusively concerned with actions under the Residential Tenancies Act. In Tasmania, actions are heard in the Magistrates' Court. In Victoria, actions are heard in the Residential Tenancies List of the Victorian Civil and Administrative Tribunal but, unlike the other two States, landlords may choose to use an expedited procedure which is swifter and potentially advantageous to landlords. Each State also has provision for advice, information and support for tenants and landlords and these vary in mode and availability. Another difference between the States is the degree of reliance placed on tenant data bases. These seem to loom much larger in the Victorian rental market than in either South Australia or Tasmania and their impact may be significant, for tenants and for public housing demand (Seelig, 2003). Finally, the policies of the State Housing authorities vary on relevant aspects of tenant and tenancy management and on eligibility. This research will be especially interested to see what light the evictees' experience throws on the significance of such differences, and what lessons may be drawn from those findings.

4 RISK FACTORS CONTRIBUTING TO EVICTION

Understanding the social, economic and cultural processes that lead to eviction is fundamental to the development of more effective policy models. To a certain degree, the legal framework in each State and Territory regulating evictions and tenancies is independent of context: that is, it is process driven and independent of 'why' evictions are initiated. Evictions, however, are not randomly distributed within the population, or even the population of tenants. Slatter and Beer (2003), for example, showed that bailiff-assisted evictions were clustered in the low-income suburbs of metropolitan Adelaide's north and south. Jones et al (2003 p.3) suggest that

The *risk factors* associated with tenancy failure are divided into two main groupings. *Vulnerability factors* are those general characteristics of some public housing tenancies that can be hypothesised as making them prone to tenancy failure, particularly eviction. Precipitating life events are the particular events that trigger '*incidents*' that make tenancy failure an immediate or proximate possibility for vulnerable households.

There are strong resonances between Jones et al's (2003) risk factors and the work of Chamberlain and MacKenzie (2003) on pathways into homelessness amongst adults. This latter work is discussed below. What is clear, however, is that long-term factors may make households prone to eviction and that eviction is often precipitated by one or more discrete events. This section of the Positioning Paper sets out to review the existing evidence base on factors contributing to evictions.

Much of this discussion reflects a recognition that eviction is frequently (but not inevitably) a 'trigger' for adult homelessness. MacKenzie and Chamberlain (2003) identified two dominant models in their typology of adult homeless careers. Of these, one is the 'housing crisis' model in which poverty and accumulating debt underpin the 'slide into homelessness' (MacKenzie and Chamberlain 2003, p.30). The first stage in this model is the gradual accumulation of debt, signalling an increasing risk of eviction. This situation may result from an unexpected financial crisis, such as redundancy or dismissal. The second stage of this model sees extreme poverty as a pathway to eviction and eventual homelessness. Problems with neighbours coupled with inadequate financial resources to move and start again is a third scenario within the MacKenzie and Chamberlain (2003) model. Finally, the impact of gentrification on tenants was the fourth precipitating situation they identified (MacKenzie and Chamberlain 2003, p.32; Chamberlain and Johnson 2001; Chamberlain and Johnson 2000). Inadequate financial resources appear to underlie many evictions, a perception reinforced by the high incidence of action based on arrears of rent. The research will examine evictees' explanations of the reasons for their eviction and their commentary on falling into arrears, where that ultimately denied them security of tenure. Research on homelessness would incline us to anticipate contributing factors such as low income, gambling, youth/lack of experience, substance abuse, mental illness and intellectual disability.

MacKenzie and Chamberlain's second 'model' for adult homelessness focuses on family breakdown. While this may not seem as obviously relevant to eviction, nevertheless it informs this research in several respects. Domestic violence, for example, may produce damage and consequent tenant debt that ultimately results in eviction and may prove a barrier to subsequent private rental. In some cases, domestic violence may lie behind actions based on 'difficult and disruptive' behaviour. Family breakdown may bring acute poverty. It may provoke or reflect some of the factors identified above. It may, more subtly, result in discrimination manifested by eviction. Clearly, many of these factors are inter-related as individuals may be on a low income, be addicted to gambling and suffer discrimination within the rental market. However, it is important to understand the potential significance of each.

