

FINAL REPORT NO. 391

Regulation of residential tenancies and impacts on investment



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Publication Date November 2022

DOI 10.18408/ahuri7124801

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ISBN

978-1-922498-58-8

Key words

Private rental, landlords, tenants, regulation, tenancy law, law reform, investment, disinvestment, property ownership, difference-in-difference, rental bonds, investor survey.

Series

AHURI Final Report

Number

391

ISSN

1834-7223

Publisher

Australian Housing and Urban Research Institute Limited
Melbourne, Australia

DOI

10.18408/ahuri7124801

Format

PDF, online only

URL

<https://www.ahuri.edu.au/research/final-reports/391>

Recommended citation

Martin, C., Hulse, K., Ghasri, M., Ralston, L., Crommelin, L., Goodall, Z., Parkinson, S. and O'Brien Webb, E. (2022) *Regulation of residential tenancies and impacts on investment*, AHURI Final Report No. 391, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/391>, doi: 10.18408/ahuri7124801.

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Acknowledgements

This material was produced with funding from the Australian Government and state and territory governments. AHURI Limited gratefully acknowledges the financial and other support it has received from these governments, without which this work would not have been possible.

AHURI Limited also gratefully acknowledges the contributions, both financial and in-kind, of its university research partners who have helped make the completion of this material possible.

The authors gratefully acknowledge the Government of New South Wales and the Government of Victoria, for providing the rental bond data; all our interviewees, for their time and insights; Dr Alistair Sisson, for helping with the preparation of the rental bonds data; and Margaret Reynolds, for helping with the analysis of data from the ABS Survey of Income and Housing.

This research report is dedicated to the memory of Honorary Associate Professor Judith Yates of the University of Sydney. Judy's ground-breaking research on private rental housing, and her generosity and kindness as a colleague, continues to inspire us.

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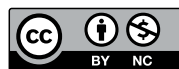
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Acronyms and abbreviations used in this report

ACT	Australian Capital Territory
AHURI	Australian Housing and Urban Research Institute Limited
ABS	Australian Bureau of Statistics
APRA	Australian Prudential Regulatory Authority
ATO	Australian Taxation Office
BTR	Build-to-rent
DID	Difference-in-difference
FDV	Family and domestic violence
GST	Goods and Services Tax
LCL	Large corporate landlord
LTR	Long-term rental
MIT	Managed Investment Trust
NSW	New South Wales
NT	Northern Territory
PRS	Private rental sector
RBA	Reserve Bank of Australia
REIT	Real Estate Investment Trust
RTA	Residential Tenancies Act
RTD	Residential Tenancy Database
SA	South Australia
SIH	Survey of Income and Housing
STL	Short-term letting
WA	Western Australia

Executive summary

Key points

- The steady growth of the private rental sector belies its dynamism: properties and landlords are continually transferring into and out of the sector.
- Tax policy and financial regulation strongly shapes the private rental sector (PRS), by encouraging some forms of investment and discouraging others. Residential tenancies law is accommodating of small-holding landlords and properties transferring into and out of the PRS. However, it is residential tenancies law that triggers concerns about disinvestment.
- Statistical analysis of rental bonds data shows no evidence for properties exiting the PRS in response to two tenancy law reform episodes in New South Wales and Victoria, and mixed results regarding properties entering.
- Responses to a survey of property investors (n = 970) also suggest tenancy law is rarely a factor in decisions to dispose of properties. Investors' stated attitudes to tenant service and tenants' security offer limited assurance to tenants and policy makers, highlighting the need for regulation.
- Residential tenancy law reform has lacked national co-ordination, and significant differences have opened up between jurisdictions. All have lessons for, and could learn from, one another.
- The Australian, state and territory governments should establish a new national tenancy law reform agenda and continuing processes for collaboration on best practice and problem areas. The agenda should centre housing rights and reject the disinvestment threat: if landlords were to leave the sector because they cannot meet standards, it is a good outcome.

Key findings

The shape of the Australian PRS

For decades, the Australian private rental sector (PRS) has been growing. It is also dynamic, with properties and landlords continually transferring into and out of the sector.

For example, from our analysis of Sydney and Melbourne rental bonds data:

- within five years of first being observed in the PRS, most properties are no longer in the sector
- more than 30 per cent of tenancies commence in a property that has just entered the PRS, and more than 25 per cent of tenancy terminations see the property also exit the PRS.

Private rental ownership is dominated by the household sector, which has gradually widened (more owners) and deepened (more owning multiple properties). As with properties, most landlords exit the PRS within five years.

Australia's nascent large corporate landlords (LCL) and build-to-rent (BTR) properties have recently grown, and operate on very different dynamics, but are still a very small proportion relative to the household landlord sector.

The rise of short-term letting (STL) is adding to the dynamism of the PRS, by opening up the prospect of properties transferring to the tourism and second-home sectors.

Factors shaping the Australian PRS

The shape and dynamism of the PRS is strongly influenced by policy settings. Many primarily relate to owner-occupied housing or other objectives, but they play out in the PRS.

Tax settings are especially influential, strongly shaping the small-holding character of PRS landlords and the transferability of properties between sectors. Conversely, some tax settings discourage investment by large landlords.

Financial regulation, too, has recently been used to dampen investment in the PRS.

On the other hand, residential tenancies laws and policies regarding STL are generally very accommodating of properties and landlords entering and exiting the PRS. More than other policy areas, residential tenancies law triggers intense concern about 'disinvestment'—even more than policy interventions that have deliberately sought to dampen investment.

Does tenancy law reform affect investment and disinvestment?

Findings from a difference-in-difference analysis of rental bonds data

We analysed two tenancy law reform interventions: the enactment of the Residential Tenancies Act 2010 (NSW), and the commencement of the 2015 Victorian Fairer Safer Housing review. We used a difference-in-difference (DID) method to test whether they affected trends in properties entering the PRS (investment) and exiting (disinvestment).

For the New South Wales (NSW) reform, we observe no effect on the trend of PRS entries, and a negative effect on the trend of PRS exits—i.e. there were fewer exits after the reform.

For the Victorian review, we observe a negative effect on the trend for PRS entries—i.e. there were fewer entries after the review commenced—and no effect on PRS exits.

The analysis supports the characterisation of Australian tenancy law as accommodating of landlords. While the prospect of reforms may cause some would-be investors to pause, the analysis does not support the contention that tenancy law reforms have caused landlords to disinvest.

What do landlords say about rental regulation and investment?

Findings from a survey of property investors

We surveyed 970 current and previous property investors and asked about their investment decisions and their attitudes to tenancy regulation and tenant service.

Their responses reinforce the view of the Australian PRS as a dynamic sector, with many engaging in investment repeatedly, owning multiple properties, and some owning interstate. There is a strong level of interest in STL, and significant minorities have used their properties for purposes other than rental housing.

When investors decide to invest, prospective rental income and capital gains are the most important reasons, but tenancy laws are an important consideration too. On the other hand, tenancy laws do not figure strongly in reasons for disposing of investment properties.

A majority of investors support the propositions that tenants should feel they can make their dwelling their home and stay as long as they choose. Similar majorities support tenants being able to keep pets, and landlords being required to maintain dwellings to minimum standards. However, even some of those supporters also hold contradictory positions regarding landlords' rights—so these commitments may be unreliable.

Three investor types can be differentiated by their attitudes to tenant service, and these types tend to differ by gender, age, multiple-property ownership and interest in STL too. It may seem like a marker of professionalism, but multiple-property ownership by small landlords is not associated with 'high-service' orientation.

These attitudes and dispositions offer limited assurance to tenants and policy makers, highlighting the need for regulation.

Australian residential tenancies law: a topical review

It is almost 50 years since the basic model of Australia's current residential tenancies law was first outlined in reports of the Commonwealth Inquiry into Poverty (1975). Since then, the law has developed without national co-ordination and numerous differences have opened up between jurisdictions. Every jurisdiction has things to learn from others, and lessons to offer.

- **Access to rental housing:** A range of old and new issues affecting access to rental housing are not addressed in residential tenancies legislation, particularly around the information requirements of tenancy application processes.
- **Rents and other costs:** Provisions regarding rents and other costs have developed little. All jurisdictions allow rent increases to be challenged where excessive to the market: a simple principle that is hard to determine in practice.
- **Tenants' quiet enjoyment, privacy and household autonomy:** The right to quiet enjoyment is prescribed in all jurisdictions, and not much developed by legislative reform. The consequences for breach are limited. Recent reforms relating to pets and alterations have had divergent outcomes.
- **Dwelling conditions and repairs:** The 'minimum standards' introduced recently in several jurisdictions largely restate the existing obligation to provide and maintain habitable premises, with some minor additions. Other problems in the general obligation remain unaddressed.
- **Termination and eviction:** All jurisdictions provide for ready but orderly termination of tenancies by landlords, including without grounds, although some limit the use of the latter. There are substantial differences between jurisdictions in notice periods, grounds, arrears, and tribunal discretion.

- **Dispute resolution and the tribunals:** Relatively quick and informal dispute resolution is provided the Civil and Administrative Tribunals, but matters involving interstate landlords are not within their jurisdiction, and must go instead to the lower courts.
- **Family and domestic violence:** All jurisdictions have addressed the tenancy consequences of FDV differently: some provide for survivors to give a certified notice and move out, others require court or tribunal proceedings. Some have also qualified tenants' vicarious liability.

Policy development options

Almost 50 years after the Australian Government's Commission of Inquiry into Poverty set the agenda for what would become today's residential tenancies legislation, it is time to pursue a new national agenda for residential tenancies law reform.

The National Housing and Homelessness Agreement should establish a comprehensive law reform agenda with a dedicated working group from all jurisdictions. Jurisdictions could take the lead on researching, consulting and developing proposals on different topic areas, as reviewed in the present research.

The overarching principle of a national law reform agenda should be to centre the right of tenants to affordable housing, in decent condition, that supports autonomy and secure occupancy. Where landlords say it is too difficult and they will disinvest, this should not be taken as a threat, but as a good thing: the incapable and the unwilling exiting the sector would open up prospects instead for owner-occupiers or non-profit rental housing providers.

The study

A collaboration by a multi-disciplinary team of researchers at UNSW Sydney, Swinburne University of Technology and the University of South Australia (SA), the research employed a mix of methods:

- analysis of rental bonds data, linked at address-level to comprise datasets of properties entering and exiting the PRS in Sydney and Melbourne over a 20-year period (Q1 2000 to Q1 2020)
- interviews with PRS experts and stakeholders
- an online survey of property investors (n = 970), who either currently own, have recently owned or are intending to acquire an investment property
- a topical review of Australian residential tenancies law.

1. Introduction

1.1 Policy context

The regulation of the Australian PRS directly affects about 40 per cent of Australian households: the 26 per cent who live in private rental housing as tenants, and the 14 per cent who own it as landlords (ABS 2022; ABS 2019; Hulse, Reynolds and Martin 2020).¹

In Australia's federal system of government, the regulation of residential tenancies is within the jurisdiction of the states and territories. Each has its own residential tenancies legislation, styled the Residential Tenancies Act (RTA) or similar,² on a broadly common 'consumer protection' model but with many differences in the details. First formulated in reports of the Australian Government's Commission of Inquiry into Poverty (Bradbrook 1975; Sackville 1975), this broad model was implemented by states and territories from the late 1970s to the late 1990s, and occasionally reviewed and reformed since then.

The past five years or so have been a particularly active period—even apart from the emergency measures introduced during the COVID-19 pandemic. Reform processes have recently concluded in NSW, Victoria and the ACT, and are currently underway in Queensland, Western Australia (WA) and the Northern Territory (NT). These processes, however, have mostly been uncoordinated at a national level, and significant divergences and gaps have opened up in the law. The Australian Government has also re-engaged with residential tenancy regulation—albeit perhaps fleetingly—by nominating as a 'national housing policy priority' in the 2017 National Housing and Homelessness Agreement 'tenancy reform that encourages security of tenure in the private rental market' (Sch A cl A2(d)). However, states and territories have proved just as divergent in this area of tenancy law reform as in others.

Reform processes have also had to contend with claims, particularly from the property industry, that reforms aimed at strengthening tenants' rights negatively impact investment in the rental sector, ultimately to the detriment of tenants. These claims are made without much evidence, and the long-term growth of the PRS over the RTA era tends to rebut the claims. The simplistic opposition of regulation to investment also overlooks the multitude of ways in which policy settings of governments—in particular, taxation and financial regulation—affect investment in the PRS, by shaping the scale, profile and strategies of rental investors. Another factor that is changing investors' options and outlooks is the rise of STL platforms such as Airbnb, which offers investors exposure to residential property without residential tenants.

This research aims to refresh the evidence-base about factors impacting and shaping rental investment, review the state of residential tenancies laws across Australia, and present options for a renewed reform agenda.

¹ A small group—three per cent of households—both live in rental housing and own rental housing (Hulse, Reynolds and Martin, 2020). Another small group—about four per cent of households—live in social housing, and their statutory rights and obligations are mostly the same as in private rental housing.

² Residential Tenancies Act 2010 (NSW); Residential Tenancies and Rooming Accommodation Act 2008 (Qld); Residential Tenancies Act 1995 (SA); Residential Tenancy Act 1997 (Tas); Residential Tenancies Act 1997 (Vic); Residential Tenancies Act 1987 (WA); Residential Tenancies Act 1997 (ACT); Residential Tenancies Act 1999 (NT). This report refers to these pieces of legislation collectively as 'the RTAs'.

1.2 Existing research

Rental regulation impacts

It is well established in the research literature that Australia's PRS is lightly regulated relative to comparator countries. In recent research for AHURI on private rental institutions, members of the present research team reviewed key aspects of PRS regulation in Australia and nine comparator countries; in seven of these countries the PRS is on a growth trend. In one other, Germany, private rental is the majority tenure (Martin, Hulse et al. 2018). The research found Australian states and territories were among the most lightly regulated as regards security of tenure, rents and registration of landlords. Prior AHURI research focussed on housing policies for 'secure occupancy' found the Australian PRS gave little assurance of security and autonomy for tenants, and this was a function of laws, subsidies, market structures and cultural norms (Hulse, Milligan and Easthope 2011).

The international review by Martin, Hulse et al. (2018) also found that 'the view of tenancy regulation as "red tape" is out of step with the recent experience of most countries in this study', because none of the recent growth in the PRS in the countries surveyed had been prompted or unleashed by deregulation. This finding was consistent with that of Whitehead et al. (2012), who examined in 11 European countries the relationship between PRS size and growth and the degree of regulation: they concluded that there is 'no clear relationship' (Whitehead et al. 2012: 69). A literature review by Short comes to the same conclusion (2018).

The specific topic of rent regulation is the subject of a substantial body of theoretical commentary and empirical research. In textbooks, essays and pamphlets, economists from Hayek and Friedman to Myrdal have criticised 'rent control', usually by reference to the hard limits on rents introduced by many countries in the First and Second World Wars, and partially continued by some in the post-war period (Arnott 1995; Slater 2020). These 'first generation' rent controls typically froze rents in nominal terms, or allowed administered adjustments according to an historic benchmark that kept rents below the market level. The near-universal criticism is that they suppress new investment, discourage property maintenance and, where partially applied, distribute benefits inequitably among tenants and provoke sharp practice and outright violence by landlords to oust tenants and properties from protection (Gibb, Soaita and Marsh 2022; Arnott 1995; Nelkin 1983). In a 1995 review of theoretical commentary, Arnott criticised the focus on these 'first generation' rent control for not keeping up with the different and diverse 'second generation' regulations implemented by numerous jurisdictions from the 1970s onwards. Gibb, Marsh and Soaita (2022) and Lind (2001) similarly emphasise the heterogeneity of second generation rent regulations, which range from the relatively weak protection of sitting tenants from rent increases that are excessive to market levels, to provisions that limit rent increases during and between tenancies according to a contemporary moving benchmark (such as CPI or a percentage cap).

Rent regulation is also the subject of a substantial body of econometric research, much of it from the United States, and much of it finding negative consequences, particularly in terms of distribution of benefits and under-investment (Diamond, McQuade and Qian 2017). However, the assumptions made in at least some of these studies as to the negativity of effects are questionable: for example, Diamond, McQuade and Qian (2017) characterise reduced mobility by tenants in rent-controlled premises as an inefficient form of insurance against rent increases, rather than a welcome respite from moves; and Autor, Palmer and Pathak (2014), observing that a partial rent control indirectly suppressed the market value of non-controlled properties, characterise this as a cost, rather than a reduction in housing costs.

In a scathing review of the theoretical and empirical literature, Slater (2020) describes the majority of it as 'hard-core agnotology', deliberately obscuring the diversity of rent regulation and the plausible benefits of well-designed regimes, including the encouragement of investment in additional rental housing (because that is how property owners could increase rental incomes, rather than simply increasing rents on existing properties). More equably, Gibb, Soaita and Marsh conclude from their recent, wide-ranging review of the research that 'rent control can have a negative, positive or neutral effect on one or more aspect of housing and related markets, depending on your modelling assumptions' (2022: 7).

Rental investor motivations

Perhaps the best way to ascertain investment motivations is to ask rental investors directly. Early reviews in the 1980s and 1990s suggested different types of investors with different motivations (Paris 1984, 1985) as did customised surveys in NSW in this period which highlighted the small scale and fragmented nature of landlordism in that state (NSWDH 1990; Brian Elton and Associates 1991; Mowbray 1996). Subsequent national surveys of rental investors by the Australian Bureau of Statistics (ABS) in 1993 and 1997 largely confirmed the picture of small-scale household investment in the PRS, and low levels of corporate investment (Yates 1996, Beer 1999, Berry 2000, Seelig 2001). The 1997 ABS national sample survey found that the major motivation for households was 'long term investment' for both current and would-be investors, which surpassed other motivations including: negative gearing, rental income, possible future home, and capital gains (ABS 1998). However, it has been suggested that these other factors are likely to contribute collectively and cumulatively to the motivation of 'long term investment' (Seelig et al 2006: 29). Although this characterisation of households holding predominantly just one property for the longer term has dominated policy and research, some have also questioned whether reliance on household surveys may disguise other non-household investment by 'small (especially family-based) partnerships and small companies' nationally (Berry 2000:664), a question which has also been posed in more recent research (Hulse et al. 2020; Pawson et al. 2021).

As investment in rental housing increased in the first two decades of the twentieth century (Hulse et al. 2019), there has been some further evidence on whether financial considerations are becoming more dominant over affective factors such as holding on to an inherited home or keeping a house that had been occupied by the investor as their family home. A customised sample survey of investors in the early 2000s found landlords were primarily motivated by the prospect of capital gains. However, 'sentimentality and informality' also appeared to be important in making investment decisions as well as financial considerations (Seelig et al. 2009: 2). Wright and Yanotti (2019: 1), analysing a dataset of bank loan applications to a major bank (2003–09), found that many investors are relatively unsophisticated financially, with a strong preference for local properties rather than portfolio diversification. On the other hand, Pawson and Martin's (2021) study of rental investors investing in residential properties in disadvantaged areas of Sydney found that capital gains, rental returns and affordability, i.e., financial factors, were the most important considerations. They conclude that an 'increasingly professionalised, hard-headed, "financialised" landlord mindset' may be replacing the amateurism that persisted in Australia as late as 10 years previously (Pawson and Martin 2021: 639). These somewhat contradictory findings about investors' motivations are also reflected in some of the international literature (such as Soaita et al. 2017).

1.3 Research questions and methods

The present research is directed to three research questions:

1. What are the main themes, gaps and discrepancies in recent residential tenancies law reforms in Australia?
2. How is rental housing investment affected by:
 - a. tenancy law and reform
 - b. other policy settings (such as macro-prudential regulation)
 - c. market conditions and disruptions (such as STL)?
3. What are the options for developing a national agenda in tenancy law reform?

To answer these research questions, we employed the following mix of research methods:

- quantitative analyses of rental bonds data
- interviews with PRS stakeholders and other experts
- an online survey of property investors
- a topical review of Australian residential tenancies law.

All research activities were approved by the UNSW Sydney Human Research Ethics Committee (HC210456) and endorsed by the relevant committees from Swinburne University of Technology and the University of South Australia.

Rental bonds analysis

We analysed specially requested data from the rental bond lodgement systems administered by the governments of NSW and Victoria. In each state, landlords who require tenants to pay a rental bond at the commencement of their tenancies (almost all PRS landlords do) must lodge the bonds with a government agency. Rental bond lodgements record when each tenancy commences and ends, its location and the rent paid at commencement.

The specially requested data were address-level bond records for the Greater Metropolitan Regions of Sydney and Melbourne for the 20 years to Q1 2020. Rental bond lodgements are a good proxy for properties in the Sydney PRS throughout the period under observation, because the practice is so widespread and the statutory requirement of lodgement is so longstanding (introduced 1977). In Victoria, the equivalent statutory requirement was introduced in 1998, so the number of properties observed with a bond lodged in 2000 is somewhat less than all PRS properties in that year. Over subsequent years this undercount would quickly diminish.

We matched property addresses to create datasets showing when properties ‘entered’ the PRS (i.e. a bond was lodged for a property for which no bond was held in the prior 12 months) and ‘exited’ (i.e. a bond was refunded and no other bond lodged in relation to the property in the succeeding 12 months) over the period to Q1 2020. This affords new insights into the dynamics of the PRS, which are presented in Chapter 2.

The bond data also allows us to test, using a DID analysis, whether residential tenancies law reforms affect trends in property entries (investment) into and exits (disinvestment) from the PRS. The DID analysis is presented in Chapter 4.

Interviews

We conducted interviews with:

- senior state government officers (SG) (2)
- tenant organisation representatives (TO) (3)
- property investor organisation representatives (PO) (1)
- real estate organisation representatives (REO) (2)
- property management intermediary businesses representatives (PI) (2)
- a build to rent (BTR) business representative (BTR) (1)
- a finance sector expert (FE) (1).

We present stakeholder perspectives on the question of residential tenancy law’s impact on investment, and on other factors that shape the sector, in Chapter 3. Their more specific comments on residential tenancies law topics and problem areas are presented in Chapter 6.

Property investor survey

We conducted an online survey of property investors (n = 970), recruited by Qualtrics from a panel of survey respondents. The large majority (89%) of participants were current owners of investment properties, and 11 per cent were previous owners of investment properties disposed of in the past 10 years. The survey probed investors’ decisions about investing and disinvesting; interest in STL; and attitudes to regulatory factors and tenant service propositions. The survey findings are presented in Chapter 5.

Topical review of Australian residential tenancies law

We reviewed all states’ and territories’ residential tenancies legislation and relevant caselaw under the following topic areas, highlighting common themes and notable variations:

- the RTAs and residential tenancy agreements
- access to rental housing

- rent and other costs
- tenants' quiet enjoyment, privacy and household autonomy
- dwelling conditions, repairs and alterations
- termination and eviction
- dispute resolution and the tribunals
- family and domestic violence.

We present the review, with comparative tables and select comments from the stakeholder interviews, in Chapter 6.

2. The shape of the Australian private rental sector

- **The Australian private rental sector (PRS) is dynamic, with properties and landlords continually transferring into and out of the sector.**
- **Within five years of first observations in the Sydney and Melbourne PRS, a majority of properties are no longer in the sector. More than 30 per cent of tenancies commence in a property that has just entered PRS, and more than 25 per cent of tenancy terminations see the property also exit the PRS.**
- **PRS ownership is dominated by the household sector, which has gradually widened (more owners) and deepened (more owning multiple properties). As with properties, most landlords exit the PRS within five years.**
- **Australia's nascent large corporate landlords and build-to-rent properties have recently grown, and operate on very different dynamics, but are still a very small proportion relative to the household landlord sector.**
- **The rise of short-term letting is adding to the dynamism of the PRS, by opening up the prospect of properties transferring to the tourism and second-home sectors.**

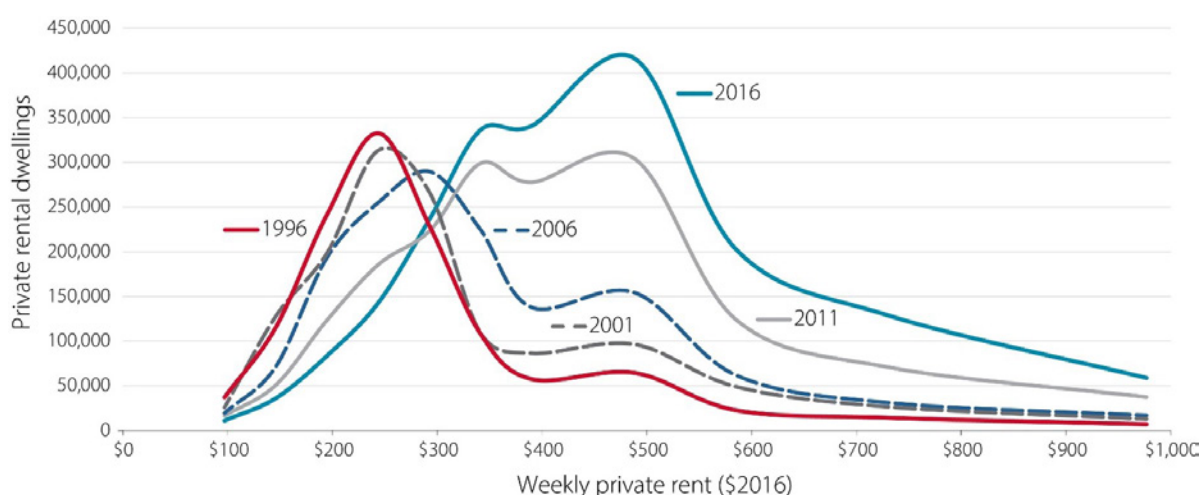
This chapter reviews the changing shape of the Australian PRS, in terms of its size, the properties it comprises, its ownership, and how it relates to other sectors of the housing system. By focusing on the sector's dynamic nature, we highlight how properties and owners enter and exit the PRS, and the other sectors of the housing system with which rental housing interrelates. The review begins with the PRS as represented by rental properties, the discussion of which includes some novel perspectives on sector entries and exits from our analysis of rental bonds data. Next it discusses the PRS as represented by its owners—Australia's small-holding household sector landlords—and then two rising factors with implications for rental investment. These are the recent emergence of LCLs and BTR operations, and the rise of STL.

2.1 Private rental properties

The Australian PRS has been the second-largest sector of the Australian housing system since the end of the Second World War, when owner-occupation became the majority tenure. In the post-war period, the PRS also lost ground to social housing, but still was always larger. The PRS has been growing in absolute terms since the early 1960s and growing relative to both owner-occupation and to social housing since the late 1980s. PRS growth accelerated in the 2000s, increasing at more than twice the rate of household growth 2006–2016 (Hulse, Reynolds et al. 2019: 26). At the most recent Census (2021), further PRS growth was recorded, but at a more moderate rate: to 25.8 per cent, from 25.1 per cent five years previously (ABS 2022).

As it has grown, the PRS has also changed, in some ways dramatically, in others more subtly. One of the dramatic changes relates to rental price points (Figure 1). The distribution of properties has shifted substantially up the rental scale over the past 25 years, as rents have increased relative to household incomes and low-rent properties have left the sector (Hulse, Reynolds, et al. 2019).

Figure 1: Changing distribution of private rental dwellings by weekly rent paid, Australia, 1996–2016



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

Source: Hulse, Reynolds et al. 2019, Figure 6.

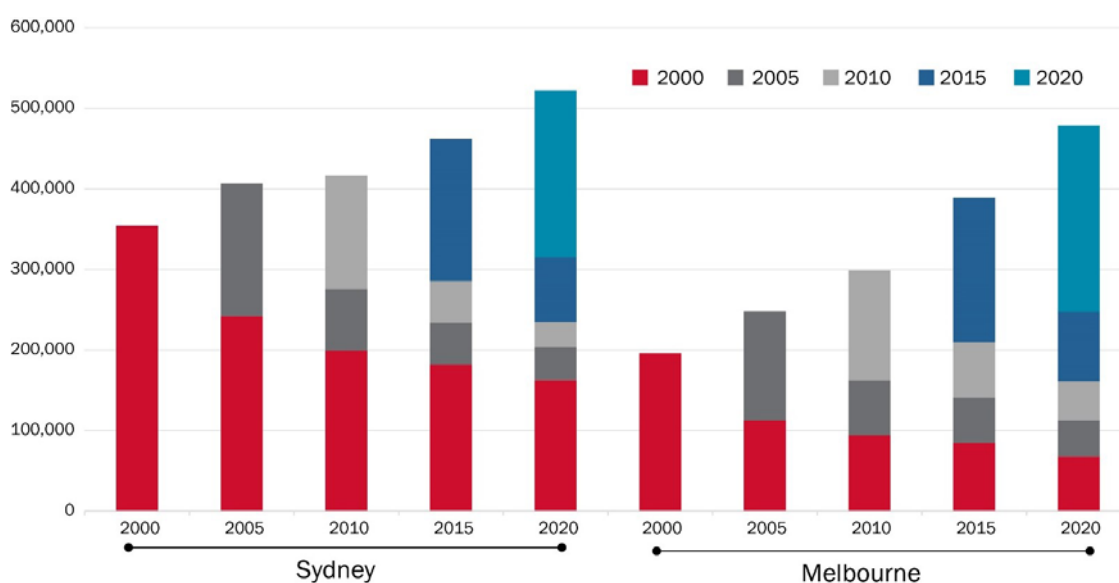
The dynamic suggested by Figure 1—the PRS growing and changing as new properties enter and older properties exit—is an important one. Properties transfer into the PRS from other parts of the housing system: from the existing stock of dwellings in the owner-occupied sector (and, on a smaller scale, the social housing sector) (Pawson and Martin 2020), and from the land development and construction sector. Properties also transfer out of the PRS, into owner-occupation and redevelopment.

At any given time, the overall profile of dwellings in the PRS differs from that of dwellings in owner-occupation. In particular, the PRS always has proportionately more apartments than houses (Martin, Hulse et al. 2018). However, as an innovator and early adopter of strata title, Australian apartments transfer readily between sectors. PRS dwellings also tend to be in worse condition, with 18 per cent of private renters reporting a significant structural defect in their dwelling, compared with 11 per cent of owner-occupiers (ABS 2015). Transfers between sectors play a role in this difference in dwelling conditions, with many properties entering the PRS at a later stage in their property 'life'.

The published evidence of inter-sectoral dynamics is small but compelling. In a ground-breaking analysis of data from rental bond lodgements in the Sydney metropolitan region, Yates and Wood (2005) found 40 per cent of dwellings privately rented in 1991 were no longer in the PRS by 2001. Looking at entries into the PRS, Nygaard, van den Nouwelandt et al. (2022: 56–57) examine two cohorts of rental properties for which new bonds were lodged in Q1 2020: all one-bedroom flats and all three-bedroom houses in Greater Sydney. One in four of the one-bedroom flats and one in six of the three-bedroom houses were new to the PRS (i.e. there were no other recent bonds lodged for those addresses). Most of these ‘new’ properties were not, however, newly developed (i.e. there were no recent development approvals for the addresses). Thirty per cent of the one-bedroom units, and just five per cent of new-to-PRS three-bedroom houses, were recent developments, the remainder having had a previous life most likely in owner-occupation.

The analysis of rental bonds conducted for the present research further fills out the picture of sector transfers. Figure 2 shows the total number of properties for which rental bonds were held in the Greater Metropolitan Regions of Sydney and Melbourne at Q1 2000 and five-yearly intervals thereafter. It also shows, for each of those subsequent intervals, how many properties had a bond lodged at a previous interval or were being observed for the first time.

Figure 2: Private rental properties, by year of first observation (five year intervals) in rental bonds data, Sydney and Melbourne, 2000–20



Note: As noted in Chapter 1, lodgement of bonds with the Victorian Government commenced 1998, so the number of properties observed with a bond lodged in 2000 is somewhat less than all PRS properties in that year. This also means that some properties first observed at any of the subsequent intervals may in fact have been in the PRS in 2000, although this number would diminish rapidly at each interval.

Source: the authors' calculations, based on special request NSW and Victorian rental bonds data.

To use terms similar to Yates and Wood (2005), of properties observed in the Sydney PRS in Q1 2000, 32 per cent were no longer in the sector five years later, and 44 per cent were no longer there 10 years later. Furthermore, 49 per cent of properties were no longer there 15 years later, and 54 per cent were no longer there 20 years later. That high rate of properties exiting within five years of entering is notable. It is even higher for properties first observed entering the PRS in Q1 2005, 2010 and 2015. This suggests that the integration of the PRS with other housing sectors and other property uses has increased over the years (Table 1).

Similarly, of properties observed in the Melbourne PRS in Q1 2005 (when the data begins to overcome the 2000 undercount problem), almost half (49.3%) were no longer in the sector five years later, 58 per cent were no longer there 10 years later, and 67 per cent no longer there 15 years later.

