

A Better Lease on Life

– Improving Australian Tenancy Law

A National Shelter Report
prepared by its member organisation
the National Association of Tenant Organisations
and Penny Carr and Maria Tennant



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FOREWORD

NATIONAL SHELTER

National Shelter is the peak non-government organisation representing the interests of low-income housing consumers, and has been in operation since 1976. It comprises representatives of Shelter bodies in all States and Territories, and also includes representation from such national bodies as Homelessness Australia, the Community Housing Federation of Australia and the National Association of Tenant Organisations. National Shelter cooperates closely with other national bodies such as the Australian Council of Social Service and is a member of the National Affordable Housing Summit Group.

National Shelter aims to realise a housing system which ensures that:

- every person in Australia has access to affordable, appropriate, safe and secure housing;
- housing provision is free from discrimination; and,
- housing provision enhances people's health, dignity and life opportunities.

National Shelter advocates the development of a national housing policy based around the following principles:

- Housing is affordable. People on low and moderate incomes should not have to pay more than 30% of their income on housing costs;
- Housing is adequate. Everybody is entitled to housing that meets acceptable community standards of decency and their own needs;
- Housing is secure. People should not live under threat of loss of home and shelter. A secure base enables people to form constructive relationships, grow families and seek employment and community engagement;
- Housing is accessible. People should be informed about available housing options and access to these should be free from discrimination. Most housing should be built to Universal Design principles;
- Housing is in the right place. It should be located close to services and support networks, to job opportunities, to transport networks and to social and leisure activities. Housing should encourage the inclusion of people in community life; and,
- Housing meets people's life-cycle needs. People have different housing needs at different stages of their lives, and housing should be available to match these changing needs.

ABOUT NATO

The Tenants' Union of Queensland (TUQ), as auspice for the National Association of Tenant Organisations (NATO), has contracted with National Shelter to undertake this project to examine tenancy legislation and protection for tenants. The project was requested by Department of Families, Housing and Community Services and Indigenous Affairs through a funding agreement with National Shelter.

The National Association of Tenant Organisations (NATO) is a federation of State and Territory-based Tenants' Unions and Tenants' Advice Services across Australia. NATO's membership comprises:

- Tenants' Union Australian Capital Territory
- Tenants' Union of New South Wales
- Tenants' Union of Queensland
- Tenants' Union of Tasmania
- Tenants' Union of Victoria
- Tenants' Advice Service (Western Australia)
- Tenants' Advice Service of the Darwin Community Legal Service

NATO is an affiliate member of National Shelter, and is Australia's representative member of the International Union of Tenants. NATO is also a member of the board of National Shelter.

NATO is unfunded by governments, but receives in-kind support from its member-organisations and the National Association of Community Legal Centres.

Each of NATO's members is a tenant advice service that gives information and advice to tenants about their legal rights and responsibilities. Most NATO members also represent tenants in legal proceedings, and some NATO members resource other tenant advice services operating at a local or regional level. All NATO members work to promote the interests of tenants in their respective jurisdictions through policy and law reform. NATO pursues this work at a national level.

NATO and its member organisations have been active in monitoring tenancy law provisions for many years. NATO recently produced a Submission in Response to the Green Paper on Homelessness (NATO, 2008). Prior to that, NATO produced a report, 'Leaking Roofs: Australian Tenancy Law'. This report is a comprehensive review of the main legal provisions and deficiencies in each State and Territory and proposes reforms to better protect tenants' rights (NATO, 2003). This report updated an original Leaking Roofs report conducted in 1991 (NATO, 1991).

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GLOSSARY OF TERMS

Agent: An agent is a person or company, including real estate agents, appointed by the landlord and authorised to act on their behalf.

Boarder/Lodger: These terms are used interchangeably in this report. Lodgers are renters who share facilities such as kitchen and bathroom and whose right to occupy premises is not exclusive of their landlord. Their landlord continues to exercise 'dominion' or 'mastery' of the premises, usually by residing there themselves or having a caretaker. Lodgers are almost always excluded from mainstream tenancy legislation; in some jurisdictions they are subject only to the common law. A boarder is a lodger who receives meals with their accommodation.

Boarding Housing: Otherwise referred to as a rooming house. This applies to shared facility multi-room premises where residents have an agreement to rent a room only with access to shared facilities such as kitchen and bathroom. There is often a resident manager or caretaker.

Caretaker: Has a similar role to an agent although the term is often used to refer to a person living in a boarding house and taking on a management role. Caretakers are sometimes longer-term residents who are offered free rent in exchange for particular services such as collecting rent and/or taking the garbage out.

Fixed term (agreement): This applies to a tenancy agreement where there is a start and end date. For example many agreements run for a fixed period of 6 or 12 months.

Just cause (evictions/terminations): This refers to restricting the ability to evict tenants to reasons specified in legislation which are deemed to be fair within the context of the Australian housing market e.g. the landlord and or their immediate family will move into the property.

Landlord: Used also to refer to the variety of terms used by different jurisdictions such as lessor and owner. It refers to the owner of the property who gives the tenant a right to occupy it.

Manager: This is another term for agent although it is often used to refer to a person acting for the owner/s of specific types of rental properties such as boarding houses or residential letting units with an on-site manager.

Notice to leave: Used also to refer the variety of terms used by different jurisdiction such as Notices to Vacate, Notice to Terminate. These are notices served by one party to a tenancy agreement to another party to notify of their intent to end the agreement. Notices to leave may be with or 'without grounds'.

Notice to remedy breach: Used also to refer the variety of terms used by different jurisdiction such as Breach of Duty. These are notices served by one party on the other to formally notify them of an alleged breach by the party being notified.

Periodic (agreement): This applies to a tenancy agreement which has a start date but no end date. Some fixed-term agreements 'roll over' to become periodic if no notices to end the tenancy or no new agreement is signed prior to the end date of the fixed term.

Renter: Is a generic term applying to anyone who rents their home, including marginal and mainstream tenures.

Resident: Applies to a renter not afforded the same rights as those covered under mainstream tenancy laws. The term is often used to generically refer to people living in boarding houses, caravans and manufactured home parks. In some jurisdictions, 'resident' is used to identify a group of people who are provided tenancy law protections (that is they are technically not boarders) which are not the same, and usually weaker than mainstream tenancy laws. Examples are Victorian rooming house residents and Queensland rooming accommodation residents.

Rooming house: Otherwise referred to as a boarding house. See above.

Room-only accommodation: Is accommodation in which a boarder or lodger rents.

Tenant advice service: This term may refer to a NATO member organisation or a local or regional tenancy advice service.

Tenant: This term is used generically to indicate a person who rents their place of residence. It can also be used more specifically to indicate a person who is given the right to occupy a residential premises by the landlord or their agent and who is covered by mainstream tenancy laws.

EXECUTIVE SUMMARY

- The Australian Government and the State and Territory Governments have committed to preventing homelessness. The Australian Government, in its White Paper on Homelessness, *The Road Home*, recognised a connection between tenancy laws and practices and the creation of homelessness and have provided funding support to scope the issues and remedies in this project.
- This study provides a comparison of key aspects of tenancy law across each state and territory of Australia, highlighting concerns of national significance expressed by tenant advocates. It also identifies which concerns, if redressed, have the potential to mitigate homelessness or alleviate a major deficiency in the quality of tenancy protections.
- Tenancy law reform is obviously not the sole answer to the growing problem of homelessness in Australia. However, it has a role to play in both preventing homelessness and improving services for people who are at risk of homelessness.
- Key recommendations of the report include:
 - Preventing arbitrary and unreasonable evictions by removing the ability to evict tenants without any grounds;
 - Ensuring adequate and relative notice periods for evictions to allow tenants the chance to find alternative premises before they are evicted;
 - Maximising the chances for tenants to rectify rent arrears prior to eviction and restore the income stream of their landlord;
 - Providing tenancy law protections, relative to the tenure type, to all Australian renters; and
 - Providing timely access to tenancy advice and advocacy to prevent evictions.
- The study was unable to expand on a range of tenancy law inadequacies identified that did not impact directly on the mitigation of homelessness or the key issue of the standard of tenancy protections.
- A coordinated cross-jurisdictional approach to the proposed reforms could be achieved through the established mechanisms aimed at coordination of work between the States, Territories and the Australian Government (e.g. the National Affordable Housing Agreement, National Partnership Agreements or Ministerial council).

A full list of recommendations follows.

LIST OF RECOMMENDATIONS

RECOMMENDATION 1 – Provide coverage of marginal groups including boarders and lodgers and renters in caravans and caravan parks

With a view to achieving appropriate tenancy law coverage of all renters:

States and Territories must:

- Implement statutory schemes of enforceable agreements for all renters not covered by residential tenancies legislation. Such legislation should reflect the following principles:
 - *Written agreements and receipts.* All persons renting should be entitled to a written copy of their agreement and receipts.
 - *Reasonable cleanliness, security and state of repair.* All agreements should provide that the landlord will provide and maintain premises in a reasonable state of cleanliness, security and repair.
 - *Quiet enjoyment.* All agreements should provide that the person renting will have quiet enjoyment of the premises.
 - *Rules.* A person renting should be entitled to know, before they are bound to an agreement, any rules of the premises. Each agreement should set out any rules of the premises.
 - *Access by the landlord.* A landlord should be entitled to have access to the premises for reasonable purposes and at reasonable times only.
 - *Rent increases.* A person renting should be entitled to a reasonable period of notice of a rent increase. Each agreement should set out how the rent may be increased, including the amount of notice that will be given.
 - *Termination.* A landlord should be entitled to give a notice of termination on reasonable grounds only, and a person renting should be entitled to a reasonable period of notice. Each agreement should set out the grounds on which the agreement may be terminated and the amount of notice that will be given.
 - *Dispute resolution.* Lessors and persons renting should both have access to the tribunal or court that has jurisdiction for tenancy disputes in that State or Territory. In particular, a person renting should have access to the tribunal or court in relation to a dispute about coverage e.g. to determine if they are a tenant or occupant and the termination of their agreement. And the tenant should be entitled to have their dispute heard before their agreement is terminated.

In order to provide tenancy rights for all renters not otherwise covered by residential tenancies legislation, States and Territories may legislate for schemes by either:

- Providing that agreements reflect the above principles, with further provision for making, by Regulation, standard terms that may apply to specified classes of marginal renters (i.e. the ACT model); or,
- Providing that each specified class of marginal renter is subject to legislation, specific to that class, that reflects the above principles; or,
- Pursuing a combination of these legislative approaches, with some specified classes of marginal renters subject to their own specific legislation and all others covered by legislation giving effect to the principles generally.

RECOMMENDATION 2: Abolish evictions without adequate grounds

Tenancies should only be terminated against tenant’s wishes where:

- There are *grounds* as prescribed by residential tenancies legislation;
- When appropriate notice is given; and,
- In the case of a dispute, a Tribunal/Court determines that in all the circumstances of the case it is appropriate to end the tenancy. It should not fall to the tenant to apply to the Tribunal to stop a termination from proceeding.

Landlords should be allowed to give notices of termination on specified reasonable grounds only. These grounds should be:

- *Serious or persistent breach* – including failure to pay rent.
- *Frustration* – that is, the premises are uninhabitable e.g. premises made unfit to live in due to a natural disaster.
- *Sale of premises* – the contract of sale requires vacant possession. Landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Landlord requires the premises for their own housing, or an immediate family member’s housing* – landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Demolition, approved change of use or major renovation* – landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Tenant has ceased to be employed by the landlord* – where the tenancy arose out of a contract of employment between the landlord and the tenant, and the landlord needs the premises to house another employee. Landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Tenant no longer eligible for housing assistance* - for example, where a tenancy is offered by a community housing provider under a youth accommodation scheme.

RECOMMENDATION 3 – Provide adequate and consistent notice periods for evictions

Minimum eviction notice periods should be as follows:

Table 1: Recommended notice periods for terminations

Grounds for Termination	Recommended Notice Period
Frustration - where the premises are uninhabitable other than for landlord’s breach.	2 days
Sale of premises – where contract of sale requires vacant possession (outside a fixed term agreement).	4 months (periodic agreement only)
The landlord requires the housing for their own or immediate family’s housing outside a fixed term agreement.	4 months (periodic agreement only)
Major renovation, change of use or demolition outside a fixed term agreement.	4 months (periodic agreement only)
Employment ended if employment-related accommodation.	2 months
End of eligibility for housing assistance.	6 months
Serious or persistent breach: <ul style="list-style-type: none"> • unpaid rent more than 14 days • other serious breach by tenant 	<ul style="list-style-type: none"> • 14 days • 28 days

RECOMMENDATION 4 – Create provisions for payment of rent arrears to sustain tenancies

Where a landlord commences termination proceedings on grounds of rent arrears, and the tenant pays rent arrears in full, the proceedings should end. Any notice to vacate, or termination order, or unexecuted warrant of possession should have no effect.

Where the tenant and landlord enter into a plan for the repayment of the arrears, the proceedings should be suspended for such time as the tenant complies with the plan. After being suspended for three months, the proceedings should end and any notice, order or unexecuted warrant, cease to have effect. Where the tenant fails to comply with the plan, the proceedings may continue from the point at which they were suspended.

RECOMMENDATION 5 – Prevent evictions by mortgagees at foreclosure

Mortgagees should assume the responsibilities of the landlord once they have obtained an outright possession order in regard to the mortgage contract. As such, they should only be able to evict tenants for just causes as outlined in the section above. The mortgagee should have no right to instruct or direct the tenant in any way until they obtain an order for possession or sale regarding the property title.

RECOMMENDATION 6 – Prevent homelessness resulting from terminations by social housing providers and revise the use of ‘anti-social’ behaviour provisions

Social housing providers should lead best practice in housing management by practicing early intervention and prevention and collaborative practices to manage tenancy issues. Social housing providers can continue to improve their practices in the following ways:

- Providing support in the early stages of a tenancy if the tenant is at risk of tenancy failure;
- Promoting respectful relationships between the tenant and housing managers;
- Establishing pathways for referral, information with appropriate support services such as health and community services, financial counselling and emergency assistance;
- Establishing referral pathways, information and linkages for tenants with tenant advice and support to emphasise their rights, responsibilities and the realities of renting;
- Providing access to advocates to support tenants to contest their eviction.

Legislation, policies or practices that place additional, unfair burdens on social housing tenants is opposed and it is recommended that residential tenancy law should not be used to enforce behaviour-management policies.

Social housing providers should not give notices to leave without grounds, in particular, to deal with allegations of breach of tenancy agreement or disputes about behaviour. Social housing providers should always provide the tenant with grounds for termination, the particulars of the case against them and give the tenant an opportunity to respond to the allegations.

RECOMMENDATION 7 - Regulation of tenancy databases

Tenant advocates are currently consulting with State and Territory governments on draft legislation, circulated at the end of 2009, which aims to achieve nationally consistent regulation of tenancy databases. This process for the reform of tenancy databases is supported by advocates across the country.

It is recommended that regulation of tenancy databases be based on the following principals:

- Listings may be made only in prescribed circumstances, and for prescribed reasons;
- Persons listed should know about and have free access to a copy of the listing;
- Parties in disputes regarding proposed and current listing should have access to the usual tenancy dispute resolution mechanisms; and
- Listings must be removed according to prescribed time limits.

RECOMMENDATION 8 – Ensure minimum housing standards for habitability and safety

It is recommended that nationally consistent legislation regarding landlords' obligations, the habitability of premises, and repairs and maintenance should be introduced.

Landlords should be obliged to provide and maintain premises in a state that is fit for habitation according to contemporary standards (including in relation to the connection and supply of utilities), maintained and in reasonable repair.

In addition to more nationally consistent standards regarding landlords' general obligation for the state of the premises, specific additional standards relating to safety should be set out in statute or regulation. These should cover safety issues such as:

- Locks and security including child locks on windows;
- Safety devices such as residual current devices(RCDs); and
- Smoke detector/s.

A rolling series of incentive programs to achieve these safety standards could be developed.

RECOMMENDATION 9 – Mitigating excessive rent increases

Residential tenancies legislation should give an objective standard for determining whether an increase is excessive, thus establishing a base for reviews of increases. Legislation should also permit the making of regulations limiting rents and rent increases in particular locations subjected to pressures from extraordinary events, for example, an international sporting event, a natural disaster or new large-scale industry.

Tenancy legislation should:

- Make provision for when and how rent can be increased i.e. notice periods and circumstances;
- Prescribe a formula linked to general pricing levels, such as the CPI, to consistently, fairly and objectively calculate an amount above which an increase is prima facie excessive;
- Reverse the onus of proof onto the landlord if the increase is found prima facie excessive pursuant to the assessment method prescribed;
- Require notice periods for rent increases when tenants move onto a subsequent agreement.

RECOMMENDATION 10 – Support for tenants

As part of a national approach to homelessness, Australian governments should make tenant advice, advocacy and support more readily available to tenants to help sustain tenancies. This applies especially to areas of: tenant representation at court/tribunal hearings; and better integration with social support services and specialist services or advocates for indigenous tenants.

The following areas of activity for expansion:

- *Representation and duty advocates.* The ability of tenant advice services to provide representation needs to be improved. The ability to provide representation through a duty advocate is especially important to homelessness prevention.
- *Extended advocacy linked to case management.* Many tenants at risk of homelessness would benefit from the more in depth advocacy and assistance that is linked to specialist caseworkers in other fields (e.g. early intervention services, youth services and health services). Additional resources would enable tenant advice services to bring their knowledge and skills to the table, under a case management model, and to provide holistic support to people who are at risk of homelessness.
- *Specialist Indigenous tenants advice services or Indigenous advocates.* As more than 60 per cent of Indigenous households rent and many experience disadvantage in the market, these households would benefit from specialist Indigenous tenants' advice services or Indigenous advocates with a heavy emphasis on community education with both tenants and housing providers.

CHAPTER 1

INTRODUCTION

1.1 Context

Conditions in the current housing market are impacting most on those with the least resources and capacity to compete in the market. Homelessness in Australia has increased dramatically over the past 10 years and many more people are finding shelter in marginalised parts of the rental housing sector. These people are living in insecure tenancies without the legal protection available to other renters.

As part of the overall national strategies to address housing and homelessness there is a need to review tenancy law, most particularly in relation to legislative protections for people most negatively affected by the current housing market.

The Market

Population growth and changes in the composition of Australian households, including an ageing population, raises issues about the availability and suitability of housing stock to meet current and future needs. In addition, labour market changes (or the need for increased mobility and workforce requirements) are requiring increased stock in key locations (National Housing Supply Council, 2008).

In Australia, the majority of households, approximately 70 percent, own or are purchasing their home... 'The great Australian dream'. The other 30 percent rent are mostly in the private market, notwithstanding about five percent in social housing (National Shelter, 2009). The private rental market is a critical part of the Australian housing system and an increasing proportion of Australian households now see renting as their only option (Seelig, 2009, p.20).

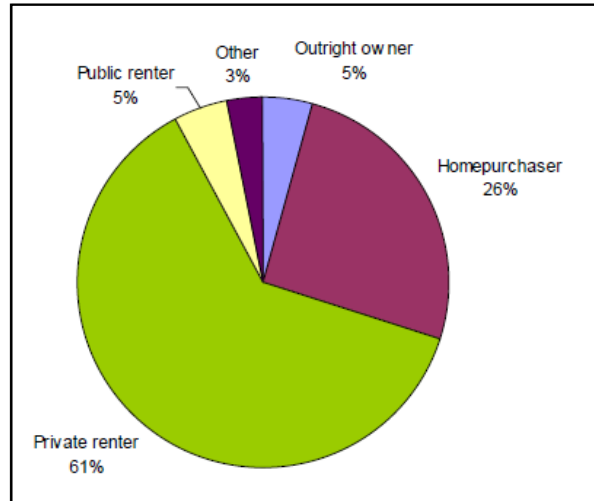
Housing affordability for first home buyers and renters declined over the decade to 2008, creating housing stress and housing affordability problems concentrated among low income households (National Housing Supply Council, 2008, p82). Low income renters are competing for limited stock with middle and high income renters who cannot access home ownership or choose not to. As a result, the low rent stock that does exist is not available for low income households (National Housing Supply Council 2008, p.97).

The total social housing stock in Australia has declined steadily from 400,000 dwellings in 1996 to an estimated 390,000 in 2008.

Whilst only a minority of households rent from social housing providers, the proportion of all renters that rent from State and Territory Housing Authorities is decreasing. Recent developments in housing policy (such as the NAHA and NRAS) have permitted more flexible allocation of funding away from the traditional public housing to community housing associations and other housing providers. Whatever the benefits of this flexibility, it also means that governments will be less able to directly affect, as a landlord, tenants' tenure and housing conditions. It will instead, have to do so through law and regulation.

Over one million Australian families were in housing stress in 2007. These families were without enough income, after housing costs, to pay for other essentials, including food, medicines, schooling, transport etc and 600,000 (61 percent) of those households were living in private rental housing (National Shelter 2009a, p.4).

Figure 1: Tenure of households in housing stress (National Shelter, 2009a, p.5)



Over 1.7 million Australian households rented from private landlords in 2005/06 (National Housing Supply Council 2008, p.90)

Renters comprised 29 percent of all households in 2005/6 which was a two percent increase from 1995/96. They tended to be a younger group (15 years younger than the median age for owner-occupier households) (National Housing Supply Council 2008, p.90). Of all rented households in 2005/6, 32 percent were classified as low income households and three quarters of these low income renters were renting from a private landlord (National Housing Supply Council 2008, p.90).

Whilst private rental does provide some flexibility, many renters face numerous and costly forced moves. Many private renters move frequently as properties transition between owner-occupied and rental markets or move in and out of the market in line with other factors. In 2006, renters were three times more likely than owner-occupiers to have changed address in the last 12 months (National Housing Supply Council 2008, p.90).

Of private renters, 17.7 percent reported their current tenancy agreement is for the duration of six months, 38.2 percent for 12 months and only 3.7 percent for another fixed period. Significantly, 16.5 percent reported that their current tenancy agreement is month to month, 7.5 percent have indefinite tenure and 14.9 percent reported having no formal lease or tenure (ABS 2007/08, 4130.0.55.002 pp. 49-50).

As more low income households are likely to stay in the private rental market, additional forced moves caused through deficiencies in tenancy law protection can further undermine their stability. And this has negative flow-on effects for households and families.

The condition of dwellings in the overall private rental market is poorer generally than those in the owner-occupier sector but marginally better than state housing authorities. In the ABS Housing Mobility and Condition Report 2007/8, major structural problems of all kinds were most frequently reported by renters from state and territory housing authorities (27 percent) and private landlords (26 percent) by comparison with owners (14 percent). 51 percent of private renters reported that repairs or maintenance had been carried out on their current dwelling in the last 12 months (ABS, 2007/08, 4130.0.55.002). The lowest levels of satisfaction with housing were among renters from private landlords and State or Territory housing authorities (both 78%) (ABS, 2007/08, 4130.0.55.002, p.8).