Evictions contribute to primary, secondary and tertiary homelessness. It would be reasonable to assume that all evictees experience tertiary homelessness, but some may proceed immediately to secondary homelessness and a few to primary homelessness. One of the important contributions of this research will be to provide some indication of the relative incidence of each level of homelessness arising out of eviction.

4.1 Low Income

Low income is clearly an important component of the social and economic framework within which evictions occur. Jones et al (2003) suggest that low income is *the* most important risk factor contributing to public sector evictions. There is a significant body of research that suggests that income inequalities are increasing within Australian society, with a 'hollowing out' of middle income earners and growth in the number of high income and low income households (Harding 1997; Vinson 1999; Gregory and Hunter 1995). Persons on statutory incomes (for example, unemployment, disability, or single parent benefits) are particularly vulnerable, but even 'working poor' households may be at risk of eviction because of incomes that are inadequate for their expenses.

Recent research by Burke and Ralston (2003) into the patterns of indebtedness, income and expenditure in the public and private sector sheds fresh light on the vulnerability of many households. Their research analysed the ABS Household Expenditure surveys from 1975-76 to 1998-99. Some of their key findings included:

- A real decline of 11.4 per cent of household disposable income, with most of this fall a consequence of changes in household composition, that is a move to smaller households with fewer income earners.
- Housing costs rose for all households. With the greatest rises occurring for home purchasers (up 66 per cent), followed by private tenants (21 per cent) and then public tenants (3 per cent).
- Falls in the real income of public tenants of 28.7 per cent and low-income private tenants of 9.5 per cent. This was a real decline and was adjusted for changing household composition.
- Housing costs increased as a percentage of all household expenditure. The private rental sector was the tenure that grew most rapidly across this period, particularly for the low-income quintiles.
- Approximately 30 to 40 per cent of private tenants reported financial problems such as the inability to pay utility bills, and an inability to raise money for emergencies. Burke and Ralston (2003) concluded that this indicated a pre-disposition to problems with rent arrears.
- Burke and Ralston (2003 p. ii) concluded that 'substantial proportions and absolute numbers of low income tenants, both public and private, cannot live at an adequate standard even after receiving a rebated rent or rent assistance'.
- A sizeable minority of tenants – especially private tenants – were burdened by debt and it was 'at a level sufficient to trigger arrears and perhaps loss of tenancy' (Burke and Ralston 2003 p. ii).

A clear picture emerges from Burke and Ralston's (2003) work: low income households in the private and public rental sectors are under increased financial pressure as a consequence of inadequate income, changes in household composition and the potential for significant debt. The pressures on these households have increased over the last 30 years, making more households vulnerable to eviction. Clearly the nature and distribution of income is an important factor contributing to the incidence of evictions.

Research on low income budgeting, mostly derived from United Kingdom studies (Berthoud and Kempson 1992; Kempson, Bryson and Rowlingson 1994; Ford and Seavers 1998) complements this work and indicates three relevant themes for the present project. First, as budgets tighten attempts are made to exercise greater control by increasing reliance on cash transactions; on prepayment; on shorter budgeting cycles and on credit. Secondly, the studies provide substantial evidence that attempts at forward planning are regularly disrupted by events and demands. Thirdly, in addition to low income, attitudes to money and thus attitudes to financial planning and budgeting vary, and may affect the style of financial management adopted and the financial outcomes that result (Ford and Seavers 1998, p.44). These are aspects of the evictees' experience that the project will explore.

4.2 Housing Market Dynamics

It is important to recognise that the nature and the structure of the housing market exerts a direct influence on the incidence and causes of eviction. Housing markets are dynamic both in their structure and in their level of activity. It is likely that landlords will be more willing to initiate an eviction when there is strong demand for rental properties and they can be assured of replacing their sitting tenant quickly. When there is a high vacancy rate in the private rental market landlords may be more willing to overlook or excuse rent arrears or damage to the property. The state of the market is therefore potentially a critical influence on the level of evictions (Slatter *et al* 2000, p.35).

