

EXECUTIVE SUMMARY

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Regulation of residential tenancies and impacts on investment



Authored by

Chris Martin, UNSW Sydney

Kath Hulse, UNSW Sydney

Milad Ghasri, UNSW Sydney

Liss Ralston, UNSW Sydney

Laura Crommelin, UNSW Sydney

Zoë Goodall, Swinburne University of Technology

Sharon Parkinson, Swinburne University of Technology

Eileen O'Brien Webb, University of South Australia

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Authors

Chris Martin, UNSW Sydney
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Zoë Goodall, Swinburne University of Technology
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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.



Australian Housing and Urban Research Institute

Level 12, 460 Bourke Street

Melbourne VIC 3000

Australia


+61 3 9660 2300

information@ahuri.edu.au

ahuri.edu.au

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