Stories abound from advocates and welfare groups throughout the community about the experiences of low income tenants suffering severe impacts from the current environment. The following quote from a single, older female, renting privately, demonstrates the costs and insecurity experienced by far too many renters in today's market.

“ ... So they sold it (the house), put up (the rent to) \$300 and I was out. Then I moved to another place where I am now – same thing happened, and the agents say, ‘All the houses in the area are having rental at \$300 per week, so yours must go up too. ‘Never mind that my toiletries are outside, the roof leaks in three rooms.’” (Hulse and Saugeres, 2009; Hulse, 2007).

Homelessness is worsening under current conditions

As at the 2006 census, 105,000 people were homeless in Australia. Demands for assistance from homelessness services have increased dramatically over the period between 2002 and 2007 (FACSHIA, 2008, p.3). Only 19 percent of those who are homeless find shelter in supported accommodation; 16 percent are in improvised dwellings or sleeping out; 45 percent are staying with friends or relatives; and 20 percent are in boarding houses (National Shelter 2009a, p.12).

Indigenous people are heavily represented as clients of homelessness services - approximately 21,000 in 2007/08 and numbers were rising (National Shelter 2009a, p.15). Other groups who experience additional challenges in accessing housing and assistance include: young people with children; women with families; asylum seekers and migrants; people with a disability and chronic illness; people leaving statutory care arrangements or institutions; and rural populations (House of Representatives Standing Committee on Family, Community, Housing and Youth, 2009, p.69).

People who are already disadvantaged are becoming more disadvantaged and losing rights and protection because they have to move to more marginalised sectors of the private rental market, into poorer quality housing and homelessness. In many cases, the only other alternative for these people is to move into higher cost housing that is unaffordable, creating financial pressures that often lead to rent arrears eviction. In marginalised tenancies, security and conditions are significantly less than in general tenancies. These people are falling into greater disadvantage and social exclusion as the housing situation reduces their capacity to participate in employment, education and access transport and other social services.

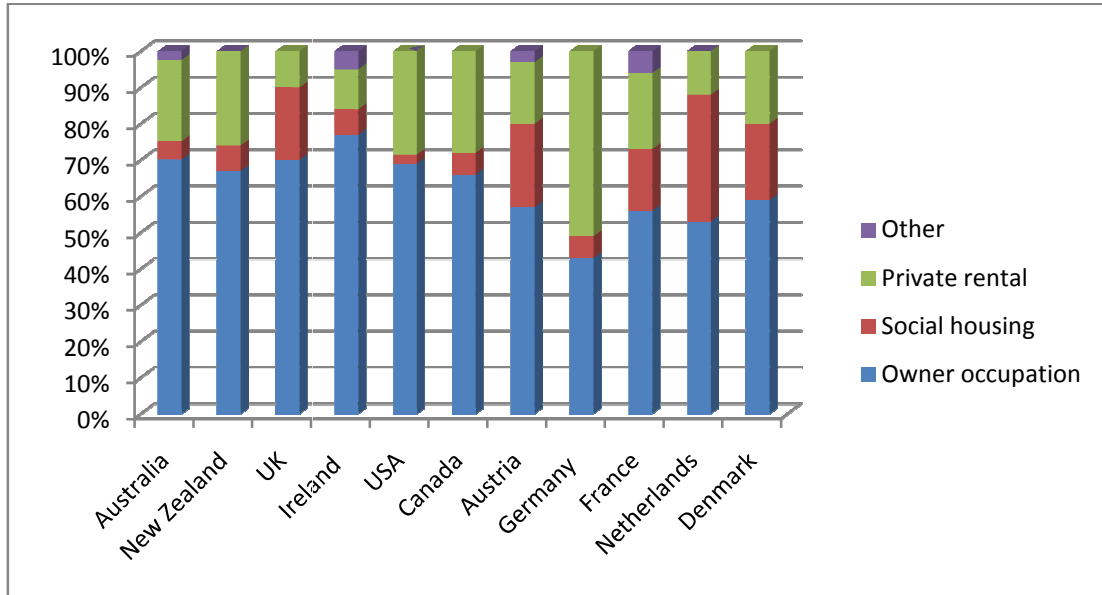
Housing insecurity and a sense of lack of control over one's housing was found to be significant in compounding other issues and leading to social exclusion (Hulse and Saugeres, 2009, Hulse, 2007). On the other hand, housing assistance and support provides positive 'non-shelter' benefits and can impact positively on housing affordability, tenure type, security of tenure, location and dwelling quality and can lead to social inclusion (Bridges et al, 2003).

Timely interventions and support for people who are at risk of homelessness due to housing stress, can help prevent homelessness. Support that addresses key risk areas is essential to any effort to reduce the level of homelessness. The Australian Government and State and Territory Governments have committed to preventing homelessness and improving services for persons who are homeless. Tenancy law has a role to play in both these objectives.

International trends

The extent of the private rental sector varies across countries as demonstrated in Figure 2 below (data for 2005-2007 sourced from Lawson and Milligan, 2007, p. 20)¹.

Figure 2: Tenure distribution across countries *



Legislation governing the rights of landlords, relative to the rights of tenants, varies markedly across the EU (Haffner, Elsinga and Hoekstra 2008). Legislation, like housing policy, changes incrementally and over time in response to political and economic conditions and the relative role of the private rental market. For example, in Germany and Italy, tenants still enjoy greater security of tenure, whilst in the UK the trend is towards limited security of tenure and in some sectors, no protection. In the Netherlands and Austria, evictions are limited by prescribed terms and debt programs are in place for arrears restoration. (The International Union of Tenants, 2006; Netherlands Woonbond/ Dutch Tenants Association, 2006; Shah N, 2006; UN Habitat, 2009; Deutscher Mieterbund/German Tenants' Association, 2006).

There have been some significant recent developments in the UK that highlight the important role of the private rental market. The sector has grown from 8 percent to 12 percent of households (1988 - 1996) and demand for private rented sector accommodation is predicted to increase.

A recent review of the private rented sector (Rugg and Rhodes, 2008), was commissioned by the UK government. The purpose of which was to improve government understanding of the sector and to identify barriers to the sector in consistently offering a 'fit for purpose' product. The review was also to assist government in identifying/clarifying its role into the future and what actions could be taken to influence and support that role. The report concludes with a set of six recommended 'policy directions of travel' including:

- Promoting housing management;
- Growing and professionalising the business of letting;

¹ Denmark 'Other' includes not for profit housing; Germany has recently transferred such social housing stock to the private rental market.

- Equalising rental choices and lowering risks for renters;
- Addressing power imbalances between landlords and tenants;
- Increased support for tenants; and
- Tenancy frameworks².

Other recent developments include the national strategy to provide ‘a decent home for all’ through improvements in housing standards and providing tenants in properties that are not fit for habitation with recourse (Department of Communities and Local Government, 2006).

Some international developments and innovations from USA, New Zealand, Canada, Ireland and the UK that are specifically relevant to tenancy law reform in this study are discussed in Chapter three.

International interest in ‘housing justice’

There is now considerable jurisprudence in Europe, the UK and South Africa around the concept of ‘housing justice’, which has flowed from an earlier recognition that affordable housing is the cornerstone for citizens to be able to lead decent and meaningful lives.

In Europe, debate about the means for enforcing housing justice/rights has also recently become more prominent in discussion about developing a European-wide strategy on housing rights (Fredriksson, 2006). The European Committee of Social Rights (ECSR) has recommended that States target their housing measures to ‘guarantee’ for the disadvantaged and vulnerable groups of people by preventing them from becoming homeless. The ECSR also emphasised the need for legal protection of evicted persons and families in both preventative and reparative ways. This includes an obligation to consult the effected parties in order to find solutions to eviction and the obligation to fix a reasonable notice period before eviction. The recommendation is also to provide legal remedies and legal aid to support tenants to seek redress from the courts. (Commissioner for Human Rights, 2009).

Magnus Hammar, Secretary General of the International Union of Tenants, sums up the strengths of the different housing systems in relation to the quality of tenants experience in his vision of a model country. He does this by identifying the very best housing policies implemented by different countries,

“...from England, I pick tenant participation; from Sweden, the rent setting system where tenant representatives negotiate the rent every year for both public and private sector; from Austria (Vienna), a social cohesion policy and outstanding architecture in social housing; from Germany, energy policies for innovative measures to save energy and sticks and carrots to pursue and convince landlords to invest in energy saving measures; The Netherlands, for its right to preserve their national policy of ‘social housing for nearly all’.” (International Union of Tenants, 2010, p.2).

² Some of the issues to be addressed by the policy directions which are of particular interest in this study include:

- Growing the number and portfolios of ‘good’ landlords
- Promoting ‘good’ housing management through professional development and accreditation
- Requirements (e.g. business plan) to improving the knowledge of both the rental market and tenancy law for the large and growing number of low key investors
- Putting policies in place to mitigate some of the risks associated with renting
- Better understanding of the reason that tenancies come to an end
- Statutory commitment to policies promoting tenancy sustainment including more proactive development of activity around rent arrears and anti-social behaviour
- Better support for people on benefits through mandatory assistance with deposits (bonds) and rent in advance
- Dealing with retaliatory evictions by regulation of the sector ensuring that landlords that take such action are removed from the sector

Tenancy law and tenancy law reform

The primary purpose of tenancy law should be to counterbalance the structural imbalance in the landlord-tenant relation. This imbalance is in the landlords' favour. Landlords enjoy considerable monopoly power in relation to tenants. Generally speaking, landlords are able to offer rental housing to prospective tenants on a take-it-or-leave-it basis, and once a tenancy is entered into a landlord feels little competition from other landlords. Tenants cannot 'shop around' for a better deal from week to week, and when they do have to move it is almost always costly financially and often costly emotionally.

Landlords are also in a powerful position when it comes to enforcing the terms of a contract and they can threaten to end it. In this respect, landlords are well-served by the law, and especially the enforcement mechanism it has established. For example, in the NSW Consumer, Trader Tenancies Tribunal Landlords' applications to the Tribunal outnumber those of tenants by a factor of six. About three-quarters of landlords' applications are for termination orders (CTTT, 2006, p.4).

Tenants, on the other hand, are in a poorer position to enforce the terms of an agreement. They cannot threaten to end the agreement without considerable financial and emotional cost to themselves.

Tenancy law reform approaches the achievement of balance between landlords and tenants as it treats landlords and tenants according to appropriate standards. It is deliberately directed to strengthening what tenants can ask of landlords and protecting them from the existing imbalance of power in the relationship.

Some commentary contends that there should be another purpose of tenancy law and law reform: to encourage investment in rental housing. This contention is not supported by the evidence. Over its recent history, tenancy legislation has not driven investors away from rental housing. The evidence strongly indicates that tenancy law is not sufficiently important in landlords' investment decisions to actually discourage investment or, for that matter, cause net disinvestment.

Investment and disinvestment – the evidence

The typical private rental market investor is a middle aged, moderate to high tax bracket individual with moderate superannuation, little unsecured debt and a continuous employment record (Wood and Ong, 2010, p. 2). Institutional investment in rental housing is low and many Australian investors (76 percent) own one property only (ABS, 1997, 8711.0).

Economic factors dominate decisions to invest in rental housing, almost to the exclusion of tenancy law. In 1993, the ABS surveyed investors in rental housing about the factors they had considered when they invested. Of the nine factors nominated, 'tenants' rights' was the least considered. Only 6.4 percent of landlords said that they considered tenants' rights (Castles, 1994). More recently, Seelig and others have found that tenancy law was the most important factor for less than two per cent of landlords, and only approximately seven per cent considered tenancy law at all (Seelig, 2006; Tenants' Union of Queensland, 2007; Seelig et al, 2009).

Much as economic factors dominate decisions to invest, they also dominate decisions to disinvest. In 1991 in NSW, two years after the commencement of the *Residential Tenancies Act 1987* (NSW), the NSW Department of Housing surveyed New South Wales landlords as to whether certain issues, including 'residential tenancy laws', were a 'problem' for them. Just over 10 per cent of small landlords (that is, owners of one rental property) nominated 'residential tenancy laws' as a major problem. Altogether, small landlords comprised more than 80 per cent of all landlords at the time. Of the small proportion of landlords with larger holdings, less than 30 percent considered residential tenancy laws a major problem (Department of Housing NSW, 1991).

Also in 1991, research by Brian Elton and Associates indicated that the then-recent law reform in New South Wales and elsewhere may have been a disincentive to investment, but that the impact might be more 'psychological' than 'substantial' (Brian Elton and Associates, 1991). Following up on that research, Paris, Randolph and Weeks conducted further consultations and found that the 'psychological impact' of residential tenancies law reform was short-lived, and that there was no evidence of net disinvestment (Paris, Randolph and Weeks, 1992). They concluded that there was no evidence that recent law reform had affected the 'fundamental economics' of investment in private rental housing, observing that the majority of landlords were motivated by equity growth and that this was not affected by residential tenancies law reform (cited in Kennedy, See and Sutherland, 1995, p.109).

Further research by Mowbray found that landlords who said they intended to disinvest within the next 12 months rarely actually did so: only 16 per cent sold within the period, and 30 per cent did not sell over the next five years (Mowbray, 1996). Recent research has confirmed that equity growth or capital gains are the key motivations for investors and that subsequently, intentions to invest or disinvest are, in the vast majority of cases, also driven by these economic factors and not by tenancy law (Tenant's Union of Queensland, 2007: Seelig 2007: Seelig et al, 2009; Wood and Ong 2010).

Tenancy law does not have a strong involvement with investment in rental property. However, it does have an important role to play in balancing the relative positions of landlords and tenants. Landlords can and do move their properties on and off the rental market to suit their investment strategies. Tenants on the other hand are not in a position to 'shop around' for the best price and conditions. Moving house is costly to both a household's finances and family life.

In Australia the right to housing has never been enshrined in legislations or in a charter of rights. Many advocates believe that the balance between tenants and landlord rights is tipped in favour of the landlord as a supplier rather than the tenant as the consumer of housing.

Whilst there are different views between tenant advocates and landlords about the 'right to housing' all parties agree that 'housing is a necessity'. Improving tenant protection, with the need to support and encourage private investment in housing, is challenging for government. Consumer protection needs to be monitored and regulated whilst investment in rental housing must be viable. Tenancy law reform that does not prevent landlords realising investment is unlikely to affect investors' security of investment, capital gain and equity growth or their capacity to reduce their taxable income.

Compromising housing justice leads to poor health, legal problems, inability to be employed, family breakdown, social isolation and homelessness.

Whilst tenancy law reform is obviously not the sole answer to the growing problem of affordability and homelessness in Australia, it does have a role to play in mitigating homelessness through greater protection of tenant rights. People become homeless because they lose their housing...sometimes the reasons are unfair or just plain unjust.

1.2 Research purpose, objectives and method

The overall aim of the study was to promote understanding of the issues faced by renters in regard to the quality of their tenure in the rental market and to explore how these issues intersect with homelessness. This review also identified actions to deal with those areas where tenants' rights need strengthening, to mitigate homelessness or address serious national issues.

The specific objectives of this study are:

- To identify key elements of each State and Territory's tenancy legislation including which types of key tenures are protected and which are not;
- To identify key reform issues which would impact on the quality and/or security of renters' tenure and/or mitigate homelessness; and
- To identify international good practice relevant to identified areas for reform.

Approach

A national review and comparison of tenancy legislation and protection for tenants was undertaken with the purpose of identifying differences in the experiences of consumers across the nation. This review provided an up-to-date description and comparison of tenancy legislation and protection for tenants. It highlighted areas where tenants are not protected within the current housing market.

The approach drew heavily on the extensive experience of tenant advocates across all States and Territories who are highly aware of the impacts of the legislation on the lives of tenants and how that changes over time and under varying market conditions.

To further understanding of tenancy legislation and protection for tenants, a range of tools was used to classify and compare individual State/Territories tenancy legislation and engage with experts in the field.

Methods

The key stages of the research were:

- Comparison of legislation across Australian States and Territories;
- Interview and open-ended questions with delegates from all States/Territories;
- Literature review of national reports, research and submissions;
- Limited review of international research and practice;
- Formulation of priority issues and recommendations for reform through a series of telephone-based meetings with NATO representatives across the country.

Information for the first stage of the study was obtained through a review of the main legislative provisions pertaining to quality of tenure and protection of tenants in all States/Territories. The categories for review were those used previously by NATO in "Leaking

Roofs: Australian Tenancy Law - a report by the National Association of Tenant Organisations" in 2003. The legislation comparison categories are as follows:

- i. The Legislation and its Application
- ii. Rents and Costs
- iii. Tenancy Terms and Conditions
- iv. Security of Tenure, Terminations and Evictions
- v. Dispute Resolution
- vi. Access to Housing

The second stage of the study was an interview, conducted by telephone, with representatives of Tenants' Unions or their equivalent from each jurisdiction as well as the South Australian Tenant Information and Advice Service and ShelterSA . The interviews built on the information captured in the legislation comparison table and provided an extended opportunity for informants to elaborate on deficiencies and key areas for reform. Informants also identified sources of information and began the process of thinking about remedies for their own State/Territory as well as potential national reforms. Open-ended questions provided the format for this stage of the study. At the end of this stage, clusters of issues were identified of both State/Territory and national importance.

The third stage of the study was desktop review of national literature on tenancy law reform. The main sources of information and analysis were previous comparative studies, national reports from independent authorities on housing; national and state submissions to government on tenancy law reform; national reports of government and conversations with informants identified by NATO representatives.

The fourth stage was a review of international 'good' practice limited to the key areas of reform identified by participants. In this stage the sources of information were largely identified by participants.

The fifth and final stage of the study was the prioritisation of reform issues that was provided by NATO delegates in their role as directors of the research study. Representatives met a number of times throughout the project, via telephone hook up, to establish priority issues for national reform, identify remedies to address these issues and formulate a set of recommendations for the report.

Limitations

It is important to note some limitations to the way the study has been approached. This study was intended and funded as a time efficient review of current tenancy legislation and protections with a view to identifying key areas for reform that could contribute to mitigating homelessness. The study has drawn on the expert knowledge of NATO members and readily available literature with the overall goal of responding to the Australian government's national homelessness reform agenda. Achieving the project objectives within a twelve week timeframe and budget has limited the breadth and extent of research and the level of representatives' participation.

1.3 Report outline

The report on the results of the project is presented in three chapters and appendixes.

Chapter 1 provides an introduction and overview of the context for the report including; housing market conditions, issues for consumers in regard to their tenure in the rental market,

impacts on low income earners and homelessness and international reflections— as well as the research purpose, methodology and report outline.

Chapter 2 identifies the key national issues pertaining to the intersection of tenancy law, tenant protection and homelessness. The information presented in this chapter is based on a comparative analysis of the key deficiencies in the current legislation for each State/Territory. It draws on information and expertise accessed for the study and recorded in the Overview of State/Territory Laws and Key State/Territory Issues (Appendix 1). From this assessment, six key topics were identified of national significance that must be considered for national reform to mitigate homelessness. Other tenancy law matters of national significance (but not directly related to this project) are also noted at some length in Appendix 1.

Chapter 3 discusses the six key topics for national reform with regard to the deficiencies in the law and the risks these pose to tenancies. Specific reforms are proposed as mitigation strategies to these deficiencies with regard to their impact on homelessness or basic tenant protection. This chapter draws on research and practice, including some limited international research of laws and practices that may be considered appropriate and applicable to our particular housing environment.

Appendix 1 provides an overview of State/Territory tenancy laws and key State/Territory issues providing a summary of the main provisions and key issues in State and Territory tenancy laws pertaining to protection of tenants as identified through the interviews.

Appendix 2 details further reading in the form of key reports, submissions and papers from Tenants' Unions or their equivalent across the nation.

Appendix 3 provides some additional information and references relevant to any further consideration of the improvement of housing standards in the private rental market.

CHAPTER 2

TENANCY LAW - RELATIONSHIP TO HOMELESSNESS AND KEY QUALITY OF TENURE ISSUES

2.1 Introduction

This chapter identifies the key nationally significant deficiencies in tenancy law that substantially undermine tenants' quality of tenure or that can lead to homelessness.

Topics discussed here have arisen from a comparative analysis of the main deficiencies in the current legislation. Data collected from interviews with NATO representatives and tenant advocates and the Overview of State/Territory Laws and Key State/Territory Issues (Appendix 1) have been analysed. This analysis identified eight key matters with regard to their impacts on the quality and/or security of renters' tenure and as having national significance to mitigating homelessness.

In discussing the issues associated with each area of tenancy law, leading practices in Australia are identified. Relevant international practices are also discussed (where they are known to be relevant to the issue in Australian housing market context).

It is important to note that the research highlighted a significant number of specific issues for each State and Territory. This chapter only reports specific issues for States/Territories when they appear to be significantly lacking in acceptable standards of consumer protection in comparison to other States/Territories. As such, this chapter does not represent a full picture and readers are encouraged to review Appendix 1 for the full description of tenancy protection deficiencies in each jurisdiction.

2.1.1 Background to Australian residential tenancies law

Australian residential tenancies law comprises the common law of tenancy and the residential tenancies legislation of each of the States and Territories. Each State or Territory has its own *Residential Tenancies Act*, which is the primary source of law relating to residential tenancies in each jurisdiction.

Each of these Acts is a variation on the model of residential tenancies legislation put forward by Adrian Bradbrook in 'Poverty and the Residential Landlord -Tenant Relationship', a special report to the Australian Government's Commission of Inquiry into Poverty (1975). The Bradbrook model distinguished residential tenancies from commercial and other tenancies and proposed to deal with residential tenancies as consumer contracts, rather than interests in land. In particular, it proposed that each of the States and Territories should provide for the following:

- Residential tenancy agreements with standard terms, including the fees and charges payable by tenants, repairs and maintenance, and privacy;
- Safeguards for security deposits;
- The regulation of termination and eviction proceedings, and the speedy return of possession of premises to landlords upon termination;
- Market rents, with provision for excessive rent increases to be disputed;
- Advice and information services for tenants; and
- A specialist Tribunal to determine disputes between landlords and tenants.

In the two decades following Bradbrook's report, each State and Territory implemented legislation based on the Bradbrook model. Variation between each State and Territory is, however, considerable.

2.2 Principal Acts - Issues and coverage of marginal groups

National Significance

Each jurisdiction's legislation sets out the types of tenures covered including mainstream tenancies e.g. tenancy agreements for units, flats, detached houses etc., and social housing tenancies (with the exception of specified provisions). Coverage anomalies exist between jurisdictions. For example, coverage of tenants in caravans and exemptions for supported accommodation or the length of that exemption. Some but not all jurisdictions cover residents living in boarding situations/houses although separate sections and rules will generally apply, such as shorter time frames. Boarders excluded from tenancy laws have only common law rights which are effectively unenforceable.

