



Final Report

Secure occupancy in rental housing: conceptual foundations and comparative perspectives

authored by

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ACRONYMS

ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AHURI	Australian Housing and Urban Research Institute Limited
CERA	Centre for Equality Rights in Accommodation (Canada)
COAG	Council of Australian Governments
CPI	Consumer Price Index
CTTT	Consumer Trader and Tenancy Tribunal (NSW)
CURF	Confidentialised Unit Record File (Australian Bureau of Statistics)
DHA	Defence Housing Authority
DHS	Victorian Department of Human Services
HEF	Housing Establishment Fund
HOPE VI	Housing Opportunities for People Everywhere (US)
HNSW	Housing New South Wales
HUD	Department of Housing and Urban Development (US)
LIHTC	Low Income Housing Tax Credit (US)
NAHA	National Affordable Housing Agreement (Australia)
NRAS	National Rental Affordability Scheme (Australia)
NRV3	National Research Venture 3, Australian Housing and Urban Research Institute
NSW	New South Wales
NT	Northern Territory
SA	South Australia
SCRGSP	Steering Committee for the Review of Government Service Provision (Australia)
SHASP	Social Housing Advocacy and Support Program (Victoria)
TAAP	Tenants' Advice and Advocacy Program (NSW)
UK	United Kingdom
UN	United Nations
US	United States of America
VCAT	Victorian Civil and Administrative Tribunal
VCOSS	Victorian Council of Social Service
WA	Western Australia

EXECUTIVE SUMMARY

This report is concerned with the nature of housing occupancy for households that rent, particularly low-income and vulnerable households. It describes and compares provisions for secure occupancy across a variety of rental systems in Australia and similarly developed countries, and attempts to interpret to what extent such provisions are adequate and appropriate to the needs of households, especially those who rely on renting for significant periods (or all) of their lives.

To inform and broaden consideration of this current policy issue in Australia, the study's methodology has been designed to enable an assessment of the means by, and the extent to which, secure occupancy in rental housing is provided in a cross-section of local and international jurisdictions. The primary aims of the study are to explore how different types of rental systems shape the nature of occupancy, and to generate new ways of thinking about secure occupancy and policy settings to help promote this in Australia.

To facilitate the study's comparative approach, the Australian authors have worked in close collaboration with a group of international housing research colleagues (named in Table 4) with expertise in one or more of the eight national and provincial jurisdictions that have been selected for comparison. These are:

1. Austria
2. New Jersey (US)
3. Flanders (Belgium)
4. Ontario (Canada)
5. Germany
6. Scotland
7. Ireland
8. The Netherlands.

As the rental systems of these countries differ considerably, they provide a rich laboratory for exploring ways that secure occupancy is shaped by multiple factors, including historical conditions, market functioning, cultural influences and institutional settings, and generate a variety of challenging ideas about how rental systems might best support the housing needs of their residents, while also encouraging appropriate and secure levels of rental investment. A concise summary of the rental system and policies of each of these case studies can be found in Appendix 1. These summaries are provided to complement the thematic analysis that is adopted in the body of the report. The international case studies were augmented by local research on the current framework for secure occupancy in Australia, as well as by a more in-depth review of the situation in two jurisdictions (New South Wales and Victoria), which was conducted by the authors.

The concept of secure occupancy

The concept of secure occupancy refers to the nature of occupancy of residential dwellings and the extent to which households can make a home and stay there for reasonable periods if they wish to do so, provided that they meet their obligations. The central concern in a discussion of secure occupancy is how its nature and legal terms affect households' experiences of housing and home, which widespread research evidence suggests is an important foundation for many aspects of human wellbeing,

including family functioning, childhood development, economic and social participation and personal health.

Much of the research about housing security has been centred on the attributes of home ownership, positing that owning a home enables people to have security and stability through control of their own circumstances. Key concepts used in explaining this process (as discussed and referenced in Chapter 2) are psycho-social and include the importance of ontological security, which refers to a deep psychological need for a sense of security and constancy, and ideas about the meaning of home that revolve around having some control over one's living circumstances. An upshot of this litany of work has often been that renting is assumed to have negative effects on health and wellbeing when it is associated with lack of security, stability and control. Whether this is the case, or whether it reflects some combination of lower socio-economic status, lower quality homes and less desirable neighbourhoods, is an issue for empirical research. Such a debate leads also to conceptual and empirical questions about whether such lack of control is intrinsic to renting *per se* or is a reflection of prevailing cultural norms about renting being an inferior, and inherently transitory, form of occupancy, particularly in countries with smaller rental markets that are subordinated to dominant home ownership systems.

Taking rental housing as its core concern, this study contends that secure occupancy in various forms of rental housing is an increasingly relevant and important issue for the same types of reasons that are well recognised for home owners, in the context of an international trend to increased periods of renting for many, especially lower-income households. To understand more fully factors that are contributing to the nature and experience of occupancy of rental housing, the study proposes that secure occupancy needs to be analysed and assessed using several interconnected perspectives. Drawing on the relevant scholarly and policy literature, four perspectives that have bearing on perceptions and experiences of secure occupancy in rental housing are proposed in the study:

- A market lens. This centres on the capacity of households to afford to access suitable rental housing and to maintain their tenancies, using concepts such as housing affordability and rental housing stress, as well as considering the supply and availability of housing for rental that is affordable to households with different levels of income.
- A legal lens. This focuses on the terms and conditions of rental occupancy, using concepts such as security of tenure and discrimination/fair housing, and using the language of rights and responsibilities.
- A social policy lens. This considers the capacity of households to access and remain in rental housing and their wellbeing, including maintenance of tenancies, when faced with financial disadvantage and/or disruptive life events such as family or relationship breakdown, loss of employment, health problems and addictions.
- A socio-cultural lens. This highlights the cultural norms around occupancy of rental housing, beliefs held by households who rent and the owners and managers of rental housing, using concepts such as ontological security and the meaning of home.

Discussions of occupancy presented in the literature on rental housing have often been framed in terms of only one or two of the perspectives above and as such may offer only a fragmented and partial view of the nature and drivers of secure occupancy. In developing the conceptual framework for this study, we have aimed to take a more holistic approach to conceptualising and examining secure occupancy which

combines all of the above influences. This leads us to the viewpoint that secure occupancy results when households who need to rent are able to:

- Participate effectively in rental markets.
- Access and remain in adequate, affordable and appropriate housing with protection of their rights as consumers and citizens.
- Receive financial and non-financial support from governments or other social service agencies if and when necessary to obtain and/or sustain their tenancy.
- Exercise a degree of control over their housing circumstances and be able to make a home, to the extent that they wish to do this.

Methods of study and presentation of findings

The empirical research undertaken to apply this conceptual framework had two main components: research by the authors in Australia, and case studies of selected international jurisdictions undertaken by housing researchers with expert knowledge of rental systems. The methods applied to investigating each component and the location of their outputs in this report are summarised in turn below.

Methods for the local study comprised, firstly, a desk-based review of existing research, policy documents and available data on relevant aspects of rental housing in Australia and secondly, a series of face-to-face interviews with key informants selected on the basis of their knowledge of various aspects of occupancy of rental housing in NSW and Victoria. Interviewees came from consumer organisations such as tenants unions and resident groups, industry groups such as real estate institutes and property owners associations, policy and program officials in government organisations, and landlord-tenant mediation and dispute resolution services.

The results of this component of the study are reported in Chapters 3 and 4:

- Chapter 3 discusses the Australian context for secure occupancy in rental housing based on a review of current settings for secure occupancy, linking the market, policy and legal contexts. The chapter also discusses how Australian governments (national and state) are responding to some of the challenges around secure occupancy in rental housing for lower-income and vulnerable households.
- Chapter 4 explores how secure occupancy in rental housing is experienced, drawing on analysis of Australian secondary data and more in-depth analysis of two cases, NSW and Victoria, that highlight current issues and challenges that are related to stability and security in rental housing.

The international comparative study was facilitated by a template that was developed by the authors in consultation with researchers at OTB Research Institute for the Built Environment, Delft University of Technology, the Netherlands, who provided four of the international case studies. This aimed to elicit a comprehensive account from collaborating national housing experts of the relevant characteristics of each national (or provincial) rental system that was chosen as a case study. The template is reproduced in Appendix 2.

The international case studies were chosen on a number of substantive grounds that are outlined in Chapter 2. Selection was also influenced by feasibility considerations, such as the availability of research evidence and national experts.

Each contributing expert provided a substantial and well referenced report on their case study which has been the basis for much of the analysis included in Chapters 5 to 9, as indicated throughout. Comparisons with the relevant situation in Australia (NSW and Victoria, in particular) are also drawn. The analysis that is presented in

these chapters has been structured thematically using the conceptualisation of secure occupancy that was developed for this study:

- Chapter 5 introduces the comparative analysis by providing an overview of some of the themes that emerged from the international case studies. These include the diverse structure and size of rental markets, some broad trends in rental systems across all of the jurisdictions, and various approaches to framing secure occupancy in policy and legal terms.
- Chapter 6 takes a market perspective and considers in what ways secure occupancy can be construed as an affordability issue, both in terms of access and ongoing affordability.
- Chapter 7 examines in what ways secure occupancy is a legal and regulatory issue, centring on landlord and tenant rights and responsibilities.
- Chapter 8 investigates the ways in which secure occupancy is a socio-cultural issue as reflected in aspects of the management of rental housing that affect day to day living, including safety, physical comfort, autonomy and the ability to make a home.
- Chapter 9 explores the current policy context for consideration of secure occupancy across the jurisdictions examined and outlines specific innovations that have been developed internationally to strengthen secure occupancy. These include measures that may benefit all tenants and those targeted to 'at risk' households.