Table 1: Properties no longer in the PRS, Sydney and Melbourne, 2000–20

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

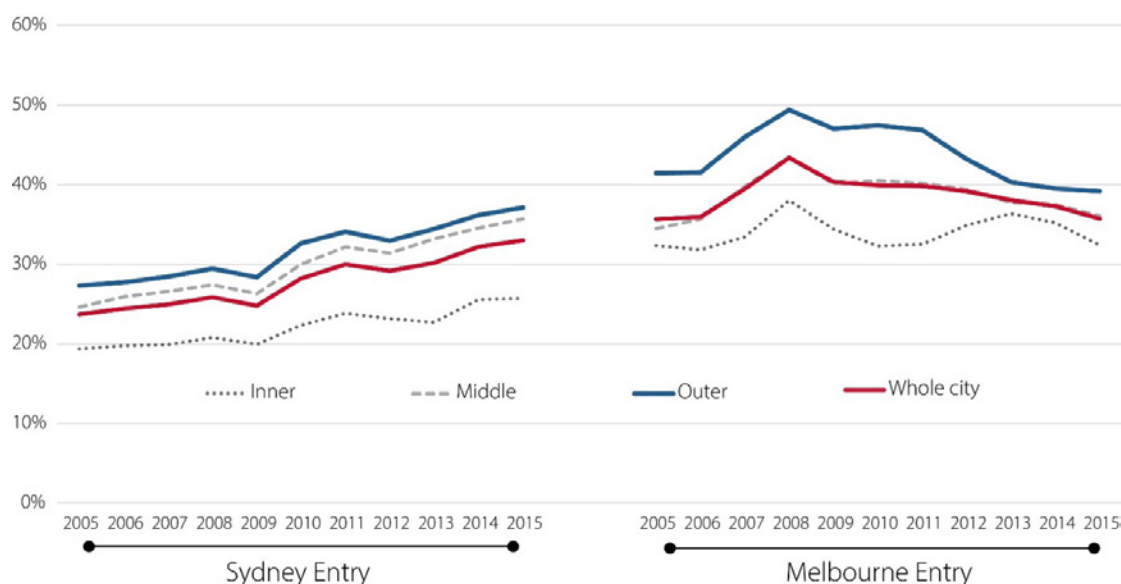
Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

For another perspective on sector transfers, our analysis of the bonds data shows how many new tenancies commencing are in properties new to the PRS—and how many tenancies ending coincide with the property exiting the PRS. In our analysis, an 'entry' occurs when a bond is lodged for an address where there is no bond held in the previous 12 months. An 'exit' occurs when a bond is refunded and there is no bond lodged in the subsequent 12 months. In this way a property may remain in the PRS for a succession of tenancies—each indicated by a bond lodgement and a later bond refund—provided the gap between tenancies is not more than 12 months.³

Figure 3 shows the average proportion of bonds lodged (i.e. new tenancies commencing) that are for properties newly entering the PRS, for all rental properties in Sydney and Melbourne for each year 2005–15. In the most recent year (2015), almost 33 per cent of new tenancies commencing in Sydney were in properties new to the PRS. The rate of new entries is lower in the inner ring of Sydney suburbs (23%), and slightly higher rates in the middle and outer rings (35% and 37% respectively), suggesting transfers from the owner-occupied sector are relatively common occurrences. All these rates have been trending up over the decade, again suggesting closer integration with other sectors and property uses. In Melbourne, in 2015, the proportion of new-to-PRS properties was higher (36%) than in Sydney. It had been even higher previously: in 2008, 43 per cent of new tenancies were in new-to-PRS properties.

³ Our preparation of the data is detailed further in Chapter 3.

Figure 3: Proportion of new bonds lodged that are for properties entering the PRS, Sydney and Melbourne 2005–15



Source: The authors' calculations, based on special request NSW and Victorian rental bonds data

In Figure 4, we see that on average about 27 per cent of Sydney bond refunds in 2015 were for properties that also exited the sector. As with entries, the rate of exits was lower in the inner ring (23%), and higher in the outer ring (30%), and the trend over the decade was for the rate to rise. In Melbourne in 2015, about one-quarter (25%) of bonds refunded were for properties exiting the PRS, down from 33 per cent in 2007. We cannot say from these data the extent to which property exits have driven tenancy terminations (i.e. the tenancy is terminating because the landlord has decided to exit the property from PRS).

Figure 4: Proportion of bond refunds that are for properties exiting the PRS, Sydney and Melbourne, 2005–15



Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

The dynamics of PRS growth and its variation across markets and places are all worth further analysis.⁴ For present purposes, it is enough to observe how dynamic the PRS is: like the ship of Theseus, the component parts are continually being replaced, with new properties entering and old properties exiting.

2.2 Landlords

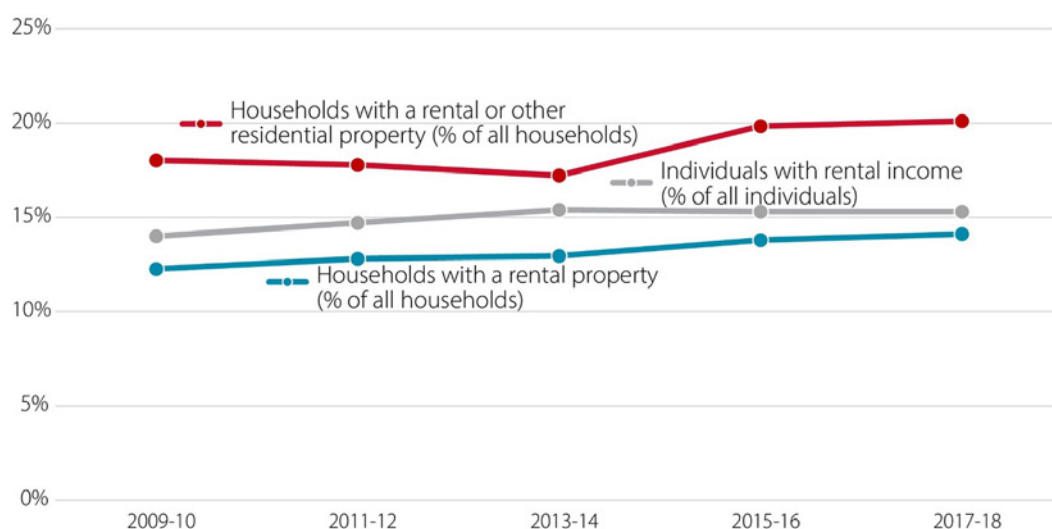
As the PRS has grown, so has the number of landlords. So too has the variety of PRS landlords. Having long been almost absent, there are now a few LCLs emerging, particularly as BTR businesses. The household sector, however, remains by far the major owner of rental housing.

2.2.1 Households and individuals with rental properties

The dimensions of the growth of rental property ownership by the household sector are recorded differently in our two main data sources. The ABS's Survey of Income and Housing (SIH) reports on a household basis (i.e. where there is one or more property owners in the household). The Australian Taxation Office's (ATO's) taxation statistics are presented in terms of individual taxpayers with an interest in a rental property, and in terms of the rental property schedules submitted by these individuals.⁵ These sources also cover time periods in different levels of detail. Here, we refer to them both.

Figure 5 shows the proportion of Australian households (per ABS) and individuals (per ATO) who own a rental property: 14 per cent and 15 per cent, respectively, in 2017–18. Another six per cent of households own a residential property other than their current residence but receive no rental income (i.e. a holiday home or second home); this group, combined with the rental property owners, are also shown in the figure. Each group has grown slightly relative to all households/individuals since 2009–10 (the first year in which the ABS SIH collected data on 'other properties' in which households received rental income).

Figure 5: Households and individuals with rental and other properties, Australia, 2009–10 to 2017–18



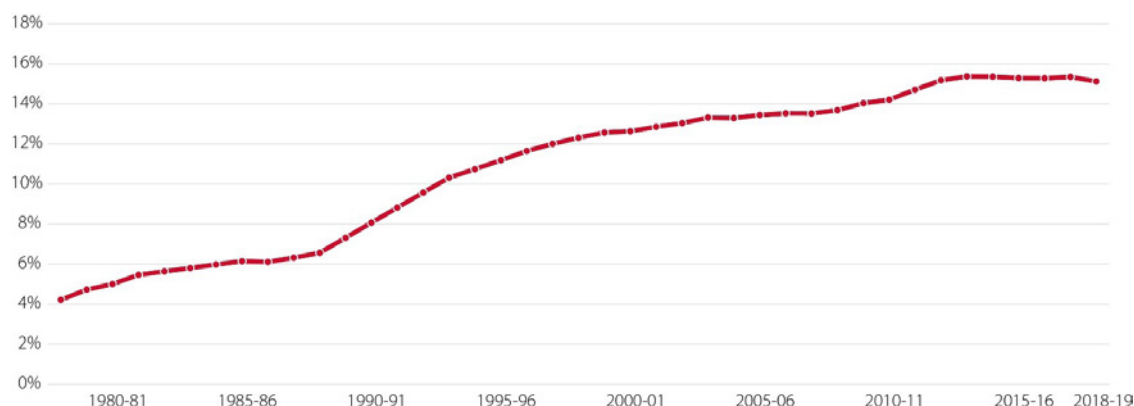
Source: ABS Housing Occupancy and Costs (various years); ATO Taxation Statistics (various years).

The ATO data goes back further, and shows a longer, steeper growth trend in rental property ownership by individuals, from four per cent in 1978–79, with a particularly strong period from the late 1980s (Figure 6).

⁴ Some breakdowns of trends in PRS entries and exits by market segment are presented in Chapter 4, although the purpose there is to generate additional data points for the DID analysis, rather than discuss the trends.

⁵ Because two or more individuals may have an interest in the one rental property, in the ATO statistics there are more individuals than rental properties, and more individuals than households per the ABS.

Figure 6: Individuals reporting income from rental properties, 1978–79 to 2018–19



Source: ATO Taxation Statistics (various years).

Most individuals and households who own a rental property own a single rental property: 71 per cent and 72 per cent, respectively, in 2017–18 (Table 2).

Table 2: Rental property owners, number of properties owned, Australia, 2017–18 (households) and 2018–19 (individuals)

	Households with rental property %	Individuals with rental property %
1 rental property	72.0	71.0
2 rental properties*	28.0	19.0
3 rental properties	-	6.0
4 rental properties	-	2.0
5 rental properties	-	1.0
6 rental properties	-	0.4
7 or more rental properties	-	0.5

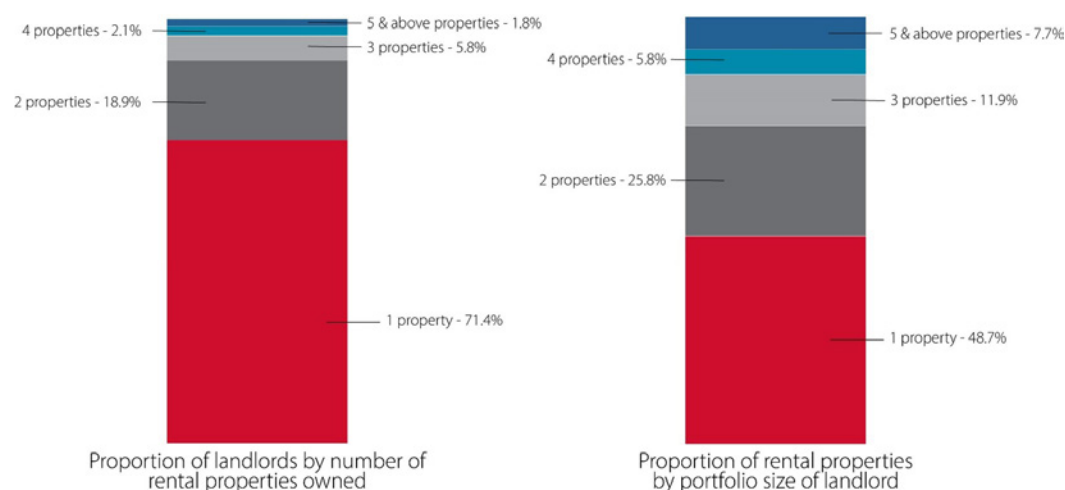
Note: * For households, 2 or more properties.

Source: ABS Housing Occupancy and Costs (various years); Parliamentary Budget Office analysis of ATO Taxation Statistics reported at Razaghi 2022.

Reflecting the small scale of their owners' holdings and the part-time nature of their commitment, most of these properties are placed with local real estate agents for day-to-day management. At the 2021 Census, 74 per cent of private rental properties were managed by agents (ABS 2022).

The predominance of single-property owning landlords is a crucial fact in Australian housing policy discourse. The property sector and politicians reference it to characterise property investment as an activity for 'the Everyman', and landlords as 'mums and dads' deserving of encouragement, care and consideration (Hulse, Reynolds and Martin 2020). Meanwhile, critics point to it as a measure of the sector's amateurism and structural insecurity (Martin 2018). As Hulse, Reynolds and Martin (2020) show, the average Australian rental property owning household is both a 'mum and dad' and a high-income, high-wealth household. They also highlight how the minority who own multiple properties in fact own more properties, in total, than the single-property owners: in other words, while most landlords own a single property only, most renters deal with a landlord who owns two or more properties. Figure 7 updates the latter analysis, using the latest ATO data for individuals: it shows the 71 per cent of landlords who each own a single property own, in total, just less than half (49%) of all rental properties.

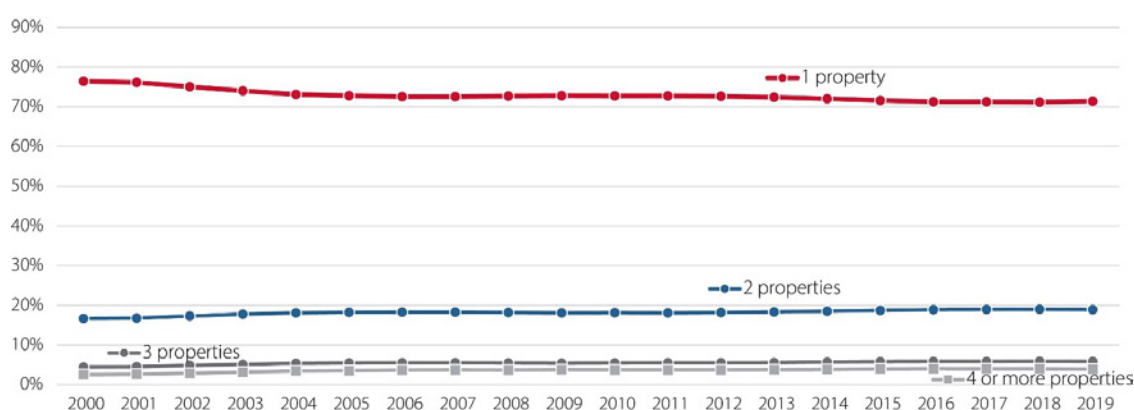
Figure 7: Landlords by number of properties owned (left); rental properties, by portfolio size of landlord (right), Australia, 2018–19



Source: Parliamentary Budget Office analysis of ATO Taxation Statistics reported at Razaghi 2022.

There has been a modestly increasing trend over the past couple of decades to multiple-property ownership: this is evident in the detailed analysis of ABS data in Hulse, Reynolds and Martin (2020) and in the ATO data, shown in Figure 8. This data helps explain the moderation in the growth of the number of individuals and households owning rental property from 2000 or so (Figure 6). Rental property ownership somewhat deepened as well as widened.

Figure 8: Individual rental property owners, number of properties owned, Australia, 2000–19



Source: ATO Taxation Statistics (various years).

As with the total number of PRS properties, these moderate trend lines belie the dynamism of landlords' engagements with the PRS. We highlighted above how frequently properties enter and exit the PRS; as properties do, so do landlords. The key piece of published evidence on this dynamic is the AHURI research by Wood and Ong (2010). This study found, from analysis of waves one to six of the Household Income and Labour Dynamics Australia (HILDA) survey (2001–06), that 25 per cent of landlords leave the sector within 12 months of entering, and almost 60 per cent leave within five years. Young, negatively geared investors with a relatively low income and human capital are more likely to exit at any point. Importantly, they also looked at exits from the rental sector, which they found was highly correlated with retirement from the workforce. This analysis highlights the importance of life course stage in shaping motivations for property investment.

2.2.2 Large corporate landlords and build-to-rent

The Australian PRS has few LCLs. However, those few constitute a sector that is significantly larger and less exotic than even five years ago. At that time, LCLs in Australia comprised several operators in the niche sectors of student accommodation, ‘new generation boarding houses’ and land lease communities, and the apartment developer Meriton. Since 2000, Meriton has occasionally diverted some of its strata-titled apartments from the individual sales into its own private rental and ‘serviced apartment’ operations (Pawson, Martin et al. 2019). Since then, several LCLs have acquired sites for projects in the capital cities of NSW, Queensland, Victoria and WA, with four projects now operating as residential rental businesses, in addition to Meriton’s rental operations.

On the basis of EY’s late 2021 stocktake of Australian institutional landlords, plus subsequent announcements of major projects by Hines and Gurner/Qualitas, and Meriton’s stated operations, we estimate that there are about 11,800 units currently operated by 15 LCLs. The large majority of units are owned by Meriton, with a similar number of units in the pipelines of the other 14 operators (there are no pipeline figures available for Meriton) (Table 3). EY estimates a further 3,800 units in unannounced projects, bringing that total pipeline to just over 15,000 units. This is a significant amount of new activity but still would represent less than one per cent of dwellings in the PRS.

Table 3: Large corporate landlords in the mainstream PRS, Australia Q4 2021

Operator	Projects	Units
Meriton	Numerous sites in NSW and Qld	9,500
Blackstone	Lotus Tower, Brisbane	200
	1 Melbourne site*	450
Mirvac	‘Liv’, Sydney	315
	3 Melbourne sites*	1,464
	1 Brisbane site*	395
Sentinel	‘Element 27’, Perth	93
	2 Perth sites*	350
	1 Melbourne sites*	170
UBS and JLL	‘Smith Collective’, Gold Coast	1,251
Altis and AWARE Super	1 Sydney site*	300
Assemble	9 Melbourne sites*	3,660
Frasers	1 Brisbane site*	354
Greystar	3 Melbourne sites*	1,325
Gurner and Qualitas	1 Sydney site*	385
	1 Melbourne site*	394
Hines	3 Melbourne sites*	850
Home	Home Southbank	406
	3 Sydney sites*	1,030+
	3 Melbourne sites*	1,000+
Investa and Oxford/Indi	1 Sydney site*	250
	1 Melbourne site*	700
Morgan Stanley	1 Gold Coast site*	200
Novus	1 Melbourne site*	170

* Projects in pipeline (i.e. proposed, in planning or under construction).

Source: EY 2021; Hines 2022; Meriton 2022; Qualitas 2021.

As Table 3 shows, operators in the nascent sector largely comprise major Australian developers whose primary business remains building strata-titled apartments for individual sale (e.g. Meriton, Mirvac, Gurner), some locally-based BTR specialists personally linked to major developers (Home and Novus), and prominent international LCLs (e.g. Blackstone, Greystar, Hines, Oxford, Sentinel). There is an even greater international presence among the sector's financiers, which include overseas pension funds and sovereign wealth funds (Pawson, Martin et al. 2019).

With the exception of Meriton, Australia's LCLs are building their rental businesses mostly through the development of buildings designed specifically for long-term rental (LTR) use, or BTR. These buildings are typically not subdivided into strata titles but owned as a single asset. Compared with conventional 'build-to-sell', BTR buildings devote more space to shared facilities and less to individual apartments. There is also greater investment in more durable finishes and sustainability measures that reduce ongoing maintenance. As such, BTR buildings are envisaged to remain in the PRS long-term, if not permanently. To the extent they are traded, it is as rental income-generating assets among institutional investors. In promoting their emerging businesses, BTR operators have claimed several benefits for renter households arising from their distinctive mode of operations: the assurance of security, professional service, and access to facilities that cannot be delivered by small-holding household sector landlords (such as access to transfers to vacancies elsewhere within the operator's building or wider portfolio).

The Australian sector's focus on new, purposely-commissioned BTR buildings differs from current international trends. In other countries, LCLs are less involved in new developments. Instead, they are focused on acquiring existing housing assets, including detached dwellings, the mass purchasing of which is a noted innovation of the decade-and-a-half since the Global Financial Crisis (Martin, Hulse et al. 2018; Fields 2019; Christophers 2021). Global LCLs have also been active in renovating housing assets and increasing rents, and in merging and acquiring major portfolios. These differences in the focus of activities between LCLs globally and in Australia may reflect how much more established corporate landlordism is in other countries, rather than an essential, enduring difference.

2.3 PRS disruption: short-term letting

The advent of online platforms such as Airbnb has opened up new, or newly widened, prospects for residential properties to be used for holiday purposes. STL is often seen as subtracting from the stock of housing available for LTR. However, it has additional, more complex implications for property dynamics across the PRS and adjacent sectors: owner-occupation, tourism and second homes.

Although letting houses and apartments for holiday purposes has a long history, the uptake of platform-facilitated STL in Australia has been dramatic. In fact, an Airbnb representative enthusiastically described Australia in 2019 as 'the most penetrated market for Airbnb' (NSW Government 2019). According to data assembled by Sigler and Panczuk (2020), in February 2019, Airbnb listings for Australia's three most populous states (NSW, Victoria and Queensland) totalled almost 105,000 properties—66 per cent more than the same month two years previously. Between July 2016 and February 2019, 346,000 different properties equivalent to one in 25 properties across Australia were listed on Airbnb at least once (Sigler and Panczuk 2020). While Airbnb often promotes its 'sharing' credentials by highlighting local residents hosting tourists in their spare rooms, listings for entire homes vastly outnumber those for rooms. In February 2019, almost three times as many entire homes (94,915) as rooms (32,915) were listed across for the three states. Entire home listings had also grown more strongly (up 81%, compared with 34%) over the previous two years (Sigler and Panczuk 2020).

While many of these 'entire homes' are listed while the usual occupant is absent, a significant proportion are 'commercial' STL properties, let on Airbnb or similar platforms for a large proportion of the year. In previous AHURI research, members of the present research team found, based on an analysis of Airbnb listing patterns, that 29 per cent of listings in Greater Sydney and 44 per cent of listings in Greater Melbourne were commercial operations (Crommelin, Troy et al. 2018). At least some of these properties could have come from the PRS, and could return to it, were STL not allowed or less appealing to owners. However, some may also come from that sector of second homes and other unoccupied residences that sits adjacent to the PRS.

There is now a large body of research indicating that high concentrations of STL impact LTR availability at the neighbourhood scale, both in Australia (Gurran and Phibbs 2017; Crommelin, Troy et al. 2018; Alizadeh et al. 2018; Thackway and Pettit 2021) and internationally (Lee 2016; Wachsmuth et al. 2017). Evidence on the profitability of STL versus LTR is mixed (Gurran and Phibbs 2017; TUNSW 2017), and a growing body of evidence suggests that property owners are approaching the issue of the returns from STL in different ways. Profitability is not the only factor shaping property owners' choices. There is clear evidence that STL listings fluctuate significantly over the course of a year, particularly in popular tourist areas (Crommelin, Troy et al. 2018; Sigler and Panczak 2020; Thackway and Pettit 2021), indicating that a proportion of STL properties move on or off the market in response to demand. This may be explained by some hosts listing the property as STL during peak periods, then converting it to a three- or six-month LTR for quieter periods. This flexibility to move back and forth between STL and LTR provides the best of both worlds for owners, allowing them to maximise the rental income achieved.

There are also owners for whom the flexibility of STL appeals even when it is less lucrative than LTR. For example, as shown in Crommelin, Troy et al (2018), some STL owners like being able to use the property themselves on occasion, while still making money from it at other times. Meanwhile, others noted STL made it easier and quicker to get rid of an occupant or dispose of the property.

The market 'disruption' of STL, therefore, runs in several directions. It opens up transfers of properties from the PRS to an informal tourism sector, and a way for landlords to exit the PRS without actually disinvesting from 'residential' property. It also opens up possibilities for financing ownership of second homes and holiday homes, and hence investment in residential property without entering the PRS. STL can enable 'mix and match' approaches to property investment, with properties transferring frequently and rapidly between sectors and uses.

2.4 Summary

The PRS is more dynamic than it may appear from its steady growth trend of the past four decades. As it has grown, a much greater number of properties have churned through the PRS. In recent years in Sydney and Melbourne, a majority has gone from the sector within five years of entering. A high proportion of landlords, too, churn rapidly through the PRS in one-off or occasional engagements, with most gone within five years of entering. Both as regards properties and investors, for those remaining after five years, the rate of exits slows. In Sydney and Melbourne, more than 30 per cent of tenancies commence in properties that are entering the PRS, and more than 25 per cent of tenancy terminations coincide with the property exiting the PRS.

The nascent BTR sector is designed to operate on quite a different dynamic, with properties and managers remaining in the sector long-term, while tenants enter and exit as they see fit (and likewise for investors in the corporate entities that own the buildings). However, this sector is still tiny relative to the individual and household landlords. Meanwhile, the rise of STL is opening up prospects for properties to transfer into the tourism sector, and into second home use, which is adding to PRS dynamism.

Highlighting the dynamic nature of the PRS is important for the present research, focussed as it is on questions of rental investment and disinvestment—of properties and owners entering and leaving the sector. As we have seen in this chapter, entries and exits are always happening, closely integrating the PRS with adjoining sectors. Indeed, the PRS is largely made this way, which we discuss in the next chapter.

3. Factors shaping private rental investment

- **The shape and dynamism of the PRS is strongly influenced by policy settings. Many policies are primarily about owner-occupied housing, but they play out in the PRS.**
- **Tax settings are an especially influential factor, strongly shaping the small-holding character of the PRS and the transferability of properties between sectors. Conversely, some tax settings discourage investment by large landlords.**
- **Financial regulation, too, has recently been used to dampen investment in the PRS.**
- **Residential tenancies laws and policies regarding STL are generally very accommodating of properties and landlords entering and exiting the PRS.**
- **More than other policy areas, residential tenancies laws trigger intense concern about ‘disinvestment’—even more than policy interventions that have deliberately sought to dampen investment.**

This chapter reviews evidence from documentary sources and statistics, and from interviews with PRS stakeholders and experts, about the factors that have contributed to the particular shape of the PRS and the ways in which it operates. We discuss these factors in terms of policy areas, specifically:

- taxation
- financial regulation
- residential tenancies legislation
- STL regulation.

3.1 Taxation

Taxation is a crucial policy factor in the Australian housing system. For decades, the Australian, and state and territory governments have sought, at least ostensibly, to promote home ownership through preferential tax treatment. At the national level, this preferential treatment comprises the exemption of owner-occupiers' imputed rents (i.e. the value of the housing service produced by their housing asset) and capital gains from income tax. At the state level, the preferential treatment is the exemption of an owner-occupier's principal place of residence from land tax. Further preferential treatment is given through the exemption of owner-occupied housing from the national Age Pension asset test, and the first home buyers grants and concessions offered by both levels of government. The general effect is to encourage owner-occupiers with spare money, or credit, to spend it on their own housing as a store of untaxed wealth.

The preferential treatment does not, however, favour home ownership so much as existing home owners, who can lever their untaxed housing wealth to invest in additional properties held in the PRS. Rental investment does not directly receive the same preferential treatment, but because properties trade between sectors, rental investors benefit from the capitalisation of owner-occupiers' preferential tax treatment. Rental investors are also subject to tax settings in relation to investment incomes that entail a different set of preferential treatments, and these shape the PRS in particular ways.

3.1.1 Individual taxation: negative gearing and capital gains tax

The first of the preferential tax arrangements regarding investment incomes is the tax deductibility of interest payments and other investment costs, including where they exceed investment income and are deducted against non-asset income. This is negative gearing, which helps asset owners bear larger losses than they otherwise would—and hence take on higher levels of debt than they otherwise would, and pay higher prices than they otherwise would, in order to hold an asset in anticipation of capital gains. This arrangement has been part of Australian tax law for almost a century, but its application to rental property investment became prominent in the 1980s—ironically, in the course of a short-lived reform to restrict it (Hulse, Reynolds and Martin 2020).

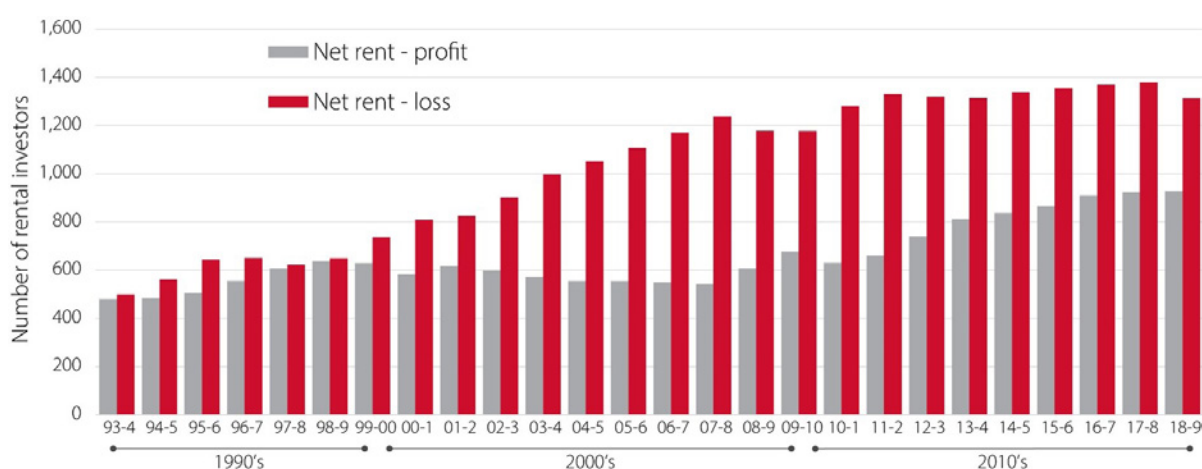
The second preferential tax treatment is the 50 per cent tax discount for income from nominal capital gains, which means that when an investor is taxed—on the sale of their asset—they pay at only half the rate that would otherwise apply to their income. This arrangement was introduced in 2000, replacing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

As a result of these two tax arrangements, policy settings that ostensibly prefer owner-occupation have driven a rise in private rental investment, particularly from individual income earners prepared to tolerate relatively low rental yields in pursuit of capital gains. The effects of both negative gearing and the capital gains tax discount are greater the higher the marginal tax rate, so those with higher incomes, and with higher levels of gearing, get greater financial advantages (see Hulse, Reynolds et al 2020). This in turn means more investment in higher value properties, while lower value properties are more likely to be passed over by investors and fall out of the rental sector, and the relative few remaining properties become less cheap to rent (Wood, Stewart and Ong, 2010: 85). This is the story behind the shift in rental price points in Figure 1 in the previous chapter.

Preferential tax arrangements have shaped the PRS in other ways too. The orientation of rental investment to capital gains is at least part of the story behind the frequency of property exits from the PRS, as individual landlords judge it a good time—according to movements in the housing market, or their own circumstances—to realise gains. Also, because this pattern of investment has also tended to hold residential rental yields below the level prevailing in other property sectors, it is generally more profitable for developers to sell properties to individuals than to develop BTR properties. For the most part, this is not because the 'mums and dads' are treated preferentially to other investors—though there are exceptions, notably around land tax, as discussed below. Rather, it is because of the capital advantage of owner-occupied housing relative to other assets, and the cashflow advantage of investors relative to would-be home owners. This is the story behind the long growth of small-holding household sector landlords (Figure 6 in the previous chapter) and the historic absence of LCLs from the Australian PRS.

The influence of negative gearing and the capital gains tax discount are evident in Figure 9, which breaks down landlords into those whose rental income is in net profit and in net loss. Loss-making (i.e. negatively-gearred) landlords have outnumbered those with positive rental incomes every year since 1993–94 (when the data was first reported by the ATO), especially following the introduction of the capital gains discount in 2000. However, the gap has narrowed over the 2010s, with the number of net-profit landlords increasing. This reflects the decline in interest rates over the period, and changes to bank lending practices that tightened equity and loan service requirements for new borrowers (discussed further below).

Figure 9: Individuals with rental incomes in profit and loss, Australia 1993–94 to 2018–19



Source: ATO Taxation Statistics (various years).

Stakeholder perspectives

Reforms to negative gearing and the capital gains discount have long been regarded as too hot to be touched (Blunden 2016). This conventional wisdom was reinforced when the Australian Labor Party lost the 2019 federal election on a tax reform platform that would have limited negative gearing and reduced the discount. However, in interviews, our real estate representatives were more equitable, reflecting that 'negative gearing was a big slogan in 2019 which is unfortunate, because there probably are some positive tweaks that could be made to negative gearing' (REO1).

Our property owner representative considered that negative gearing 'serves a purpose', but also generally welcomed the trend away from it. With interest rates low, a loan would need to have a high loan-to-value ratio to incur a rental loss, which heightens risk.

As a strategy, to go into property investing—unless you are a very high income earner and most of the mum and pops aren't—you'd be mad to do it. Or it would be pretty high risk. There has been a shift around negative gearing. Decades ago, negative gearing was pushed as a taxation benefit, a reason to go into property investing. 'If you lose money, you offset it against your income.' That was the pitch. Fast-track to now, it wasn't a great idea Do we need negative gearing in the marketplace? Yes, it serves a purpose for certain investors—but not all. So it should be there, but not encouraged as a general investment strategy for everyone. (PO1)

3.1.2 Taxation of large corporate landlords

As interest rates have declined, differences in yields between investment classes have narrowed too, including between residential and commercial property. It is this shift in market conditions that has opened the way to LCLs entering the PRS (Pawson, Martin et al. 2019). However, LCLs face certain disadvantages under tax policies relating to housing.