Coverage of manufactured homes, caravans and cabins etc. varies widely.

Across the country an array of mainly marginal renters remain without any enforceable tenancy rights. The exception is Australian Capital Territory where occupancy agreements apply to everyone not otherwise covered by mainstream tenancy agreements.

Coverage of boarders and lodgers is irregular and inconsistent across jurisdictions and is a priority for reform. Where coverage is afforded there are often threshold issues which exclude boarders/lodgers living in specified circumstances. Some jurisdictions exempt boarders/lodgers from tenancy law coverage altogether. Additionally, particular types of renters, such as those living in caravan parks, may be covered differently e.g. under separate legislation; under general tenancies legislation with varying (usually reduced) rights; or, under legislation protecting marginal renters with lesser rights.

The lack of coverage, or the application of limited rights, is considered problematic and often affects those with limited incomes and housing options.

Relevance to basic tenant protection and or mitigation of homelessness

The lack of legislative protections for people living in marginal tenancies places those renters at risk of:

- Eviction with little notice and at the whim of the manager/provider;
- Self-eviction by providers;
- Rent increases with little or no notice; and,
- No means of getting repairs done or to retrieve goods or resolve disputes generally.

In jurisdictions where boarders and lodgers have been included in tenancy laws, the protections provided are often limited compared to mainstream tenancies and threshold issues for coverage mean that some boarders and lodgers are still exempt from protections altogether.

This latter group of renters, as well as boarders and lodgers in States where no coverage exists at all e.g. Western Australia and New South Wales, are in effect without legal rights in relation to their housing.

“At common law, rents can be increased, and agreements terminated, with little notice: the period of notice being whatever is specified in the agreement or, failing that, the period for which rent is paid. Upon termination of their agreements, these persons become trespassers and can be evicted by their landlords. Dispute resolution is, at least theoretically, through the courts – and to prevent an eviction, a person would have to apply for an injunction in the relevant jurisdiction’s superior court. This is, of course, entirely impractical, and such legal rights as these persons do have are unenforceable.” (NATO, 2009, s2)

Coverage of people living in caravans and manufactured homes is also irregular and inconsistent. Complexities and variations in coverage approaches include:

- Owner-occupiers of manufactured homes are considered and covered differently to owner-occupiers of caravans. This is the Queensland approach with a separate act for the former with better protections against evictions and rights to compensation for occupiers required to move their vans through no fault of their own.
- Caravan and manufactured home occupiers, whether or not they are owner-occupiers, covered under a separate, specific Act.
- Caravans covered by general tenancy laws notwithstanding some separate provisions regarding things such as notice periods;
- Caravan residents covered only as ‘occupants’ under occupancy principals and agreements (Australian Capital Territory only).

Both site-only renters (owner-occupiers) as well as renters of van/cabin and site have particular vulnerabilities in regard to their tenure. Owner-occupiers often have attached annexes, sometimes facilities such as kitchens and bathroom facilities and have difficulty both moving their home as well as finding an alternative site. Renters of both structure and site are often with few housing alternatives and may be subject to the whims of the park manager living on site.

The entire issue of renters in caravans requires further research to identify the most appropriate coverage type and terms.

The range and volume of particular marginal tenure types vary between jurisdictions. For example, some States have larger numbers of caravan parks than others. There is a benefit when there are large numbers of renters living in a particular marginal tenure type for tenancy laws to be created to respond to that specific tenure type.

Leading practice in Australia

Australian Capital Territory introduced new laws in 2005 to make provisions in their *Residential Tenancies Act 1997* for Occupancy Agreements. These agreements cover any residential renters not otherwise covered by mainstream tenancy laws.

A set of occupancy principals is set out in the legislation and must be incorporated into all occupancy agreements. As long as agreements maintain the principals, they are flexible in regard to specific content in order to meet the needs of the diverse situations they will cover. The ‘catch all’ nature of occupancy agreements, whilst providing relatively low level tenancy rights, also provides tenancy protections for new tenure types as they emerge. There is also

provision for the development of standard agreements suitable for the various tenures through regulation thus providing a level of certainty and consistency.

Note to the Reader: *The information in the rest of this document refers only to general provisions of tenancy laws and not to those which vary due to being applicable to a specific type of tenure such as caravan parks, room-only accommodation etc.*

2.3 Evictions – evictions ‘without grounds’, notice periods for evictions, evictions for rent arrears and evictions by mortgagee and other third parties

National Significance

Under each Act, landlords may take action to terminate a tenancy on certain prescribed grounds. Whilst the prescribed grounds differ between jurisdictions, all provide for termination on grounds of breach (including rent arrears) and sale of premises (only when an agreement is periodic).

Every jurisdiction, except Tasmania, allows notices to leave ‘without grounds’. Tasmania allow terminations for the reason of ‘end of a fixed term’ which is effectively a notice without reason but only available during a limited window of time – between 28 days before and 28 days after the end of a fixed term. At all other times a reason prescribed by legislation must exist in order to evict a tenant.

Legislation in jurisdictions other than South Australia, Northern Territory and Tasmania allow a tenant to challenge a ‘without ground’ notice to leave if it is considered retaliatory although these applications are of limited effect. Retaliation is often difficult to prove and even when successful, given that ‘without ground’ evictions are available by law, a tribunal/court will only consider it such for a limited period of time.

Regarding breaches, jurisdictions other than New South Wales, Tasmania and Victoria require that a notice to remedy is served before a notice to leave. In Western Australia serving a breach notice is optional regarding a rent breach. Alternatively the landlord can immediately serve a notice to leave when the rent is late. However, an application for a warrant cannot be heard within 21 days of issuing the notice and no applications can be made if the tenant rectifies the rent breach up to one day from the date of hearing.

International Research

The social inclusion strategies in some European countries are resulting in States introducing a housing policy for all disadvantaged groups of people. Strategies in place and under consideration include: prevention of homelessness; ensuring access to housing; legal protection of evicted persons; and a more consultative approach of the courts, tenants and landlords working collaboratively in order to find solutions to eviction. In Vienna, Austria, where evictions were rising dramatically after heavy and sustained rent rises, there are social inclusion strategies, tenancy laws, policies and services in place to support tenants facing eviction. People’s Aid Vienna, provides one example of this approach (People's Aid Vienna, 2010).

2.3.1. Evictions ‘without grounds’

National Significance

Although tempered to some extent in Tasmania, all jurisdictions allow tenants to be evicted without reasons or grounds. The ability of landlords to terminate tenancies ‘without grounds’ (which includes ‘end of a fixed term’ terminations) and the ever present threat of eviction without any reason required, contributes significantly to tenants’ insecurity. It undermines the sense of belonging in their home and willingness to pursue other rights such as seeking repairs to the property. Retaliatory evictions were identified as a concern across the country and their elimination identified as the single most important issue.

Relevance to basic tenant protection and or mitigation of homelessness

Tenancy laws that allow for eviction ‘without grounds’, consequentially allow for eviction on the basis of retaliation and discrimination. Arbitrary eviction subjects households to moves that are costly both in economic and social terms.

Within the Australian housing market, private rental is already insecure because properties move between owner-occupier and rental tenures. Evictions without just cause add to this insecurity and contribute to a power differential between tenants and landlords/agents by virtue of the ever present threat of eviction.

Once a tenant moves into a property, they are virtually in a monopoly situation given the cost of ‘taking their business elsewhere’. ‘Without ground’ evictions underline and emphasise the power differential and result in tenants trading off their rights against the fear of eviction. This is particularly true for those who perceive or know they have limited alternative options. In this way, without ground evictions, the failure or inability to challenge excessive rent increases and tenants’ acceptance of substandard properties are intertwined.

To sustain tenancies and provide better protection from retaliatory eviction, tenants should only have their tenancies terminated against their wishes where there are grounds as prescribed by residential tenancies legislation.

Law reform that provides reasonable grounds for termination would neither require nor entail a change to the structure of the rental market or the investment strategies of landlords.

‘Reasonable’ grounds for evictions would be prescribed in legislation. Landlords could still pursue remedies for the greatest risks i.e. unpaid rent and damages to their property. They could still sell their property to owner-occupiers, redevelop their property, turn them to non-residential uses or move into the housing themselves.

An additional ground, ‘end of eligibility for housing assistance’ would provide consistency with current Australian social housing policies that have tightened eligibility criteria and provide direct housing assistance only for the duration of a tenant’s need. It should be noted that, in principle, the removal of security of tenure within social housing is not supported.

Overall, tenancy laws should seek to allow eviction only as a last resort.

Leading practice in Australia

There is no jurisdiction in Australia with legislation that fully protects tenants from arbitrary eviction. The best Australian practice is in Tasmania where the only lawful 'without ground' eviction is for 'end of a fixed term'. This applies only within a limited time period just before or just after the fixed term ends. At all other times, a reason for eviction prescribed by tenancy laws must apply.

Relevant international treatments

UK

The UK, like most European countries, has prescribed grounds for eviction. There are two classes of grounds for eviction:

- i. **Grounds for eviction:**
 - The owner of the house wishes to come back and live in the property
 - The owner has gone bankrupt and the house is being repossessed
 - The tenant is more than two months in rent arrears
 - Tenant refuses or delays vital maintenance work to the building.
- ii. **Discretionary grounds for eviction:**

A landlord can ask the court to decide if eviction is necessary if:

- The tenant has broken the terms of the contract e.g. damaged the property
- The tenant is consistently late in paying the rent
- The tenant lied to access the property
- The tenant is unemployed (in cases where having a job was a condition of the contract).

2.3.2 Notice periods for evictions

National Significance

Tenants may be evicted from premises for a myriad of reasons, many of which result from no fault on their part. These include, for example, sale of premises, compulsory acquisition and 'without grounds' terminations. Tenants in all jurisdictions may be evicted for breaches of agreements, including rent default, for which the notice period is relatively short. Notice periods for evictions vary according to the reason for eviction and between jurisdictions.

Even in jurisdictions where notice periods for specific 'no fault by the tenant' evictions are relatively long, if they are given during the time a tenant is bound to a fixed term agreement, the tenant is unable to find a new property and move into it without liability for the reasonable costs associated with breaking the lease early.

This is evident in Queensland and the Australian Capital Territory where longer notice periods for 'without ground' terminations were implemented with the intention of giving tenants time to find an appropriate property and move. Instead it is used to threaten a notice to terminate their agreement months out from the end date of their current fixed term agreement if a tenant does not renew. To mitigate this issue, Tasmania limits the time before the end of a fixed term agreement that a notice to leave 'without grounds' can be given.

Relevance to basic tenant protection and or mitigation of homelessness

In trying to move, tenants need time to find new premises appropriate to their needs in terms of location, size and price, and sometimes to save money for the move and arrange for their goods to be transported.

Short notice periods reduce tenants' likelihood of finding a property which suits their needs before they are evicted. Requiring minimum and standard notice periods across jurisdictions with the intention to maximise notice according to the reason for eviction, would increase tenants' chances of finding an appropriate property before they are evicted. In considering appropriate notice periods, the risk to landlords for extending notices should be considered. In particular, where there is no breach by the tenant and therefore no obvious financial risk to the landlord, notice periods should be the most generous.

Notice periods for tenants in breach should be cognisant of the impact of eviction on households, in particular those in rent arrears, and provide the maximum amount of notice having regard to issues of landlords' losses. Tenants being evicted for rent arrears are particularly vulnerable to homelessness. This is because many of those tenants will be on fixed term agreements and will be not only liable for the rent which was unpaid but also for reasonable costs associated with the early termination of the agreement.

2.3.3 Evictions for rent arrears

National Significance

The following is noted in the introduction to this section. Regarding breaches, jurisdictions other than New South Wales, Tasmania and Victoria require that a notice to remedy is served before a notice to leave. In Western Australia serving a breach notice is optional regarding a rent breach. Alternatively the landlord can immediately serve a notice to leave immediately the rent is late. However, an application for a warrant cannot be heard within 21 days of issuing the notice and no applications can be made if the tenant rectifies the rent breach up to one day from date of hearing.

The following table identifies the method and timeframe used to evict tenants who are in breach of their agreement.

Table 2: Evictions due to breaches by tenant

	No. of days rent late before action can be taken	Notice to remedy time period	Notice to leave time period
ACT <i>rent breach</i>	7 days	7 days	14 days
Non rent breach		14 days	14 days
NSW <i>rent breach</i>	14 days	N/A	14 days
Non rent breach		N/A	14 days
NT <i>rent breach</i>	14 days	7 days	N/A if NTR states landlord will go to commissioner for termination if not remedied.
Non rent breach		7 days	7 days
Qld <i>rent breach</i>	7 days	7days	7 days
Non rent breach		14 days	7 days
Sth Aust <i>rent breach</i>	14 days	7 days	7 days
Non rent breach		7 days	7 days
Tasmania <i>rent breach</i>	Nil	N/A	14 days
Non rent breach		N/A	14 days
Vic (optional processes) <i>rent breach</i>	14 days	N/A	14 days
	14 days	N/A	Application for possession can be made by the landlord who must send a copy to the tenant together with notice to vacate with 14 days notice and 2 notices of objection and information regarding tenant's right to object
Non rent breach		N/A	14 days - tenant must have previously received 2 notices to remedy for the same breach
WA (optional processes) <i>rent breach</i>	Nil	14 days	7 days
	Nil	N/A	NTL can be served immediately but application for warrant cannot be heard within 21 days of issuing notice and no applications can be made if tenant rectifies up to 1 day from date of hearing.
Non rent breach		14 days	7 days

Relevance to basic tenant protection and or mitigation of homelessness

Tenants being evicted for rent arrears are in a precarious position and at significant risk of homelessness. In some circumstances, more could be done to save their tenancies.

Low-income households are susceptible to one-off financial crises (e.g. white goods replacement or car breakdown) and must make difficult choices regarding which bills to prioritise. At times, this leads tenants into rent arrears.

Tenants facing eviction for rent arrears are presented with difficult choices about paying the outstanding rent or saving their money for an anticipated forced move (eviction). Granting ways for tenants to restore rent arrears and conversely guaranteeing their tenure provides an incentive for tenants to prioritise the payment of outstanding rent, and, where adequate protections exist, decreases the likelihood of a tenancy database listing (which would further limit their access to housing).

Leading Practice

Western Australia

WA legislation provides an optional practice for dealing with rent arrears. Immediately the tenant is late in paying rent, a notice to leave can be served by the landlord. However, an application for a warrant to evict the tenants cannot be heard within 21 days of the issuing of the notice to leave and cannot be heard at all if the tenant rectifies the rent breach at any point of time up to one day from the hearing date.

NSW

The NSW draft Residential Tenancies Bill sets out new provisions to help prevent homelessness through evictions. This is an improvement for both tenants and landlords. In the event of arrears, landlords would be able to commence proceedings more quickly (currently the tenant needs to be 14 days in arrears), whilst tenants would be assured that if they pay the arrears in full or in accordance with a repayment plan the tenancy will not be terminated on the rent breach grounds. Under the proposals, the tenant can rectify the rent breach at any point prior to a warrant for the landlord to take possession being enforced.

International treatments

In order to save tenancies and prevent homelessness many countries across Europe have adopted practices to both delay the eviction process for rent arrears and link tenants to payment plans and assistance. For example, in the Netherlands, landlords are not permitted to carry out evictions if the tenant is participating in a debt assistance programme (The Netherlands Woonbond/ Dutch Tenants Association, 2006).

2.3.4 Evictions by mortgagees and other third parties

National Significance

In all jurisdictions, except for the Northern Territory, evictions by mortgagees may occur even during a fixed term agreement.

Australian Capital Territory extends the right to terminate to other successors in title and South Australia to other interested parties where the tenant causes a nuisance to those in the immediate vicinity.

The right of mortgagees taking possession of premises to immediately evict a tenant is caught up with whether the mortgagee consented to the tenancy. In practice, consent for a tenancy is rarely sought by mortgagors. Additionally, mortgagees will take a narrow view of consent, namely requiring it for a specific tenancy agreement rather than the premises to be used as a rental property.

Tenants, unaware whether the property is mortgaged and if so who the mortgagee is, will usually be notified of their imminent eviction by letter from a large bank or law firm they have never had contact with before. It is almost impossible for tenants to understand their rights at this point. It is the interaction of land title, property and tenancy laws in addition to the terms of the mortgage contract (to which they are not privy) which will determine their specific situation.

Relevance to basic tenant protection and or mitigation of homelessness

It is invariably a confusing and anxious time for tenants who receive notices to leave from mortgagees. They must determine if the company they received notice to leave from has a

legitimate right to evict them. In many cases, they must then move with short, or in the case of Western Australia, no notice. They will rarely be successful in seeking compensation as the landlord (mortgagor) has just defaulted on the loan.

Some tenants in this situation are vulnerable to homelessness, in particular because the move is unanticipated.

Usually mortgagees desire vacant possession in order to sell the premises and attract the largest pool of potential purchasers, including prospective owner-occupiers. The tenant is the innocent party in the action taken by the mortgagee and it is unreasonable that they can be evicted regardless of a tenancy agreement having been in place.

This is particularly so given that most tenancy agreements are relatively short. According to the ABS, 56.9 percent of private renters have a current fixed term lease of 12 months or less and only 3.7 percent have a fixed term agreement for a different term (ABS, 2008, 4130.0.55.002, p.48). Additionally, in many States and Territories, a longer term tenancy agreement (e.g. in Queensland this is 3 years) will not have to be honoured by a new owner if it has not been registered against the title of the premises. Should the latter have occurred, in effect the mortgagee has consented to the agreement.

Where tenancy laws do contain specific provisions regarding mortgagees in possession, with the exception of the Northern Territory, they do not protect a tenants' interest in the property. At best they provide some notice period prior to eviction – although Western Australia requires no notice – and in Queensland they protect the tenant against liability if they act on the instructions from the mortgagee. Such provisions are not about maintaining the tenancy.

Leading practice in Australia

Northern Territory

Northern Territory tenancy laws explicitly prohibit mortgagees taking possession and evicting tenants who have agreements for a period of 12 months or less but allows them to become the landlord.

Relevant international treatments

UK

The proposed Mortgagees Repossession Bill will give courts the power to delay repossession for up to 2 months, giving tenants time to seek alternative accommodation.

New Zealand

In New Zealand, if a mortgagee takes possession of a tenanted property, the rights of the new landlord (the mortgagee or new owner) and tenant are the same except that the mortgagee can only give notice once possession of the property has been taken. The fixed term of the agreement will be overridden and notices may be provided as if the agreement was periodic (New Zealand Department of Building and Housing: Tenancy, 2010).

USA

In May 2009, United States Congress passed a new federal law (*Protecting Tenants at Foreclosure Act 2009*) which overrides State tenancy laws to provide greater protection for tenants affected by foreclosures on their rental property. Under the law (which sunsets in

December 2012) tenants are allowed to remain in the property for the term of the lease unless the new purchaser wishes to use the premises as a primary place of residence or if the agreement is not bone fide. In these cases the tenant will be given 90 days notice to leave. No provisions of this law affect any State or local law that provides for a longer period or additional protections for tenants. The State of New Jersey specifically restricts eviction by a successor of the landlord to those reasons set out in tenancy law. Therefore, the mortgagee must assume the responsibilities of the landlord. (National Law Centre on Homelessness and Poverty, 2010)

2.4 Social housing providers, terminations and the use of ‘anti-social’ behaviour provisions

National Significance

Social housing tenants are at particular risk of homelessness, in large part because of the various forms of disadvantage that many of them face.

Social housing providers in some jurisdictions use termination proceedings to deal with disputes about behaviour. This includes behaviour arising from mental illness, disability and social exclusion, as well as rent arrears. Some States and Territories have also legislated to impose additional obligations on social housing tenants, or make them subject to special proceedings that increase the prospect of their tenancies being terminated for reasons relating to behaviour.

The resultant evictions can create profound hardship, including homelessness, and cycling through the welfare (including supported accommodation) and justice systems.

Relevance to basic tenant protection and or mitigation of homelessness

Social housing plays a vital role as a safety net for those tenants who experience multiple disadvantages or who struggle with episodic mental health disorders.

Over the last decade pressure on social housing has intensified. The general housing policy response has been to target social housing to accommodate those in greatest need. Eligibility criteria have been tightened and the profile of social housing tenants is changing. It has moved from that of a low income earner to a low income earner who experiences other disadvantages that make accessing or maintaining housing in the private sector, particularly difficult. The flow-on effect of these policies has been an increase in the concentration of disadvantage in the social housing sector.

Housing management practice in this new context has been reviewed. The outcomes of new practices are mixed. Some practices are respectful and effective in sustaining tenancies whilst others are placing unfair burdens on social housing tenants that in some cases, leads to homelessness.

The use of residential tenancy termination procedures to deal with disputes about behaviour and the use of special behaviour agreements can lead to the eviction of families and households.

The Australian Government has identified the importance of social housing to disadvantaged people and acknowledged that tenants evicted from social housing will likely become homeless and cycle through the human services and justice systems (Department of Families, Housing, Community Services and Indigenous Affairs, 2008, p. 25). Discordance between the

national principles informing homelessness prevention and collaboration practices with tenants and social housing policy and practices are detrimental to positive housing outcomes (Jacobs, Easthope, Slatter, Seelig, Beer, 2006).

The use of tenancy agreements to affect the behaviour of social housing tenants is not considered to be an effective housing management practice given the risk of homelessness created by the impacts of these practices. This is particularly the case where behaviour disorders arise from mental health issues or other factors over which the tenant may have limited control.

In some jurisdictions, residential tenancies legislation provides that social housing tenants bear additional responsibilities, and social housing providers are afforded additional powers, in relation to tenants' conduct. Social housing rent rebate systems also give social housing providers a unique knowledge of tenants' personal affairs and additional scope for proceeding against tenants. NATO's submission to the Australian government's Green paper on Homelessness (2008) highlighted examples from the Inner Sydney Tenants Advice and Advocacy Service (ISTAAS) where these 'special powers' were used, resulting in eviction notices.

In the first six months of 2008, ISTAAS represented 34 tenants of Housing NSW in termination proceedings. Many of these proceedings were taken after Housing NSW cancelled the tenants' rent rebates and backdated the cancellation, which has the effect of immediately plunging tenants into rent arrears. In each of these cases, Housing NSW sought termination of the tenancy. In each case, ISTAAS convinced the Consumer, Trader and Tenancy Tribunal not to terminate and instead make orders for the payment of the arrears.