The Australian context

Nearly 30 per cent of Australian households (2.4 million) currently rent their housing and this share has increased in recent years. Of these, nearly a half (45%) are lower-income households at various life stages. Perhaps surprisingly, only 28 per cent of those households have a public landlord, so lower-income households predominately live in the private rental sector for either short or, as the available research evidence suggests, increasingly longer periods. Sixty-three percent of all renters have been renting continuously in Australia for five or more years and 41 per cent for ten or more years up to 2007–08. Private tenants comprise over two-thirds of those who have been renting for at least five years and a third of those renting for 10 or more years.¹

Notwithstanding long-term renting, most Australian households occupy their current rental property on a short-term arrangement with little security of tenure because of the terms of lease agreements—predominantly six or twelve months followed by a periodic tenancy—and the legislative provisions that allow for terminations of the latter without grounds. The public housing sector has been an exception historically, offering ongoing security of tenure in a specific dwelling for tenants. However, this situation has changed in NSW and Queensland with the introduction of fixed-term tenancies of two, five or ten years for new tenants, and other jurisdictions may follow.

One indicator of stability in rental housing is given by mobility data. In the five years to 2007–08, nearly three-quarters of renter households in Australia moved at least once, whether voluntarily or involuntarily, compared to 29 per cent of non-renter households. Private renters in particular seem to move quite frequently: 39 per cent of private renter households moved three or more times in that period, compared to 11 per cent of public tenants. While it is not known to which extent these moves are the result of unsatisfactory rental experiences or landlord-initiated terminations (with or without

¹ Analysis of Confidentialised Unit Record File (CURF) from the Australian Bureau of Statistics (ABS) Survey of Income and Housing 2007–08 (see Chapter 3).

grounds), evidence presented in Chapter 4 suggests the reasons that many tenants may have their tenancies terminated or abandon their dwellings include: a change in their financial circumstances or rent increases that occur when they are renting at the margins of their affordability; an inability to cope without tenancy support; serious disturbances arising from neighbours or the personal discomfort of their dwelling, coupled with a failure to negotiate satisfactory responses to these kinds of problems from their tenancy manager. Many of these destabilising conditions arise across both the social and private sectors. Additionally in the private sector, many other tenants are forced to move because landlords decide to turn over or sell their properties (with vacant possession as a normal condition) sometime after expiry of the (usually short) fixed period of the lease.

Secure occupancy for lower-income renter households also depends significantly on having a supply of rental accommodation that is affordable and available. However, set against the trend for lower-income Australian households to rely increasingly on renting is a growing shortage of housing that is affordable and available to that cohort of households. The latest evidence shows that there is a shortage of 138 000 affordable dwellings for those in the bottom income quintile and this figure rises to 211 000 dwellings once the availability of these lower-cost dwellings is taken into account (Wulff et al. 2009, p.34).

It is in this context of increasing reliance being placed on renting as the main long-term option for lower-income households on the one hand, and supply shortages in both the private and social rental sub-sectors on the other, that consideration of secure occupancy for rental households has emerged as a public policy issue in Australia.

Overview of the characteristics of secure occupancy in international rental systems

This study contends that the extent to which secure occupancy is delivered needs to be understood as the result of complex interactions in different socio-cultural contexts between market factors, policy settings and legislation/regulation. Through applying the conceptual framework outlined above and by undertaking an in-depth comparative analysis, the study has identified some of the key factors that appear to lie at the core of what shapes the potential for and patterns of secure occupancy in rental housing. Below we summarise our findings about these key factors, discussing those that have either positive or adverse impacts. The summary also highlights some innovative approaches (presented in more detail in Chapter 9) that the national housing experts advising the study have judged to be of international interest because of their groundbreaking character, the learning that they have generated or their potential to be adopted more widely.

Structure and scale of rental systems (Chapter 5)

The size, structure and composition of the rental market, which defines the place of renting in a system of housing provision, has many consequential ramifications for secure occupancy. In large rental sectors such as Germany, the Netherlands and Austria where between 60, 43 and 39 per cent of households across all income levels and life stages are renters respectively, renting has strong historical and cultural underpinnings and can be perceived as being on a par with owning one's own home. In such countries, cultural norms, institutional settings and legal provisions for rental housing are well developed and tend to favour long-term renting and to include strong consumer protection measures. Rental systems in these countries are described in the literature as examples of unitary rental markets because they tend to manifest

more uniform policy and regulatory approaches to their rental housing sub-sectors that support strong social outcomes, including secure occupancy. The other countries in this study, including Australia, can be described broadly as having dual rental systems. Typically these are smaller systems (ranging from 34% of households in Scotland to 21% of households in Ireland) where renting is not the cultural norm and is often constructed in policy and/or public discourse as inferior to home ownership. These systems reflect these norms in strongly differentiated policy and institutional settings affecting private versus social renters.

There are important differences in how conditions of occupancy are shaped within these two types of systems. By looking more closely at the characteristics of each of the case studies, we have identified four broad models, or ways in which rental systems are structured to provide the framework for secure occupancy for renter households (summarised in Chapter 10):

- A dominant and strongly regulated social rental sector that drives provisions for secure occupancy over all or most of the rental system (based on Austria and the Netherlands).
- A substantial and strongly regulated social housing sector that provides secure occupancy, but which is structurally separated from a small and less regulated private rental sector in which households have much lower levels of secure occupancy (based on Ireland and Scotland).
- A dominant and lightly regulated private rental sector with limited provisions for secure occupancy that is structurally separated from a small and strongly regulated social housing sector, which provides for much greater secure occupancy (based on New Jersey, Ontario, Flanders and Australia).
- A dominant and strongly regulated private rental sector that drives provisions for secure occupancy over all or most of the rental system (based on Germany).

Patterns of investment (Chapter 5)

Patterns of investment in, and ownership of, rental housing also strongly affect the supply and price of rental housing and the extent to which landlords are willing and able to offer secure renting. Whilst there is a share of institutional or syndicated investment in private rental housing in some jurisdictions (most notably Austria, Germany, New Jersey, the Netherlands and Ontario), the predominant pattern across all jurisdictions is one of small-scale investment by individual investors. Whether small-scale landlordism is inimical to secure occupancy varies according to the type of rental system. In dual rental systems, fragmented landlordism in private rental is often associated with policy settings designed to ensure maximum flexibility for landlords in entry and exit, and in managing their asset unencumbered by tenancy conditions that provide secure occupancy for tenants. In integrated rental systems, however, fragmented ownership/management is associated with longer-term investment and greater provision for secure occupancy for tenants, as illustrated by the case of Germany and, to a lesser extent, Austria.

If the policy aim is to increase secure occupancy for tenants in dual rental systems like Australia, this raises a number of possibilities. One is to seek larger-scale institutional and corporate investment. Evidence from Ontario and New Jersey suggests that this can positively influence landlord-tenant relations and service quality. Another approach is to promote more professional tenancy management among smaller private landlords, an approach taken in Scotland through the introduction of landlord registration and accreditation systems and the development of standards of rental housing (discussed in Chapter 9). A third approach, discussed further under

tenancy terms below, is that landlords will offer more secure forms of renting where they are required or encouraged to do so, provided that investment conditions are also conducive.

A final approach is the emergence in several countries of forms of hybrid tenures, which are defined for the purpose of this study as those where the investment, ownership and management of rental housing is organised in novel ways that have the potential to alter the degree of control that a resident can achieve over their housing. Chapter 9 of the report includes examples from several jurisdictions that represent alternatives to mainstream social or private renting for very low-income and vulnerable households, or another option for households generally, as a means of creating the conditions for greater resident control and responsibility, among other aims. They include forms of collective ownership, such as housing cooperatives in Germany and community land trusts in the US, tenant equity contributions such as shared equity schemes in Scotland, and head leasing schemes in Ireland and Flanders, which give an intermediary power to control tenancy allocations and offer a range of financial and non-financial supports to establish and sustain tenancies. The developing National Rental Affordability Scheme in Australia (see Chapter 3) has potential to catalyse this kind of outcome.

Rental affordability and rental subsidies (Chapter 6)

Affordability of rental housing both at the point of entry and across the duration of a tenancy is arguably the most significant structural factor affecting secure occupancy for lower-income households in many contemporary housing systems, particularly those that have experienced a considerable erosion of housing affordability. In the Australian context, interviewees for our study were consistently of the view that a shortage of affordable housing was the key constraint affecting many households' ability to access or retain appropriate forms of rental housing (as evidenced by, e.g. the extent of tenancy terminations for rental arrears) and even to exercise their rights as tenants in the context of a chronic shortage of affordable alternatives, as discussed in Chapter 4. Affordability was also identified as a major problem in Ontario, New Jersey and Flanders, which are all jurisdictions that rely heavily on forms of weakly regulated private rental and, along with Australia, have very small social housing systems and limited rental subsidy provisions.

Political preference for using rental subsidies to assist lower-income households to afford their rent has increased, at the expense of investment in so called 'bricks and mortar' or supply-side subsidies, although Austria presents somewhat of an exception to this trend among those jurisdictions included in this study. Some of the jurisdictions have comprehensive housing allowance programs for eligible renters (as in the Netherlands and Scotland), while others provide assistance to private renters, in particular those who are in receipt of various forms of government income support (as in Ireland and Australia). In other jurisdictions, the availability of rent subsidies is much more limited, for example, in New Jersey only about one in four eligible households receive assistance of this kind (in the form of rent vouchers) because of budget limits. Overall, there is very little robust comparative evidence about the extent to which differences in rental subsidy approaches mitigate tenancy failures that are attributable to affordability problems.

Rent regulation (Chapter 6)

Strong forms of rent regulation, a traditional means of protecting tenants from unaffordable market rents, have declined in favour as policy instruments because of well-evidenced adverse impacts on rental investment. Nevertheless, the unitary

systems of the Netherlands and Germany have largely retained non-market based approaches to setting asking rents and Austria has a large, diversified stock of rental housing based on cost-limited cost rents. All other jurisdictions included in this study use market rent setting for private tenancies, but moderate their social rents (using different approaches) in line with affordability principles.