In Australia and internationally, large-scale investment in property is commonly conducted through corporations known as real estate investment trusts (REITs). REITs have a long history in the Australian commercial property sector and are one type in the larger category of Managed Investment Trusts (MITs), the legal regime for which dates from 2008, though elements of it are older. This regime confers tax advantages on MITs relative to other companies, which are generally taxed at the rate of 30 per cent of their profits. By contrast, MIT incomes from 'eligible investment businesses'—including 'investments in land, for the purpose of deriving rents' (s 102M ITAA 1936)—are allowed to 'flow through' untaxed to the MIT unit-holders, with tax liabilities assessed only at the level of the unit-holders. MIT disbursements may also include tax-deferred components, reflecting non-cash costs (e.g. depreciation of MIT assets), on which unit-holders do not pay tax until a later capital gains tax event occurs (e.g. the MIT asset is sold) (Pawson, Martin et al. 2019).

In the case of foreign unit-holders, MIT disbursements are subject to a withholding tax. For most types of MIT investments, the withholding tax rate is 15 per cent (i.e. half the usual company tax rate)—a concession intended to encourage foreign investment—while some types are 'non-concessional income' taxed at 30 per cent. 'Concessional MIT income' includes income from commercial property, 'commercial residential property' (i.e. student accommodation and boarding houses) and 'affordable housing' (managed by community housing providers). 'Non-concessional MIT income' includes income from 'residential property', e.g. a BTR business.

The distinction between concessional and non-concessional MIT incomes was introduced by legislative amendments in 2018.⁶ At the time, the Australian Government presented the amendments as lifting a previous bar on MIT investment in residential property, because it was not passive rent collection. However, this was disputed by the property sector. In any event, the effect is that foreign investment in BTR is taxed at twice the rate in other property sectors.

Aside from income tax settings, Australia's Goods and Services Tax (GST) regime also treats development for BTR operations less favourably than for sale to individual purchasers. The sale of 'new' residential premises (less than five years old) is a GST taxable sale, which allows the developer to claim credits for GST they have paid on development inputs. By contrast, letting premises is an 'input-taxed sale', where no GST is levied, and no credits may be claimed for GST paid on development inputs. Therefore, a BTR operator would have to absorb these costs. BTR is also at a disadvantage to commercial development. This is because commercial lettings are GST taxable, allowing a claim for GST paid on inputs. Similarly, BTR is disadvantaged relative to 'commercial residential' development, which may be GST taxable (at a concessional rate: 5.5%) (Pawson, Martin et al. 2019: 80).

Stakeholder perspective

Our BTR interviewee confirmed federal tax policy was an enduring barrier to investment:

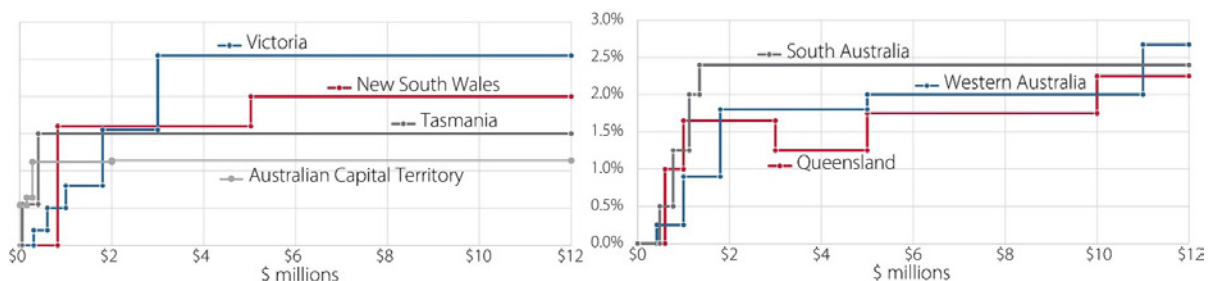
Really, we haven't had any traction with the federal government on the tax treatment of BTR compared to other core asset classes: office, industrial, even student accommodation. There's still a real hesitancy for residential rental to be considered in the same light, which puts it at a disadvantage from a returns perspective, relative to other sectors. That's the MIT regime being effectively double for BTR compared to those other core asset classes. And then GST is the other barrier, from a tax perspective ... so that's a natural disadvantage compared to those other asset classes. (BTR1)

3.1.3 Land tax

Land tax is a long-standing element of taxation in Australia and a powerful influence on the dominant small-holding pattern of Australian rental investment. Currently all Australian states and the ACT levy land tax, at different rates and thresholds. However, they all have a progressive rate structure in common that applies to the aggregated value of an owner's land holdings within each jurisdiction (Figure 10).

⁶ Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2018 (Cth).

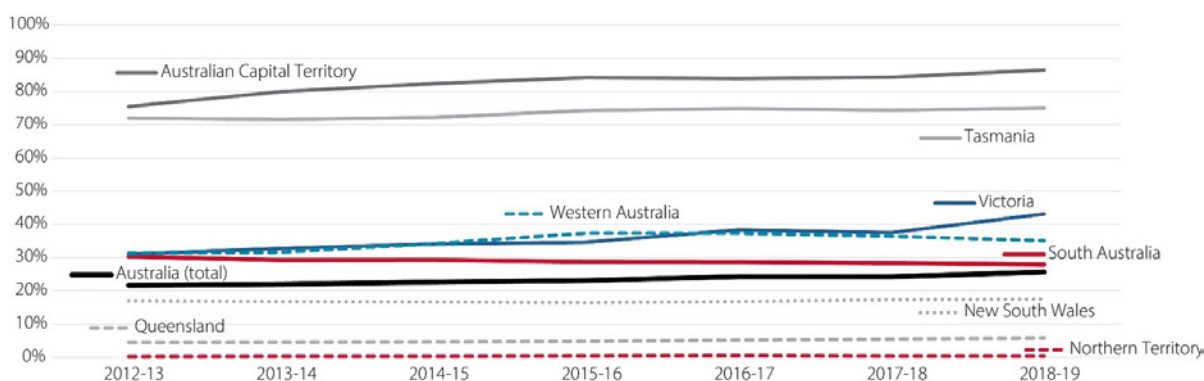
Figure 10: Land tax marginal rates, Australian jurisdictions 2021



Source: The authors, based on state and territory revenue agencies (2022).

Relatively few Australian rental investors surmount the slope at the left-hand end of the charts in Figure 10. In fact, it appears most have portfolios whose values are below the thresholds for even the lowest rates of land tax. Figure 11 shows the proportion of rental property schedules submitted to the ATO in which a land tax deduction is recorded. Only in the ACT and Tasmania do most properties attract land tax.

Figure 11: Rental property schedules recording deduction for land tax, Australian jurisdictions



Source: ATO Taxation Statistics (various years).

The progressive structure of land tax rates presents an obvious hurdle for BTR operators and, for that matter, larger-holding household sector landlords. Recently, the governments of NSW and Victoria introduced special provisions that lower the barrier for BTR. The provisions reduce taxable land values by 50 per cent and remove foreign owner surcharges for BTR projects that meet certain eligibility criteria (e.g. around scale and duration of rental operations) (NSW Revenue 2021; SRO 2021).

Stakeholder perspectives

In interviews, our finance sector expert, BTR operator and property owner representative highlighted the structure of land tax as a constraint on rental investment by large landlords. Our finance sector interviewee observed that, except for special BTR provisions like those in NSW and Victoria, the top marginal rate of land tax in most jurisdictions is 'comparable to the rental yield. Therefore, it's clearly uneconomic for anyone to own [that many] multiple properties' (FE1). Our BTR interviewee said the recent special provisions had helped make BTR competitive with both build-to-sell and commercial development opportunities.

For the property owner representative, land tax is a 'key impediment', but this interviewee also observed a way around it: 'go borderless property investing' and spread holdings under the land tax thresholds of several jurisdictions (PO1).

3.2 Financial regulation

In the 1980s, the Australian Government substantially deregulated the financial sector, leading to an equalisation of lending conditions for owner-occupiers and investors and an expansion in the provision of credit to both. However, over the past decade, financial regulation has again taken a differential approach, in the macro-prudential rules implemented by the Australian Prudential Regulatory Authority (APRA) regarding lending for housing. The objective of these rules has been to act against what APRA regarded as 'a loosening of loan underwriting standards and an increasing share of higher risk forms of lending' following the Global Financial Crisis (APRA 2019).

While its 'strategic' measures have sought to raise serviceability standards in the assessment of new loan applications, APRA has also made two 'tactical' interventions targeted to rental investors (APRA 2019). First, in 2014 APRA introduced a 'benchmark on mortgage lending to investors', limiting the growth of each bank's lending to investors to 10 per cent per annum. To keep to the limit, some banks stopped lending to investors for a time, but more generally banks reduced loan-to-valuation ratios and increased interest rates for investor loans. Second, in 2017 APRA introduced an 'interest-only lending benchmark'. This limited each bank's interest-only lending to 30 per cent of all lending (it had been just recently above 45% for the total banking sector). While not expressly targeted to investors, it was de facto, because interest-only loans maximise the tax advantage of negative gearing. Again, banks responded by increasing interest rates on these loans.

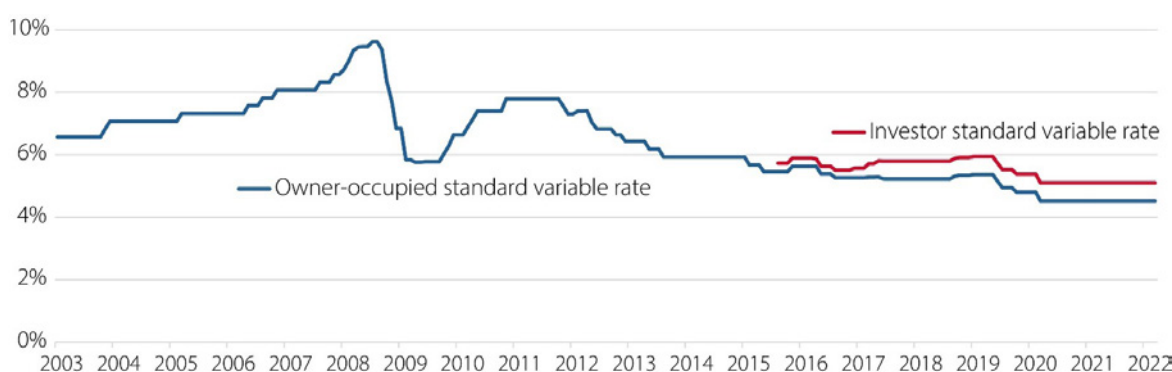
Both measures were formally withdrawn in 2018 (in April and December, respectively), but APRA did so on the basis that the effects were enduring (APRA 2019). Indeed, investor lending continued to decline to an almost two-decade low, before picking up strongly during the 2020 COVID-19 emergency (Figure 12), and the interest rate differential has continued to date (Figure 13).

Figure 12: Loans to owner-occupiers and investors, Australia, \$AU billions, 2002–22



Source: ABS Lending indicators (2022).

Figure 13: Interest rates for owner-occupiers and investors, Australia 2015–22



Source: RBA, Historical interest rates (table F5) (2022).

Stakeholder perspectives

Our finance sector expert was very critical of APRA's tactical macro-prudential rules: they contended these had unfairly targeted landlords, and left owner-occupiers relatively unaffected, solely because the latter were a politically preferred group. The first tactical intervention, in particular, had created what the interviewee characterised as a 'cartel' in investor lending that would, in other circumstances, be unlawful (FE1).

Our real estate organisation interviewees, however, thought APRA's approach to macro-prudential regulation was 'sensible' (REO1).

REO1: The last thing as an industry that we want to do is to sell properties to people who can't afford them because that creates problems for us down the track for obvious reasons. And so the changes which APRA made recently in our view were very reasonable, we thought, because we're in a situation at the moment where some of our markets are clearly overheated.

REO2: A careful approach to handing out lines of credit, I think, is appropriate at this point in the property cycle.

The property owner representative said that the APRA's rules and associated changes in lending practice had made it

harder to borrow money, but not impossible ... a property investor's major hurdle is not finding a property but the finance. The key is finance, not the property itself. (PO1)

More fundamentally, the requirements of finance had changed, and so had investment strategies:

The major effect is: it used to be about how much equity you had in your [own] property—to borrow to buy more. It's not about equity anymore, it's about cashflow. It's about your personal profit and loss statement, not whether you're sitting in a house worth \$5 million and you want to go and borrow to buy a house in Queensland for \$500,000. That's APRA, passed down through the banks, and it's become lending policy ... Potentially what we are looking at is the larger landlords, with more cashflows, will have more capacity to go and buy more property—or do things with their properties, extend them or renovate them, all those things—and the middle income middle class mums and dads are going to struggle to expand their property holdings ... And a search for yields, that's what's happening ... and that's outer suburbs, regional and interstate. (PO1)

3.3 Residential tenancies law

As noted in Chapter 1, the regulation of landlords' legal rights and obligations under Australian residential tenancies law is light by international standards. More than 'shaping' rental investment, Australian residential tenancies law accommodates the patterns of investment shaped by other policies, particularly those of small-holding landlords and the frequent switching of landlords and properties between sectors (Hulse, Milligan et al. 2011; Martin, Hulse et al. 2018; Martin 2018).

Just how accommodating Australian residential tenancies law is will be substantiated in the detailed analyses of rental market data, investor survey responses and the laws themselves that follow in Chapters 4, 5 and 6 respectively. Here we sketch the main outlines of the law, particularly those aspects that are most proximate to the sector's dynamic interrelation with other parts of the housing system. We also observe the pattern of intense concern about 'disinvestment' that has attached to discussions about residential tenancies law and reform over the years—a reaction more intense than responses to policy settings that do dampen investment (e.g. APRA's macro-prudential rules).

Each of the states and territories has its own residential tenancies legislation, broadly on a model of:

- prescribed standard forms, terms, charges and notice periods
- accessible dispute resolution
- market rents
- ready but orderly termination.

The outlines of this model were first formulated in two reports of the Australian Government's Poverty Inquiry. The first was a special analysis of 'poverty and landlord-tenant law' (Bradbrook 1975), the second a wide-ranging analysis of 'law and poverty in Australia', which drew on the first (Sackville 1975). The reports found the state of landlord-tenant law at that time was 'a scandal' (Bradbrook 1975) and 'gravely deficient' (Sackville 1975: 59). A patchwork of rent controls, older statutes and property law doctrines, the law poorly served both landlords and tenants, with tenants suffering worse. For that reason, said Sackville, 'most of the reforms we propose will appear to favour tenants rather than landlords' (1975: 59). However,

Landlords are entitled to expect that rent will be paid promptly, the premises will be kept in reasonable order and that they will be able to enforce their right to recover possession at the appropriate time with a minimum of expense and delay. (Sackville 1975: 59)

The proposed reforms turned away from property law and rent control to what would now be recognised as a 'consumer protection' paradigm: more information and advice services for tenants; regulation of bonds, deposits and non-rent charges; prohibitions on discrimination (particularly against tenants with children); a standard form of agreement. Tenants' rights regarding dwelling conditions were identified as 'without doubt the area of law most in need of reform', and prescribed terms obliging landlords to provide habitable premises and do repairs were recommended (Sackville 1975: 62). Regarding rents, 'general rent control has little to commend it', so 'a selective system with the specific purpose of protecting tenants in private housing from excessive rents' was recommended instead, limiting increases to 'current market values' (Sackville 1975: 87).

Regarding termination and eviction, Sackville (1975) recommended an orderly scheme of termination notices on certain prescribed grounds: breach by the tenant; the landlord requiring the dwelling for their own housing, for that of a family member, or for reconstruction or demolition; or the landlord contracting to sell the premises with vacant possession. Disputes about terminations would be heard quickly by a tribunal, which would have discretion to decline to order termination in three circumstances: where the ground was breach and the tenant had remedied the breach; where (whatever the grounds) the termination is retaliatory; and where (whatever the grounds) the tenant would be in hardship (Sackville 1975: 80).

Over the next quarter century, all states and territories enacted legislation broadly on the Poverty Inquiry's recommended model, but with many differences in the details and less emphasis on tenant 'protection'. In particular, all jurisdictions provided for termination of tenancies without grounds, and the investigatory and enforcement agencies recommended by Sackville regarding complaints about rent increases and dwelling conditions were reduced or absent. As well as without-grounds termination, all jurisdictions made sale with vacant possession a ground for termination. This is essential for landlords transferring properties out of the sector into owner-occupation, and trading at owner-occupier values.

A second wave of reform in the 1990s and 2000s saw most jurisdictions extend consumer protection-style regulation to residential parks and boarding houses (Kennedy, Sutherland and See 1995). Also, all jurisdictions regulated residential tenancy databases (RTDs)—a unique instance of jurisdictions adopting a nationally consistent approach. The past five years or so have seen a third wave of reform, with all jurisdictions having made reforms in some common areas of concern and most having undertaken more general reviews of their legislation. This wave of activity has had some common themes—notably responses to FDV, security of tenure, and minimum standards—but with different outcomes. Some jurisdictions have moved to restrict the use of without-grounds terminations, but not eliminate them. However, none have radically diverged from the basic model of accommodating the PRS's inter-sectoral dynamics.

Nonetheless, concerns about impacts on investment have attended discussion of residential tenancy law reform since before the beginning of the RTA era. The Sackville Report prefaced its recommendations with 'there is a danger that attempts to create wholesale change will harm the tenant we are most concerned to protect—the poorest':

If, for example, the law were to drastically reduce the profitability of investment in residential accommodation, landlords may become more selective in choosing tenants or even withdraw their properties from the housing market, causing an increase in rents. There is little reliable information on the effect law reform has on the supply of private residential accommodation, but plainly governments must be concerned with the effect reforms will have on private investment in housing. Our recommendations have been framed with this borne carefully in mind (Sackville 1975: 58).

Real estate organisations, in particular, have been vociferous in this regard. For example, when the draft Bill for the RTA 2010 (NSW) was circulated, the President of the Real Estate Institute of New South Wales (REINSW) decried it as 'investment vandalism' that would 'deliver carnage to mum and dad investors and tenants across NSW' (Cranston 2009).⁷

Similarly, after the Victorian RTA was amended in 2018, agents warned of 'diabolical' consequences of its schedule of minimum standards for rental dwellings, as reported in media:

Landlords in financial strife across Melbourne are rushing to sell their investments as new rental laws that require minimum standards for properties come into effect.

The laws, introduced on March 29, mean some landlords would rather sell up than fork out to meet what is required.

[...] Stockdale & Leggo Victoria CEO Charlotte Pascoe said there had already been a rush of landlords from the outer-eastern suburbs looking to sell up over the past few days.

'Our Langwarrin office has received 20 requests from landlords wanting to sell,' Ms Pascoe said. 'It's just diabolical, it's huge.' (Heagney 2021).

Meanwhile, the introduction to the Queensland Parliament of the Housing Legislation Amendment Bill was described by the President of the REIQ as 'the final straw' for some investors:

We will see some investors making the decision to sell. The ripple effect of this could see renters struggling to find suitable housing under already tight conditions. (Rendall 2021).

Stakeholder perspectives

Our interviewees offered a range of views on the question of residential tenancies laws' investment impacts. Most were dubious about disinvestment claims.

I don't think that reforms dissuade people from investing in property. And I think that investors take a balanced approach between their equities, their cash holdings, and their real estate investments (PI1).

⁷ The REINSW was especially exercised at provisions of the draft Bill relating to excessive rent increases, which it characterised as 'rent controls' (Cranston 2009). The only difference from the existing provisions was that the first factor to be considered—'the general market level of rents for comparable premises'—was now listed as the first of several subclauses under the section, rather than being contained in the chapeau of the section. The government went on to enact the provision with the new structure, and a further provision was added that expressly prohibited the tribunal from considering the tenant's ability to afford the rent increase (s 44(5)(h)).

I'm very sceptical about how much residential tenancies law affects these things, except to the extent that people want access to the property to maximise their sale value. That's the element of tenancy law that is very clearly lined up with investment, and the expectation is that government should not impede your ability to maximise the sale price. (TO1)

There's ongoing chatter and you still see ongoing media reports saying that rental providers are saying it's too hard and they're going to leave and they're not going to rent the property and they're selling ... I wouldn't say that there's an overwhelming amount of concern about it. It's probably still bubbling away, but I don't think it's maybe been as significant as people might have thought. (SG2)

One of the senior government officer interviewees said their own evidence showed awareness of residential tenancies laws was not strong. Similarly, TO3, who works in a jurisdiction that has recently made a range of reforms, said 'I suspect it hasn't [affected investment] ... I'm not sure that people appreciate or understand the full extent of the changes' (TO3).

The real estate organisation interviewees and the property owners representative were more equivocal. On the one hand, said a real estate organisation interviewee, 'regulation for our industry is great because it gives us the rule book, and everybody plays by the same rules, whether you're a tenant or a property owner or the estate agent acting in the middle' (REO1). However:

Nobody likes to have changes or potential changes rammed down their throat. You know that just doesn't work too well in a country like Australia and so that's an issue as well (REO1).

Aside from this purported general aversion to change, the real estate interviewees suggested that the small-holding character of most landlords made them especially sensitive: 'any changes to regulation are pretty significant to those investors because it's perhaps their only other holding, apart from some shares' (REO2). Real estate interviewees also insisted that recent reforms in Victoria and the ACT in particular had prompted landlords to leave those markets.

Our property owner representative, however, thought regulatory change was not 'top of mind' for would-be landlords:

How much does policy change affect a private landlord going into the market? The answer is—it is probably not top of mind. It's not top of mind when a first-time landlord goes into the market. It's more along the lines of: can I afford to do this? What is the financial risk? Can I outsource it? How much of my time is it going to consume? (PO1)

Regarding current landlords, too, this interviewee thought that residential tenancies legislation 'doesn't stop them from sleeping at night'; in fact 'the typical mum and dad investors aren't talking about it; legislation is just boring. "I'll leave it to the agent, it's up to them"' (PO1). However, 'where it comes up, interestingly is with the larger landlords – the one-percenters who own 10,12, 15 plus. They have a huge vested interest and they start participating'. Furthermore, this interviewee felt that 'any policy change that adds to the burden of management or the cost, yes it has direct impact' (PO1). Speaking to the example of law reform allowing tenants to terminate tenancies early because of FDV, the interviewee highlighted the vulnerability of small-holding landlords:

For the average landlord does that create financial pressure, yes it does. They are working in small margins. We know some properties are negatively geared, they are already taking a loss, so that adds to the loss. In most situations where a tenant is not paying rent, and the landlord is highly leveraged, yes, margins are tight and if there's an episode where cashflow is affected, yes they're going to be in pain in about four to six weeks. Financial pain. (PO1)

3.4 Regulation of short-term letting

We have characterised STL as a factor shaping the PRS because it opens up prospects for property investment in sectors adjacent to the PRS (tourism, second homes), including through transfers of properties out of the PRS. The regulation of STL, particularly in relation to whether, how and for how long owners may use properties for STL, is therefore a factor shaping the PRS too.

All states and territories have land-use planning regimes, largely operationalised by local councils. These regimes regulate the uses of properties as residential dwellings (owner-occupied and rented), and various forms of holiday accommodation and for other purposes. Planning instruments set out which uses are allowed, allowed subject to conditions and consent, or prohibited. A key question is the extent to which STL may be accommodated within the land use category of 'residential dwelling'. The leading superior court decision on this question has held that it may. In *Genco and anor v Salter and anor* [2013] VSCA 365, the Victorian Court of Appeal held that units in a strata scheme available year-round for entire-premises STL were nonetheless dwellings. This was because 'the test is whether at the material time the premises possessed the characteristics ordinarily found in buildings used or let for human habitation as homes' and, conversely, that 'long-term residence' is not a necessary criterion of 'dwelling'. There are other not inconsistent cases that have come to a contrary result, such as in *Dobrohotoff v Bennic* [2013] NSWLEC 61. In this case, the NSW Land and Environment Court held that a house used only for entire-premises STL—evidently specialising in bucks' and hens' nights—was not used as a dwelling, but instead as another use prohibited by the local plan. As the court held there, where the line is is 'a question of fact and degree'.

Some jurisdictions have implemented state-wide regimes relating specifically to STL that modify planning requirements. NSW has more definitively drawn the line beyond which STL represents a change of use, but it is highly permissive of STL. For most of the Sydney metropolitan area and a small number of highly affected regional local government areas, entire-property STL is allowed without approval for up to 180 days as 'exempt development', beyond that, development approval is required. Other local government areas may set their own thresholds, but not less than 180 days. 'Hosted' STL (i.e. where the host is on site) requires no approval and there is no limit on the number of days hosted properties can be rented out. Notably, 'hosted' STL is defined to include where a host is on site but not necessarily in the let dwelling, so secondary dwellings (granny flats) can be STL all year round without approval. In strata schemes, owners corporations may ban unhosted STL, but cannot prevent hosted STL.

In Tasmania, entire-property STL requires planning permission, but is a specifically permitted use for houses. On the other hand, it is not permitted in strata schemes where there are other residents. There have recently been moves to tighten this permissive approach, with Hobart City Council voting in March 2022 to approve a limit on the number of permits offered under the scheme (Podwinski 2022). Council is also considering a proposal to impose increased rates on properties used for STL (Hobart City Council 2022). In other jurisdictions, particularly Queensland and WA, some local governments have moved to require planning approvals and cap total STL days in planning instruments, and the WA Government is considering a state-wide regime.

Other regulatory responses to STL include the introduction of STL registers and provisions in NSW and Victoria for making complaints where STL disrupts neighbouring residents and damages property. In both jurisdictions, owners of properties subject to multiple complaints may be barred from STL. NSW also requires properties used for STL to meet specific fire safety standards.

Generally speaking, the approach of Australian jurisdictions to STL has been highly permissive, accommodating property owners' interests in being able to switch uses of properties and responding more to amenity concerns about 'party houses' than housing system impacts.

Stakeholder perspectives

One of the real estate interviewees was dubious as to the rental market impacts of STL, and about the motivation behind current concerns about the practice:

I'm struggling to see how it is having an impact ... they'd generally be high-end property, so wouldn't really have that much impact on rental affordability and probably not much impact on the vacancy rate either. But I think it sounds good in the media to say that those greedy property owners who are making thousands of dollars a week, they shouldn't be allowed to do that. (REO1)

A tenant organisation representative, however, saw STL, holiday houses and the PRS as interconnected sectors into which property owners were leveraging larger positions in housing:

People have got their house, the holiday house, they might have an Airbnb. It seems like people are expanding their property ownership, and taking properties out of rental into another platform like Airbnb to make money, another for their holidays and another to live in. And everyone else is suffering the consequences. I'm going on a vibe, but I feel like people getting into the short-term market are doing so not because they don't like long-term, but because it is an opportunity to make more money. So the main motivation is the same: the opportunity to create wealth. And if it's \$500 per night, \$1,000, \$1,300 per night in peak season. What they are assessing is whether they can make money from it, not that residential tenancies laws are too hard. (TO2)

3.5 Summary

This chapter has reviewed the policy and market contexts in which the Australian PRS operates and which influences its particular shape and dynamic character. In many respects, policies shaping the PRS are not directly about the PRS, but instead are about housing more widely. Similarly, investors in the PRS are investing in assets that are valued and trade beyond the rental market. Indeed, the close integration of the PRS and other housing sectors—particularly the owner-occupied sector, but also increasingly the tourism and second homes sectors through STL—is a key policy effect. We have emphasised the inter-sectoral dynamics of the PRS and its continual flow of properties. To a significant extent, these flows constitute the PRS as a site in which housing assets may be held, or can be re-deployed, according to investors' own circumstances and their assessment of opportunities and constraints emanating elsewhere.

Tax policy, in particular, encourages investment in owner-occupied housing. It also encourages investment in rental housing, as the more liquid alternative, with a tax advantage on cash flow. Historically this has meant lower yields and less interest in the sector by LCLs, who have also been discouraged by the structure of state land tax rates and, more recently, by less favourable treatment in the MIT and GST regimes. Prospects for LCLs have recently opened up, through low interest rates and yield gap compression, and some modifications by states to land tax. In the name of financial system stability, recent financial regulation has deliberately dampened investor lending through less favourable treatment than owner-occupier lending.

Australian residential tenancies laws, as well as regulatory settings relating to STL, are highly accommodating of the inter-sectoral dynamics of the PRS and of landlords' switching housing assets to other uses. The accommodating nature of residential tenancies laws, in particular, is jealously guarded by an array of concerns about disinvestment and the sensitivities and vulnerabilities of small-holding landlords.

4. Impacts of tenancy law reform: difference-in-difference analysis

- **Two tenancy law reform interventions (the enactment of the *Residential Tenancies Act 2010* (NSW), and the commencement of the 2015 Victorian Fairer Safer Housing review) are analysed using a difference-in-difference (DID) method. This tests whether they affected trends in properties entering the PRS (investment) and exiting (disinvestment).**
- **For the New South Wales reform, we observe no effect on the trend of PRS entries, and a negative effect on the trend of PRS exits i.e. there were fewer exits after the reform.**
- **For the Victorian review, we observe a negative effect on the trend for PRS entries i.e. there were fewer entries after the review commenced, and no effect on PRS exits.**
- **The analysis supports the characterisation of Australian tenancy law as accommodating of landlords. While the prospect of reforms may cause some would-be investors to pause, the analysis does not support the contention that tenancy law reforms have caused landlords to disinvest.**

4.1 Introduction

In this chapter, we investigate statistically the impact, if any, of residential tenancy law reform on rental housing investment and disinvestment, using a difference-in-difference (DID) method. DID is applied to study the effects of tenancy reform commencements on the number of properties entering the PRS (investment) and exiting (disinvestment). This compares changes observed in the affected 'treatment' jurisdiction with changes observed in the 'control' jurisdiction in which the tenancy reform intervention has not occurred.

4.2 The DID method

Difference-in-difference is a method of analysis that compares longitudinal data to test for and measure the effect of an intervention in a treatment group by comparison with a control group (Abadie 2005). The method is particularly useful in the analysis of natural experiments, such as the introduction of a policy reform in one jurisdiction while a similar jurisdiction makes no change.

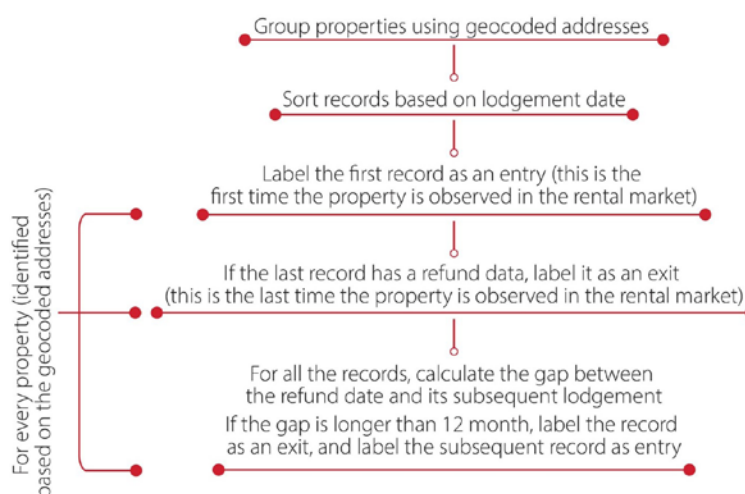
In the present analysis, the groups compared are the PRS of NSW and Victoria, with each serving as the control for the other's treatment at different points in time. Rental bonds data are used to generate historical trends of properties entering the PRS (investment) and exiting (disinvestment) before and after each intervention.

4.2.1 Data preparation

By special request, the NSW Government and Victorian Government gave us access to address-level records of bonds lodged and bonds refunded in each state for the period Q1 2000 to Q1 2020.⁸ After searching for and deleting records of bonds associated with social housing landlords, the names of the parties (landlords, tenants and agents) associated with the bonds were deleted, and the property address data was cleaned according to protocols for the detection of misspellings, abbreviations and other irregularities arising from the administrative nature of the datasets. The cleaned records were then geocoded and records with property addresses in common matched. As such, for each property in the dataset we have the dates of each bond lodgement and each bond refund over the 20-year period.

Where a bond is lodged and there is no record of a prior bond being refunded in the previous 12 months, we designated the lodgement as representing the 'entry' of the property to the PRS. Similarly, where a bond is refunded and there is no record of a new bond being lodged in the succeeding 12 months, we designated the refund as representing the property's 'exit' from the PRS. We decided 12 months was an appropriate minimum time in which a change in use of a property can be assumed. For example, a renovation or redevelopment that substantially changes the nature of the property, or a spell in owner-occupation or another alternative use. A gap in records of three quarters or less may be explicable as a period in which repairs or minor renovations were done in preparation for reletting the premises, and/or a period of vacancy while the premises were advertised. As such, this does not indicate an exit and entry. Figure 14 summarises the process.