Structural factors within the housing market will influence the level, timing and nature of evictions. Most private rental properties in Australia are owned by small landlords who own one or two dwellings at most (Beer 1999; Elton and Associates, 1991). There is, however, evidence to suggest changes within the nature of landlords and the way in which properties are being managed. While the corporate sector remains an indifferent investor in the rental market, a small number of landlords have acquired substantial rental stocks (up to 100 dwellings) (Stylianou 2001). Their management practices are likely to vary significantly from those of smaller – less professional – landlords and they may be more inclined to evict sitting tenants in order to protect their investment. Even amongst small scale landlords the increased use of professional agents to manage properties may result in an increased propensity to evict. This may be especially noticeable if the landlord has insured against 'tenant loss'. 'Landlords' insurance' is energetically marketed. Some products appear to offer very generous cover and may only be available if an agent is employed. The insurers' interest may result in a lower tolerance of tenants' breaches of tenancy, with prompt formal action taken more frequently and increasingly punctilious pursuit of lost rent and other expenses (Slatter and Beer 2003, p.12,).

The state of the housing market is therefore an important influence on the level of evictions within the private rental sector. Perhaps more subtly – and in light of the discussion above about the problems enumerating evictions – tight housing markets may result in a rise in the number of formal eviction proceedings as tenants, mindful of the difficulties they would face in finding new accommodation, do not leave their home as soon as they enter a dispute with their landlord.

4.3 Gambling and Evictions

Gambling is potentially an important pathway into homelessness and trigger for eviction. Over a period problem gamblers may lose the house they own and lose the capacity to sustain a tenancy.

Gambling and homelessness is a significant problem as gambling has emerged as a major potential cause of homelessness. The Productivity Commission (2002) has documented that gambling is an \$11 billion industry, with almost 80 per cent of Australians participating in the industry. The Commission estimated that there were approximately 130,000 Australians with severe problems with their gambling and

160,000 with moderate problems. Together 290,000 Australians are affected by problem gambling and on average they lose \$12,000 per year, compared with just \$650 for other gamblers. Policy changes in the 1980s and 1990s have liberalised access to gambling and this has contributed to growth in problem gambling and its consequences. The Commission also noted that one in ten problem gamblers reported that they have contemplated suicide, and that 20 per cent had lost time from work or study because of their gambling habit. The loss of income, the loss of time from work, relationship problems and mounting debts all contribute to the potential for an individual to be evicted from their dwelling and have that experience repeated.

There is a growing body of social science research into the gambling industry and its social and economic impact, both internationally and in Australia (McMillen 1998; 2000). But this literature, while emphasising the social pathologies with which problem gambling is associated does not specifically focus on the relationship between problem gamblers and their position within the housing market. There is some evidence showing gambling does precipitate homelessness. Over the last five years two surveys conducted by non-government agencies suggest a link between problem gambling and homelessness. The 1998 survey of 1,100 homeless men and women using 42 of the USA shelters run by the International Union of Gospel Missions, found that 18 per cent cited gambling as a cause of their homelessness. In Australia, a survey by Hanover Welfare Services (June 2001) of 48 clients of two "Break Even" gambling counselling services in Victoria, found that 12 per cent of clients had lost their housing due to gambling and one third reported gambling as leading to their housing crisis (Antonetti and Horn 2001). In-depth interviews of 12 'pathological gamblers' (from the original 48) identified common themes with regard to pathways into homelessness:

- relationship and family breakdown was seen to be an inevitable consequence of problem gambling;
- that it typically took from three to six years for problem gamblers to reach the point of housing crisis and homelessness;
- there were evident misconceptions about the type of specialist help available.

The authors concluded that further research was needed to elicit in-depth information on pathways from gambling into homelessness and thus the formulation of prevention and early intervention services. Antonetti and Horn (2001) did not examine in detail whether, and how often, these gamblers had been evicted within the private rental market, but it is likely that they had been evicted on more than one occasion.

4.4 Mental Illness and Intellectual Disability

Persons with mental illness or intellectual disability may be particularly vulnerable to eviction, particularly when combined with low income or unemployment.

Research by the Ecumenical Housing Unit for the Australian Housing and Urban Research Institute (Reynolds, Inglis and O'Brien 2002) emphasised that persons living with mental illness may need support to maintain their tenancy. Persons with mental illness are at risk of losing their rental dwelling through eviction if they are hospitalised, and not in a position to pay their rent. Moreover, the researchers reported that many persons with mental illness within the private rental sector were afraid of losing their dwelling, and this fear was a stress within their lives (O'Brien, Inglis, Herbert and Reynolds, 2002).