All jurisdictions studied retain second generation rent regulations that govern the manner, frequency and level of rent increases for existing tenancies in the private sector and, in some cases, social housing. Jurisdictions use different forms of rent indexing systems, with only Scotland and Ireland, like Australia, allowing rent increases for sitting private tenants to directly reflect market changes. In both those cases, only one increase a year is allowed, compared to the twice-yearly maximum in Australia. Overall, Australia appears to have comparatively weak regulation of rent increases for sitting tenants in private rental, even when compared to what otherwise appear to be similar private rental systems (Flanders, New Jersey and Ontario).

Tenancy terms and security of tenure (Chapter 7)

Legislative provisions formally define the rights of tenants to occupy dwellings and the length and terms of their tenure. In much discourse about secure occupancy, the nature of provisions for the duration of tenancies and the grounds for termination are seen to lie at the heart of the matter and they clearly are critical, along with rental supply conditions and rental costs.

On this dimension, jurisdictions appear to fall into three qualitatively different groups:

- Those with a well-established philosophy that promotes secure occupancy by: offering most tenants unlimited tenure (subject to proven breaches of a lease agreement by the tenant that are grounds for termination action by the landlord); not allowing arbitrary (no grounds) terminations by landlords; and adopting other strong consumer protection measures, such as requirements on landlords to locate alternative housing and having lengthy notice periods. Austria, Germany and the Netherlands fall into this group.
- Those that encourage longer-term leasing through law, policy and/or practice and in most, but not all, cases also prescribe grounds for terminations by landlords of private as well as social tenancies. These jurisdictions include Flanders, Ireland, New Jersey and Ontario.
- Those that offer the least certain security of tenure and leasing options for private tenants in law and/or practice and have laws that allow for terminations without grounds by private landlords, namely Australia and Scotland.

The comparative review of normal leasing provisions and practices suggests that private tenants in Australia have less certainty of occupancy beyond their initial six- or twelve-month lease term than in most of the other jurisdictions considered, except for those in Ontario and Scotland. Similarly, moves to contain occupancy periods in social housing through policy and legal means are at odds with practice elsewhere, although this may be changing as the widespread scarcity of tenancies in social housing grows.

It is also worth noting that, although they all rely increasingly on private rather than government investment, most of the jurisdictions have been able to maintain medium to large rental sectors, while offering stronger provisions for secure occupancy than Australia.

Legal provisions and management trends in social housing (Chapter 7)

While social housing has traditionally been characterised by strong tenancy sustainment and protection principles, for a number of reasons discussed in the body of the report, there has been a recent trend to impose additional conditions on tenancies, especially in jurisdictions with small, highly targeted social housing sectors. These go beyond the governance of traditional tenancy law by linking grounds for eviction to fraudulent, criminal or anti-social behaviour of tenants and in some cases to the behaviour, or unapproved occupancy, of other household members. Some jurisdictions, like Flanders and Ireland, also have probationary tenancies for new entrants to this sub-sector. In general, it could be said that these kinds of provisions are intended to introduce greater controls into social housing in the hope of protecting the interests of the sector at large (e.g. by reducing fraud), enabling quiet enjoyment by neighbouring tenants and other household members (e.g. by deterring violence or anti-social behaviour) or reducing household overcrowding and its ill effects.

While management and legal actions of social landlords may often be intended to protect tenants, they can also contribute to an environment of surveillance and control, and special provisions may have the unintended consequence of stigmatising the sector and its residents. Moreover, making broader provisions for controlling the behaviour of social housing tenants (e.g. via new grounds for, and streamlined routes to, eviction) extends landlord powers considerably and, arguably, increases the vulnerability of some tenants, such as those with mental health issues. Little is known in Australia, or elsewhere, about the effectiveness of this legalistic approach to deterring disruptive behaviour or about the impacts the trend is having on social housing tenants' privacy, freedom from surveillance and autonomy, which are key aspects of secure occupancy and making a home, as discussed below.

Housing rights movements (Chapters 5 and 9)

Under international law, housing is a human right, and discrimination in housing is prohibited. In rental housing, this right may encompass a right to accommodation (such as following a termination or when homeless), how tenants are chosen, having transparent and defensible grounds for tenancy termination, and a right to protection from unfair or discriminatory management practices. Most jurisdictions provided some evidence of initiatives, often begun by community and tenant-led movements, that have aimed to build wider acceptance of tenants' rights to decent, secure and affordable housing and to overcome discriminatory barriers in rental housing. While not without controversy, a critical intent behind these movements is breaking down adversarial relations between landlords and tenants, such as through informing landlords of their responsibilities, promoting knowledge among tenants of their rights and providing other practical ways of eliminating or preventing discriminatory and unfair practices. Ontario and New Jersey appear to be two jurisdictions with large private rental sectors that have been at the forefront of efforts to gain wider acceptance of fair tenancy practices.

Living in rental housing and making a home (Chapters 4 and 8)

Additional to financial and legal factors, there are many other reasons why it may be difficult for tenants to achieve secure occupancy in rental housing. These include exposure to noise, inability to personalise a dwelling to make it home and, in some cases, a low level of amenity and standard of repair. These issues can be improved or exacerbated by rental management practices.

The report explores what is known about how these issues shape the tenant experience across the diverse contexts of the ten jurisdictions in this study. More

information is available on physical comfort than any of the other elements of home identified in the literature, since this relates to aspects of dwellings and buildings that are more easily observed and quantified than subjective experiences of safety, privacy and autonomy.

The case study evidence highlights the large scope, and variety of ways, in which the issues embodied in living appropriately and making a home can potentially be considered and promoted for renters. These include: regulating environmental noise, dwelling/building performance and landlord-tenant relations, financial incentives/subsidies to landlords and/or tenants, and housing management practices to govern disruptive behaviour of neighbours, particularly in social housing. In general, many of these kinds of issues appear to have been tackled to a greater extent in social housing than in the private rental market, where there are many small-scale landlords who may be unwilling to invest in maintenance and/or improvements if they cannot get an immediate financial return. However, there are a variety of innovative examples of jurisdictions addressing problems in one or both sub-sectors presented in the report. A variety of mechanisms designed to combat rising costs of energy and water for renters are also increasingly coming to the fore in most international jurisdictions, in the context of new environmental standards.

Assistance for low-income and vulnerable households (Chapters 4 and 9)

In all jurisdictions, increasing shares of households who are renting are on low incomes and there is a developing convergence in the profiles of such tenants in the social and private sectors. General factors contributing to these trends include increasing rates of home ownership among middle-income households and a more limited role for social renting, even in jurisdictions that have traditionally had relatively large social rental sectors. As a result, it seems highly likely that the private rental sector will play a much more important role in housing lower-income households in all jurisdictions in future.

Policy settings are beginning to take this into account in a number of ways. For example, tenancy support programs, many of which began in social housing, are being extended to private tenancies, especially targeted to vulnerable households and those with a history of exclusion from the rental market, such as long-term homeless people. Eviction assistance programs are also being used, for example, in Toronto and Vienna, and several jurisdictions have made attempts to reduce the risks of rental arrears leading to termination where the arrears can be redressed. NSW is following this path in new residential tenancy laws that came into effect in early 2011 (see Chapter 4).

Faced with high demand and heavily constrained social housing supply, NSW has led the way in Australia in developing and implementing a wide range of schemes to assist low-income households to live in the private rental sector because they cannot access social housing (e.g. tenancy establishment grants and brokerage and tenancy facilitation services). The number of households being assisted through these programs now dwarfs the number who are allocated social housing (see Table 11).

Comparing approaches to assisting low-income and vulnerable tenants to establish and maintain tenancies highlights two trends. First, programs of this kind are increasingly being designed as an integrated package of financial and non-financial measures aimed at resolving a household's immediate housing problem and assisting them to develop a plan for preventing future housing instability. Second, there are a variety of agencies involved in these programs across and within countries, including municipal, not-for-profit and private agencies and dedicated service agencies.

Both favourable and unfavourable aspects of the impact of these trends on secure occupancy can be identified, for instance:

- Vulnerable households being assisted in private rental housing often have much lower levels of secure occupancy than is available in social housing although some countries, such as Ireland, are attempting to tie assistance to the offer of longer tenancy terms by the landlord.
- Use of specialised welfare service agencies (or officers) as intermediaries appears to have the potential to overcome private landlord concerns about becoming increasingly responsible for the social welfare of their tenants.
- While they may be well targeted to the needs of particular tenants, these schemes do not address underlying rental shortages and affordability problems. Therefore, without other measures such as adequate rent subsidies and more rental supply, they have only limited potential to improve rental stability and security overall in market situations like those that prevail over much of Australia.

Implications for policy

It was not our intention to identify particular policies or programs from other countries and to suggest that it is possible to transplant these to Australia. Rather, we wanted to situate the Australian framework for secure occupancy in the context of experiences in other developed countries and question some taken-for-granted assumptions about the nature of secure occupancy in rental housing. The implications for policy overall are threefold:

- Considering the concept of secure occupancy broadly provides a strong 'whole of system' framework for examining the possible policy levers and the interconnections between them that could improve outcomes for households who rent (outlined in Chapter 2 and applied throughout the report).
- The components of such a framework should include investment, management, legislation/regulation and cultural change in respect of expectations about living in rental housing and making a home (summarised in Chapter 10 and embedded in the report).
- The report provides a substantial resource in terms of policy, practice and innovation developed in NSW, Victoria and eight international jurisdictions to enhance secure occupancy for lower-income and vulnerable households (Chapters 4 and 9).