Figure 14: Rental bonds data preparation process



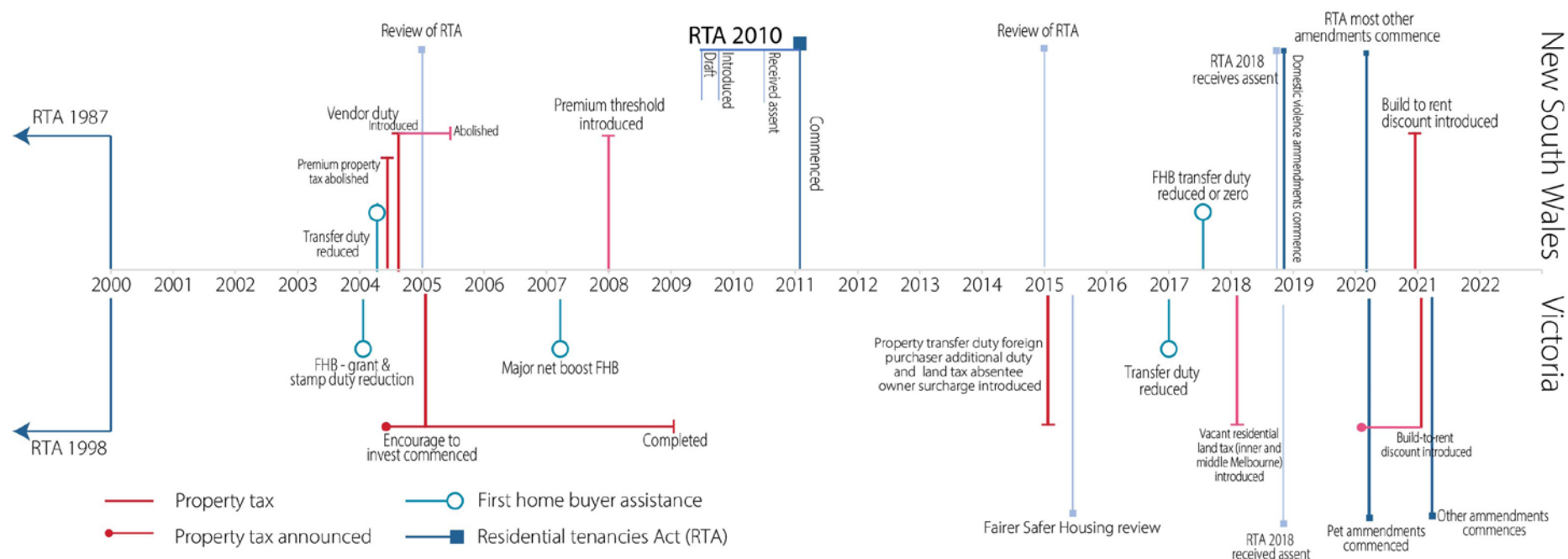
Source: The authors.

4.2.2 The interventions

We reviewed the recent history of housing policy interventions in NSW and Victoria for interventions that appear to have the potential to affect investment and disinvestment in the PRS. Aside from residential tenancy law reforms, these interventions include land and property tax reforms and state-level first home owner assistance programs. Figure 15 is a timeline of the interventions.

⁸ The NSW data were provided previously and used in the Sydney component of Nygaard, van den Nouwelant et al (2022). In processing the data for that project, it was noted that records of refunds in Q3-4 2016 and Q1-2 2017 were missing, but records in the dataset of 'bonds held' allowed us to extrapolate which bonds were refunded at some point in that period. For the DID analysis in the present research, it was necessary to know in which quarter each refund was made, so the extrapolation was not sufficiently exact. As a result, those quarters had to be excluded from the models. This was a practical consideration in our selection of interventions and periods for testing, as described below.

Figure 15: Potential PRS policy interventions, 2000–21, NSW and Victoria



Source: The authors.

Both the NSW and Victorian Governments have at various times changed their land and property tax settings with the intention of encouraging rental investment (and, in the case of the short-lived 2004 reforms in NSW, of discouraging investment, to 'take the heat out of the market'). Both jurisdictions have also at times offered additional first home buyer assistance, which may affect rental investment by making first home buyers more competitive in the market, or by inducing landlords to sell to first home buyers. We did not include in the review federal-or national-level interventions, such as changes in the Australian Government's first home owner assistance programs and the introduction of APRA's macro-prudential rules. These interventions operated simultaneously in NSW and Victoria, so any effect would cancel out in comparisons.

With all these potential state-level interventions in mind, we selected two residential tenancy law reform interventions for DID testing, one from each jurisdiction:

- the enactment by the NSW Parliament of the *Residential Tenancies Act 2010* (NSW)
- the commencement of the Victorian Government's Fair Safer Housing review (2015).

The RTA NSW is an obvious choice. It was the main residential tenancy reform in NSW in the period, involving the repeal and replacement of the existing RTA. It implemented some substantial changes, such as longer notice periods for no-grounds terminations and limits on the frequency of rent increases. It also took place at a time when no reforms were occurring in Victoria, so the latter can serve as a control for the test. Also, few other interventions took place in either jurisdiction for about five years either side of the enactment. Hence, there is little risk of the effect from other interventions interfering with the inferred effect from the NSW RTA in the test.

The commencement of Victoria's Fairer Safer Housing review is a less obvious candidate for testing, and our choice is the result of some practical difficulties around the more obvious candidate: the enactment of the *Residential Tenancies Amendment Act 2018* (Vic). Those difficulties were:

- the very short period (6 quarters) in which we have data post-intervention
- missing data from our NSW rental bonds dataset for Q3-4 2016 and Q1-2 2017, which meant we could only extrapolate where bonds had been lodged or refunded with that year, but not which quarter
- the relatively close proximity of several other interventions, the effects of which may affect the DID test results.

We decided that the commencement of the Fairer Safer Housing review was a good second choice. From the outset, this review had an unusually strong thematic focus on safety, security and housing as a right (Victorian Government 2015), presaged by the earlier recommendations of the Victorian Royal Commission into Family Violence (2015). There was, we note, an intervention in the 'control' state at around the same time—the commencement of a review into the NSW RTA—but this, we felt, was unlikely to have had an effect. It was a statutory five-year review scheduled by the RTA and did not put forward a new agenda for reform.

4.2.3 Modelling approach

We tested for effects of each intervention on PRS entries and exits separately, which yields to four separate models. The equation for each model is as follows.

$$y = \beta_0 + \beta x + \beta_t x_t$$

In this equation, y is the variable of interest (i.e. entry or exit), x is a vector of explanatory variables that can potentially explain variations in the variable of interest, β is a vector of parameters indicating sensitivity towards explanatory variables, x_t is a binary variable indicating whether the observation is under the influence of the intervention, β_t shows the effect of the intervention on the variable of interest, and β_0 is a constant representing the average effect of all omitted variables.

The explanatory variables examined in each model were:

- year
- city
- geographical region (inner, middle and outer rings of suburbs)
- market segment (lowest third by rent, middle third and highest third)
- region-specific median house price per year
- region-specific median rent per year
- vacancy rate
- consumer price index
- rental yield.

By testing these variables in the model, we controlled for their effect while investigating the effect of intervention. From the list of tested variables, only those with a meaningful and statistically significant coefficient are included in the models. The list of included variables in the models comprises year, city, region and market.

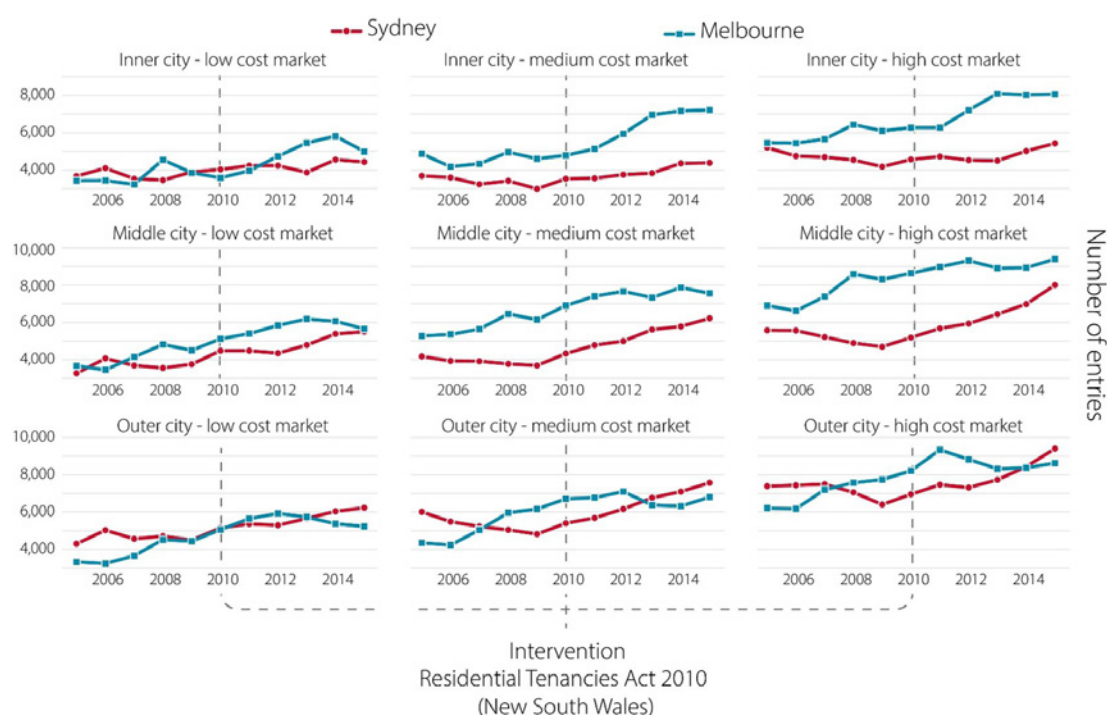
4.3 DID analysis results

4.3.1 The effect of enacting the *Residential Tenancies Act 2010* (NSW)

Effect on Sydney PRS entries

Figure 16 shows the number of PRS entries in the period 2005–15 stratified by city, market and region. In this figure, rows represent regions, columns represent the market and the lines correspond to cities. The vertical dotted line on the plots indicates the intervention timing. Overall, entries to the market show an increasing trend. The number of entries is relatively higher in Melbourne. Also, the entries in high cost markets and outer regions are higher.

Figure 16: PRS entries 2005–15, stratified by city, market segment, and region



Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

Table 4 shows the DID result corresponding to the RTA (NSW) 2010 intervention on number of entries. The parameter estimate for year is positive, indicating an increasing trend in number of entries over time. The estimated coefficient for Sydney suggests the number of entries per market segment, region, and year in Sydney is on average 873.86 units less than Melbourne. Market segment is a categorical variable, which is converted to multiple binary variables to be included in the model. The binary variable corresponding to inner region is set to zero for identification. According to the results, entries in middle regions and outer regions are higher compared to inner regions. Market segment is also a categorical variable, which is converted into three binary variables representing its levels. For identification purposes, the binary variable corresponding to high market segment is set to zero. The parameter estimates show number of entries in middle and low market segments are lower compared to high market segment.

Table 4: DID results for the RTA (NSW) 2010 intervention on number of entries

Explanatory Variable	Estimated Coefficient	Std Error	t Value	Pr (> t)
Intercept	6,534.35	129.15	50.60	0.00
Year	230.89	21.09	10.95	0.00
Treatment	-319.40	189.42	-1.69	0.09
City is Sydney	-873.86	136.14	-6.42	0.00
Region is middle	1,006.95	129.15	7.80	0.00
Region is outer	1,410.36	129.15	10.92	0.00
Low market	-2,255.56	129.15	-17.47	0.00
Mid market	-1,434.30	129.15	-11.11	0.00
Adjusted R squared	0.78			

Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

The parameter estimate for the intervention is not statistically significant. This observation suggests that evidence in hand does not support the hypothesis that the RTA (NSW) 2010 had a significant effect on the number of entries to the market.

Effects on Sydney PRS exits

Figure 17 shows the number of exits from 2005 to 2015 stratified by city, market and region. Similar to Figure 6, geographical regions are stratified in rows, market segments are stratified in columns and the RTA (NSW) 2010 intervention is highlighted using a vertical dotted line.

Figure 17: PRS exits 2005–15, stratified by city, market segment, and region



Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

Table 5 presents the DID analysis results for the enactment of the RTA (NSW) 2010 intervention on number of exits from the PRS.

Table 5: DID results for the RTA (NSW) 2010 intervention on number of exits

Explanatory Variable	Estimated Coefficient	Std Error	t Value	Pr(> t)
Intercept	4,198.66	104.26	40.27	0.00
Year	108.93	17.03	6.40	0.00
Treatment	-494.20	152.91	-3.23	0.00
City is Sydney	158.49	109.90	1.44	0.15
Region is middle	631.33	104.26	6.06	0.00
Region is outer	822.64	104.26	7.89	0.00
Low market	-593.55	104.26	-5.69	0.00
Mid market	-424.03	104.26	-4.07	0.00
Adjusted R squared	0.41			

Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

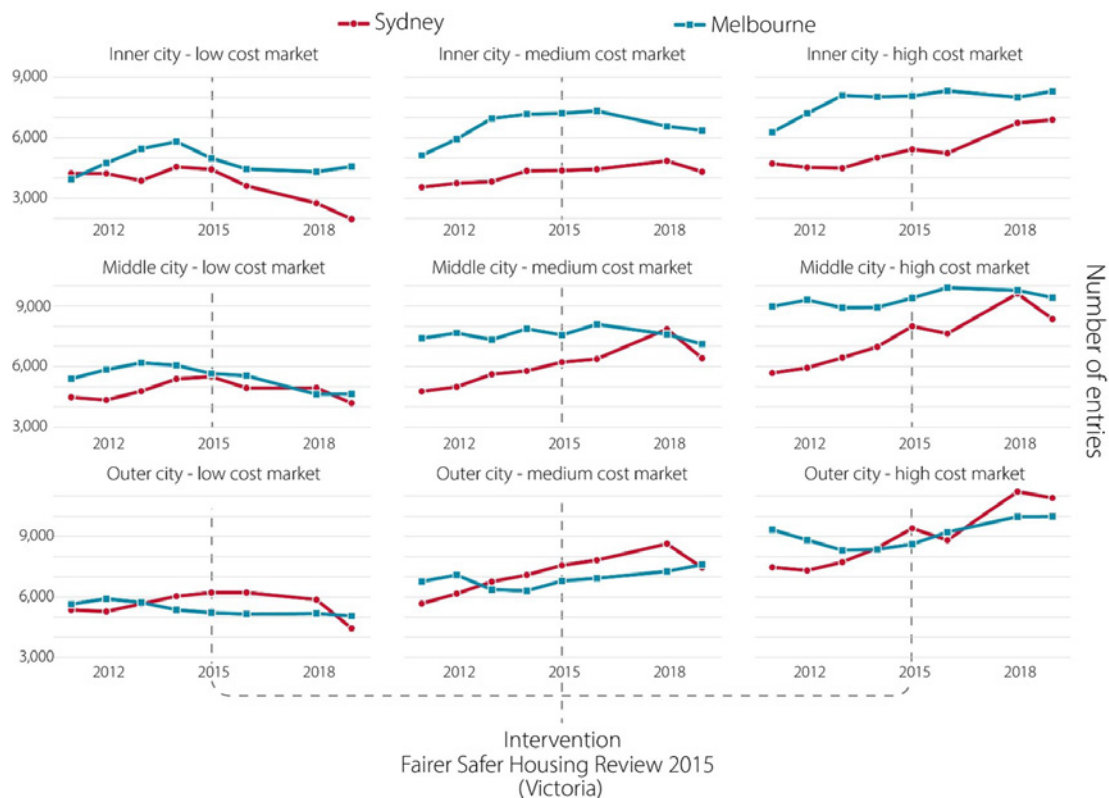
Here the parameter estimate for the treatment is statistically significant, but the coefficient is negative, indicating on average there were 494.20 fewer exits after the intervention.

4.3.2 The effect of the Victorian Fairer Safer Housing review (2015)

Effect on Melbourne PRS entries

Similar to Figure 16 in the Sydney analysis, Figure 18 shows the number of PRS entries stratified by city, market and region, this time for the period 2011–19. Data for Q3–4 2016 and Q1–2 2017 was excluded from the models, because of the missing data from the NSW rental bonds datasets.

Figure 18: PRS entries 2011–19 stratified by city, market segment, and region



Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

Table 6 shows the DID result of the Fairer Safer Housing review intervention on the number of PRS entries.

Table 6: DID results for the 2015 Fairer Safer Housing review intervention on number of entries

Explanatory Variable	Estimated Coefficient	Std Error	t Value	Pr(> t)
Intercept	7,775.59	223.93	34.72	0.00
Year	155.53	34.76	4.47	0.00
Treatment	-528.23	258.97	-2.04	0.04
City is Sydney ⁹	-1,355.92	195.10	-6.95	0.00
Region is middle	1,353.90	178.73	7.58	0.00
Region is outer	1,777.29	178.73	9.94	0.00
Low market	-2,994.52	178.73	-16.75	0.00
Mid market	-1,571.85	178.73	-8.79	0.00
Adjusted R squared	0.76			

Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

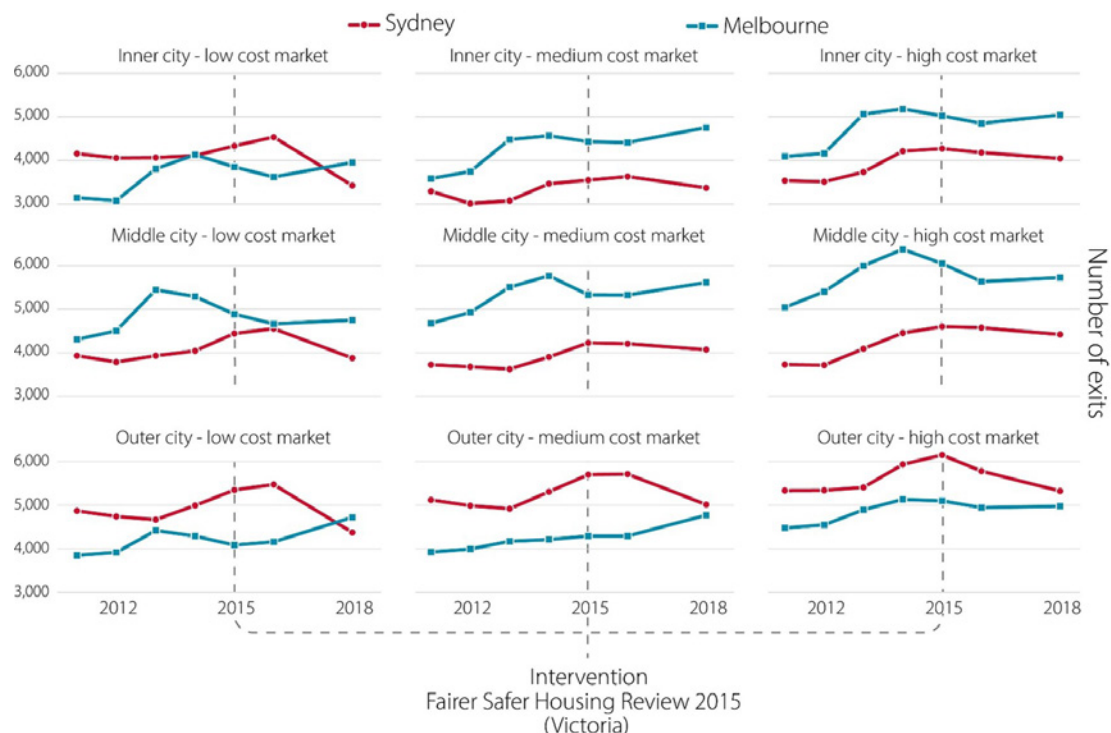
The treatment is significant and the coefficient is negative, suggesting there were 528.23 fewer entries to the PRS after the review commenced.

⁹ In all the models, 'city' is a categorical variable with two levels: Sydney and Melbourne. We set Melbourne as the base case and used a binary variable to indicate if the record pertains to Sydney—hence the appearance of 'Sydney' here. The negative coefficient shows entries in Sydney are less compared to Melbourne

Effect on Melbourne PRS exits

Figure 19 shows exits from the PRS, stratified by city, market segment and region; again, data for Q3–4 2016 and Q1–2 2017 are excluded from the models.

Figure 19: PRS exits 2011–19, stratified by city, market segment, and region



Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

Table 7: DID results for the 2015 Fairer Safer Housing review on number of exits

Explanatory Variable	Estimated Coefficient	Std Error	t Value	Pr(> t)
Intercept	4602.71	156.10	29.49	0.00
Year	82.39	28.45	2.90	0.00
Treatment	-87.46	181.43	-0.48	0.63
City is Sydney ¹⁰	-317.93	127.84	-2.49	0.01
Region is middle	675.69	124.28	5.44	0.00
Region is outer	836.71	124.28	6.73	0.00
Low market	-559.40	124.28	-4.50	0.00
Mid market	-469.12	124.28	-3.78	0.00
Adjusted R squared	0.41			

Source: The authors' calculations, based on special request NSW and Victorian rental bonds data.

The treatment is not statistically significant here. The available evidence does not provide a case for the intervention having a significant effect on the number of exits from the PRS.

¹⁰ See footnote 9.

4.4 Summary

The DID analysis presented in this chapter represents the first time that claims about tenancy law reform, investment and disinvestment have been put to the statistical test. Table 8 summarises the results for the two tested interventions.

Table 8: Summary of DID results, NSW and Victorian interventions

	RTA NSW 2010	Victorian Fairer Safer Housing review 2015
Entries (investment)	No effect	Negative effect: fewer entries
Exits (disinvestment)	Negative effect: fewer exits	No effect

Source: The authors.

The enactment of the RTA NSW in 2010 appears to have had no significant effect on the number of properties entering the Sydney PRS (i.e. investment). Exits from the sector (i.e. disinvestment) appear to have reduced after the intervention—a far cry from the ‘carnage’ prophesised by the NSW Real Estate Institute at the time (Cranston 2009).

On the other hand, the number of properties entering the Melbourne PRS after the commencement of the 2015 Victorian Fairer Safer Housing review does appear to be fewer. However, this intervention appears to have had no effect on exits from the PRS, at least in the short period of observation.

These results may be interpreted in different, but not mutually exclusive ways. It may be that the enactment of the RTA NSW 2010 had no apparent effect on investment, and reduced disinvestment, because it was the culmination of a reform process, and so merely confirmed changes of which landlords had long been notified. In comparison, the commencement of the Victorian Fairer Safer Housing review caused some prospective Melbourne investors to pause, perhaps as a matter of ‘due diligence’. It may also be that the NSW reforms were simply that much milder than the reforms prefigured in the Victorian review.

In three of the four test models, residential tenancy law reform appeared to have either no effect, or a beneficial effect, on landlords and their investment decisions. This supports our characterisation of the Australian model of residential tenancies legislation and most recent reforms as being accommodating of landlords’ interests based on research into the Sydney and Melbourne markets. Research using the same methodology in other jurisdictions which plan to implement, or have implemented, reforms to residential tenancies legislation would further build the evidence-base.

5. Landlord perspectives on regulation and investment

- Our survey of current and previous property investors (n = 970) reinforces the view that the Australian PRS is a dynamic sector, with many participants engaging in investment repeatedly, owning multiple properties, and some owning interstate.
- There is a strong level of interest in STL, and a significant minority (33%) have used their properties for purposes other than rental housing.
- When investors decide to invest, prospective rental income and capital gains are the most important reasons, but tenancy laws are an important consideration too. On the other hand, tenancy laws do not figure strongly in reasons for disposing of investment properties.
- A majority of investors support the propositions that tenants should feel they can make their dwelling their home and stay as long as they choose. Similar majorities support tenants being able to keep pets, and landlords being required to maintain dwellings to minimum standards.
- However, even some of those supporters also hold contradictory positions regarding landlords' rights. Hence, these commitments may be pliable, and unreliable.
- Three investor types are differentiated by their attitudes to 'tenant service' (low-, medium- and high-service). These types tend to differ by gender, age, multiple-property ownership and interest in short-term letting . It may seem like a marker of professionalism, but multiple-property ownership is not associated with 'high-service' orientation.
- The attitudes and dispositions regarding landlords' rights offer limited assurance to tenants and policy makers, highlighting the need for regulation.

Despite their numbers, Australian landlords are often overlooked in research. In public discourse they tend to be spoken for by others—real estate organisations, media interests and politicians—and in PRS data collection the sources are usually the households in rental housing. Research on the PRS therefore often focuses on tenants and their dwellings, rather than the smaller and less readily traceable group that owns the PRS (Pawson and Martin 2021). In this chapter, we draw on an original online survey of investors across Australia to obtain a new view on this group and their property holdings. We examine their motivations in property investment and their attitudes regarding tenants' security and other housing interests.

5.1 About the survey

Investors participating in the online survey were recruited via a Qualtrics panel. All were aged 18 years and older, and

- currently own an investment property
- owned an investment property in the previous 10 years
- are actively considering acquiring an investment property.

For the purposes of the survey, an 'investment property' was defined as:

a residential property that you do not live in, and that you own with the intention of financial benefit. You may own it yourself, or jointly with someone else, or through a company or trust. You may have acquired the property by purchasing it, or receiving it as an inheritance, gift or prize, or retaining ownership of a property you previously lived in.

Guidance on 'actively considering acquiring' was provided by the examples 'you have obtained finance, or are inspecting properties for sale.'

The survey was in the field September 2021, and yielded a sample of 970 investors—making it one of the largest samples of rental investors in Australia. The sample comprises:

- 860 persons who currently own an investment property, or 'current investors'
- 105 persons who do not currently own an investment property, but owned one in the previous 10 years, or 'previous investors'
- Five persons who neither currently own, nor previously owned, but who are actively considering acquiring an investment property, or 'prospective investors'. However, because their number is low, no separate analysis is made of them.

Of the large group of current investors, most (60%) had also previously owned another investment property, and three quarters (76%) were also actively considering acquiring another property. Almost half (46%) of the previous investors were now actively considering acquiring another property. This is consistent with the dynamics highlighted in Chapter 2, whereby ownership of a rental property is not a once-off situation but investors move in and out of the market owning more than one property over time.

5.2 The profile of rental investors and their property holdings

5.2.1 The investors

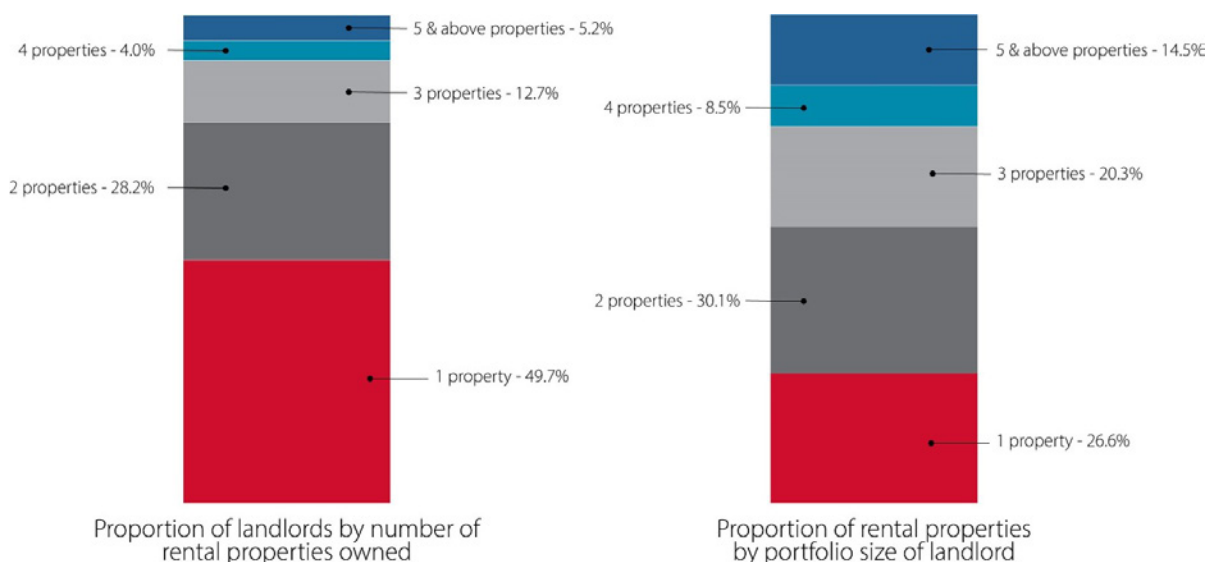
Almost all the investors in our sample disclosed they were male or female (48% and 52% respectively).¹¹ Consistent with other published data on investment property owners (ABS 2019; Hulse, Reynolds and Martin 2020), the large majority (76%) own their homes, either with a mortgage or without, and most (52%) live in households comprising a couple with dependent children—literally ‘mums and dads’. The age profile of our sample is younger than that of other sources, with most aged under 40 years and only six per cent aged over 60 years. This is significantly less than the 16 per cent reported in an analysis of the ABS SIH (Hulse, Reynolds and Martin 2020). This difference likely reflects the composition of the Qualtrics panel.

The large majority of investors (91%) are employed either full- or part-time, and for 85 per cent, employment earnings are the primary source of household income. Rents are the primary income for only eight per cent. The household income profile of the sample is higher than the general population, consistent with previous analysis of rental property owner data in the SIH (Hulse, Reynolds and Martin 2020).

5.2.2 Their property holdings

Half of current investors (50%) own one investment property only, a lower figure than other sample surveys; of the rest, most own between two and five properties each. In total, the 860 current investors currently own 1,460 investment properties.

Figure 20: Current investors, by number of properties owned (left); investment properties, by number of properties their owners own (right)



Source: The authors' survey.

¹¹ Two participants indicated they were non-binary, and four preferred not to say.

We asked current investors to disclose the postcodes of their current investment properties. On this basis, we estimate that about 10 per cent of the sample's current investment properties are in a different state or territory from their owner.¹² The three most popular states in which non-residents owned rental properties were Queensland (estimated to be 13% of the sample's current investment properties in Queensland), NSW and Victoria (estimated at 9% of the sample's properties in each of these two states).

We asked current and previous investors about the investment property they most recently acquired. For 70 per cent, this acquisition had been made in the past five years (2016–2021). Most (69%) acquired the property by purchasing it as an investment property, while over a quarter (26%) had turned the property they previously lived in into an investment property.

We asked current investors how their most recently acquired investment property had primarily been used in the preceding 12 months: two-thirds (67%) said it had been let as residential rental. Although still minor, the number of people reporting their properties had been used by family members (20%) and for STL (13%) were not trivial.

5.3 Reasons for investing and disinvesting

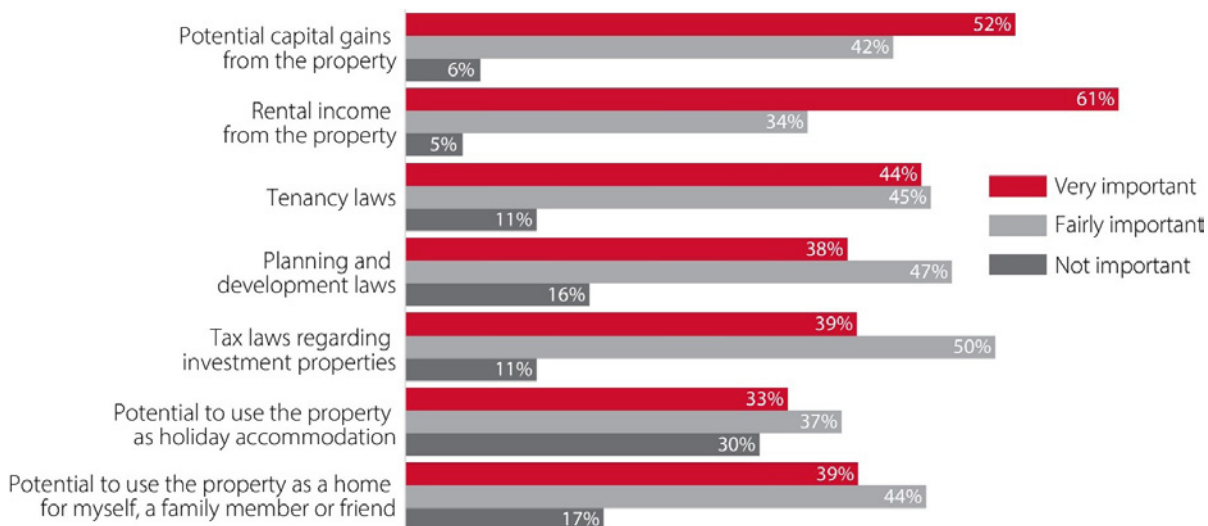
As we highlighted in Chapter 2, properties continually churn in and out of the PRS. While the sector has grown steadily over decades, it is the result of many more investors deciding to acquire investment properties, while somewhat fewer (though still many) dispose of theirs, with spells in the sector often relatively brief. We asked current and previous investors about their reasons for investing and, where applicable, disinvesting.

5.3.1 Investing

Investors were asked to assess the importance (if any) of a range of possible reasons for their acquiring an investment property (Figure 21). Of these reasons, 'rental income' was considered 'very important' by the largest portion of investors (61%), followed by 'potential capital gains' (52%). These two reasons were also regarded as 'unimportant' by fewer investors than any other reason. Tenancy law was also an important consideration: 'very important' to 44 per cent of investors, and unimportant to 11 per cent, which is comparable with the importance of tax laws (39%) and planning and development laws (38%). This is a different result from Seeilig et al., (2009) who found six per cent of investors considered tenancy law when investing. However, it is consistent with our interpretation of the DID findings presented in Chapter 4: investors give some thought to tenancy laws as part of their 'due diligence' when acquiring an investment property.