O'Brien et al (2002) identified a number of risk factors that could lead to the loss of housing for this group. These risks related to the person's own attributes, psychiatric disabilities, and behaviours when unwell and included:

- behaviour which is problematic to others
- failure to pay rent

- periods in hospital or in care resulting in an absence from the dwelling and non payment of rent
- not maintaining the dwelling to a standard acceptable to others, including the landlord or agent
- self harming behaviour
- limited skills to live within the community
- isolation and or loneliness
- poor management of medication
- difficulties managing behaviours and paying bills (Reynolds *et al* 2002 p.30).

Clearly there are a range of issues and behaviours that contribute to the propensity of persons with mental illness to lose their housing. The research focus of Reynolds *et al* (2002) was on the interventions necessary to sustain tenancies for this group but many individuals do not have access to the requisite support. Research by Butterworth (2003) gives some indication of the dimension of the problem. Using data from the ABS National Mental Health Survey he found that mental health disorders were much more prevalent amongst Family and Community Services clients than the general community. Almost one third of income support recipients had a diagnosable mental health disorder within any 12-month period (roughly 800,000 persons) and that 45 per cent of lone mothers had experienced a diagnosable mental disorder (Butterworth 2003, p.7). Interestingly, substance abuse problems were prevalent amongst those in receipt of unemployment benefits, as well as amongst students.

There are two dimensions to the question of mental health and risk of eviction. For persons with chronic psychiatric disability periods in hospital and periods of low mental health will result in behaviours and actions that could lead to eviction. For many other low-income people, such as those on lone parent parents, financial and other pressures may result in periods of poor mental well being during which time the individual may become more vulnerable to eviction. The available information may also help us understand why so few tenants appear at tribunal hearings: low mental health may impede the ability of these individuals to understand the importance of the proceedings, or inhibit their ability to take action. The mental health of tenants is therefore an important contributor to the incidence and complexion of eviction in Australia.

4.5 Youth

Young people are at greater risk of eviction from the private rental sector than older adults. Baulderstone and Beer (2003), for example, found that 20-24 year olds were the most common group within the South Australian Housing Trust's Sustainable Tenancies Demonstration Program. This group is significant because all participants in the program would have been at risk of eviction if they had not agreed to join the program. Stage in housing career is important also as young people are over represented in the private rental market and under represented in home purchase/home ownership when compared with other age cohorts. They are more at risk within the market because they have a greater level of exposure.

Young people have an elevated risk profile for a number of reasons:

- Younger adults tend to have lower disposable incomes than older adults. They also have less capital and fewer other resources than older persons, and this means they are more vulnerable in periods of crisis.
- Younger people may be less experienced in financial management. Recent research by Caruso, Wright, Intagliata and Meek (2004) has highlighted the impact of debt amongst young people. The authors focussed on debt relating to credit cards, mobile phones and motor vehicles, but the implications of their analysis for

tenancies is clear: young people have growing access to a range of consumer items but their capacity for financial management has not advanced at the same rate. Younger people are therefore a) more likely to have financial difficulties than older persons and b) increasingly likely to have substantial financial commitments other than paying their rent. Some may fall into rent arrears due to credit card and/or mobile phone debt.

- Young adults may lack living skills. These are skills that extend beyond financial management, and include the capacity to maintain a dwelling and the ability to meet other obligations under a lease (Rowland 2000). As discussed above, the failure to maintain any or all of the obligations embedded within a lease is a breach of contract and constitutes grounds for eviction.
- Households comprised of young people may be more unstable than some other types of living arrangement. Student accommodation, group houses, partnering and repartnering may be more common for this group and may contribute to instability within this cohort. In many instances households would break up with relatively little thought to the termination of the lease. Abandonment of the dwelling and non-payment of rent would constitute grounds for eviction.
- Risk taking behaviours – such as taking illicit drugs – are concentrated in the younger age cohorts. Research on the housing of heroin users (Bessant, Coupland, Dalton, Maher, Rowe and Watts 2003) suggests that visible heroin use is concentrated on public housing estates. The cost of using heroin will mean that many will not be able to sustain their tenancy and will be at greater risk of eviction. Substance abuse will exert a second order impact by contributing to a greater incidence of mental health problems.