1 INTRODUCTION

1.1 Background

The rental sector is a critical part of the Australian housing system with about 30 per cent of all households renting their housing at any one time. Households who rent are quite diverse and include those on low, moderate and high incomes, and at different stages of their lives, such as young people, families with and without children and older people. The rental sector also has a particular role in housing recent migrants and tertiary students. Renting provides a flexible option for some of these households, for example, (young) people who want to be able to move between jobs and cities and/or do not want the responsibilities associated with home ownership. Others, however, rent because their housing circumstances are constrained, including the 'intermediate' market (Wilcox 2005) of households who want to buy, but cannot afford to do so, and those who have fallen out of home ownership (Burke & Pinnegar 2007). A large segment of the rental sector, however, comprises lower-income households who are constrained in their housing choices due to their income, sometimes compounded by factors such as ill health, disability, increasing frailty, family size or support needs. More than a million lower-income households² rent their housing. These comprise an estimated 45 per cent of all renters, and about 14 per cent of all Australian households. They are the primary target group for rental housing assistance programs in Australia.

This is the Final Report of a project that investigates the nature of secure occupancy in rental housing and discusses ideas for enabling more secure occupancy, which recent research suggests is an important foundation for health and wellbeing, children's development and education, family functioning, social participation and economic engagement (Bridge et al. 2003; Dockery et al. 2008, 2010; Hulse & Saugeres 2008a). The report draws on experience in Australia and internationally to address a major public policy conundrum: if more households are going to rent, and for longer periods, as seems likely based on accumulating research evidence about declining opportunities to purchase a home in Australia (e.g. Yates et al. 2008; Yates & Bradbury 2010), how can they obtain a degree of security, stability and underlying control over their housing circumstances, which appears to be associated with health and wellbeing?

The project provides a more comprehensive investigation of the rental sector than has hitherto been attempted by:

- Developing a new concept of secure occupancy, viewed as a product of the interrelationship between market, policy and legal factors. This is broader than other concepts that have been employed to investigate the rental sector, such as 'housing affordability' or 'security of tenure'.
- Using the concept of secure occupancy as a means of enhancing understanding of the structuring of the overall rental sector rather than starting with rental housing sub-sectors, such as private and social rental, which are the product of existing institutional arrangements.
- Scoping the market, policy, legal and socio-cultural framework that shapes secure occupancy across the rental market in Australia.

² Analysis of data from the Australian Bureau of Statistics (ABS) Survey of Income and Housing 2007–08 indicates that between 1 094 882 and 1 136 233 lower-income households rent their housing across all sub-sectors. The different counts result from applying different measures of the lowest 40 per cent of household income—gross or net; equivalised or unequivalised. These households comprise between 45.5 per cent and 47.3 per cent of all renter households, depending on the measure used.

- Using a comparative approach to investigate the market, policy, legal and socio-cultural framework for secure occupancy in a number of international jurisdictions with different rental systems, and identifying innovations in policy and practice that are aimed at assisting lower-income households who rent their housing.

1.2 Approach

The approach taken in this project is one that attempts to open up, broaden and inform debates about secure occupancy in rental housing, taking into account different foci of activity (governments, markets and the third sector), different levels of government (federal, state and local) and different types of policy instruments (legislation, regulation, policies and practices). There are three important components to our approach: a focus on secure occupancy, a perspective that runs across the rental sector and, importantly, use of comparative analysis. We use comparative analysis to provide a fresh view of secure occupancy in the rental sector, in terms of how we think about the issues, including how institutional and policy frameworks can shape secure occupancy as well as market factors, and as a source of ideas to stimulate thinking about means of improving secure occupancy in rental housing in Australia.

1.2.1 *Why secure occupancy?*

The housing options available to lower-income households in Australia have become more limited than in previous decades.

- It is more difficult to buy due to rapidly increasing housing prices relative to trends in household incomes. Younger households and those on low-moderate incomes have been squeezed out of the ownership market with the expectation that more people will live in the rental sector their entire lives (Hulse et al. 2010a; Yates et al. 2008; Yates & Bradbury 2010).
- It is more difficult to access social housing due to decreasing lettings in that sector since the mid-1990s as a consequence of tighter targeting, lower turnover and, until recently, low levels of investment in additional social housing (Hulse & Burke 2005).

This means that the main options available for those on lower incomes are renting from real estate agents or private landlords and other rental arrangements, such as renting from family or friends, living in marginal housing or sharing accommodation (Seelig et al. 2008).

Lower-income households face stiff competition in finding housing in the private rental sector from three main groups who may be more attractive to property owners and managers: singles and couples (often younger people), who are relatively mobile in employment and location; households who rent while waiting to buy a home, including those with children; and domestic and international tertiary students (National Shelter 2010; Wulff et al. 2009). For many of these households, renting is a transitional stage and they may neither want, nor expect, to stay in any one dwelling for long. However, lower-income households often face renting their housing for long periods if their household income does not improve substantially, particularly if they are on statutory incomes and/or low wages.

The issues facing households in the private rental sector have been construed primarily as a problem of 'housing affordability' and there is now a substantial body of research evidence on the financial stress experienced by these households, for example, in AHURI's National Research Venture 3 (NRV3) on Housing Affordability for Lower-income Australians (Yates & Milligan 2007). In addition to trying to scope

the extent and intensity of housing affordability problems faced by households who rent, this work is important in exploring some of the ongoing consequences for lower-income renter households. Qualitative research for NRV3 found that for many long-term renters, security and stability were 'recurring themes' (Burke & Pinnegar 2007, p.105). Subsequent research has unpacked some of the dimensions of insecurity experienced by lower-income renter households: high levels of mobility, instability of housing, lack of safety, lack of privacy, lack of belonging and lack of physical comfort, with some differences between the experiences of households in different types of rental. Importantly, not only are the dimensions of housing insecurity interrelated, but they compound insecurities experienced in other areas of life such as the self, family relationships, health, employment and finances (Hulse & Saugeres 2008b). There is also an increasing body of international research evidence that suggests that the psycho-social factors (security, stability and control) associated with housing circumstances matter in terms of health and wellbeing. For example, it appears that these factors mediate the relationship between housing and physical and mental health (Evans et al. 2003; Smith et al. 2003).

Potentially, therefore, cumulative experiences of housing insecurity have profound implications for health and wellbeing, economic engagement, social participation and attachment and belonging to community, all of which are building blocks for an inclusive and cohesive society, as reflected in the Australian Government's strategy on social inclusion (Australian Government 2009). The policy challenge is that, in the context of the provisions and operation of the rental sector, households see owning their own home as the only way that they can obtain an increased sense of security, heightened levels of control over their housing and lives in general, and increased housing stability, particularly if they have children. As summarised by a lower-income home purchaser in recent qualitative research: 'Well, what are the alternatives?' (Hulse et al. 2010a, p.105). This study investigates means of providing greater secure occupancy in rental housing, in particular for those who are likely to be renting in the medium to long term because they have no other options.

1.2.2 Why rental housing?

Policy (and research) into renting in Australia conventionally reflects the traditional demarcation of the sector into clearly identified segments, most notably the private rental sector and social housing. These have been seen as so distinct as to be separate tenures. The focus on social housing has been on governance arrangements in respect of housing providers and housing management practices, reflecting a social policy perspective (e.g. Hulse & Burke 2005; Hulse et al. 2007). In contrast, the focus on private rental housing has been predominantly on market factors, supply, demand and price (e.g. Wulff et al. 2009, 2011; Yates & Wulff 2005). Interest in households living in marginal housing, such as boarding houses or caravans, reflects a social/welfare policy perspective (Chamberlain & Mackenzie 2008). There has been little attention to the more than 10 per cent of all renters living in other, mainly informal, rental arrangements.³ This is curious in view of evidence that people in receipt of income support payments are over-represented in this type of rental arrangement (Seelig et al. 2008).

Lower-income households in rental sub-sectors face quite different terms and conditions of occupancy, referring to access arrangements, rent levels, frequency and extent of rent rises, provisions for dwelling maintenance, security of tenure and a

³ Calculated from ABS (2007) 2006 Census of Population and Housing, Australia, 2006 Census Tables, Cat. no.2068.0 and refers to households occupying private dwellings rented from relatives, employers and other landlords.

number of other tenancy conditions that affect the circumstances and experiences of residents. Furthermore, the Australian rental sector is quite diverse with occupancy arrangements determined by a combination of legislation, regulation, policy and programs aimed at specific sub-sectors, as well as jurisdictional differences:

- Public housing traditionally offered sub-market rents based on household incomes rather than the size, amenity or location of the dwellings, and lifetime security of tenure. Some jurisdictions have increased rents and/or introduced fixed-term tenure of different lengths in a bid to move households out of the sector as their circumstances improve, with the aim of freeing up housing for those in more urgent or chronic need.
- The growing not-for-profit sector generally offers higher rents than public housing (although the tenant can recoup some of the rent through Rent Assistance payments) and a variable degree of secure occupancy depending on the scheme.
- The private rental sector offers market rents that reflect housing size/type, quality and location and provides predominantly short-term lease arrangements with the prospect of renewal or continuing periodic occupancy subject to a short notice period to leave.
- Hybrid schemes such as the National Rental Affordability Scheme include criteria about sub-market rents and conditions of occupancy that differ from those operating generally in the private rental sector.
- Little is known about the terms and conditions of occupancy in informal rental arrangements (including living with relatives and friends).

There is some cause, therefore, to think in a less segmented way about renting in Australia. At the national level, the National Affordable Housing Agreement (NAHA) potentially encompasses all types of renting and focuses primarily on outcomes for households rather than dwelling numbers in particular sub-sectors (Council of Australian Governments 2009). There has been innovation in housing policy with schemes such as the National Rental Affordability Scheme (NRAS); being somewhat of a hybrid and difficult to classify as either social or private rental, containing elements of both. The development of not-for-profit housing providers at scale raises the prospect of a third sector between government and the market, and may require changes to some of the institutional settings for rental housing. There has also been a proliferation of schemes at a state/territory level to assist lower-income households in private rental housing including rent guarantees, rent brokerage and head leasing.