ISTAAS's clients included a 78 year-old man; a woman from a non-English-speaking background with three children, two of whom are autistic; and a single Aboriginal woman with five children. Had their tenancies been terminated, all would have been homeless (NATO, 2008).

Numerous cases in which tenants advice services work to prevent homelessness involve tenants who are threatened with eviction from social housing. A very low income, coupled with a disability or a mental illness, can place a social housing tenant at special risk of breaching a term of their tenancy agreement. It can also make it very difficult or impossible for that tenant to find alternative accommodation in the private rental market.

Advocates reported the following legal provisions, policies and practices to be of concern:

- The use of 'Anti Social' behaviour special terms in Western Australia where all Homeswest tenants are required to sign an anti-social behaviour agreement as an addendum to their tenancy agreement at sign up.
- The use of 'acceptable behaviour' agreements in the Northern Territory. Public housing tenants can be forced to sign acceptable behaviour agreements. Should a tenant breach the agreement they are at greater risk of eviction. The tenant will have to then wait for a period of two years before reapplying for public housing in the Northern Territory.
- The use of 'end of fixed term' provision by Territory Housing in the Northern Territory. This policy aims to exclude the person from public housing for two years as a result of the Territory Housing not renewing the agreement. As there is a five year waiting

period for public housing at present, evictions under these circumstances are likely to cause homelessness. Tenants may be left unaware of what the housing authority was unhappy about in regard to their tenure.

- Using tenancy agreements in Housing NSW to deal with issues regarding illegal use and nuisance. Under legislation, Housing NSW has the power to terminate a tenancy if a public housing tenant fails to keep or enter into an anti-social behaviour agreement. Subsequent to enacting the legislation, Housing NSW has implemented a policy not to use anti-social behaviour agreements. However, the legislation should be repealed.

Leading Practice in Australia

There are alternative housing management practices to support social housing managers to address anti-social behaviour successfully. In many States there are successful tenancy support programs to prevent eviction for social housing tenants (Jacobs and Arthurson, 2003; Habibis et al. 2007; Jacobs, Easthope, Slatter, Seelig, Beer, 2006).

International Treatments

The efforts of social housing providers in tenant participation and collaboration, has been widely recognised by tenant advocates (International Union of Tenants, 2010, p. 2). The recent developments in tenant incentive schemes follow publicity generated by Irwell Valley Housing Association (IVHA) in Manchester, UK. IVHA established its own Tenant Incentive Scheme know as 'Gold Star' and is promoting it as a model for housing services both in the U.K and the Netherlands (Jacobs, Easthope, Slatter, Seelig, Beer, 2006).

2.5 Residential Tenancy Databases

National Significance

Residential tenancy databases (RTDs) are run by private companies who provide membership to real estate agents and sometimes landlords. Predominantly RTDs record the names of so called 'problem' renters listed by members and these people are subsequently excluded from the pool of applicants by other members in their pre-tenancy checks.

Despite the potential for an RTD listing to have a serious impact on an individual's ability to access the private rental market, their regulation is variable and inconsistent across jurisdictions. Whilst the Commonwealth Privacy Act applies to residential tenancy databases in regard to individuals' access to the personal information held, it does not deal with other important aspects of database operations.

For those listed, problems associated include: listing for frivolous and vexatious reasons such as a disagreement with an agent or requesting repairs; the length of a listing; and, the lack of a dispute resolution mechanism.

Additionally, the threat of a tenancy database listing impacts on tenants' willingness to pursue their rights for fear of being listed and locked out of the market. Such threats are sometimes used explicitly by real estate agents.

The current process originated by the Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys-General to achieve nationally consistent legislation for the regulation of tenancy databases is noted.

Relevance to basic tenant protection and or mitigation of homelessness

There is no doubt that a listing on a tenancy database may severely limit an individual's access to the private rental market. A listing may also cause homelessness.

This is acknowledged by the Queensland Department of Communities in their housing needs-based assessment of social housing applicants, by rating a tenancy database listing as a contributing factor to housing need.

Research carried out by the Queensland Tenancy Database Action Group (TDAG) prior to the regulation of tenancy database in tenancy law in 2003, showed that 46.9% of people housed in SAAP accommodation services identified a database listing as a factor in their homelessness and more than half of that group reported a database listing as the primary cause of their homelessness (TDAG, 2002, p.16).

In the absence of regulation, tenants may be listed for trivial and unreasonable grounds and once listed, may find it impossible to have the details removed.

The need for national regulation is highlighted in Queensland where relatively effective tenancy law provisions protect tenants from arbitrary listings and provide a mechanism for removal of those already made. A person living in Queensland with an unreasonable listing made in another jurisdiction will not be able to make use of the protections to seek removal of it. Stronger and nationally consistent regulation of tenancy databases is required.

However, it is important to note that regulating tenancy databases will not restore everyone's access to housing as some individuals will be listed under what will become 'legitimate' listing criterion. These people will require a housing policy response to assist them to access appropriate housing.

Leading practice in Australia

QLD

Queensland has a reasonable level of protection for tenants from tenancy databases abuses provided within their tenancy law provisions and regulations. Tenants have a mechanism for disputing a listing, however, there are still gaps, the most concerning of which is the lack of control over the length of listings.

Relevant international treatments

Tenancy databases are used in countries including the USA, UK and other countries in Europe. There are major differences in regulations allowing access to individual's personal information about prospective tenants. There are also major differences in privacy provisions.

IMPLEMENTATION

Nationally consistent residential tenancy database regulation is currently under consideration. The Residential Tenancies Authority in Queensland is coordinating the current reform process and each State and Territory is drafting provisions relative to their tenancy laws. Extensive consultation has occurred and the outcomes of the national consultation process will be released in due course. It is expected that the new provisions will be rolled out through tenancy law amendments across jurisdictions this year.

2.6 Lack of minimum housing standards

National Significance

Many tenants live in premises that are in a state of disrepair or substandard condition and many are fearful of requesting repairs and maintenance in case the tenancy is ended as a consequence. With an undersupply of and competition for housing at the lower end of the market, the substandard nature of some housing undermines the living conditions, in particular, of low income households.

Housing standards are regulated through a large number and variety of laws in each jurisdiction and there is no simple approach to addressing the issue. Changes are happening at different rates across all jurisdictions, as is evidenced by current upgrades to electrical and fire safety standards and energy efficiency. However, many lower cost rental properties tend to be older stock where structural issues are more common. They are less likely to be insulated than owner occupied properties and more difficult and costly to heat/cool. Appliances may also be of poor quality with greater reliance on electric heating.

In all jurisdictions tenancy legislation requires properties to be provided and maintained in a specified state. Queensland and Northern Territory provide that premises must be fit or habitable throughout the tenancy (providing broader protections), similar Australian Capital Territory and New South Wales provisions apply at commencement. The provisions for reasonable repair do not guarantee that a property will have the amenities that make a property habitable - only to maintain the property in reasonable repair in relation to original condition, fittings and fixtures.

Tenants in all jurisdictions can do urgent repairs in specified circumstances and seek reimbursement of prescribed amounts (except Tasmania where there is no limit). This relies on tenants having money to carry out repairs and their willingness to wait for reimbursement. In Tasmania landlords are not responsible for maintenance resulting from fair wear and tear during a tenancy. In Western Australia landlords can contract out of their obligation to repair the premises.

South Australia and Tasmania articulate, in other legislation: standards required for rental properties; a process for assessment of property standards; and the ability to impose rent control on substandard properties. Other States, notably Queensland and Western Australia (in transition), require smoke detectors and electrical safety switches to be installed in all rental properties. New South Wales and soon Victoria require the installation of smoke detectors only. These provisions do not specifically relate to rental properties (except in Tasmania and South Australia).

Relevance to basic protection for tenants and or homelessness

Even in States such as South Australia and Tasmania where there is legislation covering housing standards in rental properties, advocates report that the system still does not adequately protect tenants. They suspect that the underlying concern to tenants when pursuing repairs is retaliatory eviction. The following excerpts provide an insight into the perceived risks tenants have in pursuing repairs or taking action against their landlord.

“My son in Brisbane, he was put on a black list because he took the estate agent and landlord to court because the roof was damaged in a storm ... his property was badly damaged. When he went to get a new place, he was on a black list. He’s now living with his grandmother.”

“The last place we lived in was an absolute disaster. We have exposed asbestos in the shed and the idea of cleaning it up was to close the door and tell us not to go in. After making a big fuss and having them fix and change it, we got an eviction notice.”(Tenants’ Union of Queensland, 2007, p. 26)

Leading practice in Australia

Tasmanian minimum standards provisions

The Tasmanian Substandard Housing Control Act sets out minimum standards required for rental properties. Housing Tasmania administers this Act and may send out inspectors when a complaint regarding standards is received. Ultimately, rent control may be imposed on the property if it is not raised to the required standard in the prescribed time. Advocates report that the lack of resourcing for Housing Tasmania renders the process less than useful.

Tasmania is the only State where a landlord is not required to repair a tenant’s premises when required due to fair wear and tear. Arguably the standards identified above would address this problem if resourced.

South Australian provisions and practices

Similarly to Tasmania, the Housing Improvement Branch of Housing South Australia investigates rental housing conditions and requires owners to improve substandard property to comply with the Housing Improvement Act 1940 (South Australia) as amended (*Housing Improvement {Standards}*) Regulations 2007). When a Housing SA tenant request is not fulfilled in time, rent control may be imposed on the premises. Standards cover general standards; toilet, bathroom and kitchen; water supply and sewerage; miscellaneous (see Appendix 3).

Queensland provision for direct/urgent application for an order for emergency repairs

The ability for a tenant to make a direct/urgent application for an order for emergency repairs provides an accessible manner for low-income households to deal with health and safety issues in the property.

Victorian termination provisions if premises not in required state

Victoria has provisions in tenancy laws whereby tenants can terminate a tenancy before possession or suspend payment of rent until they move into the premises if it is not provided in the required state.

Relevant international treatments

UK

The Housing Act 2004 introduced reforms to housing which affect owner-occupiers, tenants, landlords, local authorities and all with an interest in housing.

Tenants are provided with the right to adequate living facilities such as hot and cold water, heating, electricity, ventilation, toilet facilities and a drainage system and if their housing does not meet health and safety standards they are entitled to take legal action.

The Housing Health and Safety Rating System (HHSRS) is a new risk assessment tool used to assess potential risks to the health and safety of occupants in residential properties in England and Wales. The legislation came into effect in England and Wales in 2006. It replaced the Housing Fitness Standard as set out in the Housing Act 1985 (see Appendix 3 a).

Ireland

New legislation, the *Housing (Standards for Rental Homes) Regulations 2008* sets down minimum standards for rental properties (see Appendix 3 b).

Canada

In Alberta, Canada, the *Minimum Housing and Health Standards* provides a comprehensive list of minimum standards that rental properties must achieve under the *Housing (Standards for Rental Homes) Regulations 2008* (see Appendix 3 c).

2.7 Excessive rent increases

National Significance

All jurisdictions set out minimum notice periods for rent increases and only allow increases during fixed term if they are provided for in the agreement. Arguably in both New South Wales and the Australian Capital Territory, tenants must get a period of notice to increase rent before commencement of a subsequent agreement.

Every jurisdiction except NSW limits the frequency of rent increases (when the tenants remain the same). In all jurisdictions, in prescribed circumstances, a tenant may make an application to the Tribunal (or equivalent) to seek remedy for an excessive rent increase. In Western Australia this is restricted to when the increase is regarded as an attempt to terminate the tenancy.

Excessive rent increase applications primarily rely on a market price test, usually with the onus on tenants to prove the increase is excessive, requiring them to gather market information. Australian Capital Territory has a threshold for increases beyond which the onus of proof reverses, requiring the landlord to show the increase is not excessive.

Tenants' applications for excessive rent increases are infrequent. This is due to; the market information required; the limited effect of the provisions; and the ever present fear of eviction 'without grounds'.

As such, tenants may be subject to arbitrary and extortionate increases which do not relate to market prices. In negotiations regarding rent increases, the relationship between landlord and established tenants is decidedly monopolistic given the costs of moving, which is the tenant's only alternative. Some tenants are forced to comply with excessive increases as moving is costly and at times impossible. Tenants may have children at the local school or physical limitations e.g. advanced age and agility, which inhibit moving.

Relevance to basic tenant protection and or mitigation of homelessness

The majority of people in housing stress are renters (over 61 percent) comprising over a quarter of all renters (National Shelter, 2009a, p. 5). Excessive rent increases only add to the stress and can be the last straw that tips tenants into arrears and out of their housing.

As already noted, when notified of a rent increase, tenants must decide to pay or move. Inadequate notice periods do not allow tenants in low income households to prepare their budget for the increase or save for the move.

Requiring generous notice periods for any rent increase, including those when a tenant is moving onto a subsequent agreement, would have no impact on the organised landlord.

Leading practice in Australia

No jurisdiction protects tenants very effectively from unreasonable rent increases.

As noted above, the Australian Capital Territory identified a threshold beyond which, on an application by a tenant, the landlord must prove the rent increase is not excessive.

In Victoria the Director of Consumer Affairs prepares a report to inform a referee's consideration of an excessive rent increase.

Relevant international treatments

Rent control and rent negotiation has historically been a feature of some countries across Europe. This applies most especially to the Nordic countries and Germany with high levels of rental housing (including history of significant social housing). The history and circumstances of these arrangements in their various housing systems are not comparable to the Australian context and are therefore not considered relevant to this discussion.

2.8 Lack of support for vulnerable tenants to access information, advocacy, early intervention and support.

National Significance

Addressing tenancy issues faced by some renters at risk of homelessness needs to go hand in hand with addressing other issues. Lack of access to tenant advice services, particularly for households at risk and vulnerable groups is a national issue.

Every jurisdiction has a State or Territory wide service providing tenancy advice and advocacy to tenants³. In New South Wales, Queensland, Victoria and Western Australia a network of local/regional tenant advice services also exist. The Tenants' Union or equivalent in these States support and resource the local/regional advice services⁴.

Essentially consumers (renters) fund the advice/advocacy services through the interest paid on bonds held centrally in trust, but only in New South Wales do tenants receive any interest back on their bonds. In all jurisdictions other than Queensland where it is the Residential Tenancies Authority, the Fair Trading department or equivalent provides an information but not advice (except Victoria) service to all parties – tenants, landlords and agents.

Most of the work done by tenant advice services is information and advice provision to tenants either through phone or face to face, casework and legal casework. These services are available to tenants generally – not just those at risk of homelessness. However, tenant advice services prioritise persons who are at risk of homelessness, for example a caller who has an imminent hearing for a warrant for possession.

³ In South Australia eligibility is restricted to low income tenants. Most jurisdictions call these services the Tenants' Union – ACT, NSW, Qld, Tas and Vic. WA and NT call their State/Territory wide service the Tenants' Advice Service and SA, the Tenant Information and Advocacy Service. At present, the NT is only funded on a pilot basis until July 2010 from the Attorney-General's Department as there is no central bond collection system.

⁴ TUs, their equivalents, and local tenancy advice services are predominantly funded by bond interest administered through Fair Trading/Consumer protection departments, with a notable exception of Queensland which is administered through the state housing authority.

Access to housing is not just about securing a residence, it also means maintaining that housing and ensuring that it continues to be provided on fair and legal terms. In this regard, the knowledge about and availability of advice and advocacy services for tenants is vital.

In day-to-day tenancy matters, most tenants are at a disadvantage, relative to real estate agents and professional landlords, in terms of knowledge, experience and confidence. The disadvantage is felt many times over in Tribunal/Court proceedings, where no matter the effort put into making proceedings informal and accessible, agents and landlords will still have the advantage of experience. Representation can make a difference as evidenced in the following case study:

When B's privately rented house in Nollamara, Perth, was vandalised by trespassers, the landlord blamed B and took proceedings to terminate B's tenancy. A single mother of three children, one of whom has an intellectual impairment, B had nowhere else to go.

Shortly before the proceedings were to be heard, B contacted a Tenant Advocate who referred B to Tenant Advice Service, Western Australia (TASWA). After attempting unsuccessfully to negotiate with the landlord's agent, TASWA prepared B's case, including police evidence about the vandalism. The Court dismissed the landlord's proceedings and B kept her tenancy. (NATO, 2008)

As the case study above shows, it can be the advocacy and representation provided by tenants' advice services that directly prevents a person from becoming homeless. The ability of tenants' advice services to provide representation needs to be improved particularly in Tasmania; in the Northern Territory, where Darwin Community Legal Service struggles to provide representation to tenants in urban centres other than Darwin; and in the regional areas of the other jurisdictions. The ability to provide representation through a duty advocate is especially important to homelessness prevention. Tenants advice services that provide a duty advocate at their local Tribunal or Court report that many of the clients they assist are unaware of the services that may be available to them and often do not know how to deal with the prospect of losing their tenancy. These persons could easily fall through the cracks into homelessness were it not for the last-minute intervention of a duty advocate.

Particular groups are disadvantaged in the market. Those with complex needs such as people who have been long term unemployed, poorly educated, victims of violence, people with a disability, people affected by substance abuse and insecure income are particularly vulnerable and at risk of becoming homeless. Caseworkers in other fields do not have the specialised skills or knowledge of tenancy law to effectively advise their clients or to negotiate with landlords.

Other groups are also disadvantaged due to their relative position of disadvantage, knowledge and experience including Indigenous tenants, newly arrived migrants, young people and NESB groups. Education about tenant's rights and responsibilities needs to be provided closer to the people most likely to be disaffected as tenants.

Opportunities to sustain tenancies should not be lost by lack of access to timely intervention, representation and advocacy. Similarly, where households have multiple challenges including being at risk of homelessness, addressing tenancy issues also needs to go hand in hand with addressing other issues.

Leading practice in Australia

New South Wales – servicing the Indigenous population in NSW

NSW has the most well developed tenancy support arrangements in the nation with a Tenants' Union, a regional network of tenant advice and advocacy services and indigenous specific services. New South Wales' Aboriginal Tenants Advice and Advocacy Services report that they work differently from other tenant advice services, with a heavy emphasis on community education both with tenants and housing providers. Aboriginal tenants can choose to use the Aboriginal TAAS or the generalist TAAS for their local area. At present, these are the only specialist Indigenous tenants' advice services in Australia, although the Tenants' Union of Queensland has a specialist Indigenous tenant education position in North Queensland.

Community Education – linking with young people where they are at

The Hunter Tenants' Advice and Advocacy Service (HTAAS) conducts 'Rent Ready', a course for young persons who are homeless or at risk of homelessness in partnership with job placement agencies. Rent Ready teaches young people about how to get and keep a tenancy in the private rental market, while the Job Placement, Employment and Training (JPET) and adult learning (WEA) courses teach budgeting and other living skills. HTAAS also conducts community education sessions with Maitland young who are coming out of care arranged by the NSW Department of Community Services and commencing public housing tenancies. (NATO 2008)

Keys to Early Intervention Services - (KEIS) Sunshine Coast, Queensland

KEIS (a program of Lions Emergency Accommodation Centre) is one of the recent services supported by Australian and State Governments funding. The program has had success in sustaining tenancies through an effective case management approach linking knowledge and skills across social supports, expert tenancy support and developing participant's links within their communities and networks. The model works as a partnership between organisations including the homelessness service, Centrelink, community centres and local tenant advice service. However, there are resourcing and practice issues for the partners concerning the timely involvement of tenancy experts and the limited capacity within the service to participate in case management processes.

Relevant international treatments

UK - Improving access for tenants to tenancy information, advice and advocacy

The Government is keen to promote a strong, professional and well-managed private rented sector that contributes to the vitality of the housing market through greater regulation and increased services. As part of this reform agenda they are seeking to improve the access tenants have to information, advice and advocacy (Rugg and Rhodes, 2008).

CHAPTER 3

NATIONAL TENANCY REFORM – TO MITIGATE HOMELESSNESS AND ADDRESS SUBSTANDARD TENANCY PROTECTION ISSUES

3.1 Overview

This chapter proposes remedies to the key nationally significant deficiencies in tenancy law that substantially undermine the quality of tenure or that can lead to homelessness and proposes respective remedies.

Tenancy law reforms are proposed here as a complement to the reforms being put in place to deal with the housing crisis facing Australians and homelessness reduction strategies.

The reform proposals have been developed from information collected at interviews, key NATO reports, subsequent discussions with NATO delegates and research.

Identified deficiencies include:

1. Lack of coverage of marginal groups including boarders and lodgers and inconsistent and irregular coverage of renters in caravans.
2. Evictions
 - Ability to evict without ‘just cause’;
 - Inconsistent and inadequate notice periods for terminations;
 - Evictions for rent arrears;
 - Mortgagees possession;
3. Lack of minimum housing standards;
4. Unjust and unreasonable operation of tenancy databases;
5. Excessive rent increases and inadequate notice periods; and
6. Limited ability of vulnerable tenants to access information, advocacy, early intervention and support.

Implementation of recommendations

The reforms identified in this report will improve tenancy laws that leave tenants and their families unprotected or disadvantaged by unjust laws and practices that are leading to homelessness and marginalisation. They align with the principles established under the Federal Government’s Social Inclusion Agenda and the National Partnerships on Homelessness.

However, obvious limitations arise when considering how the Australian Government might implement recommended changes.

There is no express head of power in the Commonwealth Constitution for the Australian Government to legislate with respect to tenancy, housing or aspects of consumer protection which remain within the States remit. The trade and commerce power and the corporation’s power cannot be relied on because few landlords are corporations and even fewer are engaged in interstate trade or commerce.

The Foreign affairs power might be used to give effect to the right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR), but there may be questions as to whether this could manage all the matters pertaining to tenancy legislation, for example, landlords' rights.

The most obvious option for implementation is to work through established mechanisms aimed at the coordination of work between the States, Territories and the Australian Government.

Through the Council of Australian Governments, principles and a timeframes for recommended law reform could be established in national partnership mechanisms – the National Affordable Housing Agreement (NAHA) and National Partnership Agreements (NPAs).

Alternatively, the work could be directed through the Ministerial Council on Consumer Affairs (MCCA) in order to achieve nationally consistent law reform to enact the recommendations. This idea is reflected in the current process of instigating nationally consistent tenancy database protections through tenancy laws. It is anticipated that all States and Territories will legislate accordingly later this year.

A coordinated cross-jurisdictional approach will provide a consistent basis for the reforms and will seek to harmonise key tenancy laws, in line with national standards, to achieve sustainable housing and social inclusion for the homeless and those at risk of homelessness. Creating minimum requirements or standards for the operation of legal principles will eliminate major differences of the laws across jurisdictions.

As part of a national approach to homelessness, it is recommended that the Commonwealth Government and their respective State or Territory Government hold discussions with key tenant advocate organisations in regard to how to best implement the reforms outlined in this report.