¹² The total number of properties counted by postcode entries (1,284) is less than the total number of properties currently owned (1,460), because the survey instrument allowed each participant to enter a postcode once only—even though they may own more than one property in that postcode.

Figure 21: Reasons for acquiring an investment property



Source: The authors' survey.

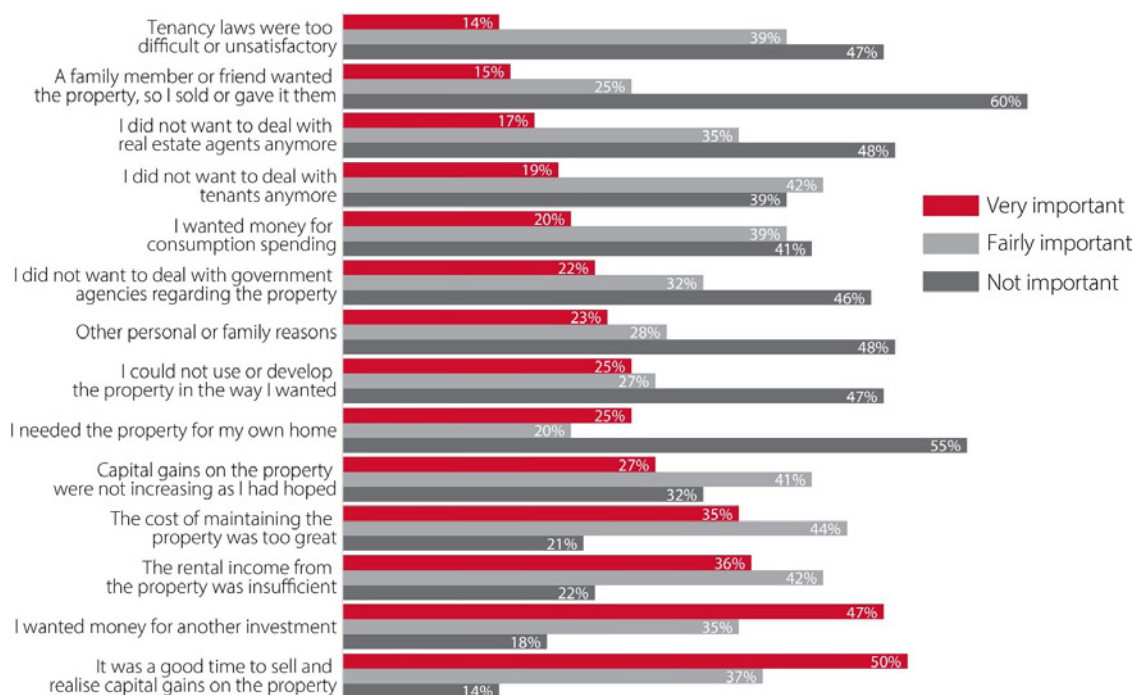
5.3.2 Disinvesting

In our sample, 623 investors indicated that they had ceased to own an investment property. Most (63%) had done so by selling the property; significant minorities had turned the property into their own residence (19%) or had given the property to someone else (18%). We asked them about the importance of a range of possible reasons for their disposing of an investment property (In contrast to its apparent importance in the decision to invest, tenancy law was less important in decisions to relinquish an investment property. A lower proportion of investors (14%) nominated difficulty or dissatisfaction with tenancy laws as 'very important' compared to any other factor, and 47 per cent say dissatisfaction with tenancy laws was not important at all (Figure 3). This is consistent with our general characterisation of Australian residential tenancies law being accommodating of landlords' interests, and with the suggestion, from our DID analysis of two tenancy law reform interventions in NSW and Victoria, that reforms have not triggered disinvestment.).

The reason most often nominated as 'very important' in investors' decisions to relinquish investment properties is that it was a good time to sell and realise capital gains (50%). This is profit-taking and indicates a successful speculation in the sector rather than disinvestment prompted by adverse circumstances. This reason is followed closely by wanting money for another investment, which was 'very important' to 47 per cent of investors and, again, not indicative of an adverse experience. The third and fourth most commonly cited 'very important' reasons are adverse ones: the rental income was insufficient (36%); followed by maintenance costs being too great (35%). All of these motivations—adverse and otherwise—correspond closely to the factors considered most important when investing in the first place: capital gains and rents.

In contrast to its apparent importance in the decision to invest, tenancy law was less important in decisions to relinquish an investment property. A lower proportion of investors (14%) nominated difficulty or dissatisfaction with tenancy laws as 'very important' compared to any other factor, and 47 per cent say dissatisfaction with tenancy laws was not important at all (Figure 3). This is consistent with our general characterisation of Australian residential tenancies law being accommodating of landlords' interests, and with the suggestion, from our DID analysis of two tenancy law reform interventions in NSW and Victoria, that reforms have not triggered disinvestment.

Figure 22: Reasons for disposing of an investment property



Source: The authors' survey.

As discussed in Chapter 2, STL offers a way for investors to exit rental housing without disinvesting from property. Investors in our sample indicated a strong interest in STL. Just over half of current investors expressed an interest in using their property as short-term accommodation in the future, with 38 per cent saying they would 'probably' short-term let and 16 per cent would 'definitely'. The most commonly reason for these plans is the flexibility of STL: 'I can use the property in other ways between short-term lets' (61%). Most (54%) also believed that STL would generate more rental income than long stay residential rental. These results are consistent with STL host survey findings by Crommelin, Troy et al. (2018), and reinforce the recommendation from the study that STL should be regarded as a significant issue for housing policy. In particular, STL is a housing supply issue, not merely an amenity issue.

5.4 Investor attitudes to 'tenant service'

We asked investors to respond to a series of propositions about rental housing and rental regulation, to gauge their attitudes to what we call 'tenant service'. We did so for two reasons. First, this is an opportunity to check the representations made on behalf of investors by real estate organisations and others in debates around tenancy law and reform. It may be that some aspects of the accommodation made by residential tenancies laws to the interests of landlords could be tightened, to the benefit of tenants, without provoking opposition from investors in the way that some of those organisations warn. Second, there is the question of whether positive attitudes to tenant service align with other attributes of investors, which might be fostered by other policy means. We discuss each of these purposes below.

5.4.1 Attitudes of single and multiple property investors

Table 9 presents the range of 'tenant service' propositions we put to survey participants and their responses. The results reveal strong support for principles of tenant service, albeit subject to degrees of dissonance. There is also some notable divergence between current investors who own one property only, and those who own multiple properties.

Table 9: Investor attitudes to tenant service

		One property %	Two or more properties %
A tenant should be able to feel that a rental property is their home	Disagree	6	7
	Neutral	25	38
	Agree	69	55
A tenant who keeps their obligations should be able to stay in the property as long as they like	Disagree	10	11
	Neutral	32	44
	Agree	58	46
A tenant should be able to keep a pet provided it is suitable to the property and does not cause damage or a nuisance	Disagree	13	13
	Neutral	29	40
	Agree	59	47
A landlord should be able to give notice to terminate a tenancy as they see fit	Disagree	9	10
	Neutral	34	42
	Agree	58	49
A landlord should be able to give notice to increase the rent as they see fit	Disagree	8	10
	Neutral	39	43
	Agree	53	47
A landlord should maintain a property to minimum standards	Disagree	8	14
	Neutral	28	35
	Agree	64	51
A landlord should be able to let a property that does not meet minimum standards if the tenant pays a lower rent	Disagree	38	17
	Neutral	31	46
	Agree	31	37
A landlord should be able to use a property for short-term holiday letting as they see fit	Disagree	11	10
	Neutral	34	43
	Agree	55	48
A tribunal or court should consider all the circumstances of the tenant and the landlord before deciding if a tenancy should be terminated	Disagree	10	11
	Neutral	37	40
	Agree	54	49
Current tenancy laws favour tenants	Disagree	9	8
	Neutral	49	47
	Agree	43	45
Current tenancy laws favour landlords	Disagree	23	19
	Neutral	55	51
	Agree	22	30

Source: The authors' survey.

Notably, a majority of current investors (52% across both single and multiple property owners) say a tenant should be able to feel that a rental property is their home and, provided they keep their obligations, stay as long as they like. This sits somewhat oddly with the majority support for landlords being able to terminate tenancies as they see fit, and indeed 30 per cent of respondents said they supported both propositions. This may indicate less-than-conscientious responses or, alternatively, pliable attitudes to tenants' security. These investors may also be inclined or could be persuaded to support stronger tenant security, but perhaps not reliably. There are similarly dissonant responses regarding minimum standards (57% agree landlords should be required to maintain properties to minimum standards, but 19% also agree landlords should be able to let substandard properties for low rent), and regarding tenancy laws (44% think current laws favoured tenants, but 29% also said laws favoured landlords). Majority support was also expressed for tenants being able to keep pets suitable to the premises (53%), and for tribunals considering circumstances before deciding if a tenancy is to be terminated (51%).

Also notable is the difference in attitudes between single-property owners and multiple-property owners. The latter were less inclined to support tenants staying as long as they like, tenants keeping pets, and landlords being required to maintain premises to minimum standards. This challenges the notion that multiple-property ownership may be associated with a more professional approach that is oriented to tenant service.

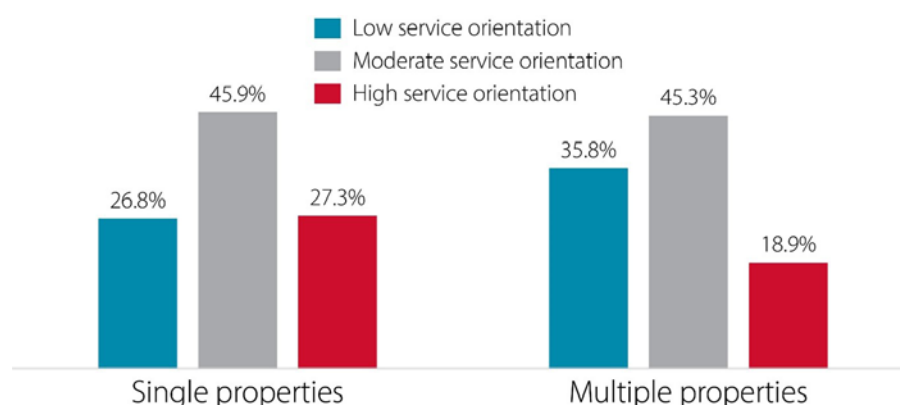
5.4.2 Three types of investor by orientation to 'tenant service'

For another perspective on investor attitudes to 'tenant service', we conducted a k mean cluster analysis that grouped current investors into three ideal types according to their responses to the propositions in Table 9. The groups typify what we term 'high service orientation', 'moderate service orientation' and 'low service orientation'. Investors with 'high service orientation' typically support the propositions that tenants may make the dwelling their home, stay as long as they choose and have pets, that landlords should comply with minimum standards and have a balanced view on tenancy laws. Investors with a moderate service orientation typically state their agreement with at least some tenants' rights propositions but want discretion to use their property as they see fit. Those with a 'low service orientation' tend to disagree with statements around tenants' rights to a home or quality dwelling and perceive laws should tip more in favour of landlords.

Below we consider chi-square tests of independence for the demographic profile, means and motivations of each of the three types, as disclosed by their other responses to the survey.

As indicated above by the divergent responses of single- and multiple-property investors, we found a statistically significant association with tenant service orientation. The former tend more towards the 'high service orientation' type, and latter towards the 'low service orientation' type ($p = 0.004$) (Figure 23).

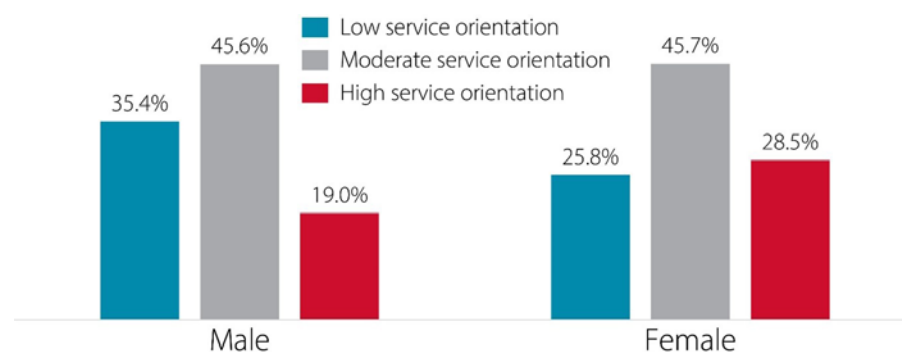
Figure 23: Tenant service orientation, single and multiple property investors



Source: The authors' survey.

We also found a significant association with gender ($p = 0.009$). Female investors tend more towards high tenant service, and male investors more towards low tenant service (Figure 24).

Figure 24: Tenant service orientation by gender



Source: The authors' survey.

Other particularly significant associated demographic factors with service orientation are:

- age ($p = 0.007$), with the high-service type tending to be older investors, and the low-service type tending to be younger
- employment ($p = 0.002$), with those not employed (i.e. unemployed or out of the labour force) tending more towards high service, although large majorities in each type are employed
- source of income ($p < 0.001$), with those who have rents as their primary source of income tending more towards low service.

Interestingly, we found no significant association between tenant service orientation and the way in which investors acquired investment properties: i.e. whether they bought the property as an investment, or were 'accidental' investors in their former home or a gifted property. Looking at factors in investors' decisions to acquire an investment property, we find the high-service type more likely than the low-service type to place importance on rental income ($p = 0.002$) and potential for capital gains ($p = 0.002$). The low service type is more likely to place importance on the prospective use of the premises for holiday accommodation ($p < 0.001$) or as a home for themselves, a family member or friend ($p = 0.007$).

Table 10: Importance of potential capital gains, by tenant service type

	Low service orientation %	Moderate service orientation %	High service orientation %	All types %
Not important	10.10	4.20	8.10	6.90
Fairly important	47.60	40.20	38.40	42.00
Very important	42.30	55.60	53.60	51.10

Source: The authors' survey.

The strongest point of difference between the types is around STL, with the high-service type less interested in that prospect. Half of the high-service type say they are definitely not (21%) or probably not (29%) planning to short-term let, compared with less than a quarter of the low-service type (7% definitely not, 15% probably not). Furthermore, over half of the low-service type are definitely (21%) or probably (37%) planning to short-term let, compared with one-third of the high-service type (5% definitely, 28% probably). Nonetheless, that third still represents a substantial degree of interest by the high-service type in STL.

Table 11: Plan to use for STL, by tenant service type

	Low service orientation %	Moderate service orientation %	High service orientation %	All types %
Definitely no	7.10	9.70	21.20	11.60
Probably no	15.40	12.00	28.80	17.00
Don't know	20.30	16.20	16.30	17.50
Probably yes	36.50	43.50	28.30	37.80
Definitely yes	20.70	18.70	5.40	16.20

Source: The authors' survey.

Of the other investor attributes and interests we asked about in our survey, we found planning laws ($p < 0.001$) and tenancy laws ($p = 0.026$) were more likely to be important to the low-service type in their investment decisions, and they were more likely to receive rent as their main form of income ($p < 0.001$). Other attributes and interests were of marginal or no statistical significance.

This analysis does not point to an obvious policy lever that can be activated to encourage more of the high-service type of rental property investor. In fact, the stronger implication is that investor attitudes and orientations to tenant service are of limited value in assuring tenants of security and autonomy in their housing, and of keeping rental housing to decent standards.

5.5 Summary

The results of our survey of property investors help substantiate some themes from the previous chapters and open up new insights into the means and motivations of investors currently or recently engaged in the PRS. We found evidence of repeated engagement in property investment, consistent with the dynamic view of the PRS highlighted in Chapter 2, with significant multiple-property ownership and interstate investment. We also found a high degree of interest in STL, which is further evidence of the need to address this practice as a housing supply issue.

In their stated reasons for acquiring an investment property, investors indicated that rents and capital gains were by far the most important reasons, but tenancy laws were also a prominent consideration. On the other hand, tenancy laws did not figure strongly in investors' reasons for disposing of investment properties. As such, we interpret this as showing, consistent with our findings in Chapter 3, that consideration of tenancy law is part of investors' 'due diligence'. However, it largely accommodates their interests and dealings once they own rental properties.

Investors' attitudes and orientations towards principles of tenant service suggest that the accommodation afforded by current residential tenancy laws could be tightened in tenants' favour with limited controversy, with majorities expressing support for some key principles. However, we also noted some dissonant responses that undercut the professed commitments of some investors. Also, while the prevalence of small-holding investors is a key structural impediment to secure rental housing, we found that multiple-property ownership is currently not strongly associated with a high-service orientation. While the high-service type is less likely to intend STL and other uses, their level of interest in STL is not trivial and their interest in capital gains (and hence being able to sell when it suits) is high. There appears to be little policy leverage on investors' attitudes and dispositions towards tenant service, and little reliance should be placed on them. This heightens the case for regulation.

6. Australian residential tenancy laws: a topical review

- Australian residential tenancies law has developed differences between jurisdictions. Every jurisdiction has lessons to learn from others, and lessons to offer.
- A range of old and new issues affecting access to rental housing are not addressed in residential tenancies legislation, particularly around the information requirements of tenancy application processes.
- Provisions regarding rents and other costs have developed little. All jurisdictions allow rent increases to be challenged where excessive to the market—a simple principle that is hard to determine in practice.
- The right to quiet enjoyment is prescribed in all jurisdictions, and not much developed by legislative reform. The consequences for breach are limited. Recent reforms relating to pets and alterations have had divergent outcomes.
- The ‘minimum standards’ introduced recently in several jurisdictions largely restate the existing obligation to provide and maintain habitable premises, with some minor additions. Other problems in the general obligation remain unaddressed.
- All jurisdictions provide for ready but orderly termination of tenancies by landlords, including without grounds, although some limit the use of the latter. There are substantial differences between jurisdictions in notice periods, grounds, arrears, and tribunal discretion.

- **Relatively quick and informal dispute resolution is provided by the Civil and Administrative Tribunals, but matters involving interstate landlords are not within their jurisdiction, and must go instead to the lower courts.**
- **All jurisdictions have addressed the tenancy consequences of FDV differently: some provide for survivors to give a certified notice and move out, others require court or tribunal proceedings. Some have also qualified tenants' vicarious liability.**

This chapter presents a detailed review of Australian residential tenancies legislation, the outlines of which we discussed in Chapter 3. The review is structured by key topics in residential tenancies legislation, briefly sketching the development of the law in each topic to its current state, highlighting common themes, notable variations and divergences, and gaps and problem areas. Throughout, we also include comparative tables of provisions in each topic, and select comments from our interviews with PRS stakeholder experts (as described in Chapter 1).

The topics are:

- the RTAs and residential tenancy agreements
- access to rental housing
- rent and other costs
- tenants' quiet enjoyment, privacy and household autonomy
- dwelling conditions, repairs and alterations
- termination and eviction
- dispute resolution and the tribunals
- FDV.

For convenience, the review uses common terminology—e.g. landlords and tenants, residential tenancy agreements, termination notices—although some jurisdictions use different terms (e.g. lessors/owners/rental providers and renters, leases/rental agreements, and notices to vacate). The review also uses 'tribunal' to refer to the adjudicatory body with primary jurisdiction for residential tenancy matters in each state and territory, although in Tasmania and WA the body is a court. Finally, where the review refers to penalties under the RTAs, it shows the maximum penalty in terms of 'penalty units' as prescribed, and the dollar amount based on penalty unit values as at July 2021.

6.1 The RTAs and residential tenancy agreements

The RTAs

As we observed in Chapter 2, each of the Australian states and territories enacted a Residential Tenancies Act (RTA)¹³, more or less on the model set out in the 1975 reports of the Commonwealth Inquiry into Poverty, beginning with SA (1978), then Victoria (1980), NSW (1987), WA (1987), Queensland (1994), the ACT (1997), Tasmania (1997) and the NT (1999). Each has amended their RTA and, in the cases of SA (1995), Victoria (1997), Queensland (2008) and NSW (2010), repealed and replaced their original legislation with newly drafted versions.¹⁴

¹³ Tasmania uses the singular 'tenancy', for the *Residential Tenancy Act*.

¹⁴ At this point Queensland's RTA became the RTRAA.

From the outset, Australian residential tenancies legislation has had a broad scope, covering the large majority of private and social housing tenancies alike, subject to certain narrow classes of agreements and premises being excluded from coverage.¹⁵ For most tenancies to which it applies, each RTA is an almost comprehensive regulatory regime. The RTAs do not quite codify the law (i.e. there are other statutory provisions and common law principles that still apply) but are the regulatory source for most aspects of a tenancy.

Some of the excluded classes—most notably residential parks and boarding houses—are covered by their own specific legislative regimes, in some cases within the relevant jurisdiction's RTA, in other cases separately. In all jurisdictions except the ACT, there remain excluded classes—notably student accommodation, crisis accommodation, lodging arrangements in private dwellings—that are not covered by any housing-specific legislation, and are instead left to the common law.¹⁶

Residential tenancy agreements

For the mainstream tenancies, the provisions of the relevant jurisdiction's RTA are much the same: agreements are required to conform with a standard form of agreement, and most terms, notice periods and other matters are prescribed, and contracting out is generally prohibited.¹⁷ There is some scope for parties to include additional terms in agreements, but not if they are inconsistent with the prescribed terms and other provisions of the RTA. In practice, it is almost always landlords who include additional terms, often by use of a version of the standard form prepared by the jurisdiction's Real Estate Institute. Most of these additional terms merely restate prescribed terms, although some add substantially additional obligations or restrictions. The most prominent example is the additional term restricting tenants from keeping pets (discussed below). Generally speaking, though, what makes tenancies different are the premises, the rent, and the parties, rather than the content of tenancy agreements or differentially applied provisions of the RTA.

Although often called 'leases', residential tenancies agreements as defined by RTAs depart from the traditional requirements of a lease in several ways. First, all jurisdictions provide that an oral residential tenancy agreement is a valid agreement, and is taken to be in the standard form.¹⁸ Secondly, residential tenancy agreements need not be for a specified term (i.e. duration), which is another defining characteristic of a common law lease. All jurisdictions' RTAs, however, countenance that residential tenancy agreements may have a fixed term, in which there is less scope for rent increases, and less scope for both the landlord and the tenant to terminate the agreement. In practice, most tenancies commence with an initial relatively short fixed term of six or 12 months, and then continue for a new fixed term agreed between the landlord and tenant, or as a periodic or continuing agreement without a fixed term.

Thirdly, in all jurisdictions except Victoria, the statutory definition of 'residential tenancy agreement' encompasses agreements where the right to occupy is not exclusive. This is unlike a lease, for which 'exclusive possession' is a defining characteristic that distinguishes leases from mere licences, and tenants from lodgers. However, in all these jurisdictions 'lodgers' are among the excluded categories. This category is not defined in legislation, and because the common law distinction has been blurred, there may be uncertainty about the coverage of rental arrangements that involve some degree of sharing (Martin, 2019).

¹⁵ Although inclusion was a particularly strong theme of the Poverty Inquiry reports, public housing tenancies were originally excluded from the first post-Inquiry RTA, the SA Residential Tenancies Act 1978.

¹⁶ For excluded classes where the landlord is 'in business', the Australian Consumer Law applies. This modifies the usual common law contractual principle of caveat emptor by stipulating that providers of goods and services (including accommodation services) must guarantee that goods and services provided are fit for purpose.

¹⁷ Until 2013, WA was a partial exception, allowing contracting out of numerous provisions, including prescribed terms about conditions and repairs. Provision for contracting out was repealed in 2013.

¹⁸ Historically, leases are required to be in writing (per the *Statute of Frauds 1677*). Although oral residential tenancy agreements are valid, the RTAs impose an obligation on landlords to put the agreement in writing and give a copy to the tenant.

Variation: exemption of long fixed terms

The general proposition that the RTAs cover all mainstream tenancies has been, and remains, one of the most consistent propositions in Australian tenancies law, but some jurisdictions have made exceptions regarding long fixed term residential tenancy agreements. The NSW RTA allows agreements for a fixed term of 20 years to contract out of many provisions of the Act, while others remain mandatory. Previously, the Victorian RTA excluded agreements with a fixed term of more than five years. However, this exclusion was repealed in the 2018 reforms.

Variation: the ACT's occupancy principles

The ACT has taken a distinctive approach to agreements excluded from the mainstream provisions applying to residential tenancy agreements. Where other jurisdictions have enacted specific regimes for some excluded categories, with their own prescribed terms, periods and grounds—rather like scale models of residential tenancies legislation—in the ACT all otherwise excluded agreements for a right to premises as a residence are known as occupancy agreements, and are subject to 'occupancy principles' set out in the ACT RTA. Diverse forms of accommodation, therefore, are subject to the occupancy principles: lodgings in private homes, boarding houses, student accommodation, caravan parks, and crisis accommodation. Accordingly, the occupancy principles are more broadly stated, and accommodate more variation between individual agreements, than the prescribed terms, notice periods and other provisions applying to residential tenancy agreements.

Variation: terminology and form

Formal differences between the RTAs themselves have opened up over time. Increasingly, they look and read differently. There have always been differences in terminology. For example, the RTAs refer variously to 'landlords' (NSW, SA and the NT), 'lessors' (Queensland, WA and the ACT), 'owners' (Tasmania) and 'residential rental providers' (Victoria)—an invention of Victoria's 2018 reforms.¹⁹ The first RTA on the Bradbrook model, SA's now-repealed *Residential Tenancies Act 1978*, ran to 95 sections and just under 15,000 words. Most of the other first-iteration RTAs were close to that length, and the current RTAs of NSW, SA, WA, ACT and the NT are still in the range of 100–200 sections and 35,000–52,000 words. The Tasmanian RTA is a trim 69 sections and 28,000 words. The Queensland RTRAA runs to 568 sections and over 92,000 words. The Victorian RTA ends at section 533, and there is now a gap between sections 215B and 322. However, this belies its size, as in some parts it runs five alphabets deep (e.g. section 498ZZZPA, one of 118 lettered sections under section 498). At almost 200,000 words, the Victorian RTA is longer than Dickens' *Great Expectations*, and just shorter than Melville's *Moby Dick*.

¹⁹ All RTAs refer to 'tenants', except Victoria's, which since the 2018 reforms uses 'renters'.

Table 12: Residential tenancies legislation, formal aspects

	Act	Parties to agreements	Types of agreements	Length (words)
NSW	RTA 2010	<ul style="list-style-type: none"> • Landlord • Tenant 	<ul style="list-style-type: none"> • Mainstream residential tenancies 	c. 52,000
Qld	RTRAA 2008	<ul style="list-style-type: none"> • Lessor • Tenant 	<ul style="list-style-type: none"> • Mainstream residential tenancies • Renters in moveable dwellings • Rooming accommodation 	c. 92,000
SA	RTA 1995	<ul style="list-style-type: none"> • Landlord • Tenant 	<ul style="list-style-type: none"> • Mainstream residential tenancies • Rooming accommodation 	c. 36,000
Tas	RTA 1997	<ul style="list-style-type: none"> • Owner • Tenant 	<ul style="list-style-type: none"> • Mainstream residential tenancies • Rooming accommodation 	c. 28,000
Vic	RTA 1997	<ul style="list-style-type: none"> • Residential rental provider • Renter 	<ul style="list-style-type: none"> • Mainstream residential tenancies • Rooming houses • Caravan parks • Specialist disability accommodation 	c. 200,000
WA	RTA 1987	<ul style="list-style-type: none"> • Lessor • Tenant 	<ul style="list-style-type: none"> • Mainstream residential tenancies 	c. 41,000
ACT	RTA 1997	<ul style="list-style-type: none"> • Lessor • Tenant 	<ul style="list-style-type: none"> • Mainstream residential tenancies • Occupancy agreements 	c. 52,000
NT	RTA 1999	<ul style="list-style-type: none"> • Landlord • Tenant 	<ul style="list-style-type: none"> • Mainstream residential tenancies 	c. 35,000

Notes: The NSW RTA 'mainstream' provisions also apply to renters in residential parks. The NT RTA 'mainstream' provisions apply to boarding houses with three or more residents (NT RT Reg 2000 Reg 4).

Source: RTAs, all states and territories.

Stakeholder perspectives

Some of our interviewees offered high-level reflections on the origins of the RTAs and their development as consumer protection legislation. One of the tenant organisation representatives harked back to the beginning: 'we've got the Sackville-recommended approach, basically' (TO1).

Going back and reading it, Sackville really set out what we have now. It's trying to regulate a market in a soft way, and recognises the power imbalance in different aspects, and so it sets standard terms because tenants aren't going to be able to negotiate these things. Sackville did understand, but whoever turned it into legislation didn't understand that if you include no-grounds [termination] it just pulls the rug out from under everything else. [Also], the lack of an alternative place to go, which would be the case even if you got rid of no-grounds, that will still undermine people from enforcing the terms of the contract. (TO1)

Another tenant organisation representative stated:

Tenants still have their heads down—particularly in this environment [a tight rental market]—they don't feel well-protected, they don't feel like putting their head above the parapet, they don't feel empowered. There is a massive narrative out there about how you really should own your own house—that's what we all aspire to—and there's a feeling that if someone owns your house, whatever they want to do with it, within reason, is fair game. And you should, as a tenant, bend to their will.

It is really hard to get people to speak up, both because they are afraid of getting evicted, and because their expectations are so low. They just accept the narrative that we're all prospective homeowners— and even if they don't think that achievable, they buy into the narrative that you shouldn't have much rights. (TO2)

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

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

This interviewee also observed that legislation had become more complex.

Another perspective on how uneasily the consumer protection framework fits around residential tenancies was offered by the BTR interviewee, who said ‘the typical mindset we find our customers in is they are not used to being treated as a customer’:

They are a little bit sceptical. We genuinely want a good customer experience and want to treat residents like customers, we want to reinvent or revolutionise —that’s the word we use—the customer journey. The understanding of consumer rights is pretty low, and part of our customer journey is to overcome that. (BTR1)

This interviewee noted there was interest among some BTR tenants in long-term agreements, but the operator was not offering them (and was instead making strong assurances about the continued renewal of 12-month agreements, or continued periodic agreements, as tenants preferred). This was because long fixed terms that contracted out the RTA raised questions about the determination of rent increases and tenants’ liabilities for breaking early that the BTR operator had not resolved.

6.2 Access to rental housing

Australian residential tenancies legislation contains two main sets of provisions relating to access to rental housing: the first regarding payments at the commencement of tenancies, and second regarding RTDs. The latter are directed at a different kind of access issue to the payments issue: the processes used by agents and landlords for determining applications and allocating tenancies. Aside from the RTD provisions, most of the RTAs do little to address this aspect of access. However, it is an area of practice that has been changing rapidly, through developments in digital information technologies (Hulse et al. 2018).

Payments at tenancy commencement

These provisions, which have been in RTAs from the outset, include: limits on the amounts that landlords may require as security deposits (or bonds) and as rent in advance; prohibitions on charges other than rent and security deposits; and prohibitions on guarantees other than security deposits. Over the years, law reform processes have mostly consolidated these safeguards, removing earlier variations for different rental price points and furnished premises.

Variation: restrictions against rental auctions

The Queensland, Tasmanian and Victorian RTAs require advertisements for rental properties to state a ‘fixed amount’ for the rent, rather than a range of rents or an invitation for applicants to make an offer. The Tasmanian and Victorian RTAs also prohibit landlords and agents from soliciting or inviting higher offers. This is intended to stop landlords and agents from instigating ‘rental bidding’. Although, it remains open to applicants to offer a higher rent than advertised and for landlords and agents to accept such an offer.

Variation: security alternatives (ACT)

Amendments made in 2017 to the ACT RTA contemplate that parties to a tenancy agreement may agree to use a commercially-provided guarantee, rather than a cash bond, as security at the commencement of the tenancy. The provisions set out a standard form of contract for such guarantees and requires issuers of guarantees to register their products with ACT Fair Trading.

Residential tenancy databases

RTDs, often known as tenancy blacklists, collect personal information about individual tenants from subscriber agents and landlords and make this information available to other subscribers for the purpose of vetting tenancy applications. RTDs were for years mostly unregulated, but now all jurisdictions have included provisions in their RTAs regulating RTDs and their use by agents and landlords. These provisions are more consistent across jurisdictions than any others, being the product of an intergovernmental working group on the issue. They have the following effects:

- restrict the circumstances in which a tenant's information may be listed on an RTD (only where the tenancy has ended, and the tenant owes money to the landlord or the tribunal terminated for breach)
- require agents and landlords to notify a tenant of a proposed listing, and to inform an applicant for a tenancy if an RTD search has revealed a listing
- limit the duration of listings (to three years)
- require RTD operators to provide listed persons a fee-free method of accessing information listed
- provide that tenants may apply to the tribunal for orders removing a listing that is inaccurate, out of date or unfair.

Some jurisdictions have recently added a further restrictions against tenants being listed in circumstances of FDV, and increased penalties. This amounts to a fairly strong regime of protection, but there are some gaps and areas where the provisions have not matched developments in practice.