Whilst there has been some innovation in housing policy and practice around renting, the outcomes for households are also shaped by other types of public policies (such as taxation), legislation and regulation of the rental sector, as well as a range of market factors including decisions of investors in rental housing (private, public and third sector) and of households that rent. It has been unusual in an Australian public policy context to take a holistic view of the rental sector and its drivers. There are some small signs that this is changing. For example, a recent national review of residential tenancies legislation was funded by the Australian Government to investigate the connection between this legislation and the prevention of homelessness (National Shelter 2010), while state/territory reviews of residential tenancies legislation have begun to ask questions about the linkages between legislation, housing policy and housing markets (e.g. Consumer Affairs and Fair Trading Tasmania, 2009; Queensland Residential Tenancies Authority 2007).

The Council of Australian Governments (COAG) is overseeing national housing reforms that propose more seamless transitions between rental sectors and between renting and owning. To date the emphasis has been on financial assistance and other

support to enable lower-income households to enter the private rental market, in particular to provide pathways for public housing tenants to move into private rental. However, a recent report on progress in implementing these reforms notes that there are significant challenges including the shortage of affordable private rental and perceived discrimination by private landlords/real estate agents (Housing Ministers' Conference 2009). It appears that the reforms will require attention not only to policies and programs, but also to issues of supply and availability of rental housing, legislation/regulation and management practices.

In this project, we are concerned with the rental sector as a whole, including public, community, affordable, private and other rental housing. We focus on long-term rental housing, not on crisis, transitional housing or specialist housing, which is an integral part of a support service. We take the view that secure occupancy for households is determined by a combination of policy instruments and institutional settings as well as market factors that affect the decisions and behaviours of households living in the sector and the owners and managers of rental housing. This approach enables thinking 'outside the square' to consider different means of enabling secure occupancy in rental housing.

1.2.3 Why comparative research?

The study uses a comparative approach to exploring issues of secure occupancy in rental housing as well as providing a review of the Australian situation with a more in-depth analysis of the position in two states, New South Wales (NSW) and Victoria. There are many reasons for engaging in comparative research, including describing and classifying the Australian experience, and seeking to account for, explore or evaluate our own experience and the experiences of other countries (Castles 1991).

Two broad strands of comparative research are relevant to a discussion of secure occupancy in rental housing. The first is analysis that compares the market factors that shape secure occupancy in different countries. The focus in this research is on the factors shaping investment in private rental housing and consequent effects on supply and price. This work has advanced understanding of the range of factors, including government policy levers that appear to affect the type and scale of investment in private rental (e.g. Oxley et al. 2010). Some of this work has also considered regulation of security of tenure and rent setting, often concluding that regulation distorts markets because it deters investors due to limited or uncertain returns, or otherwise results in owners/landlords managing their risk to the detriment of lower income and vulnerable households (e.g. Ball 2010). However, much of this literature is theoretical and there is limited empirical evidence, particularly in the Australian context, of the motivations of rental investors (see Seelig et al. 2006 for a review of the literature) or the ways in which households who rent make decisions and trade-offs in relation to their housing.

Arguably the most influential explanation in the comparative housing research literature of differences in the structuring of rental markets with consequences for secure occupancy is found in the second strand of research led by Kemeny (Kemeny 1995, 2006; Kemeny et al. 2005) who suggests that countries with different welfare regimes produce different types of rental markets. Kemeny (1995) contended that Anglophone countries with liberal welfare regimes have dual rental markets, with a large private rental sector protected from competition by a small and tightly controlled public rental sector. This situation offers little scope for the development of other forms of limited profit housing provision at scale, which could exercise a general downward pressure on rents. The sectors are kept apart through different sets of institutional arrangements and there is little security of tenure in unregulated private

rental markets. In contrast, in the social democratic and corporatist welfare regimes found in Northern and Western Europe, there are unitary rental markets in which there are much less stark differences in rental arrangements and institutional settings between sectors, enabling a much greater role for the not-for-profit sector and secure occupancy for households (Kemeny et al. 2005).⁴ The import of this explanation is that rental housing tenure is 'the product of a politico-legal construct, since it is the result of cumulative legislation and policy over many decades that entrench and reinforce such differences rather than attempting to minimise them' (Kemeny 1995, p.27). There has been a robust discussion of this thesis in the literature (e.g. Haffner et al. 2008; Hoekstra 2009; Hulse 2003; Hulse et al. 2010b).

In this study we compare the rental sectors of selected countries, which have different governance structures and institutional settings, and rental sectors of different sizes and composition. We take account of the unitary/dual rental market thesis, but are not constrained by it, either in the development of the conceptual framework or the selection of cases (discussed in Chapter 2). We use a comparative approach:

- To describe/classify the framework for secure occupancy in rental housing in Australia compared to selected jurisdictions in developed countries.
- To explore how the settings for rental housing in selected international examples shape secure occupancy, taking into account the interrelation of institutions, markets, public policies and practices, and with a particular focus on lower-income and vulnerable households who rent.
- To consider available evidence on the outcomes of different rental systems in providing secure occupancy for households.

Comparative research is potentially very fruitful in challenging taken-for-granted assumptions in a national context and opening up debates, whether about new ways of considering issues or stimulating new ideas. The approach generates ideas about secure occupancy that can be considered in an Australian context. It also enables some evaluation of the effectiveness of different approaches. However, it was not our intention to find individual policies or programs that could be transferred from one country to another. As indicated in the burgeoning literature on policy transfer and policy learning, it is not possible to take a policy or program that works in one country and transplant it into another and expect it to work, without regard to historically and culturally contingent factors (Dolowitz 2009; Dolowitz & Marsh 2000; Evans 2009).

1.3 Research aim and objective

The overall aim of the project is to open up, and inform, debates about secure occupancy in rental housing through comparative analysis of the framework for secure occupancy in different contexts. It compares the market, policy and legal context for secure occupancy in a number of developed countries with differing rental systems, including Australia, with a particular focus on lower-income and vulnerable households.

The research questions are:

1. What are current provisions for providing periods of secure occupancy for renters in Australian jurisdictions?

⁴ The later work uses the term integrated (rather than unitary) rental markets to refer to countries such as Germany, Denmark and Sweden, based on ideas originating in Germany about the 'social market' (Kemeny 2006, pp.3–4).

2. What models are used internationally for providing periods of secure occupancy for households in rental housing, having regard to legislation, regulation, policy and programs?
3. How effective are these models for providing periods of secure occupancy for renter households in the context of the greater risks faced by lower-income and vulnerable households?
4. To what extent are these models transferable to the Australian context?

'Models' of secure occupancy in this context refer to discernible national patterns in the ways in which different factors interrelate to shape secure occupancy in rental housing. Consideration of the 'transferability' of the models is about situating the Australian framework for secure occupancy in the context of experiences in other developed countries and developing a broader and deeper appreciation of the range of factors to be considered when contemplating policy change.

1.4 Outline of the Final Report

The Report proceeds as follows.

Chapter 2 outlines the conceptual framework for the research, which draws on the scholarly and policy literature relevant to secure occupancy in rental housing. We also discuss the research design and methodology in more detail. In particular, we outline the comparative research method undertaken for the project, drawing on case studies prepared by experts in the rental system of selected countries.

Chapters 3 and 4 present the research findings on secure occupancy in rental housing in Australia using this conceptual framework:

- Chapter 3 discusses the Australian context for secure occupancy in rental housing based on a review of current settings for secure occupancy, linking the market, policy and legal contexts. The chapter indicates how governments are responding to some of the challenges around secure occupancy in rental housing for lower-income and vulnerable households.
- Chapter 4 explores how secure occupancy in rental housing is experienced drawing on analysis of Australian secondary data and more in-depth analysis of two cases, NSW and Victoria.

Chapter 5 introduces the comparative analysis by providing an overview of some of the themes that emerged from eight international case studies. These include some broad trends across all of the countries and divergent and diverse approaches to secure occupancy.

Chapters 6–9 provide the comparative analysis of secure occupancy in rental housing from the international case studies:

- Chapter 6 considers in what ways secure occupancy can be construed as an affordability issue, both in terms of access and ongoing affordability.
- Chapter 7 examines in what ways secure occupancy is a legal and regulatory issue, centring on landlord and tenant rights and responsibilities.
- Chapter 8 investigates the ways in which secure occupancy is a socio-cultural issue as reflected in aspects of the management of rental housing that affect day to day living, including issues such as safety, physical comfort, autonomy and the ability to make a home.
- Chapter 9 explores the current policy context for consideration of secure occupancy across the jurisdictions examined and outlines specific innovations that

have been developed internationally to strengthen secure occupancy. These include measures that may benefit all tenants and those targeted to 'at risk' households.

Chapter 10 concludes the Report with an assessment of what can be learnt about secure occupancy in rental housing from the comparative analysis of the factors shaping secure occupancy in rental housing in different national and sub-national contexts. It outlines a way of thinking through some of these issues and some specific implications for policy and practice in an Australian context.

There are also three appendices including a concise summary of the market, policy and legislative context for secure occupancy in rental housing in the eight international jurisdictions in the study (Appendix 1) and the template for the international case studies (Appendix 2).

2 CONCEPTUAL FRAMEWORK, RESEARCH DESIGN AND METHODOLOGY

This chapter has two parts. First, it outlines the conceptual framework for the project and the concept of secure occupancy, which is the basis of the empirical research. The framework draws together what have been quite distinct lenses in looking at the rental sector (market, legal, social policy and socio-cultural) and focuses attention on each of these as potential contributors to conditions of occupancy for households who rent their housing. The second part of the chapter outlines the research design and methodology and our approach to comparative research.

2.1 Conceptualising secure occupancy in rental housing

Pivotal to this project is the concept of secure occupancy, which refers to the nature of occupancy by households of residential dwellings and the extent to which households can make a home and stay there for reasonable periods if they wish to do so, provided that they meet their tenancy obligations. The focus is on the nature of occupancy, which affects households' experience of housing and home.