Further discussion about implementation in this chapter is limited to additional comments that are topic specific.

3.2 Coverage of marginal groups including boarders and lodgers and renters in caravan parks

Across many parts of the country a variety of marginal renters have a total lack of tenancy law protection or are afforded more limited protections than mainstream tenancies.

Boarders and lodgers

In particular, boarders and lodgers remain without any enforceable tenancy rights. In jurisdictions where boarders and lodgers have been included in tenancy laws, the protections provided are often limited compared to mainstream tenancies and threshold issues for coverage mean that some boarders and lodgers are still exempt from protections altogether.

The exception to the issue of lack of coverage is the Australian Capital Territory where occupancy agreements apply to everyone not otherwise covered by mainstream tenancy laws.

Boarders and lodgers completely excluded from tenancy law coverage have only common law rights and are in effect without legal rights in relation to their housing. The lack of legislative protections places these renters at risk of:

- Eviction with little notice and being at the whim of the manager/provider;
- Self-eviction by providers;
- Rent increases with little or no notice;
- No means of getting repairs done or to retrieve goods; and,
- No means of resolving disputes generally.

Caravan residents

Coverage of people living in caravans and manufactured homes is also irregular and inconsistent. Complexities and variations in coverage approaches arise due to the array of renter types in the sector, which include owner-occupiers of caravan and manufactured homes who only rent a site and those who rent both a van/cabin and a site. The entire issue of renters in caravans requires further research to identify the most appropriate coverage type and terms.

RECOMMENDATION

With a view to achieving appropriate tenancy law coverage of all renters:

States and Territories must:

- Implement statutory schemes of enforceable agreements for all renters not covered by residential tenancies legislation. Such legislation should reflect the following principles:
 - *Written agreements and receipts.* All persons renting should be entitled to a written copy of their agreement and receipts.
 - *Reasonable cleanliness, security and state of repair.* All agreements should provide that the landlord will provide and maintain premises in a reasonable state of cleanliness, security and repair.
 - *Quiet enjoyment.* All agreements should provide that the person renting will have quiet enjoyment of the premises.
 - *Rules.* A person renting should be entitled to know, before they are bound to an agreement, any rules of the premises. Each agreement should set out any rules of the premises.
 - *Access by the landlord.* A landlord should be entitled to have access to the premises for reasonable purposes and at reasonable times only.
 - *Rent increases.* A person renting should be entitled to a reasonable period of notice of a rent increase. Each agreement should set out how the rent may be increased, including the amount of notice that will be given.
 - *Termination.* A landlord should be entitled to give a notice of termination on reasonable grounds only, and a person renting should be entitled to a reasonable period of notice. Each agreement should set out the grounds on which the agreement may be terminated and the amount of notice that will be given.
 - *Dispute resolution.* Lessors and persons renting should both have access to the tribunal or court that has jurisdiction for tenancy disputes in that State or Territory. In particular, a person renting should have access to the tribunal or court in relation to a dispute about coverage e.g. to determine if they are a tenant or occupant and the termination of their agreement. And the tenant should be entitled to have their dispute heard before their agreement is terminated.

In order to provide tenancy rights for all renters not otherwise covered by residential tenancies legislation, States and Territories may legislate for schemes by either:

- Providing that agreements reflect the above principles, with further provision for making, by Regulation, standard terms that may apply to specified classes of marginal renters (i.e. the ACT model); or,

- Providing that each specified class of marginal renter is subject to legislation, specific to that class, that reflects the above principles; or,
- Pursuing a combination of these legislative approaches, with some specified classes of marginal renters subject to their own specific legislation and all others covered by legislation giving effect to the principles generally.

3.3 Evictions – evictions ‘without grounds’, notice periods for evictions, evictions for rent arrears and evictions by mortgagee and other third parties

Evictions are a key property management tool to safeguard the landlord’s interest but are also a major cause of disruption for tenants, sometimes leading to homelessness and social exclusion. Tenancy laws should seek to allow eviction only as a last resort, in particular, when the eviction is arbitrary.

3.3.1 Evictions ‘without grounds’

The ability of landlords to terminate tenancies ‘without grounds’ (including ‘end of a fixed term’) contributes significantly to tenants’ feeling of insecurity. It also undermines the sense of belonging in their home and their willingness to pursue other rights such as seeking repairs to the property. Retaliatory evictions were identified as a concern across the country and their elimination identified as the single most important issue.

RECOMMENDATION

Tenancies should only be terminated against tenant’s wishes where:

- There are grounds as prescribed by residential tenancies legislation;
- When appropriate notice is given; and,
- In the case of a dispute, a Tribunal/Court determines that in all the circumstances of the case it is appropriate to end the tenancy. It should not fall to the tenant to have to apply to the Tribunal to stop a termination from proceeding.

Landlords should be allowed to give notices of termination on certain reasonable grounds only. These grounds should be:

- *Serious or persistent breach* – including failure to pay rent.
- *Frustration* – that is, the premises are uninhabitable e.g. premises made unfit to live in due to a natural disaster.
- *Sale of premises* – the contract of sale requires vacant possession. Landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Landlord requires the premises for their own housing, or an immediate family member’s housing* – landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Demolition, approved change of use or major renovation* – landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.
- *Tenant has ceased to be employed by the landlord* – and the tenancy arose out of a contract of employment between the landlord and the tenant, and the landlord needs the premises to house another employee. Landlords should not be allowed to give notice on this ground during the fixed term of a tenancy.

- *Tenant no longer eligible for housing assistance* - for example, where a tenancy is offered by a community housing provider under a youth accommodation scheme.

3.3.2 Notice periods for evictions

Australian tenants may be evicted for numerous reasons where there is no fault on their part. Additionally, every jurisdiction provides for evictions after specified breaches of agreements. Nationally inconsistent and inadequate notice periods for tenancy terminations contribute to the vulnerability of households. Without enough time to find an appropriate alternative, some households are forced into inadequate or unaffordable premises and/or homelessness.

Requiring standard, minimum notice periods across jurisdictions would maximise tenants' chances of finding an alternate property which meets their needs - location, size and price - before they are evicted. Notice periods should be varied according to the reason for eviction.

RECOMMENDATION

Minimum eviction notice periods should be as follows:

Table 3: Recommended notice periods for terminations

Grounds for Termination	Recommended Notice Period
Frustration - where the premises are uninhabitable other than for landlord's breach.	2 days
Sale of premises – where contract of sale requires vacant possession (outside a fixed term agreement).	4 months (periodic agreement only)
The landlord requires the housing for their own or immediate family's housing outside a fixed term agreement.	4 months (periodic agreement only)
Major renovation, change of use or demolition outside a fixed term agreement.	4 months (periodic agreement only)
Employment ended if employment-related accommodation.	2 months
End of eligibility for housing assistance	6 months
Serious or persistent breach <ul style="list-style-type: none"> • unpaid rent more than 14 days • other serious breach by tenant 	<ul style="list-style-type: none"> • 14 days • 28 days

3.3.3 Evictions for rent arrears

Tenants being evicted for rent arrears are in a precarious position and at significant risk of homelessness. In some circumstances, more could be done to save their tenancy.

Low-incomes households are susceptible to one-off financial crises (e.g. white goods replacement or car breakdown) and must make difficult choices regarding which bills to prioritise. At times, this leads tenants into rent arrears.

Tenants facing eviction for rent arrears are presented with difficult choices about paying the outstanding rent or saving their money for an anticipated forced move (eviction). Granting ways for tenants to restore rent arrears and conversely guaranteeing their tenure provides an incentive for tenants to prioritise the payment of outstanding rent, and, where adequate protections exist, decreases the likelihood of a tenancy database listing (which would further limit their access to housing).

Protecting tenants from eviction if they rectify the rent breach in full at any time prior to the enforcement of a warrant of possession for rent arrears would maximise the potential for tenants to remain in their current location whilst also restoring the income stream of the landlord.

RECOMMENDATION

Where a landlord commences termination proceedings on grounds of rent arrears, and the tenant pays rent arrears in full, the proceedings should end. Any notice to vacate, or termination order, or unexecuted warrant of possession should have no effect.

Where the tenant and landlord enter into a plan for the repayment of the arrears, the proceedings should be suspended for such time as the tenant complies with the plan. After being suspended for three months, the proceedings should end and any notice, order or unexecuted warrant cease to have effect. Where the tenant fails to comply with the plan, the proceedings may continue from the point at which they were suspended.

3.3.4. Evictions by mortgagee and other third parties

Mortgagees foreclose on landlords who do not meet their obligations under loan agreements. Except for the Northern Territory, in every jurisdiction, tenants living in premises where a mortgagee becomes entitled to possession from a mortgagor can be evicted. This is the case whether or not they have a fixed term agreement and may occur with limited, or in the case of one State, without any notice.

Such evictions are rarely anticipated by tenants as they will generally be unaware whether there is a mortgage on the property prior to a previously unknown party claiming to have the right to possession and seeking to evict the tenant.

Given the level of landlord debt and anticipation of rising interest rates, mortgagee repossessions are an increasing issue for tenants. To avoid unforeseen eviction and the propensity to homelessness, tenancy rights should be protected when a mortgagee acquires a legal right to possession of the premises.

RECOMMENDATION

Mortgagees should assume the responsibilities of the landlord once they have obtained an outright possession order in regard to the mortgage contract. As such, they should only be able to evict tenants for just causes as outlined in the section above. The mortgagee should have no right to instruct or direct the tenant in any way until they obtain an order for possession or sale regarding the property title.

3.4 Social housing providers and terminations including the use of ‘anti-social’ behaviour provisions

Social housing providers sometimes use termination proceedings to deal with disputes about behaviour. This includes behaviour arising from mental illness, disability and social exclusion as well as rent arrears.

Some States and Territories have legislated to impose additional obligations on social housing tenants, or make them subject to special proceedings that increase the prospect of their

tenancies being terminated for reasons relating to behaviour. Evictions from social housing providers in such circumstances can create profound hardship, including homelessness.

RECOMMENDATION

Social housing providers should lead best practice in housing management by practicing early intervention and prevention and collaborative practices to manage tenancy issues. Social housing providers can continue to improve their practices in the following ways:

- Providing support in the early stages of a tenancy if the tenant is at risk of tenancy failure;
- Promoting respectful relationships between the tenant and housing managers;
- Establishing pathways for referral, information with appropriate support services such as health and community services, financial counselling and emergency assistance;
- Establishing referral pathways, information and linkages for tenants with tenant advice and support to emphasise their rights, responsibilities and the realities of renting;
- Providing access to advocates to support tenants to contest their eviction.

Legislation, policies or practices that place additional, unfair burdens on social housing tenants is opposed and it is recommended that residential tenancy law should not be used to enforce behaviour-management policies.

Social housing providers should not give notices to leave without grounds, in particular, to deal with allegations of breach of tenancy agreement or disputes about behaviour. Social housing providers should always provide the tenant with grounds for termination, the particulars of the case against them and give the tenant an opportunity to respond to the allegations.

IMPLEMENTATION

The National Partnership on Homelessness has already agreed, through COAG, to actively work to prevent evictions through the development of support models to sustain tenancies. That examination of the policies and practices of social housing providers that might lead to eviction should be included as part of the prevention of homelessness partnership between Australian and State/Territory Governments.

3.5 Residential Tenancy Databases

The regulation of tenancy databases across jurisdictions is irregular and inconsistent.

A listing on a tenancy database can severely diminish a person's access to housing or make them homeless. Without regulation, listings of tenants may be made in unreasonable and unjust circumstances and may be impossible to remove. As a result, the threat of a listing also has the power to undermine tenants' willingness to assert their rights.

Stronger and nationally consistent regulation of tenancy databases is required.

RECOMMENDATION

Tenant advocates are currently consulting with State and Territory governments on draft legislation, circulated at the end of 2009, which aims to achieve nationally consistent regulation of tenancy databases. This process for the reform of tenancy database is supported by advocates across the country.

It is recommended that regulation of tenancy databases be based on the following principals:

- Listings may be made only in prescribed circumstances, and for prescribed reasons;
- Persons listed should be aware of and have free access to a copy of the listing;
- Parties in disputes regarding proposed and current listing should have access to the usual tenancy dispute resolution mechanisms; and
- Listings must be removed according to prescribed time limits.

3.6 Lack of minimum housing standards

The condition of some rental properties poses a real risk to tenants, particularly those on low incomes as they are forced to seek affordable accommodation in properties where conditions are substandard and sometimes dangerous. Low income tenants in this situation are often trading off their safety against affordability.

RECOMMENDATION

It is recommended that nationally consistent legislation regarding landlords' obligations, the habitability of premises, and repairs and maintenance be introduced.

Landlords should be obliged to provide and maintain premises in a state that is fit for habitation according to contemporary standards (including in relation to the connection and supply of utilities), maintained and in reasonable repair.

In addition to more nationally consistent standards regarding landlords' general obligation for the state of the premises, specific additional standards relating to safety should be set out in statute or regulation. These should cover safety issues such as:

- Locks and security including child locks on windows;
- Safety devices such as residual current devices (RCDs); and
- Smoke detector/s.

A rolling series of incentive programs to achieve these safety standards could be developed.

IMPLEMENTATION

Nationally consistent legislation as to landlords' obligations in relation to the habitability of premises and repairs and maintenance should be provided in each jurisdiction's legislation as per principles set out by the Australian Government.

A rolling series of upgrades with government incentives could be established to support the implementation of additional specific obligations for safety improvements (i.e. RCDs, smoke detectors, child safety locks or bars on windows). Subsidies in support of these obligations should be put in place.

Each State /Territory will decide how these improvements are implemented and report back against those principles.

3.7 Excessive rent increases

Low vacancy rates, underpinned by the ability to be evicted without any grounds, leave tenants in a relatively powerless situation in rent increase negotiations. Many are living in housing stress and have inadequate income, after housing cost, to sustain a quality of life for their families.

Tenants' propensity to use the currently available mechanisms to challenge rent increases considered excessive have been tempered by inherent difficulties. The primary test for the increase being excessive is how it compares to other market prices which in and of itself does not guarantee affordability. Additionally, tenants are usually required to provide market knowledge which is difficult for them to obtain.

As a result, tenants may be subject to arbitrary and extortionate rent increases which do not relate to market prices but serve to increase them.

When notified of a rent increase, tenants must decide to pay or move. Inadequate notice periods do not allow tenants in low income households to prepare their budget for the increase or save for the move.

Existing 'excessive rent' provisions do not allow for consideration of the personal circumstances of tenants, such as their ability to afford the increase. Notice periods for increases are inadequate because a rent increase may mean effectively that a tenant has to move out, the notice period should be at least equal to the period of notice of termination on the ground landlord wants premises for some purpose of their own.

RECOMMENDATION

Residential tenancies legislation should give an objective standard for determining whether an increase is excessive, thus establishing a base for reviews of increases. Legislation should also permit the making of regulations limiting rents and rent increases in particular locations subjected to pressures from extraordinary events, for example, an international sporting event, a natural disaster or a large-scale housing redevelopment.

Tenancy legislation should:

- i. Make provision for when and how rent can be increased i.e. notice periods and circumstances.
- ii. Prescribe a formula linked to general pricing levels, such as the CPI, to consistently, fairly and objectively calculate an amount above which an increase is prima facie excessive.
- iii. Reverse the onus of proof onto the landlord if the increase is found prima facie excessive pursuant to the assessment method prescribed.
- iv. Require notice periods for rent increases when tenants move onto a subsequent fixed term agreement.

3.8 Lack of support for vulnerable tenants to access information, advocacy and early intervention and support.

Tenancy advice, advocacy and support services are not always readily available to tenants at risk. Groups with special needs and those with complex needs require coordinated support and assistance including tenancy advice and advocacy.

RECOMMENDATION

As part of a national approach to homelessness, Australian governments should make tenant advice, advocacy and support more readily available to tenants to help sustain tenancies. This applies especially to the areas of: tenant representation at court/tribunal hearings; better

integration with social support services and specialist services or advocates for indigenous tenants.

The following areas of activity for expansion are recommended:

- *Representation and duty advocates.* The ability of tenant advice services to provide representation needs to be improved. The ability to provide representation through a duty advocate is especially important to homelessness prevention.
- *Extended advocacy linked to case management.* Many tenants at risk of homelessness would benefit from the more in depth advocacy and assistance that is linked to specialist caseworkers in other fields (e.g. early intervention services, youth services and health services). Additional resources would enable tenant advice services to bring their knowledge and skills to the table, under a case management model, to provide holistic support to people who are at risk of homelessness.
- *Specialist Indigenous tenants advice services or Indigenous advocates.* As more than 60 per cent of Indigenous households rent and many experience disadvantage in the market, these households would benefit from specialist Indigenous tenants' advice services or Indigenous advocates with a heavy emphasis on community education with both tenants and housing providers

IMPLEMENTATION

Discussions between the Commonwealth Government and their respective State or Territory Government and key tenant advocate organisations about how best to expand advice services to tenants with emphasis on homelessness prevention are welcomed.

Expansion of tenants advice services' homelessness prevention work should be funded additionally, and not through a reallocation of existing funds. It is not appropriate that tenants advice services should reallocate existing resources from the provision of phone information and advice for tenants generally. This is because the number and proportion of persons renting is growing and demands on this type of service will also continue to grow.

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APPENDIX 1

Overview of State/Territory Laws and Key State/Territory Issues

1. Coverage

1.1 What marginal renters/tenure types are covered?

Each jurisdiction's legislation sets out the types of tenures covered and covers mainstream tenancies e.g. tenancy agreements for units, flats, detached houses etc., and social housing tenancies with the exception of specified provisions. Coverage anomalies exist between jurisdictions. For example, coverage of tenants in caravans; and, exemptions for supported accommodation or the length of that exemption. Some but not all jurisdictions cover residents living in boarding situations/houses although separate sections and rules will generally apply such as shorter time frames. Boarders excluded from tenancy laws have only common law rights which are effectively unenforceable.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
<p><i>Residential Tenancies Act 1997 (ACT).</i></p> <p>Caravan park tenants are excluded from residential tenancy (RT) coverage but covered as 'occupants'.</p> <p>All renters (other than specified exclusions due to other legislation) not covered by RT agreements are covered as 'occupants' (see below). This includes: boarders/lodgers, tenants in caravan parks, hotels/motels, premises used for a club, or on the campus of an educational institution. Parties to occupancy agreements can 'opt up' to RT agreements.</p>	<p><i>Residential Tenancies Act 1987 (NSW), Residential Parks Act 1998 (NSW) (RPA).</i></p> <p>RPA covers park residents who rent the van and site or just the site (van owner-occupiers).</p> <p>Boarders and lodgers expressly excluded. However arguably the legislation covers share house and boarding house residents who have a right of exclusive possession and where landlord does not retain 'mastery'.</p>	<p><i>Residential Tenancies Act 2008 (NT) ('RTA 2008(NT)').</i></p> <p>Covers tenants in caravans not in caravan parks; caravans in parks residing > 90 days should be covered by mid '10; demountables; and, houseboats. Must pay rent to be covered.</p> <p>Boarder covered where more than 3 boarders/lodgers rent in the same premises and the boarder rents for more than one week. Coverage provisions are the same as tenants.</p>	<p><i>Residential Tenancies and Rooming Accommodation Act 2008 (RTRAA); Manufactured Homes (Residential Parks) Act (2003).</i></p> <p>RTRAA covers tenants in caravans; manufactured homes (MH); rental units in a retirement village from 1 July '10. Also caravan owner-occupiers renting the site.</p> <p>Owner-occupiers of MHs are covered under <i>MHA</i> and have stronger rights regarding no fault by occupier evictions and related compensation.</p> <p>Boarders covered (specific provisions with less rights) unless provider lives on site then there must be at least 4 rooms available for occupation.</p>
South Australia	Tasmania	Victoria	Western Australia
<p><i>Residential Tenancies Act 1995 (SA)</i> <i>Residential Tenancies (Rooming House) Regulations 1999</i></p>	<p><i>Residential Tenancy Act 1997 (Tasmania).</i></p>	<p><i>Residential Tenancies Act 1997 (Vic).</i></p>	<p><i>Residential Tenancies Act 1987 (WA); Residential Parks (Long Stay Tenants) Act 2006 (RPA).</i></p>

<p><i>Residential Parks Act (RPA) (2007)</i> The RPA covers tenants in caravan parks. Boarders and lodgers are only covered if they rent where 3 or more rooms are available for rent as a commercial operation. These are covered by RTA Rooming House regulations.</p>	<p>Coverage of boarders except when the provider lives on site and there are fewer than 3 boarders. Unclear whether tenants in caravans are covered.</p>	<p>The Act covers tenants in caravan parks, including moveable dwellings, who occupy a site for 60 consecutive days.</p> <p>Coverage of boarders (specific provisions in RTA) where 4 or more people occupy.</p>	<p>The RPA covers tenants in caravan parks under specific legislation but excludes stays for holiday purpose.</p> <p>Boarders excluded.</p>
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Issues of Concern or Note to State/Territory:

ACT	Occupancy agreements cover all renters who are not otherwise captured by mainstream tenancy laws, are therefore focused on those in more marginal tenures and provide tenancy protections of a reduced kind. Coverage of occupants attempts to provide flexibility in regard to specific provisions of agreements (such as grounds for eviction and notice periods) by setting out occupancy principals and requiring agreements in writing after 6 weeks. However, in operation, some concerns have been raised including: the distinction between tenants and occupants is not clear enough resulting in agents and proprietors attempting to downgrade coverage to occupancy; the Act does not set out a standard occupancy agreement as a default when agreements are not put in writing resulting in unclear occupancy rights and obligations (e.g. reasons available for eviction by occupancy ‘grantors’ and required notice periods). These issues are compounded by the Act only having 1 penalty offence so that landlords and grantors are not penalised for failing to comply.
NSW	Residents of educational institutions should be included in coverage. The exclusion of boarders and lodgers is of key concern. Common law rights afforded to boarders and lodgers are effectively unenforceable.
NT	There is an exemption “in respect of premises provided for the use of homeless, unemployed or disadvantaged persons for charitable purpose”. Excludes SAAP accommodation of any length and debatable whether much of the housing in remote Northern Territory communities would fall under this exemption category. Further limitation of the exemption is required. Boarders and lodgers, when not exempt, have the same rights as mainstream tenants.
Qld	Aboriginal hostels, supported accommodation for less than 13 weeks and boarding situation/houses with less than 4 rooms available for occupation and provider living on site are specifically excluded in the Act – should be covered. The eviction of boarders (covered as residents in legislation) does not provide natural justice as self-eviction by housing provider without a tribunal order is allowed for. This undermines all other rights as residents fear summary eviction.
SA	Boarders or lodgers residing where there are less than 3 rooms available for rent are excluded. Coverage needs to be extended to include these situations.
Tas	The ambiguity as to whether caravans and manufactured homes are covered needs to be clarified positively. Student accommodation exemptions should only apply to on-campus providers with coverage extended to off campus accommodation. Emergency accommodation of less than three months should be covered too. Boarders living in situations where the majority are students are covered as general tenancies (exemption for less than 3 rooms still applies).
Vic	The Act should be amended to provide the Tribunal express power to hear and determine matters regarding application of the Act to an agreement. Tenancies for a fixed term greater than 5 years should be covered (currently excluded). Need to confine farming exclusion to premises let for commercial farming ventures. Educational exclusions for off-campus accommodation needs restricting to that which is university owned/managed on behalf of the university with a fees component relating to provision of educational services. Need to remove exclusions for: tenants & residents of motels and licensed premises and caravan parks, residing less than 60 days. Need to remove landlord’s ability to declare premises unsuitable for renting to household with children.
WA	Need to provide protections for boarders and lodgers. Coverage should also extend to students in on-campus student accommodation. Stating a specific length of stay for residents of caravan parks as an indication of a long term stay (not holiday) would be useful. Currently undefined.