4.6 Discrimination

Discrimination in the context of rental housing may be more common with respect to denying individuals access to rental properties, but it is likely that some discrimination occurs after the tenancy has commenced. This may take the form of denying the extension of a periodic tenancy (Stanley 2001, Rowland 2001). Discrimination may also be alleged as the motivation for an eviction during the course of a tenancy, even if the action for possession is apparently based on arrears of rent, or maintenance debt, or 'nuisance' behaviour. In their *Bush Talks*, visits to rural regional and remote areas, members of the Human Rights and Equal Opportunities Commission were told of such problems, especially for Aboriginal tenants. At one meeting for example

'(o)ne participant told of her niece who was away working on a CDEP project. She returned home to Kalgoorlie to find her house locked. (The Housing Authority) had taken her to court for an eviction order without her knowing. The Aboriginal Legal Service had the court order revoked. The court gave her a week to put her case forward and she did get her house back.

People have complained of receiving large bills for repairs on vacating or being evicted from (State Housing Authority) houses, even for ordinary wear and tear in the course of a decade or longer tenancy. People don't challenge these because if they're not paid you can't get another (State) house' (HREOC 1998).

In their work on minimum tenancy legislation Kennedy *et al* (1995) reported that discrimination within the rental market was best dealt with through specialist legislation and anti-discrimination Tribunals. However, the number of matters relating to allegations of discrimination in the rental market heard before the relevant tribunals is remarkably small. Formal challenges may not succeed. Allegations that evictions were motivated by racial discrimination (McGlade and Purdy 1998) or racial and disability discrimination (Michael 1996) have been heard but not necessarily upheld. Even the

number of preliminary inquiries and complaints under Equal Opportunities legislation is small. This is likely to reflect a mismatch between problem and 'remedy' rather than an absence of discrimination (Thornton 1990; Morgan 1999; San Pedro 2000). Other research has reported discrimination against refugees and Temporary Protection Visa holders (Marston, 2003; Foley and Beer forthcoming) while the inability of the private rental sector to accommodate Indigenous Australians suggests relatively high levels of discrimination. Some groups within the community – lone parents, the unemployed, persons born overseas et cetera – are at greater risk of eviction arising out of discrimination.

There is surprisingly little research throughout Australia into the relationship between discrimination and housing eviction. In part this reflects the gap discussed earlier between legal scholarship on tenancy legislation and more conventional housing research into the public or private rental sectors.

4.7 Understanding the Risk Factors that Contribute to Evictions

This section of the report has considered the risk factors that contribute to the incidence of eviction. In large measure it has focussed on those factors that Jones et al (2003) identify as vulnerability issues: low income, inexperience within the rental market, discrimination, gambling, mental illness and disability et cetera. The section has shown that many rental households are very exposed to potentially adverse economic circumstances and that these vulnerability factors are themselves sufficient to precipitate events leading to an eviction. However, both the work by Jones et al (2003) and Chamberlain and MacKenzie would lead us to expect that triggering incidents – such as changed household circumstances, loss of employment and family breakdown – will also play a powerful role in leading to evictions. The empirical component of the research will provide an opportunity to test this hypothesis.

5 IMPLICATIONS FOR THE CONDUCT OF THE RESEARCH

This Positioning Paper has shown that evictions are a significant issue across Australia. Evictions place pressure on public housing agencies and publicly funded non-government organisations because:

- Evictions almost inevitably contribute to homelessness and governments across Australia are committed to addressing the needs of homeless persons. Some governments, such as the Government of South Australia, have made addressing homelessness a policy priority (Social Inclusion Unit 2003) and virtually all jurisdictions have well-developed homelessness strategies. Evictions may be necessary for the efficient operation of the housing system, but they generate policy dilemmas for many areas of social welfare.
- Evictions add to the cost of providing private rental housing and may discourage private investors in the low rent section of the market. Previous research in South Australia has shown that landlords almost inevitably lose the equivalent of four weeks rent every time there is a bailiff-assisted eviction (Slatter and Beer 2003). This estimate does not include rent foregone while the landlord searches for a new tenant, or the cost of repairs and maintenance in preparing the property for re-letting. Other research has suggested that there has been a loss of stock in the low rent segment of the rental market in many States (Yates and Wulff 2000). As noted previously, landlords are reluctant to serve as both investor and social worker. This may be a significant problem in the light of recent attempts to encourage private investment in this section of the market.
- SHAs may be forced to evict their own tenants. This raises substantial challenges of policy and effective housing management, as persons evicted from publicly-owned dwellings may meet needs based criteria for a new allocation despite outstanding debt to the SHA. In some jurisdictions – such as Queensland – individuals cannot be rehoused until they have repaid their debt to the SHA. This may contribute to the incidence of homelessness.