2.1.1 Lenses for viewing secure occupancy in rental housing

In considering secure occupancy in rental housing, we draw on four different lenses, each involving a different perspective and using different concepts. It is possible to view secure occupancy through:

- A market lens, which centres on the capacity of households to afford to access suitable rental housing and to maintain their tenancies, using concepts such as housing affordability and rental housing stress, as well as considering the supply and availability of housing for rental that is affordable to households with different levels of income.
- A legal lens, which focuses on the terms and conditions of occupancy, using concepts such as security of tenure and discrimination/fair housing and using the language of rights and responsibilities.
- A social policy lens, which foregrounds the capacity of households to access and remain in rental housing and their wellbeing, including maintenance of tenancies when faced with financial disadvantage and/or disruptive life events such as family or relationship breakdown, loss of employment, health problems, addictions and other life circumstances.
- A socio-cultural lens, which highlights the cultural norms around occupancy of rental housing, beliefs held by households who rent and the owners and managers of rental housing, using concepts such as ontological security and the meaning of home.

Below we briefly explore each of the four lenses, and related concepts, as a means of understanding the concept of secure occupancy in rental housing.

A market lens

Analyses of rental housing markets are concerned with aggregate behaviours that reflect the decisions of many households about where to live and the decisions of many owners of housing to offer housing for rental, mediated through the mechanism of price (rent). The owners of rental housing can themselves be households, for-profit or not-for-profit organisations and governments. The provision of rental housing can be mediated by those who manage the housing: household investors who self-

manage, real estate agents and property managers, not-for-profit housing providers and government housing agencies. In this sense, occupancy of rental housing is a commodity to be exchanged like any other and occupancy is clearly distinct from ownership.

Using this lens, key aspects of secure occupancy are whether households can afford to access and remain in housing, typically construed as rental housing affordability or lack of affordability. There are many conceptual and empirical issues in using the concept of rental housing affordability that have been canvassed elsewhere (Burke & Ralston 2003; Nepal et al. 2010; Yates & Gabriel 2006; Yates & Milligan 2007). At its core, the concept is a normative one; it establishes benchmarks for the assessment of the situation of individual households and renter households generally. However, as has often been pointed out in the economic literature, households make trade-offs between the amount they spend on housing and other living expenses (Linneman & Megbolugbe 1992; Winger 1969), and between housing type and location. A household may be able to pay a rent that appears to be unaffordable, but this may be a conscious decision to minimise expenditures in other areas. For example, a household may decide to pay a higher rent for a property that is near to public transport so that they do not have the costs of running a car.

Whilst the focus is often on the ability of households to obtain rental housing they can afford and to maintain their payments, households also often have to pay 'up-front' transaction costs in order to gain occupancy of rental housing. These payments vary between, and sometimes within, countries and include rental bonds, up-front equity contributions, rent in advance, relocation expenses and utility connection fees. In addition, there are other ongoing expenditures associated with renting such as utility costs, which may be affected by the type and condition of the dwelling being rented.⁵ Thus, in addition to ongoing rental, the transaction costs of renting and ongoing non-rental expenditures may also impact on secure occupancy for households who rent.

Viewed through this lens, public policies to assist households who are finding it difficult to afford rental housing may aim to:

- Increase effective demand through provision of additional income, for example, through housing-related cash transfers within income support/social assistance systems, through housing allowances, or 'in kind' assistance such as housing vouchers (Hulse 2002; Kemp 2007).
- Increase the supply of rental housing at price points affordable to lower-income households through a variety of policy instruments ranging from investment incentives to landlords (Berry 2000; Berry & Hall, 2005) to more direct involvement in eliciting the supply of affordable housing (e.g. through capital grants to rental housing providers).
- Regulate the price of rental housing. Although not a feature of Australian policy, this does occur in some other countries, including many European countries and some cities in the United States of America (US) and Canada.

A market lens on secure occupancy highlights some issues, but leaves others in the shadows. For example, it is not possible to say whether rents charged are reasonable given the type of property and its amenity and condition or whether the frequency and/or scale of rent increases mean that some households will be unable to sustain

⁵ In some countries, such as Canada and the US, these expenditures are incorporated into rental payments (for multi-unit dwellings) whereas in others rents do not include heating, such as the 'cold rents' in Germany.

their tenancies. These types of issues are often addressed through a legal lens as we discuss below.

A legal lens

The legislation and associated regulation that provide the terms and conditions under which households occupy rented housing have important financial and non-financial consequences for households. Terms of occupancy include bond and rent in advance payments, rent levels, frequency and size of rent increases, and legal rights and responsibilities including circumstances in which households must leave the dwelling. Conditions of tenancy may be specific to the provider and/or type of dwelling and concern many aspects of daily living, such as occupancy levels, pet ownership, personalising a dwelling and garden maintenance, as well as the regulation of practices such as car parking and use of common areas. Landlord-tenant legislation may be enacted at a national level or, more usually in federal systems of government, at a state/provincial or even local level. Thus, the legislation that shapes secure occupancy may differ quite substantially within a country as well as between countries.

Legislation covering the rights and responsibilities of tenants and owners of rented housing is viewed as a part of property law in the Anglophone countries, where the focus is on the contract (or lease agreement) freely entered into by two parties, the landlord and the tenant (Stewart 1994, p.264). The terms of occupancy under a lease arrangement are considered to be inferior to those of freehold occupation (ownership), but superior to licence arrangements which give permission to occupy, such as in some residential complexes for older people. In English law, on which Australian law is based, whilst lease agreements between landlords and tenants derive from property law, there is also some differentiation between rental sub-sectors based on housing specific legislation and regulation which gives additional rights and responsibilities to some tenants, such as social housing tenants (Blandy & Goodchild 1999, p.34). Thus, categories of housing status (or nature of occupancy) heavily used in housing policy debates in countries such as the UK, Ireland and Australia, such as 'social housing tenant', draw on both property and housing law. In contrast, many of the European countries have legal systems that deal differently with occupancy of rental housing. For example, in Austria, Belgium, the Netherlands and Germany, tenancy contracts are covered by Civil Codes as well as by specific legislation on rents (e.g. De Decker 2001).

In housing policy and research, the term 'security of tenure' is often used in a taken-for-granted way to refer to legal rights of occupancy, although rarely defined precisely. It is often construed as the right of a household to occupy a property as long as they wish provided that they meet their obligations, such as paying the rent on time. However, security of tenure differs between countries and over time and can best be seen as a continuum rather than a dichotomy. The strongest version of security of tenure is that households can continue to occupy their housing as they wish and can transfer tenancy to their children, sometimes also with a right to buy the property. However, there are also 'weaker' versions of security of tenure that provide for the owner to require the tenant to leave in certain circumstances, such as wanting to live in the property themselves, wishing to sell with vacant possession, or intending to undertake major renovations or redevelopment. Further, in some countries, there is also a 'catch all' provision that enables owners to require tenants to leave without giving a reason specified in legislation, although the consequences for the households may depend to some degree on the length of notice required. Security of tenure is thus not an absolute concept, but reflects cultural norms about renting as reflected in legislation or codes that confer rights and responsibilities on landlords and tenants.

In Australia, provisions for security of tenure have traditionally been very different between the private and social rental sectors. The private rental sector is seen as a transitional sector for households *en route* to home ownership or social rental and offers only weak security of tenure. Historically, the social rental sector was seen as an end point for some households and traditionally offered strong security of tenure, although this is slowly changing as social housing becomes a more residual sector, as is also the case in most of the other jurisdictions in the study (discussed in Chapter 5). Thus in dual rental markets like Australia, security of tenure in the private rental sector is seen as an issue for legislation and regulation whereas security of tenure in the social rental sector is construed primarily as an issue of housing policy. In contrast, some of the continental European countries with unitary rental markets can be expected to have similar legal and regulatory provisions in respect of security of tenure across the rental sector, supplemented by housing legislation and policies to provide assistance as required across rental types.

It is also important to note that the terms and conditions of occupancy in rental housing can also be affected by legislation in a variety of domains (e.g. property, contracts, housing, fair trading, consumer affairs, anti-discrimination), which in combination shape the degree of secure occupancy for households renting their accommodation. For example, equal opportunity or fair trading legislation that prohibits discrimination against people on the basis of characteristics such as age, gender, ethnicity/race, marital status and disability applies to the selection of household for occupancy of rental housing and ongoing management of rental housing. Other legislation that may be relevant relates to family and domestic violence, consumer protection, building standards, health and safety, privacy and planning. The type, coverage and mix of legislation as it affects occupancy of rental housing can also be considered in the context of social policy objectives and settings, which we discuss next.

A social policy lens

A social policy lens on secure occupancy recognises that some households are not able to access and remain in rental housing without action by governments. Problems of access and tenancy sustainment could be construed as a problem of inadequate income, a problem of housing market failure, a problem resulting from the characteristics and behaviours of some households, or some combination of these.

Housing policies address these issues in different ways within broader social policy objectives. For example, a popular policy instrument since the 1980s has been housing allowances, which provide additional income to households so that they can spend less of their income on rent and/or access more adequate and appropriate housing than would otherwise be the case. In some countries, housing allowances are available across tenures, but in others allowances are restricted to renting, or particular types of renting (Kemp 2007). Similarly, supply subsidies take a number of forms and may be available to private, third sector and government rental housing providers, and for varying periods of time.

Housing assistance measures to improve access to, and sustainment of, rental housing arrangements can be on a continuum from universal availability to tightly targeting households on the lowest incomes and/or those who are vulnerable due to mental and physical health status, living with a disability, of younger/older age and, in some countries, Indigenous status. At one end of the continuum, social policies can be framed in terms of universal human rights and/or social citizenship (Levitas 2005; Lister 2007). An example of this approach would be minimum acceptable standards of housing and access to housing that is appropriate in terms of specific needs, such as

living with a disability. At the other end of the continuum is the notion that the role of housing assistance is to provide a safety net for the most vulnerable. An example of this would be a strong focus on homelessness prevention and intervention, in which intensive assistance is directed to defined groups of vulnerable households to assist them have more secure and appropriate housing. This may comprise a mixture of support (e.g. intensive tenancy support programs and life skills programs) and/or compliance requirements (e.g. anti-social behaviour and rental arrears mitigation strategies).