Nationally Applicable Comments

Across the country an array of mainly marginal renters remain without any enforceable tenancy rights. The exception is Australian Capital Territory where occupancy agreements apply to everyone not otherwise covered by mainstream tenancy agreements.

Additionally, particular types of renters e.g. those living in caravan parks, may be covered differently – under separate legislation; under mainstream tenancies legislation with varying (usually reduced) rights; or, under legislation protecting marginal renters and having lesser rights. The lack of coverage, or the application of limited rights, is considered problematic and often affects those with limited incomes and housing options.

Introduction of a legislative regime modelled on the Australian Capital Territory occupancy agreements to cover any residential renters who are otherwise excluded from tenancy laws is recommended. States and Territories should also consider making specific legislation, additional to occupancy agreements legislation, for specific types of marginal rental housing, such as caravans.

Note to the Reader

The information in the rest of this document refers only to general provisions of tenancy laws and not those which vary due to being applicable to a specific type of tenure such as caravan parks, room-only accommodation etc.

2. Tenancy Agreements

Northern Territory, Tasmania, South Australia, Western Australia and Victoria do not require agreements to be in writing but verbal agreements are enforceable in every State and Territory despite the behaviour being unlawful in other jurisdictions. All jurisdictions have prescribed terms and some have a standard form for agreements which may be used. All except Western Australia and Australian Capital Territory explicitly prohibit 'contracting out', meaning terms in a tenancy agreement which contradict the legislation are unenforceable. Western Australia nominates clauses which may be contracted out of (see below) and Australian Capital Territory effectively allows it through the process of endorsements.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Inconsistent terms are void unless endorsed by Tribunal on joint application. (See below).	Standard form of agreement must be used.	Standard form of agreement applies where there is no written agreement between parties.	Standard form of agreement available but not required.
South Australia	Tasmania	Victoria	Western Australia
			Provision for contracting out and inconsistent terms are allowed regarding specific items (see below) only if agreement is in writing.

Issues of Concern or Note to State/Territory:

ACT	Endorsements are required when an inconsistent term is proposed. Many prospective tenants are required by agents to sign an application for endorsement of a term when they sign the tenancy agreement (e.g. to prohibit pets) and the Tribunal has a series of issues it will immediately endorse: pet related clauses, storage clauses and water clauses. Effectively tenants do not have a choice in these matters as they will not get the tenancy if they don't sign the endorsement application. These clauses are automatically approved as soon as they are received, with no further consideration despite the Act saying such clauses shouldn't be obtained by undue influence. The use of this process also leads to uncertainty about the standard terms and opens the way for agents and landlords to add additional clauses that are clearly inconsistent, without following any due process.
NSW	Additional terms are often inserted by landlords and agents which contract out of the legislation e.g. tenant must steam-clean carpets or no pets.
NT	
Qld	Landlords and agents often use additional terms which contract out of the legislation e.g. no unregistered vehicles allowed on the property, no pets.
SA	Tenants can apply to the Tribunal to have a harsh or unconscionable term declared invalid or varied.
Tas	TUT and REIT have both generated model tenancy agreements but REIT's imposes additional obligations which may attempt to contract out.
Vic	Tenants can apply to the Tribunal to have a harsh or unconscionable term declared invalid or varied.
WA	'Contracting out' is allowed (if the agreement is in writing) in regard to: tenant's responsibility for cleanliness and damage; tenant's conduct on the premises; vacant possession; legal impediment to occupation as a residence; owner's responsibility for cleanliness and repairs; compensation where tenant sees to repairs; locks; owner's right of entry; right of tenant to affix or remove fixtures; owner to bear outgoings regarding the premises; right of tenant to assign or sub-let; vicarious responsibility of the tenant for breach by another person lawfully on the premises; the cost of the written agreement borne by landlord; discrimination against a tenant with children. Tenants do not have equal bargaining power and contracting out is often less beneficial to them. Tenants who contract out, taking on responsibility for repairs may face extensive costs e.g. if the hot water system requires replacement during a short tenancy. Many tenants who sign agreements taking on repair responsibilities do not realise they have done so until a repair is required, assuming repairs to be the landlord's obligation. The ability to change the party who is responsible for key issues makes educating tenants difficult.

Nationally Applicable Comments

Requiring all agreements to be in writing would make terms and conditions clear and undisputable for all parties. Contracting out should be prohibited as tenants do not have the bargaining power in landlord/tenant relationship. Allowing applications to strike out or amend unconscionable or harsh terms as in Victoria and South Australia would provide added protections from unreasonable clauses.

3. RENT, BOND AND COSTS

3.1 Charges Paid by Tenants

All jurisdictions allow for tenants to pay rent, bond and service charges for gas, electricity, telephone, water etc. with some restrictions where the property is not separately metered. Tenants who break fixed term agreements early are usually on-charged the reasonable costs incurred by the landlord in re-letting the premises.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
	Lease preparation fee (\$15), septic tank pump-out and excess garbage.		Prohibition on penalties. Full water consumption costs only if 'water saving' devices fitted and separately metered. Otherwise landlord must provide 'reasonable' quantity.
South Australia	Tasmania	Victoria	Western Australia
Tenants can be charged water supply and usage costs by agreement between parties and written into the lease.	Full water consumption costs can be charged where water separately metered.	Sewerage disposal if separately metered. Prohibition on penalties.	Option fees ('deposit' charged by agents, kept if tenant accepted then doesn't take property); full water consumption costs; costs of agreement; rates, taxes and other outgoings if owner contracts out of these.

Qld	Re-letting fees are unreasonably charged – new QCAT which commenced Dec, '09, may assist with this issue. Agents require tenants on short, back to back fixed terms even when tenants know they can't stay. Perceived advantage to agents is they charge re-let fees to owner, then seek to on-charge full costs to tenants anytime they must leave prior to the end of f/t regardless of overall length of tenure or how long through specific agreement they are.
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Nationally Relevant Comments

In order to encourage retro fitting of water saving devices, charging tenants the full consumption costs of water could be restricted to where 'water saving devices' are fitted, as in Queensland.

3.2 Bonds

All jurisdictions place a cap on the amount of bond taken from tenants - the equivalent of four weeks' rent. However, in five States the amount increases or is unlimited when weekly rent is over a prescribed amount. In all jurisdictions except the Northern Territory, and Tasmania bonds taken prior to 1 July 2009, all bonds must be lodged centrally with a government body or authority. Western Australia requires bonds to be lodged centrally but also allows them to be placed into a specific bank account held by landlord or agent. Jurisdictions vary in regard to allowing bond increases when the rent is increased. Only New South Wales returns some interest back to tenants on a bond return.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
	Rent <\$250 pw and furnished = max bond equivalent of 6 weeks rent; furnished and >\$250 pw = unlimited bond.	Bond held by landlord or agent.	Rent >\$700 pw = unlimited bond.

South Australia	Tasmania	Victoria	Western Australia
Rent >\$250 pw = max bond equivalent of 6 weeks rent.	Prior to 1 July 2009, held by agent or landlord. Post 1 July 2009, held with Rental Deposit Authority, 'MyBond', not retrospective.	Rent <\$350 pw = equivalent of 4 weeks rent; Rent >\$350: unlimited. .	Rent >\$500 pw or landlord's principal residence for 3 months prior to letting = unlimited bond. \$100 pet bond if dog/cat allowed.

Issues of Concern or Note to State/Territory

NT	No central bond collection process. Agents/landlords often try to keep the bond, tenants have to go to the tenancy commissioner to seek repayment of it.
Vic	Rent amounts where bonds are limited are very dated although there isn't much evidence that a lot of bonds asked are over the 4 weeks rent.
WA	Rent amount where bonds are limited are set out in the Act not the regulations so are very dated.

Nationally Applicable Comments

A maximum bond equivalent to 4 weeks' worth of rent across all jurisdictions would simplify the issue of bonds.

3.3 Rent in advance, Payments and Receipts

All jurisdictions except Western Australia have a limit on the amount of rent in advance taken. Victorian limits only apply to rents less than a prescribed amount. Some jurisdictions require receipts for all rent payment types but most only require them for cash and in some circumstances, cheque. Many jurisdictions require rent payment records to be kept by the landlord/agent whilst some only require this when receipts are not required.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Rent in advance (RIA) maximum: 1 calendar month.	RIA maximum: 2 weeks' (rent <\$300 pw); 4 weeks' (>\$300 pw). Receipts issued unless paid into a financial institution. Rent payment records must be kept by landlord/agent.	RIA no more than 1 rental payment per rental payment period. Receipts for cash, or if asked for at time of paying by cheque. Rent payment record must be kept by landlord/agent.	RIA maximum: periodic agreement - 2 weeks; fixed term agreement - 1 month. Receipts for cash, or if asked for at time of paying by cheque, otherwise rent payment record must be kept by landlord/agent.
South Australia	Tasmania	Victoria	Western Australia
RIA maximum: 2 weeks; Receipts must be issued if rent paid other than by deposit into an account.	RIA maximum: One rental period, max 4 weeks.	RIA maximum: 1 month (rent <\$350 pw); unlimited (>\$350).	RIA maximum: 2 weeks initially (at sign up), then unlimited but only 1 rent payment per rental payment period. Receipts for rent unless paid by deposit to financial institution. Rent payment record must be kept by landlord/agent.

Issues of Concern or Note to State/Territory:

Vic	Threshold allowing unlimited RIA is out of date. Despite some examples of where more is charged the usual practice is still only to charge 4 weeks RIA.
WA	Despite no limit on RIA after initial sign up of agreement, usual practise is to ask for 2 weeks RIA.

Nationally Applicable Comments

A cap on the amount of all rent in advance, regardless of the cost of rent, would simplify the issue and, if expressed as equivalent to a number of weeks' worth of rent (e.g. four), would stay relative. Requiring rent payment records to be kept regardless of rent payment type, as well as providing access to the record by tenants through statute, would assist tenants who otherwise have to keep copies of all receipts without requiring additional work by landlords or agents.

3.4 Rent Increases

All jurisdictions set out minimum notice periods for rent increases and only allow increases during fixed term agreements if they are provided for in the agreement. Arguably in both New South Wales and the Australian Capital Territory, tenants must get a period of notice to increase rent before commencement of a subsequent agreement. This is not required in other jurisdictions. Every jurisdiction except New South Wales limits the frequency of rent increases (when the tenant is the same). In all jurisdictions the Tribunal (or equivalent) can hear matters and make orders regarding excessive rent increases. In Western Australia this is restricted to when the increase is regarded as an attempt to terminate the tenancy. Excessive rent increase applications primarily rely on a market test, usually with the onus on tenants to prove the increase is excessive. Australian Capital Territory effectively has a threshold beyond which it considers rent increases excessive unless shown otherwise by the landlord/agent.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
8 weeks notice of increase (arguably includes prior to a subsequent agreement). Limited to 1 x 12 months. Landlord must sometimes prove increase not excessive (see below).	60 days notice of increases (arguably includes prior to a subsequent agreement). No limits as to frequency. Excessive increase applications arguably apply to proposed subsequent agreements.	30 days notice of increase (see below). Limited to 1 x 6 months. Common for 'market rent' increase to be included at month 6 of a 12 month agreement.	2 months notice of increases. Limited to 1 x 6 months. To challenge rent increase as excessive regarding proposed, subsequent f/t agreement must be signed before Tribunal application (see below).
South Australia	Tasmania	Victoria	Western Australia
60 days notice of increases. Limited to 1 x 6 months.	60 days notice of increase. Limited to 1 x 6 months.	60 days notice of increase. Limited to 1 x 6 months.	60 days notice of increases. Limited to 1 x 6 months. Can't challenge excessive increase unless it's an attempt to terminate tenancy.

Issues of Concern or Note to State/Territory

ACT	For excessive rent increase application: If rent increase is > 20percent above increase of CPI (private rental market housing in the ACT) since last rent increase, onus is on landlord to prove increase not excessive; if increase is < 20percent above CPI increase, onus is on tenant to prove increase excessive.
NT	Lack of clarity whether 30 days notice applies during fixed and periodic terms or whether only one rent payment period is required as notice during

	periodic. Standardising notice periods and increasing them is important due to competitive market.
Qld	Notice periods for rent increases do not apply between subsequent fixed term agreements and excessive rent increase on the subsequent agreement can only be challenged if signed first, potentially leaving tenants in an unaffordable premises if they are not successful.
Tas	Personal circumstances of tenant or state of property not required to be considered regarding excessive rent increases although 'other matters' are.
Vic	'Excessive' rent consideration is based on report by the Director of Consumer Affairs – they look at property type in location.
WA	Need to provide mechanism to challenge excessive rent increase (other than those attempting to end the tenancy), currently none available.

Nationally Applicable Comments

Requiring notice periods for rent increases when tenants move onto subsequent agreements would assist tenants to plan for increases in rent as well as challenge those they believe excessive. The key issue with excessive rent increase applications is that they are primarily decided on a 'market price' test, a self fulfilling prophecy. Additionally, the onus of proof usually rests with the tenant who must provide market information which is likely to be difficult for them to obtain. These clauses are rarely used by tenants and have limited affect. Advocates in some jurisdictions indicated consideration of circumstances of the tenant should be included in excessive rent increase decisions.

4. TENANCY TERMS AND CONDITIONS

4.1 Habitability, Repairs and Maintenance

All jurisdictions require properties to be provided and maintained in a specified state. Queensland and the Northern Territory provide that premises must be fit or habitable throughout tenancy (providing broader protections), similar Australian Capital Territory and New South Wales provisions apply at commencement. Tenants in all jurisdictions can do urgent repairs in specified circumstances and seek reimbursed of prescribed amounts (except Tasmania where there is no limit). This relies on tenants having money to carry out repairs and seeking reimbursement later. In Tasmania landlords are not responsible for maintenance resulting from fair wear and tear during a tenancy.

South Australia and Tasmania articulate, in other legislation, standards required for rental properties, a process for assessment of property standards and the ability to impose rent control on substandard properties (see below). Other States, notably Queensland and Western Australia (in transition) require smoke detectors and electrical safety switches to be installed in all rental properties. New South Wales and soon Victoria require the installation of smoke detectors only.

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Landlord to provide and maintain premises in a state of reasonable repair. Premises to be reasonably secure. Premises must be habitable at commencement. Urgent repairs prescribed amount- up to 5 per cent of the annual rent.	Landlord to provide and maintain premises in a state of reasonable repair having regard to age, rent and prospective life of premises. Premises to be reasonably secure. Urgent repairs prescribed amount –up to \$1000.	Landlord to provide and maintain premises in a state of reasonable repair, habitable and meeting all health and safety requirements. Premises to be reasonably secure. Urgent repairs prescribed amount -up to equivalent of 2 weeks rent.	Landlord to provide and maintain premises in a state of good repair, fit to live in and not in breach of laws about health or safety. Premises to be reasonably secure. Urgent repairs prescribed amount - up to the equivalent of 2 weeks rent.

South Australia	Tasmania	Victoria	Western Australia
Landlord to provide premises in a state of reasonable repair and cleanliness and maintain in reasonable state of repair having regard to their age, character and prospective life. Premises to be reasonably secure. Urgent repairs (likely to result in personal injury, damage to property or undue inconvenience) prescribed amount- 'reasonable costs'. Housing Trust may issue housing improvement notice for substandard premises (see below).	Landlord to maintain premises in condition as at commencement, except for fair wear and tear. Devises necessary to secure premises to be fitted and maintained. Urgent repairs prescribed amount- no limit. Housing Tasmania may declare premises to be substandard (see below).	Landlord to provide premises reasonably clean and maintained in a state of good repair. All external doors and windows to be provided with locks. Tenant may do urgent repairs in prescribed circumstances and be reimbursed up to \$1000.	Owner to provide and maintain premises in a state of reasonable repair and cleanliness. Urgent repairs prescribed amount- 'reasonable costs' but repair must be likely to result in injury to person or property or undue inconvenience. Owner may contract out of numerous provisions in the RTA if agreement is in writing.

Issues of Concern or Note to State/Territory

NT	Advocates do not advice using urgent repairs provisions due to tenants not having money and/or risk of not getting money for repairs back. Reducing time for landlords to attend to emergency repairs is important, currently too long. No urgent applications available for health and safety repairs.
Qld	Tenants can make urgent applications for an order that the landlord carry out health and safety or emergency repairs.
SA	Inspectors from Housing Improvement Branch go out and check the standard of rental properties on request and impose rent control if the landlord does not bring the premises up to standard. Standards are set out in Housing Improvement (Standards) Regulations 2007. Whilst there are clear standards and processes, they are not used frequently, probably because tenants are not very aware of these processes and when they are they are fearful of eviction (through lease non-renewal) at the end of their fixed term. All new housing must have hard wired smoke detectors and safety switches. .
Tas	Landlords are not responsible for maintenance on premises relating to fair wear and tear. This needs to be rectified. Also the Act needs to state premises should be fit to live in and in a reasonable state of cleanliness both at commencement of and during any tenancy. Substandard Housing Control Act 1973 – standards for rental properties prescribed in regulations. Housing Tasmania may declare premises to be substandard, and fix rent. Rarely used – possibly because resources are not invested by Housing Tasmania to investigate and process. Minimum standards would be better – could address smaller issues.
Vic	Laws don't expressly state premises should be reasonably secure – should be rectified so that various requirements are taken into consideration. Victoria's legislation expressly states a tenant does not have to move into premises if landlord obligation to provide it reasonable clean is not met, also states tenant does not have to pay rent until they move in. This provides some protection for tenants when commencement obligations are not met. Nothing in the Act says property has to be fit to live in. Amendments may happen early in 2010 and take effect later in the year requiring landlords to install smoke detectors in all rental properties to take effect a bit later. If an appliance, fitting or fixture that uses or supplies water needs to be replaced, the replacement must have at least an A rating.
WA	Landlords can 'contract out' of repair obligation. When they do so there are generally no compensatory rent reductions. As of 1 October 2009, all rental properties are required to have a mains powered smoke alarm installed or by 1 October 2011 where no change of tenancy. As of 9 August 2009, two residual current devices (RCDs) must be installed in all rented homes prior to being rented out or by August 2011 if no change of tenancy.

Nationally Applicable Comments

Introducing an obligation for the premises to be provided and maintained in a manner fit to live in provides additional protection for tenants against unreasonable omissions such as telephone or water connections and provides flexibility as community expectations change. Each jurisdiction having a direct/urgent application to seek an order for emergency repairs (similar to Queensland) would provide an accessible manner for low-income households to deal with health and safety repairs. Other jurisdictions would benefit from Victorian provisions whereby tenants may terminate a tenancy before possession or suspend payment of rent until they move into the premises if the premises are not provided in the required state. The underlying concern to tenants when pursuing repairs is retaliatory eviction.

As well as general obligation for repairs and maintenance, obligations requiring basic safety items such as smoke detectors, safety switches and child proof locks, to be fitted should apply. A rolling series of upgrades with government incentives could be established.

The processes in Tasmania and South Australia prima facie provide desirable protections for tenants against substandard properties although advocates indicate they do not operate well. This appears related to a lack of resources for the administering body – the housing authorities – to investigate.

4.2 Quiet Enjoyment, Privacy and Access by Landlords

Tasmania and Victoria provide shorter notice periods than other States and Territories for general inspections entries. Queensland, the Australian Capital Territory and New South Wales prohibit access on Sundays, public holiday and, before 8am or after 6pm unless the tenant consents.

In every jurisdiction tenants must provide access for the landlord/agent to show the premises to prospective purchasers without any right to compensation. The property going on the market is not a reason available to the tenant to terminate a fixed term agreement. The one exception is Queensland where a tenant may end the agreement within a prescribed time without penalty (or compensation) if the property is advertised for sale or an entry made to show a prospective purchaser within two months of the fixed term commencement. Queensland and Tasmania prohibit open houses or auctions on site without the tenant's written consent. Other legislation is silent (and protections debatable) on this issue.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
<p>Access reasons and notice periods:</p> <ul style="list-style-type: none"> • Emergency: N/A • Urgent repairs: reasonable notice • Repairs: 7 days 	<p>Access reasons and notice periods:</p> <ul style="list-style-type: none"> • Emergency or urgent repairs: immediate • Repairs: 2 days notice 	<p>Access reasons and notice periods:</p> <ul style="list-style-type: none"> • Emergency: immediate • Repairs: 24 hours notice • Inspections; 7 days notice, not more than 1 in 3 months 	<p>Access reasons and notice periods:</p> <ul style="list-style-type: none"> • Emergency/prevent damage: Immediate • Urgent repairs: reasonable notice • Repairs: 24 hours • Inspections: 7 days, not more than 1 in 3 months. • Other:
<ul style="list-style-type: none"> • Inspection: 7 days, not more than 2 in 12 months, plus 1 each in the first and last months (for entry and exit inspections) • Show prospective purchaser: 24 hours • Re-letting: 24 hours in last 3 weeks of tenancy 	<ul style="list-style-type: none"> • Inspections: 7 days, not more than 4 in 12 months • Show prospective purchaser or mortgagee: 'reasonable' notice a 'reasonable' number of times 	<ul style="list-style-type: none"> • Show prospective purchaser: 24 hours notice, a 'reasonable' number of times. • Collection of rent: 7 days notice • Relet to new tenant: 24 hours notice during 28 days before termination of agreement. • Preparation of condition report: 24 hours 	<ul style="list-style-type: none"> • To inspect repair or re enter following 'significant breach' notice: within 14 days of completion or end of remedy period. • Show prospective purchaser/tenant, valuation of premises, abandonment: 24 hours. • No display photographs of tenant's goods without consent.
South Australia	Tasmania	Victoria	Western Australia
<p>Access reasons and notice periods:</p> <ul style="list-style-type: none"> • Emergency: immediate • Repairs: 48 hours • Inspections: must be between 7-14 days, not more than 1 in 28 days. • Show prospective purchaser: 'reasonable' notice a 'reasonable' number of times. • Open inspections not explicitly prohibited. • Tenant has the right to be there during entry. 	<p>Access reasons and notice periods:</p> <ul style="list-style-type: none"> • Emergency: immediate • Repairs: 24 hours notice • Inspections: 24 hours notice, not more than 1 in 3 months • Possible breach by tenant: 24 hours • Show prospective purchaser/tenant: 48 hours, once a day, five days a week, between 8am and 6pm. • Specific permission required by tenant for 'open homes' 	<p>Access reasons and notice periods:</p> <ul style="list-style-type: none"> • Emergency: - N/A • Urgent repairs: 24 hours • Repairs: 24 hours • Inspections: 24 hours, not more than 1 in 6 months, not in first 3 months • Show prospective purchaser: 24 hours 	<p>Access reasons and notice periods:</p> <ul style="list-style-type: none"> • Emergency: immediate • Repairs or inspect repair: 72 hours • Inspections: between 7 and 14 days • Show prospective purchaser: 'reasonable' notice, 'reasonable' number of times. • Show prospective tenant: reasonable notice, reasonable number of times in last 21 days of tenancy • If agreed rent collection method is on site: once/week • Inspect when collecting rent, not more than 1 in 4 weeks.