The main gap arises from the RTAs' common definition of RTD. One element of the definition specifies that RTDs are for use by landlords or agents in checking a person's tenancy history to decide whether to enter into a tenancy agreement with them. This purposive aspect of the definition appears to exclude from coverage databases of tenancy-related information that have other purposes. For example, some real estate office databases (developed by RTD operators) alert an agent when a current tenant is checked against the associated RTD by another agent. These databases have the purpose of monitoring current tenants—in intrusive and potentially abusive ways—rather than checking applicants.

Another element in the definition specifies that RTDs contain information relating to the occupation of residential premises under a residential tenancy agreement. There is a question whether information entered by a prospective tenant into an online application portal, such as 1Form, fits this element of the definition, and whether these portals are in fact RTDs. They currently operate as if they are not, and there are aspects of the current regime that are impractical for them. However, the question remains as to whether and how these important facilitators of PRS access should be regulated.

Discrimination

Aside from the RTD provisions, there are some important regulatory interventions, mostly outside the RTAs, directed at agents' and landlords' decision-making. Discrimination in the provision of rental housing on grounds of race, sex, disability, age and certain other attributes is prohibited by federal and state anti-discrimination legislation (enacted over roughly the same period as the first iteration of RTAs).

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

Variation: discrimination provisions within RTAs

While all jurisdictions have separate anti-discrimination legislation, Victoria, SA and WA include in their RTAs anti-discrimination provisions relating to tenants with children. This reflects a recommendation of the Sackville Report and, before that, of anti-discrimination provisions occasionally being included in rent control regimes.

Following its recent reforms, the Victorian RTA also contains an express reiteration of the prohibition on discrimination in that state's *Equal Opportunity Act 2010*, and a power to make regulations with respect to the information required by landlords and agents as part of the tenancy application process. The following information is proscribed: whether the applicant has previously had a tenancy dispute, or a claim on a rental bond; a bank statement showing daily transactions; and any information about protected attributes under the *Equal Opportunity Act 2010*.

The NT RTA has a unique anti-discrimination provision that expressly protects tenants' right of association. It prohibits landlords from refusing to renew the tenancies of tenants who join, or use the services of, a tenants' association (s 67).

Between the general anti-discrimination Acts and the specific RTA provisions, there remain a number of attributes that are not protected from discrimination. These include source of income, status as a recipient of income support, and status as an applicant for social housing—all of which are commonly asked about in tenancy application forms.

Landlords' access to the PRS

Finally, another 'access' issue is that of landlords' access to the PRS. No state or territory requires landlords to be licenced, hold a qualification, undertake training or even register as landlord. Nor is there any disqualification of landlords. Persons managing rental properties on behalf of others are required to be licensed real estate agents and there may be training requirements depending on the jurisdiction. For their principals, however, access to the PRS is unregulated and unfettered.

Variation: Victoria's 'rental non-compliance register'

Victoria's recent reforms introduced a 'rental non-compliance register', operated by Consumer Affairs Victoria. Landlords are listed in the register when ordered by the tribunal to remedy or compensate for a breach, or found to have committed an offence under the RTA. The listing includes name of the landlord, the agent (if used), and the address of the relevant property, and remains on the publicly-accessible register for three years.

Stakeholder perspectives

Of all the topics we discussed with interviewees, 'access' encompassed more issues that were not currently addressed in residential tenancy law, and the largest disconnect between policy and practice.

This disconnect appears to be partly because of the salience of digital technology in access issues and the familiar theme that regulators are always behind the curve. However, another factor is the diverse range of actors and intermediaries involved and a lack of clarity in government as to which agencies are responsible. As a senior government officer said, 'We need to do some more work to understand what's going on here, but even just 1Form has changed the market [...] Who regulates 1Form? [...] Is it privacy [legislation]? Is it consumer affairs? What is it precisely?' (SG1). For their part, a property intermediary interviewee said they would welcome closer engagement with rental housing policy makers:

I think renting is the future of housing and that state governments should work with the innovators to look at maybe sandboxing new and emerging models. The consumer expectations are moving the fastest; technology and innovators, entrepreneurs are looking to follow. And you know, somewhere three to five years behind them are the state regulators. (PI1)

Interviewees indicated a range of developments affecting access were taking place. A tenant organisation representative saw 'lots of third party companies popping up, application platforms but also in-tenancy platforms as well' (TO2):

They all have broader privacy statements [consents] than I'm willing to sign. There are definitely issues: because the market is so hot, people are giving away data for no benefit. They have to use online platforms and put data in but they don't get to even see the property. (TO2)

Another tenant organisation interviewee said:

People don't mind having a central database holding their info that they can flick it across to [agents] – lots of tenants find that convenient and good. But some do object to the amount and level of info being collected. That should definitely be up for regulation. (TO1)

A property intermediary interviewee saw the use of artificial intelligence in tenancy applications as a 'very big problem' yet to be addressed (PI2). The BTR interviewee said they had dispensed with requiring bonds (because it was a 'pain-point' for customers), and instead relied on their application process for risk management. This was 'quite a formal process':

It's a digitised process, and as easy for the resident as possible—that's the aspiration. There's a focus on financial viability and affordability and making sure those metrics line up. And where someone doesn't have the income or asset backing, say a younger person, we'll seek a guarantor from their parent. So we use other mechanisms, but we work through employment history, rental history, we do the typical real estate agent checks on those databases as well ... We think there's an opportunity to revolutionise, from a renter's perspective, how their profile is managed and how it can be done more efficiently and how we reward good renters—that is a total space for innovation. (BTR1)

With regard to another much-touted innovation—review sites for rating rental properties and landlords—one of the tenant organisation interviewees noted that the slower turnover of tenancies meant they could not collate sufficient data like hotel review sites can. Instead, governments and the older technology of public registers would be better:

A government register would be better, but still a lot of tenants don't feel like they can list a landlord, they are putting a target on their back So the better way would be to register all landlords, and if there are complaints, [the consumer affairs agency] can lodge them on the register, like they do with tradies. (TO1)

6.3 Rent and other costs

Rents and rent increases

All Australian jurisdictions only lightly regulate rents; this has been characteristic of Australian residential tenancies legislation from the outset and has not been significantly changed—or even discussed—in legislative reviews since then.

No jurisdiction regulates the amount of rent a landlord may seek when letting a property. All allow rent increases after the expiry of a tenancy's fixed term (typically six or 12 months), provided a valid notice is given (the ACT is a partial exception, see below). None limits the amount or rate of an increase, except by providing that a tenant may dispute a notified rent increase as 'excessive'. In resolving these disputes, the primary consideration for the tribunal is the general market level of rents for comparable premises, along with a list of specific factors, e.g. the state of repair of the property. No jurisdiction prescribes affordability as a consideration (in fact, the RTA NSW expressly proscribes it). The most significant development in the law regarding rent increases has been the movement to limit the frequency of rent increases. All jurisdictions now limit increases to once in six or 12 months.

Table 13: Rent increases

	Rent increases - notice	Period between increases	Rent payment fees
NSW	60 days	12 months	Fee-free method required
Qld	2 months	6 month	Fee-free method required
SA	60 days	12 months	Fee-free method required
Tas	60 days	12 months	Prohibited
Vic	60 days	12 months	Fee-free method required
WA	60 days	6 months	Prohibited
ACT	8 weeks	12 months	Fee-free method required
NT	30 days	6 months	Allowed

Source: RTAs, all states and territories.

Variation: Victoria's rent assessments

In Victoria, tenants' complaints about excessive rent increases go first to Consumer Affairs Victoria, which prepares a report on rents for comparable premises. Then, the tenant may apply to the tribunal, which will be informed by the report and other evidence. This is a continuation of a function that predates the RTA era, and which originally resided in the Victorian Rental Investigation Bureau. The Sackville Report recommended its adoption by other jurisdictions, and expressly suggested that provisions for challenging excessive rent increases would be ineffective without it (Sackville 1975: 88).

Variation: the ACT's rent increase guideline

The ACT is the only jurisdiction to include an objective 'guideline' in its excessive rent increase provisions. Where a rent increase would be more than 110 per cent of the increase in the rent component of the ACT Consumer Price Index over the relevant period, the landlord must apply to the tribunal and show that the increase is not excessive, considering the general market level of rents for comparable premises. The guideline, therefore, does not determine whether the increase is excessive, but imposes a procedural requirement and external scrutiny on landlords considering above-guideline increases. By the same token, rent increases below the guideline may be as 'excessive', with the onus on the tenant to take proceedings and prove the case.

The provision for a guideline has been part of the ACT RTA since it was enacted: originally set at 120 per cent of CPI, it was reduced to 110 per cent in 2019.

Variation: the COVID-19 rent regulations

In a remarkable, if temporary, departure from the usual light regulation of rents, at the outset of the COVID-19 pandemic in March 2020, four jurisdictions prohibited rent increases for all tenants (SA, Tasmania, Victoria, WA), and the ACT prohibited rent increases for tenants in COVID-19 hardship. These restrictions were lifted after six months, although the ACT re-imposed its restriction during its 2021 lockdown, and SA has continued to date to restrict rent increases specifically where tenants are suffering financial hardship because of COVID-19.

A throwback to 'first generation' rent controls (i.e. a freeze on rent increases), the COVID-19 rent increase prohibitions are more of a reminder of the power that states have than a model for regulating PRS rents for greater affordability and fairness going forward.

Other costs

In contrast to rents, other costs for which tenants may be liable under residential tenancy agreements are firmly regulated. Utility charges by landlords are generally limited to their metered use and cost, and fees for late payment of rent are not allowed. The Queensland, SA, WA and NT RTAs allow landlords who have increased the rent to also require tenants pay an additional amount to top-up the rental bond held.

As observed by Hulse, Martin et al (2018), the practice of tenancy management is being changed by agents (and sometimes landlords) engaging third-party businesses to provide platforms or services that intermediate between themselves and tenants. These intermediaries may purport to charge tenants for the service, including rent collection. In response, all jurisdictions except the NT either prohibit rent collection companies from charging tenants (Tasmania and WA) or specifically require landlords offer at least one method of rent payment that is free of additional charges (NSW, Queensland, SA, Victoria and the ACT).

Stakeholder perspectives

Current laws offer 'no real protections against rent increases', said a senior government officer; this was one of the 'spectacular omissions' from the RTAs and from recent reform discussions (SG1). TO1 also regarded the current provisions regarding rent increases as 'broken', not least because 'the general level of market rents for comparable premises' was not easily determined on available data for tenancies that had been ongoing for any length of time. Published data about rent levels refer to median 'asking rents' advertised by agents, and to median rents for new tenancies for which bonds have just been lodged. TO3 argued rent increases 'probably should be pegged to CPI or as a percentage' (T3).

The property owner's representative and real estate organisation interviewees were strongly in favour of market principles for rent increases and opposed to any further regulation. The real estate interviewees went as far as characterising the ACT's guideline as 'a form of rent control', and claimed 'investors have left the market' as a result (RE1). However, as we have discussed, the ACT RTA has always provided for a guideline and that 'the general market level of rents' ultimately determines whether an increase is excessive.

6.4 Tenants' quiet enjoyment, privacy and household autonomy

Quiet enjoyment and privacy

'Quiet enjoyment' is a right of tenants implied by common law in all leases. It gives the tenant a contractual remedy where the landlord interferes with the tenant's possession of the premises. All the RTAs expressly make quiet enjoyment a prescribed term of residential tenancy agreements. Most expand the landlord's obligation to not interfering in the tenant's 'reasonable peace, comfort and privacy', and to taking action against other tenants of the landlord who cause such an interference in breach of their own agreements.²⁰ The NT RTA omits 'comfort' from the expanded obligation. The Victorian RTA refers to obligations of 'quiet enjoyment' in mainstream rental, and 'reasonable, peace and privacy' in the marginal rental forms covered by the Act (rooming houses, caravan parks and SDA accommodation).

The archetypal breach of quiet enjoyment is an attempt by the landlord to unlawfully evict the tenant. However, a range of acts and omissions may constitute a breach: an unlawful entry to the premises; building work on or near the premises that detracts from the tenant's use of the premises; and a failure to properly do work or other action that would prevent an interference.²¹ These latter types of interference shade into the obligations of landlords regarding habitability of premises and repairs (discussed below), and the cases often involve claims of breach of both obligations. Several jurisdictions provide for a penalty for breaches of quiet enjoyment, in addition to contractual remedies (Table 3).

²⁰ Because few private tenants have a landlord in common, the latter situation more often arises in relation to social housing (Hunter, Nixon and Slattery 2005; Martin 2015).

²¹ For example—albeit not a binding precedent—the Appeal Panel of NCAT has held that a landlord's failure to take action to address the penetration of cigarette smoke from an adjoining unit is a breach of quiet enjoyment: *Bhandari v Laming* [2015] NSWCATAP 224.

All the RTAs also impose terms regulating tenants' use of the premises or, put another way, limiting their autonomy in making a home of the premises and hence their sense of 'secure occupancy' (Hulse, Milligan and Easthope 2011; Martin 2018). These terms limit the maximum number of occupants, limit subletting, prohibit use for an illegal purpose and regulate making alterations to the property. They also provide for agents and landlords to access the premises on prescribed grounds, with notice.

Compensation for distress and disappointment

In many cases of breach of quiet enjoyment and privacy, the tenant's loss will be in the nature of distress or disappointment. At common law, distress and disappointment are not compensable unless (i) they arise from physical inconvenience caused by the breach, or (ii) the object of the contract is specifically to 'provide enjoyment, relaxation or freedom from molestation' (*Baltic Shipping Company v Dillon* [1993] HCA 4). The NSW Supreme Court (in *Fawzi El-Saiedy v New South Wales Land & Housing Corporation* [2011] NSWSC 820) and the NT Court of Appeal (in *Chief Executive Officer (Housing) v Young & Anor* [2022] NTCA 1) have held that residential tenancy agreements do not have the object in the second limb of that test; specifically, 'quiet enjoyment' is 'very different' from 'enjoyment' in the relevant sense.²² So, for a breach of quiet enjoyment and privacy to be compensable, it must cause physical inconvenience: e.g. being unable to use, or having only limited use, of part of the premises.

This qualification on compensation affects breaches of other terms of residential tenancy agreements, notably the terms about habitability and repairs.

Pets

Rules around keeping pets in rental properties are currently split between two approaches. These rules do not apply to assistant animals, which are not considered pets under the legislation. All jurisdictions require tenants to ask their landlord's permission to have a pet in the property. However, in Victoria, the ACT and the NT, recent reforms require landlords to apply to the tribunal if they wish to refuse tenants' requests. Landlord consent is assumed if the landlord does not apply to the tribunal after 14 days. The tribunals may refuse the tenant's request for select reasons. For example, lack of space in the property. Queensland is implementing extremely similar reforms in late 2022. Conversely, in NSW, SA, WA and Tasmania, tenants having pets is at the landlord's discretion and they may refuse. Tenants' ability to have particular pets (e.g. the number of pets, certain breeds) also depends on other rules besides the RTA, including strata by-laws and local council laws.

Variation: pet bonds

In all jurisdictions except WA, landlords cannot ask tenants to pay an extra bond if they have a pet. In WA, landlords may charge tenants with animals (but not assistance dogs) up to \$260 on top of their regular bond to cover fumigation costs at end of tenancy.

Alterations

All the RTAs originally prescribed terms prohibiting tenants from making alterations without the consent of the landlord. Most jurisdictions have now qualified that prohibition, in different ways.

Variation: qualifications on refusal of alterations

In Queensland, landlords may not unreasonably refuse consent to alterations (s 208). Similarly, NSW landlords may not unreasonably refuse consent if the alterations are minor (s 66), and SA landlords may not unreasonably refuse consent to alterations necessary for a 'prescribed service or infrastructure' (s 70).

²² By contrast, a contract providing accommodation for the purpose of a holiday would be a contract for 'enjoyment' in the relevant sense, and disappointment or distress at the loss of that enjoyment would be compensable: *Baltic Shipping Co v Dillon* (1993) 176 CLR 344, 371 per Brennan J.

In WA, tenants may affix furniture to the wall if for safety of a child or person with a disability, and may also make any alterations necessary to prevent entry of a former party to a tenancy agreement or to prevent family violence, after notifying the landlord (s 47). In Victoria, tenants may make 'prescribed modifications', including curtains, picture hooks, wall anchors and child safety gates, without the landlord's consent. Landlords may not unreasonably refuse consent to a range of other modifications, including those that increase thermal comfort, those that increase security and those that are required for health and safety (s 64). In the ACT, landlords cannot refuse consent for 'special modifications'—minor modifications, or modifications for safety, security, and energy efficiency—except with the approval of the tribunal. They must apply within 14 days of the tenant's request or else consent is assumed. Landlords also cannot unreasonably refuse general modifications. Tasmania (s 54) and the NT (s 55) still allow landlords to refuse consent altogether.

Access to premises by landlord

From the outset the RTAs have allowed landlords and agents to access premises, after giving notice, for the purpose of conducting inspections, doing repairs and showing the premises to prospective tenants and to prospective purchasers. In practice the latter appears to be the most controversial. Several jurisdictions have made more specific provisions in this regard, as well as introducing new associated grounds for access, such as taking photographs for marketing.

Variation: provisions regarding property sales

The Queensland and Tasmanian RTAs expressly provide that access is for individual prospective purchasers only, and that open house inspections may occur only with the consent of the tenant.

The NSW and SA RTAs contemplate landlords and tenants negotiating a schedule of access, and require tenants to not unreasonably refuse access. Where no schedule is agreed, the RTA makes default provisions (per Table 3). Under the Victorian RTA, tenants have a right to be compensated by the landlord where they access the property to show prospective purchasers. The amount of compensation is the greater of \$30 or half a day's rent.

Table 14: Quiet enjoyment, access and pets

	Quiet enjoyment— penalty for breach	Pets	Alterations	Access (notice required and frequency)				
				Inspection	Showing prospective purchasers	Repairs	Valuation	Photography
NSW	\$1,100 (10 p.u.)	Landlord may prohibit all pets	Tenant must ask consent; if minor, landlord must not unreasonably refuse	7 days 4 times in 12 months	48 hours Twice in a week	2 days	7 days Once in 12 months	'Reasonable notice' Once in 28 days before sale
Qld	\$2,757 (20 p.u.)	Tenant must ask consent of landlord, who may refuse on certain grounds	Tenant must ask consent; landlord must not unreasonably refuse	7 days Once in 3 months	24 hours 'If a reasonable time has elapsed' since previous access	24 hours	24 hours	-
SA	\$5,000	Landlord may prohibit all pets	Tenant must ask consent; if for prescribed service, landlord must not unreasonably refuse	7 days Once in 4 weeks	Reasonable notice' Twice in 7 days	48 hours	-	-
Tas	\$8,650 (50 p.u.)	Tenant must ask consent of landlord, who must not unreasonably refuse	Landlord may refuse all alterations	24 hours Once in 3 months	48 hours Once per day, five times in a week	24 hours	-	-
Vic	No	Tenant must ask consent; landlord must apply to tribunal to refuse	Tenant may make prescribed alterations without consent, and certain others with consent; landlord must not unreasonably refuse	7 days Once in 6 months	48 hours	24 hours	7 days	7 days
WA	No	Landlord may prohibit all pets; if allowed, additional bond may be required	Tenant may make prescribed alterations after notifying landlord	7 days 4 times in 12 months	Reasonable notice' 'A reasonable number of occasions'	72 hours		
ACT	No	Tenant must ask consent; landlord must apply to tribunal to refuse	Tenant must ask consent; if minor or prescribed, landlord must apply to tribunal to refuse	1 week Twice in 12 months	48 hours Twice in a week	1 week	-	-
NT	No	Tenant must ask consent; landlord must apply to tribunal to refuse	Landlord may refuse all alterations	7 days Once in 3 months	24 hours 'A reasonable number' of times	24 hours	-	-

Source: RTAs, all states and territories.

Stakeholder perspectives

The BTR interviewee made some observations that touch on the issue of tenants' autonomy and the quiet enjoyment term. Regarding the first, the interviewee said they had identified 'the feeling of being in control ... being able to paint walls, have pets and have the place for as long as they want' as being a key selling point for BTR, and a key point of differentiation from the predominant style of management in the PRS: 'we definitely want to be the anti-real estate agent, that's the way we think about it' (BTR1). However, the BTR operator also included additional 'house rules' in its tenancy agreements, because 'we want to cultivate a community, and you've got to follow house rules to make that positive contribution' (BTR1). The interviewee also said the operator was conscious of its unusual position as the common landlord of hundreds of residents, which meant disputes between neighbours could readily become tenancy disputes with the operator involved.

6.5 Dwelling conditions, standards and repairs

The 'habitability' obligation

All the RTAs impose obligations on landlords regarding the condition of premises when they are provided at the commencement of a tenancy, and over the course of the tenancy (therefore requiring maintenance and repairs). These obligations have been prescribed terms in all residential tenancy agreements from the outset of the RTA era (with the exception of Tasmania, which enacted an obligation similar to other states in 2013;²³ and the partial exception of WA, pre-2013, noted above). The wording of the obligation differs between jurisdictions, with each adopting older formulations from landlord-tenant law, but courts have considered them to mean the same.²⁴ All RTAs also impose a separate similar obligation on landlords regarding locks and security devices to make the premises reasonably secure.

The RTAs make landlords' obligations about dwelling conditions contractual obligations that are owed to and enforced by the tenant. The Tasmanian and Victorian RTAs, however, also make breach of the obligations an offence punishable by a fine; the maximum amounts in Victoria are substantial.

Although the obligation to keep premises to the required standard is on the landlord, all RTAs make provision for tenants to effect urgent repairs, within certain limits. Otherwise, tenants can apply to the tribunal for specific performance orders, orders reducing the rent (to reflect the reduction in goods and services provided by the landlord) and compensation.

All the RTAs oblige tenants to keep premises reasonably clean, notify the landlord of damage, and not deliberately or negligently cause damage to the premises. They also oblige tenants to return the premises at the end of the tenancy in the same condition as they were at commencement, except for fair wear and tear. This leaves some uncertainty about the liability of tenants for accidental damage (e.g. where an appliance brought by the tenant malfunctions and causes damage to the dwelling). Also, where damage by the tenant causes the premises to be in disrepair, the landlord is not in breach, and hence under no obligation to repair the damage. This may be a problem for tenants who lack the money to get repairs done.

²³ Tasmania's original obligation was that the owner 'maintain the premises as nearly as possible in the condition, apart from reasonable wear and tear, that existed on the day on which the residential tenancy agreement was entered into' (s 32). This formulation is similar to an oddly-worded recommendation of the Sackville Report; read strictly, both would relieve landlords from repairing defects occurring through the effects of ordinary use (i.e. fair wear) and the elements (i.e. tear), which is inconsistent with a continuing obligation on the landlord to maintain and repair the premises. 'Fair wear and tear excepted' should attach to the tenant's obligation to return the premises undamaged, not to the landlord's obligation to do repairs. Also (unlike the Sackville recommendation), the Tasmanian provision does not state that the condition at commencement must be habitable at commencement. Nonetheless, it remains in the Tasmania RTA—although since 2013 the RTA has also included an obligation that premises are provided in good repair (s 36J).

²⁴ The NT Court of Appeal observed in *Chief Executive Officer (Housing) v Young & Anor* [2022] NTCA 1 that 'the notion of habitability has a long jurisprudential history', and there appears no 'material difference between ["good tenable repair"] and "habitable repair"' in the cases. Similarly, the Victorian Supreme Court has held "'good repair' means 'tenantable repair', or 'reasonably fit and suitable for occupation'": *Shields v Delipoulos* [2016] VSC 500 at [38].

Table 15: Dwelling conditions and repairs

	Dwelling condition	Urgent repair thresholds (when the tenant may repair, and to what cost)	Minimum standards (aside from 'habitable')	Penalty for breach of habitability obligation
NSW	Fit for habitation' and in a 'reasonable state of repair'	After a reasonable time, up to \$1,000	Yes	None
Qld	Fit to live in' and in a 'reasonable state of repair'	After a reasonable time, up to 2 weeks' rent	Provision for minimum standards by regulation; yet to be implemented	None
SA	Reasonable state of repair'	After a reasonable time, reasonable costs	In separate legislation	None
Tas	Good repair'	After 24 hours, no cost limit	Yes	\$8,650 (50 p.u.)
Vic	In good repair' and 'reasonably fit and suitable'	After a reasonable time, up to \$2,500	Yes	Individual: \$10,904 (60 p.u.) Body corporate: \$54,522 (300 p.u.)
WA	Reasonable state of repair'	After 24 hours (essential services) or 48 hours (other urgent repairs), reasonable costs	No	None
ACT	Fit for habitation' and in a 'reasonable state of repair'	After a reasonable time, 5% of the annual rental value	Provision for minimum standards by regulation; yet to be implemented	None
NT	'Habitable'	After 7 days, up to 2 weeks' rent	No	None

Source: RTAs, all states and territories.

More than most aspects of residential tenancies law, landlords' obligations regarding dwelling conditions have been the subject of judicial interpretation by state and territory superior courts and the High Court. The case law is complex, and the following distils some key points.

- 'Habitable' means that the dwelling, used ordinarily, is both reasonably safe and comfortable (in contrast to some lower court decisions that have found only a threat to safety will render premises uninhabitable). 'An accumulation of defects in the property may so undermine its comfort and amenity as to render it unfit for habitation, even where those defects do not constitute a threat to health and safety' (*Chief Executive Officer (Housing) v Young & Anor* [2022] NTCA 1).
- However, 'a finding that premises are not fit for habitation should not lightly be made' (*Chief Executive Officer (Housing) v Young & Anor* [2022] NTCA 1). The obligation does not require that premises are 'free from risk to health or safety' (*Gray v Queensland Housing Commission* [2004] QSC 276: 5); nor that materials or facilities that are non-compliant with current building standards are replaced, unless defective (*Jones v Bartlett* [2000] HCA 56). According to the NT Court of Appeal, 'questions of fitness for habitation are to be judged against a standard of reasonableness having regard to the age, character and locality of the residential premises and to the effect of the defect on the state or condition of the premises as a whole.'²⁵ However, concepts of 'security, peace and dignity' are too 'broad and imprecise' to be of use in determining habitability. That the premises were in a bad state of repair when first taken by the tenant does not reduce the landlord's obligation, nor does the landlord charging a low level rent (*Shields v Deliopoulos* [2016] VSC 500).

²⁵ Similarly, the Victorian Supreme Court has held that 'good repair' is relative to the age and character of premises. Older authorities also relate the habitability of a dwelling to 'the class [of tenant] who would be likely to take it' (*Proudfoot v Hart* (1890) 25 QBD 42, cited at *Chief Executive Officer (Housing) v Young & Anor* [2022] NTCA 1).

- The obligation requires the landlord to take reasonable steps to ascertain defects, such as by inspecting the premises before the tenancy commences, and to rectify defects they know or ought to know about, but it is not an absolute obligation: the landlord is not liable for defects unapparent to a reasonable ordinary person (*Gration v C Gillan Investments Pty Ltd* [2005] QCA 184).²⁶ The obligation is also not non-delegable. In other words, where a landlord engages an apparently competent person to rectify a defect, they have discharged their obligation (until such time as any deficiency in the repair becomes known to the landlord). Courts have observed that some RTAs use the wording that the landlord will 'provide' premises in habitable condition, while some use 'ensure', but it does not appear to be a material difference.
- Co-existing with the contractual obligation prescribed by a jurisdiction's RTA is an obligation owed by landlords under common law principles of negligence. This duty is owed not only to the tenant but also to the tenant's household members and visitors (to whom the landlord does not owe the contractual obligation). This obligation closely resembles the contractual obligation, and requires that the landlord take reasonable care to avoid foreseeable risks of harm, including by ensuring that the premises are fit for habitation (*Jones v Bartlett* [2000] HCA 56; *Northern Sandblasting Pty Ltd v Harris* [1997] HCA 39). The High Court has indicated that this common law obligation may be less onerous than the prescribed contractual obligation (per Gummow and Hayne JJ at 172). However, subsequent judgements on the latter have interpreted them very similarly, if not identically (*Gray v Queensland Housing Commission* [2004] QSC 276, *Gration v C Gillan Investments Pty Ltd* [2005] QCA 184).
- A breach of the contractual obligation is compensable if it causes the tenant to suffer economic loss (e.g. the value of clothes ruined by mould) or, as noted above, if it causes distress or disappointment arising from physical inconvenience. According to the leading cases, it is not self-evident that unfit premises cause physical inconvenience. For example, in *Chief Executive Officer (Housing) v Young & Anor* [2022] NTCA 1, the premises had been without a back door for over five years. However, the NT Court of Appeal struck down a compensation order because 'physical inconvenience' had not been proved.

Specific requirements and 'minimum standards'

Most jurisdictions have, at different times, amended their RTAs to specify the provision of certain facilities that would not be required by the 'habitable' standard (e.g. smoke detectors and residual current detectors). Since 2013, several jurisdictions have also amended their RTAs to include schedules of 'minimum standards' that set out specifically required facilities, including facilities that may have been required by the 'habitability' standard. Tasmania was first to do so, specifying (in addition to a general 'good repair' obligation) that premises must be structurally sound and weatherproof, adequately ventilated, and include bathrooms and toilets, cooking facilities, electricity and heating, and window coverings for privacy (ss 36I-O). NSW's minimum standards (at s 52(1A) and 1B) are similar, and presented expressly as necessary but not exhaustive aspects of the obligation to provide habitable premises. Victoria's minimum standards (Sch 4 Residential Tenancies Regulation 2021) are the latest and most detailed, encompassing similar matters to other jurisdictions but also specifying efficiency standards for heaters and bathroom fittings.

Both the Queensland RTA and the ACT have recently been amended to make provision for minimum standards by regulation, but regulations have yet to be drafted in either jurisdiction.

²⁶ See also *Shields v Deliopoulos* [2016] VSC 500, which is less clear on this point: it characterises the obligation as 'strict and absolute', but approvingly cites *Gration v C Gillan Investments Pty Ltd* and other judgements to also find that the obligation is to take reasonable steps and that it is 'not in the nature of a warranty or guarantee': at 17.

Stakeholder perspectives

Reflecting their prominence in recent reviews and reforms, 'minimum standards' were the focus of most interviewees' comments. One of the senior government officers highlighted how basic they were:

The minimum standards, we're not talking about six-star luxury accommodation standards; like, they're pretty basic. I would say they're things people would almost be shocked that some properties didn't meet them in the first place. They're standards that I think most people would expect in any kind of home they're going to live in (SG2).

The property owners representative, however, regarded the increasing specification of landlords' obligations as a 'huge burden':

This ongoing health and safety regime that doesn't seem to end. Window safety, swimming pools, asbestos, mould, smoke alarms, the list keeps getting longer. And landlords and agents have been wedged into becoming building inspectors, and monitoring compliance where they are not qualified to do so. That's a problematic area. (PO1)

On the other hand, the BTR interviewee, whose carbon-neutral building is maintained by an on-site team, was unperturbed by minimum standards. The real estate organisation representatives were also generally supportive, from a practical perspective: 'we want good quality properties with good quality standards because it makes our job a lot easier' (REO1). Our finance sector expert, a purist in these matters, regarded minimum standards (in all housing, rented or otherwise) as 'a terrible idea' that impinged on freedom to choose to live in substandard housing, but admitted some 'grey areas' where actual conditions were not always obvious, such as ventilation.

Tenant organisation representatives expressed mixed views on minimum standards. TO3 anticipated that the introduction of minimum standards in their jurisdiction would have a 'big impact'. However, TO1 said that 'for ages we've said we've already got a standard: fit for habitation and reasonable state of repairs':

And really that covers it—even the efficiency stuff, you can make that argument But all the other problems—lack of power, lack of enforcement (by tenants) —means we still have the enforcement problem. Okay, so you now have a better idea of what [standard] is expected—there's a value in that. But it won't change the material condition of the property itself. (TO1)

Similarly, TO2 considered minimum standards to be a 'mini-codification' of landlords' existing obligation regarding habitability, with some 'little steps forward' on things not previously covered, but 'it is so vanilla it won't have an impact on what we can argue in the tribunal' (TO2).

6.6 Termination and eviction

All Australian states and territories provide for the ready but orderly termination of tenancies by landlords: 'ready' in that the circumstances in which a tenancy may be terminated are relatively broad and the process relatively quick and straightforward; 'orderly' in that tenants may be forcibly evicted only by order of the tribunal executed by an authorised officer.²⁷ Self-help evictions ('lock outs') are prohibited and the associated penalties are generally the heaviest provided for by the RTAs.

Termination under the RTAs has always been 'readier' than envisaged by the Poverty Inquiry reports, which recommended that residential tenancies legislation should prescribe grounds for termination, and not provide for termination without grounds. All states and territories provided for termination without grounds, as well as with grounds, and all still do—although some have placed limits on without-grounds terminations. This has been a prominent issue in recent reviews and is an area of increasing divergence.

²⁷ A sheriff's officer or bailiff; only the NT RTA allows the landlord themselves to be authorised by the tribunal.