A social policy lens on secure occupancy in rental housing will reflect views about the role of governments *vis a vis* the welfare and wellbeing of its citizens. As noted by Statistics New Zealand (2005), although tenure is subject to preference and aspiration, secure occupancy is defined in terms of wellbeing and independence. This broader view of secure occupancy has been promoted in recent work on conceptualising and measuring the housing needs of Indigenous people/households in Australia (Australian Institute of Health and Welfare (AIHW 2009).

A socio-cultural lens

A socio-cultural lens on secure occupancy is reflected in some of the research literature, but less so in policy debates. It refers to the cultural norms around renting, which are taken for granted, and often unspoken, but which underpin both beliefs and practices. For example, if the rental sector is understood primarily as an asset, an investment and a means of storing and increasing wealth for owners/investors, the institutional arrangements for renting will reflect these beliefs. The various players in the sector will act to ensure that their asset is safe, well maintained and able to be realised if market conditions are favourable or their own personal circumstances require this. They will not give priority to the circumstances of people living in rental housing except as it affects their asset (e.g. regular revenue stream and looking after the property). In contrast, if the rental sector is understood primarily as a place to live, make a home and bring up a family, we would expect to see practices that derive from such beliefs. These might include tenure neutral assistance such as housing allowances, long-term tenancies and conditions that enable residents to personalise their dwelling. In practice, of course, cultural norms are likely to reflect both perspectives to some extent, but the dominant perspective will shape institutional settings including legislation, policies and programs.

The views of renter households, investors/owners and property managers are clearly important here, but so too are the views of other groups, such as policy makers, legislators, residential tenancies tribunal members, the media, lobby groups and community members generally. Cultural norms will shape economic and social relations between different sets of actors. If renting is seen as transitional and inferior to owning, the attitudes of actors will reflect this, including households residents in the sector (e.g. referring to themselves as 'only a tenant'). If renting is seen as a mainstream housing choice and an alternative to owning, the actors will reflect this in their practices, for example, in viewing a rented dwelling as someone's home. At the end of the day, the beliefs of various actors translate into practices and behaviours that in aggregate constitute markets (Christie et al. 2008).

The research literature provides some insights into beliefs and practices in respect of renting. Often, and interestingly, this can only be inferred in contrast with home ownership. A diverse body of literature posits that owning a home enables people to have security and stability through control of their own circumstances, which translates into a range of positive outcomes for health and wellbeing (reviewed in Bridge et al. 2003; Dockery et al. 2010; Hulse & Saugeres 2008b). Key concepts used

in explaining this process are psycho-social and include the importance of ontological security, which refers to a deep psychological need for a sense of security and constancy (Dupuis & Thorns 1998; Hiscock et al. 2001) and ideas about the meaning of home (Mallet 2004) that revolve around having some control over one's living circumstances. The corollary of this work is that renting is assumed to have negative effects on health and wellbeing if it is associated with lack of security, stability and control. Whether this is the case, or whether it reflects some combination of lower socio-economic status, lower quality homes and less desirable neighbourhoods is an issue for empirical research (e.g. Hulse & Saugeres 2008b; Morris 2009). There are also questions about whether such lack of control refers to renting *per se* or is a reflection of prevailing cultural norms in countries with dual rental markets about renting being an inferior, and inherently transitory, form of occupancy.

2.1.2 A more comprehensive public policy perspective on secure occupancy in rental housing

Understanding of secure occupancy in rental housing is often fragmented and framed in terms of one of the lenses discussed above. In developing the conceptual framework for the project, we are interested in a broader, public policy approach to secure occupancy, which combines all of these in a whole of government approach. Thus secure occupancy could be seen as households being able to:

- Participate effectively in rental markets.
- Access and remain in adequate, affordable and appropriate housing with protection of their rights as consumers and citizens.
- Receive support from governments if necessary.
- Exercise a degree of control over their housing circumstances and be able to make a home, to the extent that they wish to do this.

In Table 1, we provide the conceptual framework for the research, which illustrates our approach and teases out some of the potential contributors to secure occupancy from market, legal, social policy and socio-cultural perspectives. The nature of occupancy, and thus the degree of secure occupancy, is shaped by a complicated mixture of market factors, legislation/regulation in a variety of domains, government policies and the everyday practices of various actors, underpinned by cultural norms about rental housing. Our aim was to establish a more holistic understanding of secure occupancy than is usual in the housing research literature, which often portrays one or other of these factors as being the key causal factor.

It is important to note that secure occupancy is not an absolute concept. Rather, we are interested in the degree of secure occupancy that is available in rented housing for those who want, or have to, make a home there. We are particularly interested in the degree of secure occupancy available to lower-income and vulnerable households who have no choice except to rent their housing. 'Lower-income' refers to households on statutory incomes and/or low wages. Vulnerable households include those who experience additional difficulties in renting their housing because of their personal situation (e.g. people who have experienced domestic and family violence, substance abuse problems and social/cultural isolation); they require particular forms of accommodation (e.g. people with physical and mental health issues or living with a disability) and/or they are judged as being higher risk based on assumed attributes, (e.g. sole parents, recent migrants and refugees, Indigenous households). However, the focus is on mainstream rental housing rather than the specialist supported housing sector, such as supported aged care and homelessness services.

Table 1: Different lenses key concepts and potential contributors to secure occupancy

Lens	Key concepts and terms	Potential contributors to secure occupancy in rental housing
Market	<p>Access affordability</p> <p>Ongoing affordability</p>	<p>Availability of suitable properties at affordable rents.</p> <p>Ability to afford up-front transaction costs.</p> <p>Ability to meet regular rental payments.</p> <p>Ability to pay any increases in rent.</p> <p>Ability to cover ongoing payments associated with renting.</p>
Legal	<p>Security of tenure</p> <p>Terms of tenancy</p> <p>Conditions of tenancy</p> <p>Consumer protection</p> <p>Fair trading</p> <p>Discrimination</p>	<p>Control over length of stay and timing of moving out of dwelling (subject to meeting tenancy obligations).</p> <p>Lease agreement between tenant and landlord/provider, which contain rights and responsibilities, including extent and frequency of rent increases, standard of repair, etc.</p> <p>Conditions that affect daily living such as child safety, suitability for disability, pet ownership, visitors, use of common areas, etc.</p> <p>'Reasonable value' or fair rent for rental of property including condition and standard of amenity, ability to get repairs done, rents receipted, etc.</p> <p>Avenues for redress for households and landlords/providers to enforce rights/responsibilities (e.g. tribunals to mediate/arbitrate).</p> <p>No discrimination on the basis of age, family status, ethnicity/race, gender, etc.</p>
Social policy	<p>Housing assistance</p> <p>Tenancy support and tenancy sustainment programs</p>	<p>Living in better (more affordable, adequate and appropriate) housing than would be available without government assistance.</p> <p>Housing and management tailored to support tenants who have particular needs (e.g. due to disability, health problems, history of homelessness); identification of tenants at high risk of losing their tenancy and programs to prevent loss of tenancy and homelessness.</p>
Socio-cultural	<p>Ontological security</p> <p>Meaning of home</p>	<p>Safety, privacy, lack of surveillance, control over one's environment.</p> <p>Ability to make a home (e.g. identity, family relationships, friends, pets, attachment, belonging).</p>

2.2 Research design and methods

2.2.1 From conceptual framework to research methods

As indicated in Chapter 1, the overall aim of the project is to open up, and inform, debates about secure occupancy in rental housing through comparative analysis of the framework for secure occupancy in different national contexts.

The research design had four stages:

1. Development of the conceptual framework for the project and the concept of secure occupancy in rental housing.

2. Review of the framework for secure occupancy in Australia, with case studies of two Australian jurisdictions involving interviews with key stakeholders (responding to research question 1).
3. Case studies of the framework for secure occupancy in rental housing in eight international jurisdictions in developed countries with different institutional settings and policies/programs, based on reports by country experts using a common template (responding to research question 2).
4. Analysis of international case study information in the context of issues raised in the Australian review and assessment of the potential for innovation in improving secure occupancy in Australia for lower-income and vulnerable households (responding to research questions 3 and 4).

The research design and methods received ethics clearance from the two universities involved in the research.⁶

Development of the conceptual framework for the research was outlined in Section 2.1 above (in particular Table 1). This framework was used to develop a template for the empirical research, provided in Appendix 2, and presented in summary form in Table 2. The template had three parts:

1. Part A investigated the nature of the rental market and the market and policy context for rental housing.
2. Part B explored the legislation and regulation applying to rental housing in each jurisdiction.
3. Part C examined the extent to which secure occupancy for households that rent is regarded as a policy issue in each jurisdiction as well as identifying specific provisions to assist lower-income and vulnerable households and innovations to improve secure occupancy. Innovations could be large-scale and national, but equally quite small-scale and local. The country experts were asked to provide detailed information about particular innovations that they nominate as potentially instructive, including the rationale for their adoption, evidence of their success (or otherwise) and relevant learning that they have generated.

⁶ A certificate of ethics clearance was received from Swinburne University's Human Research Ethics Committee (HREC 2009/260 dated 10 November 2009). This approval was subsequently ratified by the University of New South Wales Human Research Ethics Committee (HREC09387/SUT2009/260 dated 30 November 2009).