Issues of Concern or Note to State/Territory

ACT	When provided notice for general inspection, time for entering is often stated by agents as between 9am and 5pm. Difficult for tenants to accommodate.
NSW	Most complaints are about entries when the property is on the market - tenant expected quiet enjoyment but by law must allow entries without

	compensation. The law should encourage bargaining and payment by the parties. The circumstances are unique in that tenants have a bit of bargaining power.
NT	Notice periods for entry to show prospective purchaser/tenant should be increased to the same as inspection time frames which is 7 days.
Qld	24 hour notice to carry out repair or show prospective purchaser is too short, e.g. if hand delivered to letterbox and not received for 12 hours. Needs to be at least 48 hours.
Tas	Very short notice times for inspections. When provided notice for general inspection, time for entering is often stated by agents as between 9am and 5pm. Difficult for tenants to accommodate.
Vic	Would like increased time for all entries – 7 days for repairs and sale entries. Nothing in the Act provides for open inspections but there are often different interpretations and disputes about them. When provided notice for general inspection, time for entering is often stated by agents as between 9am and 5pm. Difficult for tenants to accommodate. People or entity entering should be named. Photographs of tenants' goods are being used for sales on the internet without consent – needs change.
WA	The entry when they collect the rent is very intrusive for tenants and a coinciding inspection often happens more often than allowed. Entry to collect rent should be prohibited. Owner's rights of entry may be contracted out of if agreement is in writing.

Nationally Applicable Comments

The invasion of tenants' privacy and quiet enjoyment of the property if it goes on sale when tenanted was raised as a concern across the country. In these situations tenants believe they should be compensated for the intrusion. Not only does this not occur, if the property goes on the market during a fixed term the tenant cannot break the agreement without penalty.

Of all matters, this is the one about which tenants feel most disappointed the law does not seem to protect them well. Keeping the statutory entitlement to access low – e.g. one day per week for one hour with notice - and the requirement for bargaining if the landlord/agent wants additional access would bring about more reasonable outcomes. Open houses (to re-tenant or sell) should only be allowed with written consent of the tenant. Entry for general inspections should not require a quick turnaround and at least seven days notice provided.

4.3 Tenants' Use of Premises

In all jurisdictions tenants must not use premises for an illegal purpose, cause a nuisance, and other than Tasmania, or interfere with another's peace, comfort and privacy. The Australian Capital Territory specifies the illegal purpose should not be to the detriment of the landlord's interests. Tasmania, and the Australian Capital Territory (unless there is an agreement in writing), restrict the use of premises exclusively to residential purposes whereas other jurisdictions have greater flexibility by using terms such as 'intended to be' or 'primarily used as' a residence, providing a limited ability to conduct business, e.g. via the internet, family day care.

Though legislation is silent on keeping pets everywhere but Tasmania (where the legislation states pets require permission), they are commonly prohibited by special term inserted by the agent or landlord. In Queensland, regulation but not legislation says agreement to pets must be contained in the tenancy agreement.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Inconsistent Tribunal decisions whether prohibiting pets needs endorsement.	Additional terms prohibiting pets common. Prohibition on causing nuisance is more prescriptive for tenants of Housing NSW, can be asked to enter “Acceptable Behaviour Agreements”.	Pets commonly prohibited by special term.	Tenant must keep premises clean & not maliciously damage it. Pets commonly prohibited (see below).
South Australia	Tasmania	Victoria	Western Australia
Pets commonly prohibited by special term.	Tenant must not use premises for a non-residential purpose. Pets commonly prohibited by special term.	Premises must be used primarily for a residential purpose.	Residential premises are intended to constitute a residence.

Issues of Concern or Note to State/Territory

NSW	Housing NSW commence a disproportionate number of proceedings for illegal use, nuisance and annoyance. The Anti-Social Behaviour Agreement provisions have never been used and should be repealed.
Qld	Tenants’ obligation to keep premises clean is unreasonable and interpretation is too subjective. Better to phrase as “keeping premises in a condition that does not result in damage and meets health and safety requirements.” Pets are not prohibited by legislation only regulation which states keeping pets must have agreement by the landlord.

Nationally Applicable Comments

Tenant advocates argue additional ‘pet terms’, where the legislation does not require agreement to pets, breach tenants’ right to quiet enjoyment and ‘contact out’ of the legislation. Strata by-laws prohibiting pets will be enforceable where legislation states they form part of the agreement, although may not be the case in Australian Capital Territory.

5. EVICTIONS AND TERMINATIONS

5.1 Terminations by Landlords and Evictions

Under each Act, landlords may take action to terminate a tenancy on certain prescribed grounds. The prescribed grounds differ between jurisdictions, but all provide for termination on grounds of breach (including rent arrears) and sale of premises (only when an agreement is periodic).

Every jurisdiction except Tasmania allows notices to leave ‘without grounds’. Tasmania allows terminations for the reason of ‘end of a fixed term’ within 28 days of the end of the term (see below), which is effectively ‘without grounds’. All States and Territories other than South Australia, Northern Territory and Tasmania allow a tenant to challenge a ‘without ground’ notice to leave on the grounds it is retaliatory. However, given ‘without ground’ evictions are available, a tribunal will usually only consider such eviction retaliatory for a certain period of time.

Regarding breaches, jurisdictions other than New South Wales, Tasmania and Victoria require that a notice to remedy is served before a notice to leave. In Western Australia serving a breach notice is optional regarding a rent breach with an alternate process available (see below).

Detail/Differences

Notices to leave (other than breaches)

Australian Capital Territory	New South Wales	Northern Territory	Queensland
<p>Grounds for termination:</p> <ul style="list-style-type: none"> • • Sale: 8 weeks (periodic term only) • • Without grounds: 26 weeks • Renovations: 12 weeks (periodic term only) • Landlord/immediate relative moving in: 4 weeks (periodic term only) • Premises uninhabitable: 1 week • Unauthorised sub-letting <p>Applications direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship: 8 weeks (or less if justified to Tribunal) • Serious damage/threat to premises or injury to landlord/their family: immediate • Repeat breach • Inducement by false/misleading statement • Ending of tenant’s employment: 4 weeks • Tenant repudiates, landlord accepts and tenant doesn’t vacate. <p>Tribunal hears applications for termination/possession. Evictions by police.</p>	<p>Grounds for termination:</p> <ul style="list-style-type: none"> • End of fixed term: 14 days • Sale: 30 days (periodic term only) • Agreement frustrated: immediate • Without grounds: 60 days; • Social Housing only: <ul style="list-style-type: none"> ➢ Tenant no longer eligible: 60 days ➢ Tenant has been offered alternative social housing tenancy: 30 days <p>Applications direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship • T has caused, or is likely to cause, injury to LL, agent or neighbour, or damage to property. <p>Tribunal hears applications for termination/possession. Evictions by the Sheriff.</p>	<p>Grounds for termination:</p> <ul style="list-style-type: none"> • End of fixed term: 14 days • • Agreement frustrated: 2 days. • Without grounds periodic: 42 days. • End of employment (related tenancy): 14 days (or 2 days if employment ended for employment breach) <p>Applications direct to Court:</p> <ul style="list-style-type: none"> • Hardship • Non compliance or refusal to enter an acceptable behaviour agreement (public housing only) <p>Commissioner or Court hears applications for termination/possession. Evictions by the Bailiff.</p>	<p>Grounds for termination:</p> <ul style="list-style-type: none"> • • Sale: 1 month (periodic term only) • Frustration (non-liveability): immediate • Without grounds: 2 months • Death of sole tenant: 14 days • Non-compliance Tribunal order: 7 days • Compulsory acquisition: 2 months • End of tenant’s employment: 1 month • Entitlement to supported accommodation ended: 1 month • Entitlement to affordable housing ended: 2 months • Mortgagee in possession: 2 months <p>Applications direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship • Repeat breach (specific type) • Objectionable behaviour <p>Tribunal hears applications for termination/possession. Evictions by police.</p>

South Australia	Tasmania	Victoria	Western Australia
<p>Grounds for termination:</p> <ul style="list-style-type: none"> • End of fixed term: no notice required. • Sale of premises, owner/their family wants to move in, significant renovation of premises: 60 days • Without grounds: 90 days <p>Applications direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship • Third party termination for nuisance <p>Tribunal hears applications for termination/possession. Evictions by Bailiff</p>	<p>Grounds for termination:</p> <ul style="list-style-type: none"> • End of fixed term: min 14 days before lease ends but no more than 28 days before lease ends, and 14 days notice after lease ends provided it did not end more than 28 days before notice given. • Sale: 28 days (periodic term only) • To be renovated or used for another purpose: 28 days • Mortgagee in possession – 28 days notice and can be served during a fixed term agreement <p>Applications direct to Court:</p> <ul style="list-style-type: none"> • Recklessly caused damage to premises, contents, neighbouring premise or another party has caused physical injury to another party or a neighbour <p>Court hears applications for termination/possession. Evictions by Bailiff.</p>	<p>Grounds for termination:</p> <ul style="list-style-type: none"> • End of fixed term: <6 months 60 days; >6 months 90 days. • End of fixed term (prior notice premises is landlord’s primary place of residence): 14 days. • Premises to be occupied by landlord/landlord’s family – 60 days • Sale: 60 days (periodic term only) • Frustration: immediate. • Without grounds: 120 days • Non-compliance tribunal order: 14 days • Repair, renovate, reconstruct requiring vacant possession or demolition (256/7): 60 days • Demolition: 60 days • Malicious damage: immediate • Premises to be used for business 60 days • Tenant no longer eligible for public or community housing: 90 days • Mortgagee in possession: 28 days. <p>Applications direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship • Alternate rent breach procedure allows landlords to apply to the Tribunal and then issue a notice to leave. <p>Tribunal hears applications for termination/possession. Evictions by police</p>	<p>Grounds for termination:</p> <ul style="list-style-type: none"> • End of fixed term: no notice required • Sale: 30 days (periodic term only) • Frustration (non-liveability): 7 days • Without grounds: 60 days. <p>Applications direct to Court:</p> <ul style="list-style-type: none"> • Hardship • Tenant causing damage or injury <p>Court hears applications for termination/possession. Evictions by Bailiff.</p>

Evictions due to breaches by tenant

	No. of days rent late before action can be taken	Notice to remedy time period (NTR)	Notice to leave time period
ACT	rent breach 7 days	7 days	14 days
	Non rent breach	14 days	14 days
NSW	rent breach 14 days	N/A	14 days
	Non rent breach	N/A	14 days
NT	rent breach 14 days	7 days	N/A if NTR states landlord will go to commissioner for termination if not remedied.
	Non rent breach	7 days	7 days
Qld	rent breach 7 days	7days	7 days
	Non rent breach	14 days	7 days
South Australia	rent breach 14 days	7 days	7 days
	Non rent breach	7 days	7 days
Tasmania	rent breach Nil	N/A	14 days
	Non rent breach	N/A	14 days
Vic (optional processes)	rent breach 14 days	N/A	14 days
	14 days	N/A	Application for possession can be made by the landlord who must send a copy to the tenant together with notice to vacate with 14 days notice and 2 notices of objection and information regarding tenant's right to object
	Non rent breach		14 days - tenant must have previously received 2 notices to remedy for the same breach
WA (optional processes)	rent breach Nil	14 days	7 days
	Nil	N/A	NTR can be served immediately but application for warrant cannot be heard within 21 days of issuing notice and no applications can be made if tenant rectifies up to 1 day from date of hearing.
	Non rent breach	14 days	7 days

Issues of Concern or Note to State/Territory

ACT	Long notice periods regarding without ground terminations were meant to discourage their use but are used as a threat six months out from the end of the fixed term agreement that it will be ended if they don't re-sign. Tenants are often unclear of their intentions at that point.
NSW	'End of a fixed term' notice period is too short. Want the abolition of without ground terminations, should only be prescribed grounds. When public housing introduced fixed term agreements they also introduced a range of special termination provisions so they could break them in particular

	circumstances such as redevelopment etc. Current proposals for tenancy law reform regarding rent arrears are supported. They suggest applications for warrants cannot be made if rectification of rent breach occurs prior to a warrant for possession being enforced. Such a change provides incentive for tenants to pay arrears rather than save for moving if they think the Tribunal will order a warrant for possession.
NT	Anti-social behaviour agreements are used as a tenancy law tool to evict. Serious repeated breaches of anti-social behaviour agreements (ABAs), often in practice unsubstantiated and without due process, may lead to eviction. ABAs often target urban Indigenous tenants.
Qld	Notice to leave 'without grounds' should be prohibited and evictions should only occur for 'just causes' set out in the Act. 'Without ground' eviction creates opportunities for landlords to remove 'troublesome tenants' who want repairs done. They are given a notice to leave at the end of their lease, no reason given. Recent reforms increased notice period for 'without grounds' termination at the end of a fixed term to two months from two weeks. Industry now seeks renewal of tenancy 2-3 months prior to end of fixed term. This defeats the purpose of the reform. If availability of w/t grounds evictions continues, restrictions should be place on how long out from the end of a fixed term agreement one can be issued so tenants do not have to decide a long time prior.
SA	No notice is required to end an agreement at the end of a fixed term but agents usually send out renewal form 4-6 weeks before the end of lease. However, the lack of notice has the potential to be difficult for tenants and a prescribed notice period would be better. Notice to remedy provides a vacation date applicable if you don't remedy but tenants are often confused by it and think they must vacate on that day. There are no provisions for a tenant to challenge a notice to leave w/t grounds for reason it is retaliatory. Third parties can apply to the Tribunal to have the tenancy ended because the tenant caused or permitted the interference with the reasonable peace, comfort or privacy of persons who reside in immediate the vicinity.
Tas	With all notices to vacate if you remedy the notice before the end of notice period the notice is void but not in regard to causing substantial nuisance. An application for a warrant for possession for nuisance can be defended. There are no 'without ground' evictions only termination for end of a fixed term. Between 28 days before end of fixed term agreement and 28 days after a tenant can be given 14 days notice as long as the end date is not prior to end date of the agreement.
Vic	Notices to leave for rent arrears don't require a prior notice to remedy and can be served when rent is unpaid for 14 days. A tenant can challenge a notice to vacate e.g. retaliation defence to without grounds within time limits. Possession orders must be gained before evictions by police. Excessive hardship terminations are provided for both tenants and landlord as 'reduction of fixed term'. Tenants may be evicted because a child lives in premises where a term prohibits this.
WA	There is no notice period required to end a fixed term, it would be better if one was required so no one ends up having to leave on short notice. If rent is accepted by the landlord/agent for a period beyond the end of a fixed term the agreement becomes periodic. Many tenants get a letter to negotiate what occurs at the end of a fixed term.

Nationally Applicable Comments

Evictions in retaliation for standing up for a tenant's rights such as seeking repairs were identified as a concern across the country. Whilst in most jurisdictions a tenant can challenge eviction on the basis of retaliation, proving a link between the tenants enforcing their rights and the actions of the terminations notice can be difficult. Eliminating the use of without ground evictions, including 'end of a fixed term' is the single most important issue identified.

Additionally, introducing provisions protecting tenants from eviction if they rectify a rent breach in full or enter a repayment plan before a warrant for possession is enforced would prove additional incentive to do so. Tenants in this situation are faced with difficult choices– to apply the limited money they have to rectifying the rent breach in an attempt to save their tenancy or to moving expenses they will inevitably incur if they are forcefully evicted.

5.2 Termination by third parties including mortgagees

In all jurisdictions except for Northern Territory, evictions by mortgagees may occur even during fixed term agreement. Australian Capital Territory extends the right to terminate to other successors in title and South Australia extends it to other interested parties where the tenant causes a nuisance to those in the immediate vicinity. Mortgagees’ right to possession is usually found in the terms of the mortgage document. Until a tenant hears from an organisation purporting to be a mortgagee or mortgagee’s representative, they usually do not know if the property is mortgaged and if so, who the mortgagee is.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Grounds for third party termination: A successor in title e.g. a mortgagee or child who inherits the premises, 8 weeks’ notice (fixed term or not). Agreement terminated without Tribunal order.	Grounds for third party termination: anyone with superior title including mortgagees, 30 days notice of date when Sheriff will evict. Tenant not required to pay rent, other fees or charges during notice period, can claim repayment if paid in advance.	Grounds for third party termination: none. Explicitly prohibits mortgagees taking possession if tenancy less than 12 months but allows them to become landlord.	Grounds for third party termination: Mortgagees in possession: 2 months’ notice. Domestic associate of tenant or an occupant if damage or injury occurs: by tribunal order.
South Australia	Tasmania	Victoria	Western Australia
Grounds for third party termination: Financial Party/Financial Institution. Other interested parties, e.g. neighbours, in case of disruption.	Grounds for third party termination: Mortgagee: 28 days.	Grounds for third party termination: mortgagees taking possession: 28 days notice.	Grounds for third party termination: superior title including mortgagees taking possession, no notice required.

Issues of Concern or Note to State/Territory

NSW	Landlords should have to inform tenants of any third party interest in the property at the point of signing – mortgages, joint tenant of the landlord, co owners (who are not on the agreement).
NT	Mortgagees do not have the right to evict tenants who have a tenancy < 12 months just because they take legal possession.
Qld	Whilst termination time periods are given, a tenant is unaware if the claimed mortgagee is in fact entitled to legal possession as no order for possession against the landlord is required prior to issuing notice. It is almost impossible for tenants to know who has the legal right to possession, which often changes due to breach of the mortgage then subsequent rectification.
SA	Third parties in the vicinity of the tenancy should not have a right to seek termination on the grounds of nuisance. The underlying message is that tenancy is a second class tenure as owner-occupiers cannot be evicted on similar grounds.
Tas	Mortgagees should have no further rights to possession of property than those subsumed from the property owner

Vic	Problems arise where banks ignore the RTA processes and use a supreme court order and the sheriff. Whilst not lawful, tenants are scared into following the mortgagee's instructions.
WA	Not only can mortgagees take possession during a fixed term agreement they are not required to give notice of eviction.

Nationally Applicable Comments

Mortgagee repossession is an escalating issue, particularly in anticipation of increasing interest rates and the level or debt of landlords. There is no justification for a person with superior title (usually mortgagees) at a point in time when they gain legal possession of the property to evict a tenant for that reason. Most mortgagees desire vacant possession to sell the premises and maximise the pool of potential purchasers to include owner-occupiers as well as investors. This is not reasonable to tenants who are usually unaware if there is a mortgage, who the mortgagee is and when that mortgagee has a right to legal possession under the mortgage. Often the first a tenant becomes aware the property is mortgaged is a letter from someone they don't know, either the mortgagee or a law firm, giving them notice to leave. Mortgagees should have to stand in the place of the landlord if they take possession during a tenancy. The situation in South Australia where a third party can seek to terminate a tenancy agreement should be rectified as it discriminates against tenants. Owner-occupiers are not subject to eviction if they disturb neighbours.

5.3 Termination by Tenants

Tenants may take action to terminate a tenancy on certain prescribed grounds or without grounds.

All States and Territories except for Tasmania, Victoria and New South Wales require that tenants issue a notice to remedy prior to a notice to leave for an unremedied breach. Terminating fixed term agreements by notice for an unremedied breach is risky. If the purported grounds for termination do not hold up in the Tribunal (or equivalent), the tenants' termination may in fact be unlawful, and the tenant may be liable to the landlord for loss of rent etc.

Neither Western Australia nor Tasmania avail applications for tenants to terminate tenancies early on grounds of hardship.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Grounds for termination by notice and notice period: <ul style="list-style-type: none"> • Unremedied breach: 14 days (after 14 day notice to remedy (NTR) expires) • End of fixed term: 3 weeks • Without grounds: 3 weeks • Uninhabitable: 2 days 	Grounds for termination by notice and notice period: <ul style="list-style-type: none"> • Breach: 14 days • End of fixed term: 14 days • Without grounds: 21 days • Agreement frustrated: immediate notice. 	Grounds for termination by notice and notice period: <ul style="list-style-type: none"> • Breach: 7 days (after 7 days NTR expires) • Offer of public housing: 14 days • End of fixed term: 14 days • Without grounds: 14 days. • Agreement frustrated: 2 days 	Grounds for termination by notice and notice period: <ul style="list-style-type: none"> • Death of sole tenant: 14 days • Breach (after 7 days NTR expires): 7 days • Non-compliance Tribunal order: 7 days • Non-liveability: immediate • Compulsory acquisition: 14 days • Property on market (if within 2 months of agreement starting property advertised for sale or entry made to show prospective purchaser): 14 days

<p>Direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship • Landlord likely to cause damage or injury 	<p>Direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship 	<p>Direct to Court:</p> <ul style="list-style-type: none"> • Hardship • Serious breach by landlord 	<ul style="list-style-type: none"> • Without grounds: 14 days <p>Direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship • Damage or injury by co-tenant, domestic assoc., or landlord. • Landlord’s objectionable behaviour • Repeated (specified) breach. • Unremedied breach
South Australia	Tasmania	Victoria	Western Australia
<p>Grounds for termination by notice and notice period:</p> <ul style="list-style-type: none"> • Breach: 7 days (after 7 days NTR expires) • End of fixed term: no notice required • Without grounds: 21 days <p>Direct to Tribunal</p> <ul style="list-style-type: none"> • Hardship 	<p>Grounds for termination by notice and notice period:</p> <ul style="list-style-type: none"> • Breach: 14 days • End of fixed term: no notice required • Non-fixed term lease: 14 days. <p>Direct to Court</p> <ul style="list-style-type: none"> • Damage or injury by another party • Damage or injury by a violent partner (to strike their name off lease). 	<p>Grounds for termination by notice and notice period:</p> <ul style="list-style-type: none"> • Repeat Breach (third successive): 14 days • Offer of public housing: 14 days • Going into care: 14 days • Landlord gave notice to vacate: 14 days • Without grounds: 28 days. <p>Direct to Tribunal:</p> <ul style="list-style-type: none"> • Hardship 	<p>Grounds for termination by notice and notice period:</p> <ul style="list-style-type: none"> • End of fixed term: no notice required • Without grounds: 21 days. • Agreement frustrated: 2 days <p>Direct to Court</p> <ul style="list-style-type: none"> • Serious breach by landlord

Issues of Concern or Note to State/Territory

Tas	No notice required at the end of a fixed term. Many tenants provide notice anyway but not required. If the owner rectifies a breach the tenant cannot terminate unless it is for repairs and maintenance. No provisions for excessive hardship terminations.
Vic	Tenants generally have double rent periods they are obliged to give long notice (28 days) to leave ‘without grounds’.
WA	No hardship provisions for tenants to end tenancies early.