Table 16: Termination grounds, notice periods, discretion and penalties for unlawful repossession

	Without grounds – end of fixed term	Without grounds - periodic	Breach – rent arrears	Breach - other	Sale of premises requiring vacant possession	Landlord needs premises for own housing	Demolition, major renovations, change of use	Preparing premises for sale	Frustration (premises have become uninhabitable)	Discretion to decline without – grounds	Penalty – unlawful repossession
NSW	60 days	90 days	After 14 days, a 14-day notice	14 days	30 days	-	-	-	Immediate	No	\$22,000 (200 p.u.)
Qld	2 months	-	After 7 days, a 7-day notice to remedy, then a 7-day termination notice	7-day notice to remedy, then 14-day termination notice	2 months	2 months	2 months	2 months	Immediate	No	\$6,893 (50 p.u.)
SA	28 days	90 days	After 14 days, a 7-day notice to remedy, then termination	7-day notice to remedy, then 7-day termination notice	60 days	60 days	60 days	-	Immediate	No	\$5,000
Tas	60 days	-	14 days	14 days	42 days	42 days	42 days	-	-	Yes	\$8,650 (50 p.u)
Vic	60 days or 90 days*	-	After 14 days, 14 days' notice	14 days	60 days	14 days or 60 days**	60 days	60 days	Immediate	Yes	Individual: \$27,261 (150 p.u.) Body corporate: \$136,305 (750 p.u.)
WA	30 days	60 days	After 1 day, a 14-day notice to remedy, then a 7-day termination notice; or After 1 day, a 7 day notice to remedy, then after 21 days a termination application	14 day notice to remedy, then 7-day termination notice	30 days	-	-	-	7 days	No	\$20,000
ACT	26 weeks	26 weeks	After 7 days, a 7-day notice to remedy, then a 7-day notice	14-day notice to remedy, then 14-day notice to vacate	8 weeks	8 weeks	12 weeks	8 weeks	4 days	Yes	Compensation to tenant determined by the tribunal
NT	14 days	42 days	After 14 days, a 7-day notice to remedy, then termination	After 14 days, an 7-day notice to remedy	-	-	-	-	Immediate	Yes	\$11,000

* 60 days if the fixed term is less than 6 months; 90 days if the fixed term is 6 months or more.

** 14 days at the end of the fixed term if the residential tenancy agreement states that the premises will be so required.

Source: RTAs, all states and territories.

Termination by landlords without grounds

Five jurisdictions—NSW, SA, WA, the ACT and the NT—provide for termination without grounds at the end of the fixed term of a tenancy, and during a periodic tenancy. Until recently, Victoria and Queensland were also in this group. Since 2021 (when reforms enacted in 2018 commenced), Victoria has limited without-grounds termination to the end of the first fixed term of a tenancy; so tenancies subject to a subsequent fixed term and periodic tenancies cannot be terminated without grounds. From October 2022, Queensland has limited without-grounds termination to the end of fixed terms. This is a more modest reform than Victoria's, and means without-grounds terminations can still be used where, as is often the case, tenancies are subject to a series of fixed terms. Tasmania's RTA has always limited 'no-grounds' terminations to the end of the fixed term of an agreement.

Termination by landlords with grounds

All RTAs allow landlords to give a termination notice on the grounds that the tenant has breached a term of the residential tenancy agreement. In certain urgent circumstances such as violence against the landlord, the landlord can apply directly to the tribunal for termination without prior notice. In most jurisdictions, a notice to remedy the breach is required as a preliminary step. If the breach is not remedied, then a termination notice may be given (Queensland, ACT) or the effect of the notice becomes that of a termination notice (SA, WA, NT).

All the RTAs also provide several grounds for termination where the tenant is not in breach. These grounds differ between jurisdictions but the most common are frustration because the premises have become uninhabitable (all jurisdictions except Tasmania) and sale of the premises requiring vacant possession (all jurisdictions except the NT, and not during the fixed term of a tenancy). Numerous other grounds, such as the landlord or a family member requiring the premises for their own housing, are prescribed in Victoria, SA and Tasmania, and following its restriction of without-grounds terminations, Queensland. In the other jurisdictions, these and other reasons for seeking termination are implicitly covered by without-grounds terminations.

The scope of the grounds in Victoria and Queensland, as recent 'without-grounds' reformers, is notable. For example, both provide for termination where a landlord is merely preparing to sell the property (contrast the more common 'sale' ground, which in most jurisdictions requires a contract for sale with vacant possession).

Variation: rent arrears

On the limited data available, termination proceedings on the grounds of failure to pay rent are by far the most common type of termination proceeding (Martin 2021). All the RTAs deal with this breach somewhat differently from other breaches by tenants.

As shown in Table 5, most jurisdictions provide for a short period before landlords may take action, and many have a 'notice to remedy' period too. In Victoria, Tasmania and WA, payment of the arrears before the tribunal hearing makes the termination notice ineffective and stops the termination proceedings. NSW goes further and provides payment at any time before eviction will stop the process. However, this assurance has limits for tenants who are repeatedly arrears. In Tasmania, a third termination notice in 12 months may end the tenancy regardless of payment. In Victoria, a fifth termination notice in 12 months may end it. In NSW, 'frequent' failure to pay may result in termination regardless of payment ('frequent' is not defined). A termination order expressly made on this basis cannot be stopped by subsequent payment of the arrears.

Variation: limits on reletting after termination on certain grounds

As an integrity measure, several jurisdictions (Queensland, SA, Tasmania and Victoria) temporarily prohibit landlords from reletting premises after they have given termination notices on grounds involving no breach by the tenant: e.g. demolition, use of premises as a business, and sale (although they may apply to the tribunal for an exemption).

Variation: termination by termination notices

A technical but potentially profound divergence is that in all jurisdictions except SA and the NT, tenancies do not terminate by effect of a termination notice alone; an order of the tribunal, or the tenant vacating the premises, is also required (NSW (s 81), WA (s 60) Tas (s 37) Vic (s 91E) Qld (s 277)).

In SA and the NT, a landlord's termination notice has the express effect of terminating the tenancy at the end of the notice period (s 79(b) SA RTA; ss 86-91 (NT)). To take possession of the property, the landlord must still apply to the tribunal for an order. If they do not take action within prescribed time limits the termination notice ceases to have effect and the tenancy continues as if it had not terminated.

Discretion and considerations

The issue of grounds for termination has overshadowed another issue with important implications for tenants' security: whether the tribunal hearing termination proceedings has discretion to decline termination and, if so, how that discretion is structured by the RTA. This is a complex issue, with provisions differing between and within RTAs, depending on the type of termination proceeding.

In NSW, Queensland, WA and SA, the tribunal has no discretion in without-grounds termination proceedings—although the former three jurisdictions do have provisions relating to retaliatory proceedings, discussed below. Retaliation aside, in these jurisdictions without-grounds proceedings will result in the termination of the tenancy without regard to any factors or circumstances, and the tribunal's discretion is confined to setting the date for possession. Hence without-grounds proceedings are virtually a trump card. Under its original RTA, the NSW tribunal could exercise discretion and decline to terminate considering 'the circumstances of the case',²⁸ but that was removed in the 2010 RTA. The four jurisdictions afford discretion in most termination proceedings with grounds, through consideration of the seriousness of the breach and whether it justifies termination.

The NSW, Queensland and WA RTAs expressly allow the tribunal to dismiss termination proceedings where they are retaliation for the tenant asserting their rights—a particular risk of providing for termination without grounds. The scope of this protection is limited. In NSW and Queensland, the tenant bears the onus of proving the retaliatory intent. In WA, the landlord bears the onus of proof if the termination proceedings are within six months of the tenant's action. The WA Supreme Court has held that without-grounds proceedings are not retaliatory where taken in response to a tenant defending with-grounds proceedings (*Re Magistrate Steven Malley; ex parte the Housing Authority* [2017] WASC 193). Similarly, the Queensland Civil and Administrative Tribunal (QCAT) Appeals Panel has characterised a landlord's use of without grounds notice (given two days after the tenant filed a dispute notice) as '[choosing] the path of peace', rather than retaliation (*De Bruyne v Ray White Waterford* [2020] QCATA 113).

Discretion is afforded the tribunals in Tasmania, Victoria, the ACT and the NT. In Tasmania, this is a relatively recent development, following the Supreme Court's 2018 decision that magistrates can decline without-grounds termination (as well as with grounds) where the landlord's reasons are not 'genuine and just' (*Parsons v Director of Housing* [2018] TASSC 62; *Director of Housing v Parsons* [2019] TASFC 3). There has been change in Victoria too, which prior to its 2018 reforms had a tightly structured discretion. VCAT may decline termination (with grounds and without grounds, in the limited circumstances where the latter is still allowed) if termination is not 'reasonable and proportionate' considering a wide range of factors (s 330A). Both the ACT and NT RTAs afford discretion in termination proceedings with and without grounds.²⁹

²⁸ *Swain v Roads and Traffic Authority* [1995] NSW Supreme Court 30034 (unreported, Rofe J, 22 March 1995).

²⁹ *Eastman v Commissioner for Housing for the ACT* [2006] ACTSC 52; *Williams v CEO Housing* [2013] NTSC 28.

Variation: the COVID-19 eviction moratoriums

The COVID-19 pandemic was the occasion for another remarkable, if temporary, variation on Australia's usual provision for ready termination: the eviction moratoriums announced in March 2020. Although announced jointly by governments, convened as the National Cabinet, each of the states and territories implemented their own moratoriums that differed significantly in the scope, strength and duration of protection. Tasmania had the most complete moratorium, stopping terminations on most grounds for all tenants; the other jurisdictions distinguished a COVID-19-impacted group for particular protection, and several provided for lighter protections for other tenants. With the exception of some continuing light protections for COVID-19-impacted tenants in SA and the NT, the moratoriums were lifted in 2020 and 2021, so are not discussed in detail here.³⁰ Some aspects of the approaches taken by states and territories do, however, offer lessons for permanent reform, particularly regarding termination grounds and tribunal discretion.

- Several jurisdictions stopped allowing landlords to take without-grounds termination proceedings (Queensland, Tasmania, Victoria, WA and NSW in its 2021 lockdown moratorium).
- Several jurisdictions introduced new or expanded preliminary scrutiny of termination proceedings, with an emphasis on resolving rent arrears proceedings with rent variations and repayment plans (NSW, Victoria, WA).
- Two jurisdictions afforded the tribunal discretion to refuse termination and structured this discretion by directing the tribunal to consider the need to avoid homelessness (NSW and SA).

Termination by tenants

The short fixed terms in which almost all new tenancies—and many continuing tenancies—are subject also impose a liability on tenants. If they vacate during the fixed term, they may be liable for the landlord's loss of rent until the end of the fixed term. This liability is qualified by a duty on the landlord to mitigate their loss, typically by taking reasonable action to relet the premises.

From the outset, all the RTAs have provided for tenants (and landlords) to apply to the tribunal for early termination on grounds of hardship. Lately, some jurisdictions have created additional grounds for termination by tenants during fixed terms: e.g. FDV (discussed further below); and accepting an offer of social housing. Also, NSW and the ACT have introduced 'break fees' to specify the tenant's liability, rather than leaving it to the vagaries of mitigation.

Stakeholders' perspectives

For several of our interviewees, tenants' insecurity is the biggest problem with residential tenancy law and rental housing generally.

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

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

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

Our finance sector expert also highlighted insecurity as 'a terrible problem', but saw it better addressed through structural reforms to open the way for LCLs.

³⁰ For details, see Leishman, Aminpour et al. 2022 and Martin 2021.

For their part, the real estate organisation interviewees said that where jurisdictions had limited the availability of without-grounds terminations: 'the conditions [grounds] on which you can get a tenant out to do things like upgrades and renovations, they've been really challenging issues' (REO1). This is not, however, their biggest problem:

Probably the biggest issue which causes grief for our industry is notice periods for when a property owner wants their property back ... versus the notice period the tenant has to give when they want to vacate [The difference] is quite inequitable. (REO1)

It is fair to say that these concerns are less grave, and suggest that the interests of landlords and agents are relatively well accommodated by the law.

6.7 Dispute resolution and the tribunals

The removal of tenancy disputes from courts to specialist residential tenancy tribunals, quicker and less bound by legal formalities than the courts, was a key recommendation of the Poverty Inquiry reports. Most jurisdictions established such tribunals in their original RTAs. Since then, each of these jurisdictions has established a Civil and Administrative Tribunal (CAT) to deal with tenancy disputes and various other matters. In WA, tenancy disputes are still heard in the Magistrates Court, using streamlined procedures. In Tasmania, the office of the Residential Tenancy Commissioner determines some disputes (such as rent increases, bond claims, repairs) while the Magistrates Court determines others (such as termination). In Queensland, the Residential Tenancies Authority provides dispute resolution services preliminary to proceedings in QCAT.

Each of the RTAs is administered by a state or territory executive agency with responsibility for consumer affairs (in Queensland, it is the Residential Tenancies Authority). These agencies are responsible for determining whether offences under the RTAs are prosecuted, and some take and investigate complaints from tenants, including with a view to resolving them informally.

Variation: investigation and orders by fair trading officers (NSW)

Under the most recent round of amendments to the NSW RTA, fair trading officers have power to investigate complaints about breaches of the habitability and repair obligation (including a tenant's obligation to repair damage they have caused) and make orders to rectify the breach. The provisions are intended to divert these matters from the tribunal.

Interstate landlords

The use in most states and territories of tribunals, rather than courts, has lately produced a problem regarding interstate landlords. In *Burns v Corbett and anor* [2018] HCA 2015, the High Court held that state tribunals lack jurisdiction where one of the parties in proceedings is the resident of another state. This is because matters between 'residents of different states' are within federal jurisdiction (per s 75(iv) of the Australian Constitution), which may be exercised by state courts, but not by non-court tribunals.

This means, for example, that a tenancy agreement for a property in Victoria would be covered by the Victorian RTA. However, if the landlord lives in NSW they could not apply to VCAT for any order with respect to the tenancy; nor could the Victorian tenant apply to VCAT for any orders against their landlord.

'Residents' for the purposes of s 75(iv) means natural persons (*Australasian Temperance And General Mutual Life Assurance Society Ltd v Howe* [1922] HCA 50), so tenancies involving corporate landlords are not affected by the *Burns v Corbett* problem. However, as we saw in Chapter 2, the very large majority of landlords are persons, not corporations, and, from our survey results in Chapter 5, we estimate 9 to 13 per cent of rental properties in the three largest states are owned by interstate investors.

NSW, SA and Victoria have each legislated to confer jurisdiction for tenancy matters with an interstate party to the Local Court (NSW) or Magistrates Court (SA and Victoria). In Queensland, QCAT's statute expressly characterises that body as a 'court of record' (s 164), and there is Court of Appeal authority—predating *Burns v Corbett*—affirming this characterisation,³¹ so it has continued to exercise federal jurisdiction. This must, however, be open to question, considering that the CATs are substantially identical.

Stakeholder perspectives

Despite the accessibility and speed of the tribunals compared to the pre-RTA-era courts (Edgeworth 2019), timeframes for proceedings continued to trouble some interviewees.

Just the whole process with disputes and tribunals in a lot of jurisdictions there's big backlogs with that. It's takes a lot of time. It's very costly. It can be very weighted to one side depending on the jurisdiction. And I mean if you if you want to sort of improve regulation in the whole space and have happier investors and happier tenants, you'd definitely start with the respective tribunals. (REO1)

A different 'access to justice' issue with the tribunals was highlighted by a tenant organisation interviewee: 'one of the big issues with the way everything is set up—the Act and the Tribunal—is there's not enough opportunity to litigate what the Act actually means, and push different lines and readings of the legislation' (TO1).

Because the tribunal orders are not binding [precedent], and you have to go up to the Appeal Panel but even that—you really have to go to Supreme Court, and the values, power imbalance, precarious position of tenants and the lack of legal support for cases means there's a bunch of stuff in the act that could be quite powerful if we could litigate it ... there's not nearly enough strategic litigation, and when advocates run lines in the tribunal, they win a case but it does not necessarily lead to a spread of understanding or new readings. (TO1)

6.8 Family and domestic violence

Until relatively recently, the RTAs were silent on family and domestic violence (FDV), making no specific provision for changes in tenancy arrangements and liabilities in circumstances of FDV. Similarly, state and territory regimes for making court orders to protect against FDV also did not address the implications of these orders for tenancies. This meant, for example, that where a tenant was experiencing FDV:

- if they vacated the premises during a fixed term, they would be breaking the agreement (and liable for the landlord's loss of rent)
- if they left the premises with the perpetrator remaining in occupation, they could not end their liability (because they had not given vacant possession, as required for terminating the tenancy)
- if they remained in the premises and had a co-tenant perpetrator removed by an FDV order, the perpetrator's co-tenancy rights remained on foot
- if they remained in the premises and wanted locks changed or security devices installed, they would need the landlord's consent, which the landlord could withhold
- if the perpetrator caused damage to the property, or caused a nuisance to neighbours, the tenant experiencing FDV would be vicariously liable.

Since 2004, when Tasmania included provisions dealing with residential tenancies in its *Family Violence Act 2004* (Tas), all Australian states and territories have legislated with respect to at least some of the above. However, the legislative responses are not uniform and demonstrate varying levels of effectiveness.

³¹ *Owen v Menzies* [2013] 2 Qd R 327.

Table 17: Family and domestic violence provisions

	Tenant wishes to stay in property and remove perpetrator	Tenant wishes to leave property and terminate the tenancy	Vicarious liability
NSW	FDV order may terminate perp's tenancy	Give notice with evidence/certificate	Tenant not liable for FDV damage
Qld	Apply to tribunal, satisfy as to FDV	Give notice with evidence/certificate	Tenant not liable for FDV damage
SA	Apply to tribunal, satisfy as to FDV	Apply to tribunal, satisfy as to FDV	Per usual
Tas	FDV order may terminate perp's tenancy	FDV order may terminate tenancy	Per usual
Vic	Apply to tribunal, satisfy as to FDV	Apply to tribunal, satisfy as to FDV	Tenant may apply to dismiss termination proceedings where related to FDV
WA	Apply to court, satisfy as to FDV	Give notice with evidence/certificate	Per usual
ACT	Apply to tribunal, satisfy as to DV	Apply to tribunal, satisfy as to FDV	Per usual
NT	FDV order may terminate perp's tenancy	FDV order may terminate tenancy	Per usual

Source: RTAs, all states and territories.

Removing an FDV perpetrator and continuing a tenancy

All jurisdictions make provision for a tenant experiencing FDV to terminate a perpetrator's co-tenancy rights and obligations, in order to continue the tenancy themselves. In NSW, Tasmania and WA, this can be effected by a court when it makes an FDV order against the perpetrator. In other jurisdictions, the tenant must apply separately to the tribunal for residential tenancy disputes and satisfy the tribunal that FDV has occurred.

An obvious consequence of removing a perpetrator is the need for the tenant to change locks at the premises. All the RTAs generally restrict tenants from changing locks without the consent of the landlord. In their recent reforms Queensland, Tasmania, WA, Victoria and the ACT have made express provision for FDV survivors to do so provided they provide keys to landlords later. NSW and the NT each have a wider provision allowing tenants to change locks and provide keys later where they have a reasonable excuse.

Leaving FDV and terminating a tenancy

All jurisdictions make provision for a tenant experiencing FDV to terminate the tenancy, including during a fixed term, in order to leave. In Tasmania and the NT, this can be effected as part of a court order protecting against FDV. In SA, Victoria and the ACT, the tenant must apply to the tenancy tribunal and satisfy the tribunal that FDV has occurred.

In NSW, Queensland and WA, the tenant need not apply to a court or tribunal, but instead may serve a termination notice on the ground that FDV has occurred and vacate. The notice must be accompanied by evidence of an FDV order certification by a qualified person who can attest to the victim/survivor's circumstances (such as a health practitioner, a social worker, a refugee or crisis worker, a domestic and family violence support worker or case manager, an Aboriginal and Torres Strait Islander medical service or a solicitor). This more streamlined process relieves the tenant experiencing FDV of having to engage, or engage a second time, in potentially traumatic legal proceedings. It should be noted, however, that each of the jurisdictions providing for streamlined termination by notice also provides for landlords to dispute the notice. NSW also makes giving a false notice an offence punishable by two years imprisonment. This is the only offence provision of any RTA that imposes such a penalty.

Vicarious and extended liability

All the RTAs make tenants liable not only for their own acts and omissions in breach of their obligations under their tenancy agreements and the law, but also the acts and omissions of other occupiers and visitors. Most RTAs (NSW, SA, Tasmania, WA and the ACT) have an express provision to this effect, and the liability is strict: it does not depend on tenants having knowledge of or control over the breach. All (except Queensland) also construct the prescribed terms for tenants' obligations to provide that the tenant shall not 'permit' the proscribed conduct: e.g. not to cause or permit damage to the premises. These forms of vicarious and extended liability mean a tenant experiencing FDV may be liable to compensate the landlord for property damage done by the perpetrator, and may be subject to termination proceedings on grounds relating to the perpetrator's violence.

Three jurisdictions have, in their recent reforms, qualified the usual application of vicarious liability in FDV cases. In NSW and Queensland, a tenant is not liable for damage to the premises where it was caused by an act of FDV against the tenant. However, it appears they may still be liable under other grounds (e.g. permitting a nuisance) or face termination by direct application to the tribunal. In Victoria, a tenant who is the subject of termination proceedings on grounds of breach (including damage, but also nuisance, threat and other direct application grounds) may challenge the validity of the notice where the breach was caused by FDV against the tenant. To do so, the tenant must apply to the tribunal within 30 days of the commencement of proceedings.

Stakeholder perspectives

In an area of considerable recent reform activity, most interviewees felt progress had been made but further action may still be necessary.

One of the senior government officers, from a jurisdiction that took the approach of allowing early termination by tribunal orders, considered them 'really important measures, [but] there's still some way to go to practically have all of the intermediaries understanding them and confident in invoking them (e.g. family violence workers, healthcare workers)' (SG1). Another senior government officer acknowledged 'concerns from some sort of the renter advocates and family violence advocates that maybe they were still a bit clunky and difficult to use ... there's still a process that people affected by family violence have to go through under the new reforms' (SG2).

One of the tenant organisation interviewees, in a jurisdiction that had introduced termination by certified notice, regarded the reforms as 'not everything we wanted, but progress' (T2):

You could terminate a tenancy pretty quickly, by notice, with a wide range of evidence. The real estate can still go for the bond. In operation it has worked quite well ... The DV provisions are good if you want to leave, not so good if you want to stay. (TO2)

'Not so good' because tenants still lacked assurance that they could change locks and make other alterations that may be necessary for their safety.

From the perspective of the property owner representative, who was in a jurisdiction that allowed termination by certified notice, 'the DV provisions were not welcomed with arms wide open':

Yes, there was a concern around the local GP being able to write a letter and that's enough to terminate a lease. That was an area of confusion, legislation-wise. No clear parameters of what an owner can do in those circumstances, and the liability. So, dealing with the aftermath of a DV situation, dealing with a perpetrator in the property, dealing with unpaid errant and property damage. It's all tied in to financial loss and it exposes landlords to loss very easily. (PO1)

The real estate organisation representatives, however, said their organisations generally supported the reforms, varied as they were across jurisdictions. FDV was a frequent source of problems for agents. According to a survey conducted by the organisation, '58 per cent of property managers have some sort of interface with DV two to three times a year'—and FDV provisions helped agents in their self-identified role as 'first responders' (REO2).

6.9 Summary

To summarise this review, we make some overarching observations, followed by summaries by topic.

Australian residential tenancies law has largely developed as variations on the themes outlined by the Bradbrook and Sackville Reports almost 50 years ago. The differences in variations between jurisdictions are numerous and significant; even as successive reviews have addressed some themes, there is no sense that residential tenancy laws are converging on common positions. On the contrary, the RTAs are probably more different now than in the late 1990s, when all jurisdictions first had one.

No single jurisdiction stands out as 'best practice' in all, or even most, areas; likewise, no single RTA is the stand-out worst. In its recent reforms, Victoria has gone further than other jurisdictions in the important areas of access to housing. Victoria has regulated application information and dwelling conditions (by prescribing minimum standards that go beyond the habitability standard), and assured tenants' security (by limiting without-grounds terminations). However, most of its other reforms were in line with positions taken in some other jurisdictions, and of the two broad approaches to FDV reform, it took the approach that is more administratively burdensome to survivors. Conversely, the NT RTA is probably the least reformed legislation, and allows without-grounds termination with the shortest notice periods in the country. However, it does afford its tribunal a degree of discretion that several others do not, and uniquely protects tenants who associate and take advice. It also has done less than other jurisdictions in most respects regarding dwelling conditions and tenant autonomy, but has enacted reforms regarding pets where NSW and SA have not. Every jurisdiction has things to learn from other jurisdictions, and lessons to offer them.

The RTAs and residential tenancy agreements

There are significant differences in the presentation and terminology of the RTAs. Some of the presentation differences arise from differences in how jurisdictions have legislated for rental forms beyond the mainstream (e.g. boarding houses and residential parks). The result is increased complexity within RTAs and in navigating the differences between jurisdictions.

Access to rental housing

There is a range of old and new issues affecting access to rental housing that are not addressed by the RTAs, particularly around the information requirements of tenancy application processes. Victoria's recent reforms go further than other jurisdictions, but some issues regarding information technologies, discrimination and landlord registers remain to be addressed.

Rent and other costs

There is more similarity across jurisdictions regarding rent and other costs than in most other areas of the RTAs, but also little development, except that the frequency of rent increases is now limited in most jurisdictions. All jurisdictions allow rent increases to be challenged where excessive to the general market level of rent for comparable premises. This sounds like a simple principle but is harder to determine in practice.

Tenants' quiet enjoyment, privacy and household autonomy

The right to quiet enjoyment is prescribed in all jurisdictions, and not much developed by legislative reform. The consequences for breach are limited: compensation is limited by common law doctrine that elevates the enjoyment of holiday accommodation over the enjoyment of home-life, and most jurisdictions do not provide for penalties.

Recent moves to reform provisions relating to pets and alterations have had divergent outcomes, including within jurisdictions. Some jurisdictions have qualified landlords' ability to refuse pets, some their ability to refuse alterations, some both.

Dwelling conditions, repairs and alterations

The recent reform focus in several jurisdictions on minimum standards has largely restated in more specific ways the existing general obligation of landlords to provide and maintain habitable premises, and made some minor additions to that obligation. However, other problems in the general obligation remain unaddressed, particularly whether liability is delegable and whether it is strict, and consequences of breach, such as the aforementioned compensation issue and the lack of penalties in some jurisdictions.

Termination and eviction

All jurisdictions provide for ready but orderly termination of tenancies by landlords, including without grounds, although use of the latter is more limited in Queensland, Tasmania and Victoria. There are substantial differences between jurisdictions in notice periods and the scope of grounds, provisions regarding the remedying of arrears, and in the discretion afforded the tribunal.

Tenants ending tenancies early (i.e. before the end of a fixed term) are liable to compensate the landlord; two jurisdictions (NSW and the ACT) have set break fees.

Dispute resolution and the tribunals

All jurisdictions afford relatively quick and informal dispute resolution, mostly by placing jurisdiction for tenancy matters with the CATs. Some have established other executive officers and agencies to divert some matters from the tribunals.

Following the *Burns v Corbet* judgment, matters involving interstate landlords are not within the jurisdiction of the CATs (though Queensland considers itself an exception); instead these matters must go to the lower courts.

Family and domestic violence

All jurisdictions have recently legislated provisions addressing the tenancy consequences of FDV. Approaches differ: on the key issue of tenants breaking agreements early in order to leave FDV, some provide for tenants to apply to the tribunal for orders, some provide for courts to make relevant orders as part of FDV proceedings, and some provide for tenants to give a termination notice, certified by relevant workers, and move out without proceedings. Three jurisdictions (NSW, Queensland and Victoria) have also qualified, in different ways, tenants' vicarious liability where the breach involves FDV.

7. Policy development options

7.1 What impact does residential tenancy regulation have on rental investment?

Our research finds little evidence that Australian residential tenancies law has impacted investment in private rental housing. On the contrary, Australian residential tenancies law has been accommodating, even facilitative, of the long-term growth of the PRS, and of its particular structure and dynamic character. Dominated by small-holding landlords who frequently transfer properties into and out of the PRS according to their individual circumstances and wider housing market conditions, the Australian PRS is built for investing and disinvesting.

While residential tenancies law accommodates this structure and dynamism, other policy settings have more actively shaped it. The tax treatment of owner-occupied and rental housing has facilitated the growth of rental housing ownership and, within that, a slight trend towards multiple property ownership. However, in other respects, tax policy settings have discouraged investment by LCLs, and in recent years financial regulation has sought to marginally discourage investment by investors relative to owner-occupiers. However, it is residential tenancies legislation and law reform that triggers concerns about ‘disinvestment’.

The small-holding, frequently-transferring character of the PRS presents basic problems for tenants trying to make homes in it. The prevalence of single-property landlords is also used to argue against stronger legal protections for tenants, while also obscuring the larger presence in the sector of landlords with multiple properties (though still small scale). Our survey suggests that multiple-property landlords are less oriented to propositions of tenant service, and that landlords oriented to ‘high-service’ are still often motivated by investment objectives that involve transferring out of the PRS. The nascent BTR sector is establishing its customer service credentials, but its access technologies, and its unusual presence in community relations and local rental markets pose potential problems. Tenants and policy makers cannot rely on the attitudes or dispositions of landlords for affordability, security and decent conditions, and legal protections are required.

7.2 Towards a national agenda for residential tenancy law reform

It is now almost 50 years since the Australian Government, through the reports of the Commission of Inquiry into Poverty, set the agenda for the law reform processes that eventually produced the residential tenancies legislation currently operating in all states and territories.

It is time to pursue a new national agenda for residential tenancies law reform. This time the starting point is not the same sort of legal disarray found by the Poverty Inquiry reports, and there is more legislative experience, expertise and material at the level of the states and territories that can be productively drawn on. However, co-ordination is needed, as is accountability for the consequences of inadequate legal protection of housing rights.

There is the germ of a national agenda for residential tenancy law reform in the current National Housing and Homelessness Agreement, specifically the National Policy Priority for ‘tenancy reform that encourages security of tenure in the private rental market’ (Sch A cl A2(d)). This should be expanded into a more comprehensive law reform agenda, with a dedicated working group, comprising officers from all jurisdictions (including the Australian Government). Jurisdictions could take the lead on researching, consulting and developing proposals on different topic areas—possibly, though not necessarily, delineated as in the present research. We suggest the following directions for reform in each topic area:

- **The RTAs and residential tenancy agreements:** Work should be done on a more consistent format for standard form residential tenancy agreements and, more importantly, for the RTAs themselves. A consistent modern definition of boarders, lodgers and other categories of renters excluded from the mainstream provisions should be agreed, and broad occupancy principles established for those categories without specific regulatory regimes. Whether fixed terms should be abolished should be investigated.
- **Access to rental housing:** A watching brief should be maintained on developments in information technology in rental housing, particularly involving third party intermediaries who might not otherwise be covered by provisions directed at landlords and agents. Discrimination in the provision of rental housing on grounds of source of income, status as a recipient of income support, and status as an applicant for social housing should be prohibited. Consideration should be given to a prescribed standard form for tenancy applications. Registers for landlords should be established, and consideration given to qualifications and banning orders.
- **Rent and other costs:** An investigation should be made into contemporary rent regulation regimes that moderate increases in market rents (e.g. by reference to CPI, administratively determined guidelines, or local reference rents), including their effectiveness and respective data requirements.
- **Tenants’ quiet enjoyment, privacy and household autonomy:** Appropriate penalties should be devised for breach of quiet enjoyment, and provision made for compensation for loss of enjoyment. Terms that unreasonably restrict the number of members of the tenants’ household should be prohibited. Consideration should be given to allowing tenants to keep pets and make minor alterations without approval. The scope of prescribed reasons for landlords accessing the premises should be investigated, as should schemes for bargaining over access and compensation for loss of enjoyment when a property is advertised for sale.
- **Dwelling conditions, repairs and alterations:** The obligation of landlords to provide and maintain premises in a habitable condition should be clarified in consistent minimum standards, and augmented by specific additional requirements in identified priority areas for improvement (e.g. electrical safety devices and energy efficiency standards). Consideration should be given to increasing and clarifying the standard of conduct required of the landlord in detecting and monitoring for defects, and to clarifying whether and how their liability may be delegated to others.
- **Termination and eviction:** Termination by landlords should be on prescribed grounds only; without-grounds termination should be abolished. The appropriate scope of the prescribed grounds, and the notice required for each, should be investigated. The tribunals should be afforded discretion to decline termination; how this discretion is most appropriately structured (e.g. by factors for specific consideration) should be investigated.
- **Dispute resolution and the tribunals:** An investigation should be made into how to appropriately balance use of preliminary procedures (including by other executive agencies) that divert from the tribunal, ordinary proceedings in the tribunal and more formal proceedings that produce written reasons. The tribunals’ lack of jurisdiction in matters involving interstate landlords is difficult to reform, because of its constitutional basis. Consideration should be given to requiring landlords to disclose to prospective tenants if they reside interstate and the jurisdictional consequences thereof.
- **Family and domestic violence:** Provision should be made for tenants to give a termination notice on grounds of FDV, certified by an appropriate person, and leave without further liability. Vicarious liability should be qualified such that tenants are not liable where a breach arises from FDV against the tenant.