This Positioning Paper has shown that all states have legislation relating to residential tenancies that defines the eviction process. While there are common elements across jurisdictions – and indeed a common philosophy – there are considerable differences also. We need to be mindful of these differences as we advance to the empirical component of this research. There are differences also in the policies of SHAs, and these can significantly shape the incidence of eviction and the experience of evictees. Access to housing assistance post eviction will vary significantly across Australia.

Understanding and enumerating evictions raises a number of challenges for research in this field. At a conceptual level, an eviction could be construed to be those tenancies that end with the physical ejection of tenants from their dwelling by a bailiff or police officer enforcing a tribunal order. Alternatively, an eviction can be seen to be any tenancy that ends at the instigation of the landlord and against the desires of the tenant. An evictee, therefore, is anyone tenant who leaves his or her home unwillingly. In this Positioning Paper we have adopted the latter understanding of evictions, but we recognise that there are considerable 'shades of grey' in the processes and circumstances surrounding the ending of tenancies. The definition applied here may be too all encompassing and not truly reflect evictions as they are understood in both a legal and commonly used sense, but it provides a sound and comprehensive platform for initiating the empirical component of our research. We may find through our interviews that Stage 1 terminations (Table 2.1) are not genuine evictions but it is important that we do not rule out from further investigation any set of circumstances from our analysis. Fieldwork for this research needs to target a range of different types of

tenancy terminations in order to furnish an evidence base that either supports or refutes our current conceptual frameworks.

The Positioning Paper has shown that a number of social processes contribute to the incidence of eviction. Young people appear to be more vulnerable to eviction. They are at risk because of their inexperience in dealing with social circumstances – such as those involved in the maintenance of a tenancy, they have lower incomes and more limited financial capital for dealing with crises, they may be more likely to lose employment, they are more likely to engage in risky behaviours, and they tend to live in households of relatively short duration. Perhaps most importantly of all, they are over represented in private rental accommodation and under represented in the more stable tenures, owner occupation and public rental. It is therefore going to be important to include young people who have been evicted in the empirical phases of the research.

Gambling contributes to the level of evictions within the community. We should attempt to include persons with problem gambling in the fieldwork. At the same time, we will need to inquire into the gambling habits – and associated costs – of those evicted for other reasons.

Low income is clearly an important trigger of eviction. Burke and Ralston (2003) showed that private and public tenants alike have a lower disposable income than 30 years previously. Significantly, much of this fall can be attributed to falling household sizes, with fewer wage earners per household. The fieldwork needs to examine the incomes of persons evicted from their homes as well as their level of debt. These debts may be related to their housing – such as arrears of rent or damage to the property – or unrelated consumer debt. Either way, debt may predispose low income households to eviction. The empirical component of the research needs to consider a variety of household types, including those with few – if any – wage earners.

Discrimination should not be ignored as a trigger for eviction. While anti discrimination legislation prohibits discrimination within the rental market other research suggests high levels of discrimination within the rental market. Much of this discrimination would take place in the letting of dwelling, but some may be expressed in the decision to evict tenants.

Finally, we need to be mindful of how mental health issues may affect a person's capacity to sustain a tenancy. Other research (O'Brien *et al* 2002) has shown that persons with a psychiatric illness have considerable difficulties in maintaining a tenancy and that substantial supports are needed to keep them housed. This research will not re-examine this issue as it is not have appropriate resources to deal with the issues surrounding the accommodation of people with complex needs. However, the research will be informed by an awareness of these issues and will scrutinise any relevant information it uncovers.

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