5.4 Domestic Violence

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
If a court has made a final order to remove (DVO) a tenant/co-tenant from premises, or if tenant/co-tenant gives an undertaking to a court to leave the premises, then an	No specific provisions. Section 69A may be used by a victim to terminate the agreement - Tribunal may terminate where tenant would otherwise suffer undue hardship.	Under Domestic & Family Violence Act 2007 (NT), a protected person may gain order for defendant to vacate premises where protected person lives, despite	Domestic associate, co-tenant and/or occupant may apply to Tribunal to terminate OR order recognising the person as tenant or co-tenant under

occupant of premises can apply to replace tenant or co-tenant.		defendant's legal interest in premises; Court may exclude defendant from tenancy agreement.	agreement.
South Australia	Tasmania	Victoria	Western Australia
Not yet gazetted: Intervention Orders (Prevention of Abuse) Act 2009 – allows re-assignment of lease to victim via Magistrates Court Tenancy Order.	Application to Court available to strike a violent partner off the lease.	Substantial amendments to tenancy provisions from the <i>Family Violence Protection Act 2008 (FVPA)</i> (see below)	No provisions.

ACT	Protections rely on a final order being made - the bar should be lowered to include evidence of domestic violence.
NSW	Proposed amendments: a victim co-tenant, sub-tenant or not a tenant can apply to change agreement into their name and exclude perpetrator. Where there is an AVO excluding perpetrator from premises, draft bill provides that person's co-tenancy is terminated.
SA	Magistrates court order allows for those subject to DV to apply to become the tenant when lease in perpetrator's name.
Tas	An additional provision is required to allow a tenant to terminate lease if unsafe or unaffordable as a result of domestic violence.
Vic	<i>FVPA</i> has made substantial changes to tenancy law. Tenants who are the 'protected person' or 'excluded tenant' can sever co-tenancies. A protected person living in a property as their principle residence but not party to the lease can apply to VCAT for an order for a new tenancy agreement if there is a final family violence (FV) intervention order. The tenant must be 'excluded' which is noted in the FV protection order.
WA	Need for suitable provisions to protect victims of DV and enable them to remain in the home where feasible and remove responsibility from the victim for cost of damage caused to property by perpetrator of violence.

Nationally Applicable Comments

Only Western Australia and New South Wales lack adequate protections regarding domestic violence. Deficiencies in both these States mean the Tribunal lacks the power to assign a tenancy agreement to a person experiencing domestic violence when they wish to remain in the premises to the exclusion of the perpetrator. This situation is likely to be remedied in New South Wales with the passage of new tenancy laws expected in the near future.

6. SETTLEMENT OF DISPUTES

All jurisdictions except the Northern Territory, Tasmania and Western Australia have specialist tribunals or specialist listings in a broader consumer tribunal.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
ACT Civil and Administrative Tribunal ('ACAT'). Conciliation may occur within the tribunal prior.	Consumer, Trader and Tenancy Tribunal (CTTT). Conciliation may occur within the tribunal prior. Hearings usually same day if conciliation not successful.	Commissioner of Tenancies (all disputes except if Act says must go to (local) courts e.g. hardship terminations and serious breach by landlord.	Queensland Civil and Administrative Tribunal ("QCAT") but some disputes must proceed through Residential Tenancies Authority conciliation first.

South Australia	Tasmania	Victoria	Western Australia
Residential Tenancies Tribunal (RTT)	Residential Tenancies Commissioner (security deposit disputes only); Magistrates Court (Minor Civil Division). No conciliation unless monetary debt.	Victorian Civil and Administrative Tribunal (VCAT). VCAT offers mediation, compulsory conferences are often ordered for matters over \$10K.	Magistrate’s Court (Civil Division, Minor Case Matters). Sometimes dispute resolution (through court) is ordered prior.

ACT	Fewer disputes should proceed to mediation first and/or mediator to explain process better e.g. bonds –many tenants do not realise agreement is not compulsory; and, repairs – are not appropriate for mediation as they are needed or not. Conference turnaround times about 8 weeks with hearing soon after if unsuccessful.
NSW	Specialist tribunal works well and is quick, accessible and low cost. Greatest benefit of system has gone to landlords who make 5/6 of applications, for \$30 they can get their matter heard and resolved quickly.
Qld	QCAT has just been established. Residential Tenancies Authority (RTA) conducting dispute resolution is a conflict as they also ensure compliance with the Act. Separating DR from QCAT (some matters must go through RTA DR first) slows matters down as there are 2 separate application processes and wait times. Bond disputes can take months. DR should be solely dealt with by QCAT.
Tas	Need a tribunal to deal with tenancy related matters – current system has no specialised knowledge of tenancy law, matters don’t have enough time, conciliation prior would be good. Ability to join processes together would be useful.
Vic	Better education of Tribunal members required so they better understand the housing system and market.
WA	There is a move toward DR prior to hearing matters but it is inconsistent across the state.

Nationally Applicable Comments

Common across the dispute resolutions systems is that the vast majority of tenancy applications come from landlords, many of which reflect housing affordability issues (i.e. rent arrears) experienced by tenants. In most jurisdictions many matters proceed without the tenant respondent in attendance. An estimate of proceedings commenced by tenants would be 5-15 percent of all matters and may reflect tenants’ reluctance to pursue rights (such as repairs concerns) for fear of eviction ‘without grounds’ later. Landlords have benefited the greatly from the introduction of quick and easy tenancy dispute processes and for small applications fees may gain a monetary order against a tenant. Some research focussing on tenants who use the tribunal (in particular regarding landlord breaches), tenants’ motivations and outcomes including tenancy renewal, would be useful.

7. UNCOLLECTED GOODS

Each jurisdiction, except the Australian Capital Territory, makes specific provisions for how goods left behind after the termination of a tenancy should be treated (in the Australian Capital Territory, the general provisions of the Uncollected Goods Act 1996 may apply). Everywhere (except for the Australian Capital Territory where it still may apply) laws require valuable, uncollected goods to be stored for a period of time. In circumstances where valuable goods may be sold by the landlord, they can apply funds to alleged tenant debts in Northern Territory, South Australia, and Tasmania and in Victoria and Western Australia only if a tribunal order provides for it but not in Queensland and New South Wales where it is prohibited.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
No provisions in tenancy legislation but <i>Uncollected Goods Act 1996</i> may apply.	If goods value \geq cost of storage landlord must store for 30 days, then sell otherwise get rid of within 2 days. Tenant may demand goods on paying storage costs. Landlord must account proceeds of sale to tenant, less storage costs. Tribunal may make orders, but not compensation.	If goods value \geq cost of removal, storage and sale landlord must store goods for 30 days, then sell. Tenant may demand goods on paying storage costs. Landlord must account proceeds of sale to tenant, less storage costs and tenant debts. Tribunal may make orders.	Landlord must store goods worth > \$1500 for 1 month. If the premises is a caravan, 3 months. Tenant may demand goods on paying removal and storage costs. Tenant's personal documents or money must be returned to them (if possible) otherwise given to Public Trustee. Urgent application if tenant dissatisfied with way goods/ documents dealt with.
South Australia	Tasmania	Victoria	Western Australia
Landlord must store valuable goods for 60 days then sell. Landlord must account proceeds of sale to tenant, less storage and sale costs and tenant debts. Tribunal may make orders.	Landlord may: dispose of goods if appear to the owner to have no value (stat dec required) and goods below prescribed amount (\$300); Sell goods if values less than prescribed amount. Apply to court to permit sale of goods if \geq than prescribed amount. Proceeds applied: Debt owed to owner by tenant, reasonable costs of the sale, balance to be kept for tenant in interest bearing a/c for 6 months after which become property of Commissioner.	Landlord must store valuable goods for 28 days before selling. Documents must be stored for 90 days. Tenant may demand goods on paying storage costs. Landlord must account proceeds of sale to tenant, less storage costs and tenant debts per Tribunal order.	2 days after tenant leaves landlord can remove, destroy or dispose of low value (less than removal/storage costs) or perishable goods. Valuable goods to be stored for 60 days then sell by public auction. Prior to sale tenant may demand goods on paying storage and removal costs. Landlord to account for proceeds of sale to tenant, less storage, removal and selling costs and tenant debts per Court order.

Issues of Concern or Note to State/Territory

ACT	As the only state without a specific tenancy law requirement for landlords to store uncollected goods, inclusion is sought. Coverage of tenants' goods under Uncollected Goods Act is unclear but if applicable, provides differing periods of time for storage relative to value of goods, and how they can be disposed of.
NSW	Tenants can seek orders in regard to goods where they were not dealt with lawfully but a flaw in the legislation means tenant can't get compensation – will be fixed with proposed reforms.
NT	Many public housing tenants who leave goods behind lose their goods because the authority says they weren't worth anything and gets rid of them. No specific provisions around documents.
Qld	If tenant tells the landlord they want the goods before they are dealt with they must give the goods back. Cannot take debts from the money from sale other than storage costs.
WA	Documents are not always identified as valuable and are sometimes destroyed. This creates hardship for tenants.

Nationally Applicable Comments

Commonly States and Territories report concerns about how the value of goods are calculated often resulting in them being valued at less than that which is required to be stored.

8. ACCESS TO HOUSING AND TENANCY ADVICE

8.1 Tenancy databases

The Commonwealth Privacy Act (1988) applies in regard to individuals’ access to their personal information held by certain companies. This applies to tenancy databases but does not deal with important aspects of their operation e.g. the length a listing may be retained. Some States and Territories – New South Wales, Queensland and the Australian Capital Territory have implemented their own regulations. Queensland and the Australian Capital Territory laws are similar and are the only ones placed in tenancy law. New South Wales regulations related only to real estate agents as they are set out in the rules of conduct regulating them.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Currently unlawful. Information must not be stored unless regulations prescribe reasons for including it. There are no regulations.	No provisions in tenancy law but rules of conduct under the <i>Property, Stock and Business Agents Act 2002</i> .	No provisions.	Tenants may be listed only in prescribed (breach) circumstances, and person listing must take steps to notify before listing. Tribunal may order that a listing be removed or not made.
South Australia	Tasmania	Victoria	Western Australia
No provisions.	No provisions.	No provisions.	No provisions.

Issues of Concern or Note to State/Territory

NSW	Many problems with databases are not resolved by agents’ rules of conduct. Key issues are what gets listed, timeframes for listing and why a tenant gets listed. Agents’ regulations deal appropriately with when and why but the restrictions do not extend to landlords or the tenancy databases themselves. There is no dispute resolution mechanism. Rules of conduct deal with timeframes for listing but only if a reason for listing applies – most listing do not record reasons so timeframes do not apply. Database rules of conduct are not considered to apply to listings made prior to the rules’ commencement.
NT	Database issues aren’t currently a huge problem but the potential to list is sometimes used as a threat by agents.
QLD	Current protections are reasonably effective with the biggest gap being rules about the length of listing. Protections only apply to listings for Qld properties and do not help those listed in other States/Territories living in Queensland.
Tas	Database issues aren’t currently a huge issue but listings are occasionally used as a threat.
Vic	A huge issue but there is significant underreporting. Currently no regulation and but would like protections in place immediately.
WA	Tenancy database matters do arise – numbers might not be huge but very difficult to deal with when a listing occurs.

Nationally Applicable Comments

The regulation of residential tenancy database companies and their members is inconsistent across jurisdictions. Protections in one state, even if effective, will not assist a tenant listed in another state/territory. Unreasonable, unfair and unjust listings may result in homelessness and nationally consistent regulation is important to protect against them.

8.2 Financial Assistance to Tenants

Every state or territory provides assistance to eligible persons in the form of bond loans or grants. Some provide the whole amount and others part of it. Eligibility is usually aligned to public housing income limits and eligibility.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Rental Bond Loan Scheme pays for up to 80% of the bond to eligible persons who may also receive \$100 establishment grant	Rent Start program provides bond (see below), and, in some circumstances, rent arrears assistance for eligible persons. Tenancy guarantee (by public and community housing providers) provides an initial \$1000 incentive over and above the bond to take on 'risky' tenants. Applies for a period of time.	Bond Assistance Scheme lends bond monies to eligible persons. For people in extreme hardship there is 2 weeks rent in advance available.	Bond Loan program provides bond money to eligible persons who pay it back during tenancy. One off rental grant (2 wks rent) may apply at the same time in extreme case. Homelessness early interventions services can assist with small amounts of money for tenants in hardship. Rentconnect assists eligible people to access private rental market, may provide additional bond guarantee for a period of time as an incentive to house certain tenants.
South Australia	Tasmania	Victoria	Western Australia
Private Rental Assistance, lends bond money (interest free) and, in limited circumstances, rent in advance and rent arrears, for eligible persons. Pays for emergency accommodation in motels/crisis accommodation before entering SAAP.	Bond assistance and emergency rent assistance for eligible persons.	Bond Loan Scheme for eligible persons. Housing establishment fund – households at risk of homelessness in arrears can access this in a limited way but most funds go to establishment costs. Administered by SAAP and transitional housing providers.	Bond Assistance lends bond monies to eligible persons. Tenancy start-up assistance for young people through NFP groups.

Issues of Concern or Note to State/Territory

NSW	Any bond not claimed by landlord is refunded to Housing NSW at the end of the tenancy. Agents are aware of this and often claim the whole bond.
Qld	Rental grants are not widely available. Bond loans are interest free but any of it not paid back to the program at end of tenancy (e.g. claim by landlord and bond not fully paid off) is a debt to the public housing authority and may prevent access to social housing.

8.3 Advocacy

Every jurisdiction has a statewide service providing tenancy advice and advocacy to tenants. In South Australia eligibility is restricted to low income tenants. Most jurisdictions call these services the Tenants' Union (TU) – Australian Capital Territory, New South Wales, Queensland, Tasmania and Victoria. Western Australia and the Northern Territory call their statewide service the Tenants' Advice Service (TAS); and South Australia, the Tenants Information and Advocacy Service (TIAS). At present, the Northern Territory TAS is only funded on a pilot basis until July 2010. The pilot funding come from the Attorney-General's department as there is no central bond collection system.

In New South Wales, Queensland, Victoria and Western Australia a network of local/regional tenant advice services exist in addition to the TU or TAS. The TU/TAS in these States support and resource the local/regional services. The TUs, TASs, TIAS as well as the local/regional tenancy advice services are predominantly funded by bond interest administered through Fair Trading/Consumer protection departments, with a notable exception of Queensland administered through the state housing authority.

Essentially, consumers fund the advice/advocacy services through the interest received on bonds held in trust but only in New South Wales do tenants receive any interest back on their bonds. In all jurisdictions other than Queensland where it is the Residential Tenancies Authority, the Fair Trading department or equivalent provides an information (but not advice – except VIC, see below) service to all parties – tenants, landlords and agents.

Detail/Differences

Australian Capital Territory	New South Wales	Northern Territory	Queensland
Tenants' Union ACT; Welfare Rights and Legal Centre advices public housing tenants on tenancy matters.	Tenants' Union of NSW and 20 local/regional Tenant Advice and Advocacy Services — 14 generalist, 4 aboriginal services, 1 park and village service and 1 older persons service.	Tenant Advice Service (provided through Darwin Community Legal Service) provides territory wide advice via telephone and face to face services in Darwin & Katherine regions.	Tenants' Union of Queensland and 23 local/regional Tenant Advice and Advocacy Services.
South Australia	Tasmania	Victoria	Western Australia
Tenants Information and Advocacy Service is a statewide service provided to low income tenants.	Tenants' Union of Tasmania; 4-5 private rental support services provide advocacy for tenants, go and visit properties and provide tenancy assistance but no legal advice.	Tenants' Union of Victoria and other non-government organisations. Additionally there are 2 outreach services into caravan parks and rooming housing in Melbourne. 12 or so other advocacy services (some specifically tenancy others not). One generalist legal service advocacy in SE Melbourne. Consumer Affairs provides front line advice to tenants since early in the 2000s.	Tenants' Advice Service (Tasmania) (the peak) and 15 Tenancy Local Service Units statewide.

Issues of Concern or Note to State/Territory:

NSW	Older persons' service does a lot of work with protected tenants. These tenancies are covered by post war legislation restricting eviction and rent increases. These tenancies are declining in numbers as no properties have been newly covered for many years.
SA	Agents, landlords and non-eligible tenants will be provided a limited service: information on what the laws say.
Vic	It is concerning that independent tenant focussed services were 'taken back' into Consumers Affairs in the beginning of the decade given funds for these services are from the interest made on tenants' bonds. Consumer Affairs run a large call centre in the city with regional offices and do basic information, advice and referral if advocacy required. TUV not funded to work with social housing tenants but get plenty of calls.

APPENDIX 2

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APPENDIX 3

Housing Standards - International Developments

a. UK Health and Safety rating System

The Housing Act 2004 introduced reforms to housing which affect owner occupiers, tenants, landlords, local authorities and all with an interest in housing.

Tenants are provided with the right to adequate living facilities such as hot and cold water, heating, electricity, ventilation, toilet facilities and a drainage system and if their housing does not meet health and safety standards they are entitled to take legal action.

The new UK system includes procedures for assessing housing conditions. Local housing authorities review housing conditions in their districts and are responsible for the enforcement of housing standards. Inspections by local housing authorities assess whether category 1 or 2 hazards exist.

The assessment method focuses on the hazards that are present in housing. The likelihood of 29 hazards is assessed and the likelihood of injury or ill health from each is calculated. Tackling these hazards is designed to make housing healthier and safer to live in. The 2 categories of hazards cover:

- Damp/mould
- Excess heat/cold
- Asbestos
- Biocides
- Carbon monoxide etc
- Lead
- Radiation
- Uncombusted fuel gas
- VOC's crowding and space
- Intruders
- Lighting
- Noise
- Hygiene
- Food safety
- Water supply
- Falls electrical
- Fire
- Hot surfaces
- Entrapment
- Explosions
- Ergonomics
- Structural

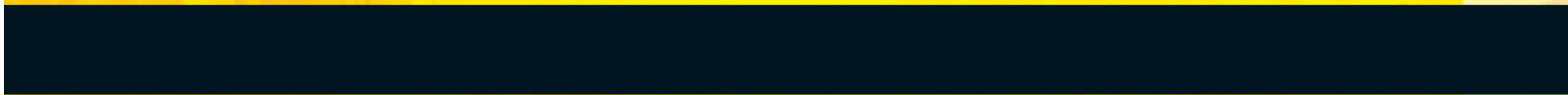
b. New Irish legislation

The *Housing (Standards for Rental Homes) Regulations 2008* sets down minimum standards. These regulations require that a landlord:

- Ensure that the house is essentially sound with roof, floors, ceilings and walls and stairs in good repair and the property does not have severe dampness or rotting.
- Must provide a sink with hot and cold water.
- Must provide a separate ventilated room with a bath or shower and toilet.
- Must provide facilities for cooking (including 4 ring hob with oven and grill, fridge and freezer, and microwave oven) and facilities for hygienic storage of food.
- Must provide clothes washing facilities and clothes drying facilities if the property does not have a garden or yard.
- Must also ensure that the electricity or gas supplies are in good repair and safe and ensure that each room has adequate ventilation and have both natural and artificial lighting.
- Must also provide a fire blanket and fire alarms.
- Must provide a permanently fixed appliance or appliances capable of providing effective heating for each habitable room.¹⁷

Failure to comply with the standards can result in the imposition of penalties and prosecution.

- c. List of main minimum standards from Alberta, Canada.**
- i. Housing premises are structurally sound, in a safe condition, in good repair, and maintained in waterproof, windproof and weatherproof condition.
- Property must be free from damp and mould.
 - The housing premises must be structurally sound.
 - The roof and exterior cladding of walls shall be maintained in good repair, free of cracks and weatherproof.
 - All windows and exterior doors shall be in good repair, free of cracks and be weatherproof.
 - Exterior windows and doors shall be fitted with locking devices.
 - Inside or outside stairs or porches including all treads, risers, supporting structural members, rails guards and balconies shall be maintained in good repair.
 - All rooms shall be provided with adequate ventilation.
 - All walls, windows, ceilings, floors and floor coverings shall be maintained in good repair, free of cracks, holes, loose or lifting coverings and in condition that is easy to clean.
- ii. Equipment and Furnishings – Occupants of housing premises must be supplied with adequate; sanitary facilities, heat, potable water, utilities and space for sleeping.
- Housing premises must be connected to the public sewerage system or to an approved private sewerage disposal system.
 - The plumbing system and drainage system must be maintained in proper operating condition.
 - Every housing premise must be provided with plumbing fixtures consisting of a toilet, a washbasin and a bath or shower.
 - Properties to be supplied with heating facilities – all heating facilities to be properly installed and maintained in good working condition.
 - Every house to be supplied with a potable water supply.
 - Every house to be supplied with electrical service – outlets, switches and fixtures to be properly maintained in good and safe working condition.
 - Properties to be fitted with electrical safety switches.
 - Smoke alarms should be hard wired and operational at all times.
 - Public hallways or stairways to be adequately lit at all times.
 - Every house must be fitted with food preparation facilities including – kitchen sink, supplied with potable hot and cold water and a stove that is fully functioning.
 - Every house must have adequate number of containers suitable for storage of garbage and refuse awaiting disposal.
- iii. The owner shall ensure that all rooms and other areas are maintained in a clean and sanitary condition
- Property to be free of insect and rodent infestation.



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– Improving Australian Tenancy Law

APRIL 2010