The overarching principle of a national law reform agenda should be to unapologetically centre the rights of tenants to affordable housing, in decent condition, that supports autonomy and secure occupancy. Whereas 'the profitability of investment' was 'borne carefully in mind' by the Sackville Report, the national agenda should leave it to the ingenuity of the private sector as to whether it can profitably operate rental housing services according to the standards set. Where landlords or their representatives say it is too difficult and they will disinvest from existing PRS dwellings, this should not be taken as a threat, but as a good thing: that is, the incapable and the unwilling exiting the sector, and thereby opening up prospects instead for new owner-occupiers or for differently oriented landlords—especially non-profit rental housing providers. On the same reasoning, were higher standards and expectations to discourage new private landlords from entering the sector, there would be more scope opened up for new owner-occupiers and investors less inclined to churn properties and households.

Investment in the capacity of the non-profit sector to scale up their affordable rental housing businesses would be required. There is also the prospect, highlighted in the presented research, that properties may transfer into the second home and tourism sectors. This should be addressed by tax and finance policy reforms that discourage leveraging owner-occupied housing wealth into additional housing investment, and by local land-use planning rules that regulate, according to assessed local housing needs, the use of dwellings for non-residential purposes. Both the capacity of the non-profit sector, and the equitable use of housing wealth, should be key topics of a wider ranging national housing strategy.

References

- Abadie, A. (2005) 'Semiparametric Difference-in-Differences Estimators', *Review of Economic Studies*, vol. 72: 1–19.
- ABS (1994) *Investors in Rental Dwellings Australia*, Cat. no. 8711.0, AGPS, Canberra.
- ABS (1998) *Household Investors in Rental Dwellings, Australia*, Cat. no. 8711.0, AGPS, Canberra.
- ABS (2019) *Household Income and Wealth 2017–18*. ABS, Canberra.
- ABS (2015) *Housing Occupancy and Costs 2013–14*, Cat. No. 4130.0. ABS, Canberra.
- ABS (2022) *Census of Population and Housing 2021*, ABS, Canberra.
- Alizadeh, T., Farid, R. and Sarkar, S. (2018) 'Towards Understanding the Socio-Economic Patterns of Sharing Economy in Australia: An Investigation of Airbnb Listings in Sydney and Melbourne Metropolitan Regions', *Urban Policy and Research*, vol. 36, no. 4: 445–463. DOI: 10.1080/08111146.2018.1460269.
- Allen, J. and McDowell, L. (1989) *Landlords and Property: Social Relations in the Private Rented Sector* (Cambridge: Cambridge University Press).
- APRA (2019) *Information Paper: Review of APRA's prudential measures for residential mortgage lending risks*, APRA, Sydney.
- Arnott, R. (1995) 'Time for Revisionism on Rent Control?', *Journal of Economic Perspectives*, vol. 9 no. 1: 99–120.
- ATO (2021) *Taxation Statistics*, ATO, Canberra.
- ATO (2014) *Taxation Statistics*, ATO, Canberra.
- Beer, A. (1999) 'Housing Investment and the Private Rental Sector in Australia', *Urban Studies*, vol. 36 no. 2: 255–270.
- Berry, M. (1999) 'Unravelling the "Australian Housing Solution": The Post War Years', *Housing, Theory and Society*, vol. 16: 106–123.
- Berry, M. (2000) 'Investment in Rental Housing in Australia: Small Landlords and Institutional Investment', *Housing Studies*, vol. 15 no. 5: 661–681.
- Blunden, H. (2016) 'Discourses around negative gearing of investment properties in Australia', *Housing Studies*, vol. 31 no. 1: 340–357, DOI: 10.1080/02673037.2015.1080820.
- Bradbrook, A. (1975) *Poverty and the Residential Landlord-Tenant Relationship*. Australian Government Commission of Inquiry into Poverty, Canberra.
- Brian Elton and Associates (1991) *The Supply-Side of the Private Rental Market*, National Housing Strategy Background Paper no. 2. AGPS, Canberra.
- Christophers, B. (2021) 'Mind the rent gap: Blackstone, housing investment and the reordering of urban rent surfaces', *Urban Studies*, vol. 59 no. 4: 698–716, DOI:10.1177/00420980211026466.
- City of Hobart. (2022) 'Visitor accommodation', accessed 28 June 2022, <https://www.hobartcity.com.au/Development/Planning/Visitor-accommodation>.
- Cranston (2009) 'Landlords object to new bill', *Australian Financial Review*, 19 November 2009.

- Crommelin, L., Troy, L., Martin, C., and Parkinson, S. (2018) *Technological disruption in private housing markets: the case of Airbnb*, AHURI Final Report 305, Australian Housing and Urban Research Institute Limited, Melbourne. DOI: 10.18408/ahuri-7115201
- Diamond, R., McQuade, T., and Qian, F. (2019) 'The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco', *American Economic Review*, vol. 109 no. 9: 3365–94.
- Edgeworth, B. (2017) 'Australian residential tenancy law 40 years after the Sackville Report: a multi-level snapshot', in Durbach, A., Edgeworth, B. and Sentas V. (eds) *Law and Poverty in Australia: 40 years after the Poverty Commission*. Federation Press, Annandale.
- EY (2021) *Institutional Build to Rent: unpacking the business model and unravelling the opportunities*, EY, Sydney.
- Fields, D. (2019) 'Automated landlord: Digital technologies and post-crisis financial accumulation', *Environment and Planning A: Economy and Space*, vol. 54 no. 1: 160–181, DOI: 10.1177/0308518X19846514.
- Gibb, K., Soaita, A. and Marsh, C. (2022) *Rent Control: a review of the evidence base*, UK Collaborative Centre for Housing Evidence, Glasgow.
- Gurran, N. and Phibbs, P. (2017) 'When Tourists Move In: How Should Urban Planners Respond to Airbnb?', *Journal of the American Planning Association*, vol. 83 no.1: 80–92, DOI: 10.1080/01944363.2016.1249011.
- Heagney, M. (2021) 'Sell or spend? Victorian landlords grapple with new laws requiring minimum standards', *Domain*, accessed 28 June 2022, <https://www.domain.com.au/news/the-rush-is-on-to-sell-rentals-that-dont-comply-with-new-victorian-laws-1041785/>.
- Hines (2022) 'Hines Acquires Third Build-to-Rent Asset in Australia', media release 18 May 2022, <https://www.hines.com/news/hines-acquires-third-build-to-rent-asset-in-australia>, accessed 28 June 2022.
- Hulse, K., Reynolds, M. and Martin, C. (2020) 'The Everyman archetype: discursive reframing of private landlords in the financialization of rental housing', *Housing Studies*, vol. 35, no. 6: 981–1003, DOI: 10.1080/02673037.2019.1644297
- Hulse, K., Reynolds, M., Nygaard, C., Parkinson, S., and Yates, J. (2019) *The supply of affordable private rental housing in Australian cities: short-term and longer-term changes*, AHURI Final Report No. 323, Australian Housing and Urban Research Institute Limited, Melbourne. DOI: 10.18408/ahuri-5120101
- Hulse, K., Milligan, V. and Easthope, H. (2011) *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, AHURI Final Report No. 170. Australian Housing and Urban Research Institute Limited, Melbourne. <https://www.ahuri.edu.au/research/final-reports/170>.
- Lee, D. (2016) 'How Airbnb short-term rentals exacerbate Los Angeles's affordable housing crisis: Analysis and policy recommendations', *Harvard Law and Policy Review*, vol. 10: 229–253.
- Leishman, C., Aminpour, F., Baker, E., Beer, A., Crowe, A., Goodall, Z., Horton, E., Jacobs, K., Lester, L., Torchia, S., MacLennan, D., Martin, C., Nash, M., Pawson, H., Rowley, S., Stone, W. and Viforl, R. (2022) *Australia's COVID-19 pandemic housing policy responses*, AHURI Final Report No. 376, Australian Housing and Urban Research Institute Limited, Melbourne, DOI: 10.18408/ahuri3227801.
- Lind, H. (2001) 'Rent regulation: a conceptual and comparative analysis', *International Journal of Housing Policy*, vol. 1 no. 1: 41–57, DOI: 10.1080/14616710110036436.
- Martin, C. (2018) 'Improving Housing Security through Tenancy Law Reform: Alternatives to Long Fixed Term Agreements', *Property Law Review*, vol. 7: 184.
- Martin, C., Hulse, K., and Pawson, H. (2018) *The changing institutions of private rental housing: an international review*, AHURI Final Report No. 292, Australian Housing and Urban Research Institute Limited, Melbourne. DOI: 10.18408/ahuri-7112201
- Martin, C. (2021) 'Australia's incipient eviction crisis: No going back', *Alternative Law Journal*, vol. 46 no. 2: 134–140, DOI: 10.1177/1037969X21990940.
- Meriton (2022) 'Property management – Meriton', accessed 28 June 2022, <https://www.meriton.com.au/services/property-management/>.
- Mowbray, R. (1996) *The Nature of Contemporary Landlordism in New South Wales: Implications for Tenants' Rights*, PhD thesis, Faculty of Architecture, Department of Urban and Regional Planning, Sydney University.

- Nelkin, D. (1983) *The Limits of the Legal Process: A Study of Landlords Law and Crime*. Academic Press, Cambridge Massachusetts.
- NSW Department of Housing (1990) *Rental for Investment: A Study of Landlords in NSW*, Research and Policy Paper no. 3, NSW Department of Housing, Sydney.
- NSW Government (2019) *The Future of Airbnb Made in Sydney*, accessed 28 June 2022, https://invest.nsw.gov.au/_data/assets/pdf_file/0017/271403/Airbnb-case-study.pdf.
- NSW Revenue (2022) 'Treasurer's Guidelines for the Reduction in Land Value for Certain Build-to-rent Properties, for Land Tax Purposes – 24 March 2022', NSW Revenue, Sydney.
- Nygaard, C., van den Nouwelant, R., Glackin, S., Martin, C. and Sisson, A. (2022) *Filtering as a source of low-income housing in Australia: conceptualisation and testing*, AHURI Final Report, Australian Housing and Urban Research Institute Limited, Melbourne. DOI: 10.18408/ahuri5124401
- Paris, C. (1984), *Affordable and Available Housing: The Role of the Private Rental Sector*, Australian Institute of Urban Studies, Canberra.
- Paris, C. (1985) 'Negative Gearing and Private Rental Housing', *National Housing Action* (Journal of National Shelter), vol. 2, no. 1
- Pawson, H. and Martin, C. (2021) 'Rental property investment in disadvantaged areas: the means and motivations of Western Sydney's new landlords', *Housing Studies*, vol. 36 no.5: 621–643, DOI: 10.1080/02673037.2019.1709806.
- Pawson, H., Martin, C., van den Nouwelant, R., Milligan, V., Ruming, K. and Melo, M. (2019) *Build to Rent in Australia: product feasibility and affordable housing contribution*, NSW Landcom, Sydney.
- Pawson, H., Milligan, V. and Yates, J. (2021) *Housing Policy in Australia*, Springer, Singapore.
- Podwinski, I. (2022) 'Hobart City Council passes amendment to limit number of new whole houses used as short-stay accommodation', ABC News, accessed 28 June 2022, <https://www.abc.net.au/news/2022-03-29/hobart-city-council-airbnb-clamp-on-new-short-stay-properties/100945980>.
- Qualitas (2021) 'Gurner and Qualitas Successfully Close Upsized Raise of \$1.2bn for BTR Platform', media release 25 November 2021, accessed 28 June 2022, <https://www.qualitas.com.au/media-release-gurner-qualitas-successfully-close-upsize-raise-of-1-2bn-for-btr-platform/>.
- Razaghi, T. (2022) 'Negative gearing and capital gains tax breaks go to top income earners and men', *Sydney Morning Herald*, 5 May 2022, accessed 28 June 2022, <https://www.smh.com.au/property/news/negative-gearing-and-capital-gains-tax-breaks-go-to-top-income-earners-and-men-20220503-p5ai3v.html>.
- RBA (2022) 'Historical interest rates', *RBA Charts Pack*, RBA, Sydney.
- Rendall, J. (2021) Queensland landlords stripped of automatic refusal on pets in rental properties under new housing bill, ABC News, accessed 28 June 2022, <https://www.abc.net.au/news/2021-10-14/qld-new-housing-bill-removes-refusal-right-on-pets-in-rentals/100540534>.
- Sackville, R. (1975) *Law and Poverty in Australia: Second Main Report*. Australian Government Commission of Inquiry into Poverty, Canberra.
- Seelig, T., Burke, T. and Morris A. (2006) *Motivations of investors in the private rental market*, AHURI Positioning Paper No. 87, Australian Housing and Urban Research Institute, Melbourne.
- Seelig, T., Thompson, A., Burke, T., Pinnegar, S., McNelis, S. and Morris, A. (2009) *Understanding What Motivates Households to Become and Remain Investors in the Private Rental Market*, Final Report no. 130, Australian Housing and Urban Research Institute, Melbourne. <https://www.ahuri.edu.au/research/final-reports/130>.
- Sigler, T. and Panczak, R. (2020) 'Ever wondered how many Airbnbs Australia has and where they all are? We have the answers', *The Conversation*, 13 February 2020.
- Slater, T. (2020) 'Rent control and housing justice', *Finisterra*, vol. LV no. 114: 59–76.
- Soaita, A., Searle, B., McKee, K. and Moore, T. (2017) 'Becoming a landlord: Strategies of property-based welfare in the private rental sector in Britain', *Housing Studies*, vol. 32, no. 5: 613–637.
- Short, P. (2018) *Residential tenancy law and residential rental investment*, Tenants Queensland, Brisbane.

- State Revenue Office (2021) *Land tax discount for build-to-rent developments*, accessed 28 June 2022, <https://www.sro.vic.gov.au/land-tax-discount-build-rent-developments>.
- Tenants' Union of NSW (2017) *Airbnb and renting in Sydney*, TUNSW, Sydney, accessed 28 June 2022, <https://files.tenants.org.au/policy/2017-Airbnb-in-Sydney.pdf>.
- Thackway, W. and Pettit, C. (2021) 'Airbnb during COVID-19 and what this tells us about Airbnb's Impact on Rental Prices', *Findings*, June, DOI:10.32866/001c.23720
- Wachsmuth, D., Kerrigan, D., Chaney, D. and Shillolo, A. (2017) *Short-term cities: Airbnb's impact on Canadian housing markets*, McGill University, Montreal.
- Whitehead, C., Markkanen, S., Monk, S., Scanlon, K., and Tang, C. (2016) *The Private Rented Sector in the New Century: A Comparative Approach*. Cambridge, University of Cambridge.
- Wood, G. and Ong, R. (2010) *Factors Shaping the Decision to Become a Landlord and Retain Rental Investments*, Final Report no. 142, Australian Housing and Urban Research Institute, Melbourne, <https://www.ahuri.edu.au/research/final-reports/142>.
- Wood, G. and Ong, R. (2013) 'When and why do landlords retain property investments?', *Urban Studies*, vol. 50: 3243–3261.
- Wood, G., Stewart, M. and Ong, R. (2010) *Housing Taxation and Transfers: Final Report—Research Study for the Review of Australia's Future Tax System*, Australian Government, Canberra.
- Wright, D. and Yanotti, M. B. (2019) 'Home advantage: The preference for local residential real estate investment', *Pacific-Basin Finance Journal*, no. 57: 101167–101114.
- Yates, J. (1996) 'A Reassessment of the Private Rental Market', *Housing Studies*, vol. 11, no. 1: 35–50.
- Yates, J. and Wood, G. (2005) 'Affordable Rental Housing: Lost, Stolen and Strayed', *The Economic Record*, vol. 81, no. 255: S82–S95.

Appendix 1: Interview topic guide



INTERVIEW TOPIC GUIDE

Regulation of residential tenancies and impacts on investment Dr Chris Martin (UNSW Sydney)

[Read verbal consent script before commencing interview questions]

General (all participants)

1. What is your role, and your organisation's role, in relation to the rental housing sector?
2. Can you give me your perspective on investment in rental housing in Australia? Who invests, why and how? What does this mean for the experience of living in rental housing?
3. What are the main factors shaping investment in rental housing?
4. How much of a factor is residential tenancies law? Do changes to laws affect investment?
5. How would you characterise residential tenancies laws in Australia, and in the state/territory in which you're based?
6. What areas of the law are a problem? How should be they changed?
7. Is there an advantage to states/territories legislating independently, or would more consistency be better? What role, if any, do you think the federal government should have?

Representatives of tenants, landlords, agents and consumer affairs regulators

1. What is your view on these areas of the law – including possible reforms:
 - a. No-grounds termination
 - b. Discretion in termination proceedings
 - c. Rent increases
 - d. Minimum standards in property condition, safety, equipment, efficiency
 - e. Domestic/family violence
 - f. Pets
 - g. Information technology (e.g. RTDs, property portals, review sites, alternative bond products)
 - h. Interstate disputes
2. Most Australian jurisdictions have recently reviewed, or are reviewing, their residential tenancies laws. What is your view on those reviews?

Finance sector, large landlords

1. What effect do tax settings have on investment patterns? In particular:
 - a. negative gearing (note declining prevalence)
 - b. capital gains tax
 - c. depreciation
 - d. taxation of managed investment trust
 - e. land tax
 - f. stamp duty
 - g. foreign owner surcharges
2. What effect do financial market settings and regulation (e.g. APRA's macro-prudential tools) have on investment patterns?

Appendix 2: Property investor survey



Online survey

Regulation of residential tenancies and impacts on investment Dr Chris Martin (UNSW Sydney)

Research Study Title: Regulation of residential tenancies and impacts on investment

This is a survey conducted by Qualtrics for researchers at UNSW, Swinburne University and the University of South Australia.

The survey is for people who are aged 18 years and over and:

- Currently own an investment property; or
- Previously owned an investment property in the past 10 years; or
- Are actively considering acquiring an investment property (e.g. you have obtained finance, or are inspecting properties for sale).

Participation in this research is optional and voluntary. It will take approximately 15 minutes to complete the survey.

To participate, please first read the Participant Information and Consent Form [link] and, if you agree, click to continue to the questions.

[Note: text in square brackets are functional directions for the survey that will not be visible to participants. A slash indicates 'piped text' alternatives that vary according to previous answers]

Thanks for agreeing to participate in the survey.

1. Are you aged 18 years or older?

- a. Yes
- b. No

[If no, exit the survey]

2. Do you currently own an investment property?

In this research, 'investment property' means a residential property that you do not live in, and that you own with the intention of financial benefit. You may own it yourself, or jointly with someone else, or through a company or trust. You may have acquired the property by purchasing it, or receiving it as an inheritance, gift or prize, or retaining ownership of a property you previously lived in.

- a. Yes
- b. No

3. Have you, in the past 10 years, owned an investment property that is no longer your investment property?

(In this research, a property is no longer your investment property if you sell it, give it to someone else, or move into it for your own housing.)

- a. Yes
- b. No

4. Are you actively considering acquiring an investment property in the next year (e.g. applying for finance, looking at properties for sale)?

- a. Yes
- b. No

[If 'no' to all of 2, 3 and 4 – exit the survey. If 'yes' to 2 or 3 – go to 5. If 'no' to 2 and 3, and 'yes' to 4 – go to 26]

5. How many investment properties do you currently own? ____

[If more than one] When this survey asks about your investment property, please answer with respect to the property you **most recently acquired**.

[If zero] When this survey asks about your investment property, please answer with respect to the property you **most recently owned**.

6. What is the postcode of the investment property you most recently acquired/most recently owned? ____

[If more than one (at Q5)] Please also enter the postcodes of other investment properties you currently own. ____

7. How did you acquire the investment property?

- a. I bought it
- b. I owned the property as my home, then moved out and kept it as an investment
- c. I received it as an inheritance, gift or prize

8. What year did you acquire the investment property? ____

[If owned as a home and then kept as an investment (Q7)] State the year it became your investment property.

9. How do/did you own the investment property?

- a. I am the sole owner of the property
- b. I own the property jointly with another person(s)
- c. The property is owned by a company, which I own
- d. The property is owned by a company, which I own jointly with another person(s)
- e. The property is owned by a trust (including a superannuation fund), of which I am a beneficiary
- f. I own the property as trustee for another person(s)
- g. Other ____

10. Do/did you have a loan secured by the investment property (i.e. a mortgage)?
- Yes
 - No
11. How important were the following factors in your decision to acquire the investment property? Please indicate the importance of each factor on the scale [Not important--Fairly important--Very important]
- Tax laws regarding investment properties. [Not important--Fairly important--Very important]
 - Planning and development laws. [Not important--Fairly important--Very important]
 - Tenancy laws. [Not important--Fairly important--Very important]
 - Rental income from the property. [Not important--Fairly important--Very important]
 - Potential capital gains from the property. [Not important--Fairly important--Very important]
 - Potential to use the property as a home for myself, a family member or friend [Not important--Fairly important--Very important]
 - Potential to use the property as holiday accommodation [Not important--Fairly important--Very important]
12. [Skip if no investment property currently owned (Q2)] What is the main way the investment property has been used in the past year? Please tick one.
- Let as rental housing under standard residential tenancy agreement(s)
 - Let as short-term accommodation
 - Used as a home for a family member(s) or friend(s)
 - Used as holiday accommodation for myself, family member(s) or friend(s)
 - Deliberately left unoccupied
 - Other ____
13. What is/was the main way the investment property has/had been used in the time since you acquired it?
- Let as rental housing under standard residential tenancy agreement(s)
 - Let as short-term accommodation
 - Used as a home for a family member(s) or friend(s)
 - Used as holiday accommodation for myself, family member(s) or friend(s)
 - Deliberately left unoccupied
 - Other ____
14. Has/had the investment property been used any other way since you acquired it?
- No
 - Let as rental housing under standard residential tenancy agreement(s)
 - Let as short-term holiday accommodation
 - Used as a home for a family member(s) or friend(s)
 - Used as holiday accommodation for myself, family member(s) or friend(s)
 - Deliberately left unoccupied
 - Other ____

15. [Skip if no investment property currently owned (Q2)] Do you have plans to let the premises as short-term accommodation in the future, rather than as longer-term rental housing with a tenant? Please indicate how likely on the scale [Definitely yes—probably yes—don't know—probably no—definitely no]
- [If definitely or probably yes – go to 16. If don't know or probably or definitely no – go to 17]
16. Why?
- a. I can generate more rental income through short-term letting
 - b. Short-term letting is more flexible – I can use the property in other ways between short-term lets
 - c. Short-term letting causes less wear and tear to the premises
 - d. The place is better suited to short-term visitors than long-term residents
 - e. The managing agent has advised me to do short-term letting
 - f. Other ____
17. Why not?
- a. I have no idea how to go about it
 - b. I don't understand the laws around short-term letting
 - c. I can generate more rental income through long-term renting
 - d. Short-term letting is a lot of work
 - e. Short-term letting causes too much wear and tear to the premises
 - f. There are rules against short-term letting in the building or local area
 - g. I think residential properties should be used for long-term housing
 - h. I do not want to upset the neighbours
 - i. The managing agent has advised against short-term letting
 - j. Other ____
18. Who manages/managed the property (i.e. advertises it for let, collects rent, arranges repairs)?
- a. I do/did all or most of the management myself
 - b. A real estate agent does/did all or most of the property management
 - c. A short-term letting agent does/did all or most of the property management
19. How long do you intend to/did you hold this investment property?
- a. Not more than 1 year
 - b. 2-4 years
 - c. 5-10 years
 - d. More than 10 years
20. Have you taken any of the following actions in relation to a tenancy in an investment property in the past 10 years – i.e. in the property you most recently acquired/owned or another investment property you own/have owned?
- a. Gave the tenant a notice of termination or a notice to leave
 - b. Applied to the tribunal or court for a termination order
 - c. Got a termination order from the tribunal or court
 - d. Executed a termination order (i.e. evicted a tenant)

- e. Applied to the tribunal or court for an order that the tenant perform the tenancy agreement or stop breaching the tenancy agreement
 - f. Applied to the tribunal or court for an order that the tenant pay rent arrears
 - g. Applied to the tribunal or court for an order that the tenant pay compensation for damage or another breach
21. [Skip if 'no' at Q3] What became of your former investment property? (If you formerly had more than one investment property, please answer regarding the former investment property that was most recently your investment property).
- a. I sold it
 - b. I gave it to someone else
 - c. I moved into it and use it as my own home
22. [Skip if 'no' at Q3] When you decided to dispose of/move into your former investment property, what factors were important in your decision? Please indicate the importance of each factor on the scale [Not important--Fairly important--Very important]
- a. The rental income from the property was insufficient [Not important--Fairly important--Very important]
 - b. The cost of maintaining the property was too great [Not important--Fairly important--Very important]
 - c. Capital gains on the property were not increasing as I had hoped [Not important--Fairly important--Very important]
 - d. It was a good time to sell and realise capital gains on the property [Not important--Fairly important--Very important]
 - e. I needed the property for my own home [Not important--Fairly important--Very important]
 - f. I could not use or develop the property in the way I wanted [Not important--Fairly important--Very important]
 - g. Tenancy laws were too difficult or unsatisfactory [Not important--Fairly important--Very important]
 - h. I did not want to deal with tenants anymore [Not important--Fairly important--Very important]
 - i. I did not want to deal with government agencies regarding the property (e.g. the tax office, the local council) anymore [Not important--Fairly important--Very important]
 - j. I did not want to deal with real estate agents anymore [Not important--Fairly important--Very important]
 - k. I wanted money for another investment [Not important--Fairly important--Very important]
 - l. I wanted money for consumption spending [Not important--Fairly important--Very important]
 - m. A family member or friend wanted the property, so I sold or gave it them [Not important--Fairly important--Very important]
 - n. Other personal or family reasons [Not important--Fairly important--Very important]
23. Please indicate whether you agree, disagree or are neutral regarding the following statements. You can make a further comment, if you wish:
- a. A tenant should be able to feel that a rental property is their home [Agree—Neutral—Disagree]
Comment _____
 - b. A tenant who keeps their obligations (e.g. pays the rent, keeps the premises clean and undamaged) should be able to stay in the property as long as they like [Agree—Neutral—Disagree] Comment _____
 - c. A tenant should be able to keep a pet provided it is suitable to the property and does not cause damage or a nuisance [Agree—Neutral—Disagree] Comment _____

- d. A landlord should be able to give notice to terminate a tenancy as they see fit [Agree—Neutral—Disagree]
Comment _____
 - e. A landlord should be able to give notice to increase the rent as they see fit [Agree—Neutral—Disagree]
Comment _____
 - f. A landlord should maintain a property to minimum standards [Agree—Neutral—Disagree] Comment _____
 - g. A landlord should be able to let a property that does not meet minimum standards if the tenant pays a lower rent [Agree—Neutral—Disagree]
 - h. A landlord should be able to use a property for short-term holiday letting as they see fit [Agree—Neutral—Disagree] Comment _____
 - i. A tribunal or court should consider all the circumstances of the tenant and the landlord before deciding if a tenancy should be terminated [Agree—Neutral—Disagree] Comment _____
 - j. Current tenancy laws favour tenants [Agree—Neutral—Disagree] Comment _____
 - k. Current tenancy laws favour landlords [Agree—Neutral—Disagree] Comment _____
24. In the 2020 coronavirus pandemic, governments implemented eviction moratoriums and other emergency measures. During the emergency period, did you experience any of the following? Please tick yes or no:
- a. I wanted to terminate a tenancy but was prevented from doing so
 - b. I terminated a tenancy
 - c. A tenant terminated a tenancy
 - d. I agreed with the tenant to reduce or waive the rent (i.e. the amount reduced or waived does not have to be paid later)
 - e. I agreed with the tenant to defer the rent (i.e. the amount deferred was to be paid later)
 - f. The tenant asked for a rent variation but I declined
 - g. I got rent relief from the state government
 - h. I deferred loan repayments relating to the rental property
25. After the end of the emergency period, did you experience any of the following:
- a. The tenant was in arrears
 - b. I took action to terminate the tenancy
 - c. I increased the rent
 - d. I considered selling the property
- [Q26-30 for those who answered 'yes' only to Q4]
26. How important are the following factors in your thinking about acquiring an investment property?
- a. Tax laws regarding investment properties [Not important--Fairly important--Very important]
 - b. Planning and development laws [Not important--Fairly important--Very important]
 - c. Short-term-letting laws and rules [Not important--Fairly important--Very important]
 - d. Tenancy laws. [Not important--Fairly important--Very important]
 - e. Rental income from the property [Not important--Fairly important--Very important]
 - f. Potential capital gains from the property [Not important--Fairly important--Very important]

- g. Potential to use the property as a home for myself, a family member or friend [Not important--Fairly important--Very important]
 - h. Potential to use the property as holiday accommodation for myself, a family member or friend [Not important--Fairly important--Very important]
 - i. Potential to use the property for short-term letting. [Not important--Fairly important--Very important]
 - j. Other ____
27. What is the main way you intend to use an investment property? Please tick one.
- a. Let as rental housing under standard residential tenancy agreement(s)
 - b. Let as short-term holiday accommodation
 - c. Used as a home for a family member(s) or friend(s)
 - d. Used as holiday accommodation for myself, family member(s) or friend(s)
 - e. Deliberately left unoccupied
 - f. Other ____
- 27a. Do you think, in future, you might let the premises as short-term holiday accommodation? [Definitely yes—probably yes—don't know—probably no—definitely no]
- IF Q27=B OR IF Q27A="YES", THEN ASK Q28*
28. Why are you thinking of short-term letting?
- a. I can generate more rental income through short-term letting
 - b. Short-term letting is more flexible – I can use the property in other ways between short-term lets
 - c. Short-term letting causes less wear and tear to the premises
 - d. The place is better suited to short-term visitors than long-term residents
 - e. The managing agent has advised me to do short-term letting
 - f. Other ____
29. You've said you're not intending to get into short-term letting – can you say why?
- a. I have no idea how to go about it
 - b. I don't understand the laws around short-term letting
 - c. I can generate more rental income through long-term renting
 - d. Short-term letting is a lot of work
 - e. Short-term letting causes too much wear and tear to the premises
 - f. There are rules against short-term letting in the building or local area
 - g. I think residential properties should be used for long-term housing
 - h. I do not want to upset the neighbours
 - i. The managing agent has advised against short-term letting
 - j. Other ____
30. Please say whether you agree, disagree or are neutral regarding the following statements. You can make a further comment, if you wish:
- a. A tenant should be able to feel that a rental property is their home [Agree—Neutral—Disagree]
Comment ____

- b. A tenant who keeps their obligations (e.g. pays the rent, keeps the premises clean and undamaged) should be able to stay in the property as long as they like [Agree—Neutral—Disagree] Comment _____
- c. A tenant should be able to keep a pet provided it is suitable to the property and does not cause damage or a nuisance [Agree—Neutral—Disagree] Comment _____
- d. A landlord should be able to give notice to terminate a tenancy as they see fit [Agree—Neutral—Disagree] Comment _____
- e. A landlord should be able to give notice to increase the rent as they see fit [Agree—Neutral—Disagree] Comment _____
- f. A landlord should maintain a property to minimum standards [Agree—Neutral—Disagree] Comment _____
- g. A landlord should be able to let a property that does not meet minimum standards if the tenant pays a lower rent [Agree—Neutral—Disagree]
- h. A landlord should be able to use a property for short-term holiday letting as they see fit [Agree—Neutral—Disagree] Comment _____
- i. A tribunal or court should consider all the circumstances of the tenant and the landlord before deciding if a tenancy should be terminated [Agree—Neutral—Disagree] Comment _____
- j. Current tenancy laws favour tenants [Agree—Neutral—Disagree] Comment _____
- k. Current tenancy laws favour landlords [Agree—Neutral—Disagree] Comment _____

Finally, some questions about you and your household:

- 31. What is the postcode where you live?
- 32. What is your age?
 - a. 18-30
 - b. 31-40
 - c. 41-50
 - d. 51-60
 - e. 61-70
 - f. 71-80
 - g. 80+
- 33. How do you describe your gender?
 - a. Man/male
 - b. Woman/female
 - c. Non-binary
 - d. I use a different term _____
 - e. Prefer not to answer
- 34. What is your highest level of education?
 - a. Below year 10 high school
 - b. High school Year 10
 - c. High school Year 12

- d. Trade qualification, certificate IV, diploma
 - e. Bachelor degree
 - f. Post-graduate degree
35. What sort of household do you live in?
- a. Sole person
 - b. Single person with dependent child(ren)
 - c. Couple
 - d. Couple with dependent child(ren)
 - e. Group of unrelated adults (share house)
 - f. Group of related adults
 - g. Other ____
36. What sort of housing do you live in?
- a. I own my home, subject to a mortgage
 - b. I own my home, no mortgage
 - c. I pay rent for my home
 - d. I live in a property owned by a family member or friend
 - e. Other ____
37. What is your employment status?
- a. Employed full-time
 - b. Employed part-time
 - c. Unemployed
 - d. Not in the labour force
38. What is your household's main source of income?
- a. Earnings from employment or business
 - b. Rent
 - c. Government payments
 - d. Superannuation payments
39. What is your household's total annual income (before tax)?
- a. Less than \$35,000
 - b. \$35,000-\$60,000
 - c. \$60,001-\$100,000
 - d. \$100,001-\$150,000
 - e. More than \$150,000

The survey is complete. Thanks very much for participating. The findings will be published in 2022 as an AHURI Final Report, available for free download from www.ahuri.edu.au.



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