Table 2: Key areas for investigation in empirical research into secure occupancy

Theme/section in template	Lens	Details
Market context (Part A)	Market	Examines the size and composition of the rental sector, the extent to which there are identifiable sub-sectors, the role of sub-sectors and profiles of owners and renters.
Policy context (Parts A; C)	Market Social policy	Outlines policy context e.g. direct/indirect assistance, supply and demand subsidies. Targeting and differences in approach to rental sub-sectors and extent to which secure occupancy in rental housing is a policy issue.
Legal context (Part B)	Legal	Concerns the main legislative context that may affect secure occupancy in each country and any reforms designed to enable more secure occupancy for residents of rental housing across the rental sector or within specific sub-sectors.
Access to rental housing (Parts A; B)	Market Legal	Explores whether difficulties in obtaining secure occupancy may start with entry into rental housing and what measures, if any, there are to address these issues.
Affordability of rental housing (Part A)	Market Legal Social policy	Focuses on elements of affordability that are covered less often than rent to income measures such as unpredictability and timing of rent increases and other expenditures (fees, bonds, rent advances, set-up costs, utility charges etc.) associated with renting.
Safety, privacy and quiet enjoyment (Part B)	Legal Social policy Socio-cultural	Explores whether secure occupancy can be enhanced or compromised by the safety of the dwelling itself and the ability to live with desired privacy and without being adversely affected by others.
Comfort and standard of repair (Part B)	Legal Socio-cultural	Considers ways in which physical comfort might contribute to secure occupancy.
Landlord-tenant relations (Part B)	Legal	Investigates the extent to which the management of rental housing can affect secure occupancy for residents.
Specific provisions to improve secure occupancy for lower-income and vulnerable households (Part C)	Social policy	Investigates specific policies or programs to improve secure occupancy for lower-income and vulnerable households.
Innovations (Part C)	Social policy	Explores sources of innovation in the area of secure occupancy and details of specific innovations.

The template was designed to frame the empirical research in Australia and overseas, drawing on the literature and Australian policy context. This took much iteration before we were satisfied that it was the appropriate instrument, including consultation with colleagues at the Onderzoeksinstituut OTB Research Institute for the Built Environment, Delft University of Technology, the Netherlands, who are partners in the project and who conducted four of the international case studies.

The template enables scoping of the market, legal and social/public policy contexts. It then identifies seven themes for empirical investigation:

1. Access
2. Affordability
3. Safety, privacy, quiet enjoyment and autonomy
4. Comfort and standard of repair
5. Landlord-tenant relations (management)
6. Specific provisions to enable lower-income and vulnerable households to access and maintain their tenancies
7. Innovations in policy and practice.

It should be noted that the socio-cultural context is difficult to investigate without interviews with a variety of actors, which was only possible in the Australian case. However, the data did enable consideration of the institutional settings for secure occupancy (both policy and legal), which do provide some insight into cultural norms about renting. Chapter 8 provides further consideration of socio-cultural norms based on comparative analysis of data on living in rental housing (safety, privacy, quiet enjoyment and autonomy, and comfort and standard of repair).

2.2.2 Review of provisions for secure occupancy in Australia

Research question 1 asks: 'What are current provisions for providing periods of secure occupancy for renters in Australian jurisdictions?'

Our purpose in conducting this stage of the research was to provide a broader public policy perspective on secure occupancy in Australia than is currently available. Whilst a significant amount of research has been conducted into the market and social policy context, in particular around social housing and homelessness, rather less is available on either the legislative context for rental housing in Australia or the cultural norms about rental housing.

The first part of this stage, therefore, was to scope major changes to residential tenancies legislation in Australian jurisdictions, as the last national review had been undertaken in the mid-1990s (Kennedy et al. 1995). We accessed and reviewed a variety of documentary material from individual jurisdictions, including relevant reports and legislation, briefing papers prepared by parliamentary library research services, fact sheets and information sheets provided by tenant and landlord organisations, and state/territory housing and consumer affairs/fair trading departments. The review also drew on four recent jurisdictional reviews of residential tenancies legislation in Queensland, Western Australia (WA), NSW and Tasmania. When we were part way through this review, a report was published by National Shelter (2010), which provided an up to date overview of residential tenancies legislation in Australian jurisdictions. This filled in some blanks in our review, enabled us to corroborate our findings against another source and to focus on key trends. Finally, we undertook some limited analysis of data on rental housing from the Australian Bureau of Statistics' (ABS) Survey of Income and Housing 2007–08, a cross sectional survey with a large sample size (n = 9345 households) (ABS 2009) to complete our scoping of the framework for secure occupancy in Australia.

The second part of this stage comprised two case studies of NSW and Victoria in which we sought to elicit further information about implementation and impacts of policy and legislation, practices and underlying cultural norms that may not be evident from a desk-based review. This involved some limited analysis of data from the ABS Census of Population and Housing 2006 and of available data from other sources such as state-based tenancy tribunals and state housing departments to provide

some context for the case studies. The main method used was face-to-face interviews with key informants.⁷

Participants for the interviews were selected on the basis of their knowledge and expertise on various aspects of secure occupancy in rental housing. They drew their expertise from work with consumer organisations, such as tenants unions and resident groups, industry groups such as real estate institutes and property owners associations, government organisations (policy and programs) and landlord/tenant mediation and dispute resolution. Potential participants were contacted by the researcher responsible for that case study and given information about the project and an invitation to participate. Appendix 3 acknowledges these participants.⁸

The interviews were semi-structured and followed key themes that had been identified in earlier scoping. The interviewer was accompanied by another research team member who took notes of the interview, and an electronic recording was made with the consent of the interviewees. The recording was to provide a backup to the notes was not transcribed for in-depth analysis. The recording was also used to check verbatim quotations.

Fifteen interviews were conducted in NSW and Victoria with 28 people participating in the interviews.⁹ The interviews ranged from 40 minutes to almost two hours. The interviewees were asked for their views based on their personal expertise in the area of rental housing rather than as representatives of their organisation. For this reason, and because we were seeking to pull together quite disparate perspectives, the interviewees' views are not ascribed to them personally in this report. The interviews yielded very rich data, which were analysed according to the key themes.¹⁰

The findings of research in this stage are presented in Chapter 4. In many cases, however, the interviews yielded insights that also contributed to the conceptual development of the project and raised questions for the comparative analysis. In this sense, the research stages, and the methods within them, were iterative rather than linear.

2.2.3 Comparative research: case studies of the framework for secure occupancy in eight other jurisdictions

Research question 2 asked 'What models are used internationally for providing periods of secure occupancy for households in rental housing, having regard to legislation, regulation, policy and programs?'

The major focus of the empirical research was comparative research involving case studies of secure occupancy in rental housing in eight jurisdictions in North America and Europe.

The method involved commissioning reports on these jurisdictions prepared by expert informants following a common template (discussed in Section 2.2.1).

⁷ The resources allocated to the study were insufficient to interview people who live in, and experience, rental housing in the two states, which is part of the socio-cultural context. Further research is required to elicit their perspectives.

⁸ We attempted but were unable to set up interviews with people from an organisation representing property owners in Victoria, Consumer Affairs Victoria and Fair Trading in NSW.

⁹ One group interview in NSW involved 10 members of the Consumer, Trader and Tenancy Tribunal, at the request of members.

¹⁰ The number of interviews was such that analysis was possible without use of a software tool such as N*Vivo.

Selection of countries/jurisdictions

As discussed in Section 2.1 above, the dominant means of classifying rental systems in the research literature is the distinction between dual and unitary/integrated rental markets (Kemeny 1995; Kemeny et al. 2005). However, in view of developments in the rental systems of various countries since the mid-1990s, including Australia (as discussed in Chapter 1), this was not the only means of selecting countries. We are particularly grateful to Dr Marietta Haffner of OTB Research Institute for the Built Environment, Delft University of Technology, for her insights into this categorisation, which were conveyed in discussions as well as through a number of publications (e.g. Haffner et al. 2008, 2009a, 2009b). The comparative research of Dr Haffner and colleagues examines rental systems using economic theories of competition between rental sectors, in particular between social and market rental housing. Our approach in this study is different, but complementary.

Several criteria were used to select the international cases:

1. We wanted to reflect a variety of welfare regimes and institutional settings for rental housing across similarly developed countries to Australia, reflecting the differences between dual and unitary rental markets posited by Kemeny (1995) as discussed earlier in this chapter. Differences in approaches to securing rental housing, while culturally and historically based, offer lessons from well-established models as well as new ways of thinking about this issue.
2. Countries with both larger and smaller rental sectors have been included. Countries with a smaller rental sector (and, it follows, higher rates of home ownership) tend to have a relatively large share of low-income and vulnerable households in the rental sector, while those with large rental sectors cater to a broader cross-section of the population. As such, an examination of both types of systems (and comparisons between them) can be instructive about how secure occupancy can be perceived and addressed.
3. At a time when there is growing evidence that rental tenures are resurgent across many developed countries, our selection has been influenced by recent developments in rental housing and innovative policies in the rental sector, which may have applicability to Australia.
4. Practical considerations, such as the availability of national experts and language barriers, have also influenced the list from which the final cases have been chosen.¹¹

Countries with both unitary and federated governance systems have been included. In several cases, responsibility for residential tenancy legislation and policy lies primarily at a lower level of government. In these cases, a regional (province or state) focus was selected with policy analysis and evidence of outcomes related to either the national or the regional context, as appropriate.¹²

A list of the international case studies and summary descriptive material about their rental sectors is provided in Table 3.

¹¹ Ideally a Scandinavian country and an Eastern European country could have been included but this was beyond the resources of this study.

¹² The case study of Germany provided an invaluable contribution as this is the rental system that most differs from Australia. We are grateful to Dr Marietta Haffner for undertaking this task in view of the challenges posed by reunification of the two parts of Germany and the regional differences within such a large federal country.

Table 3: Case study countries selected for comparative research

Jurisdiction	Descriptive overview
Austria	Strong unitary rental market, key role for diversified limited profit housing companies, cost based capped rents apply, high level of secure occupancy, rent to buy facilitated.
Flanders	Similar tenure structure to Australia; active policy reform aimed at utilising private rental market to support low-income households to complement small social housing sector. Tenancy periods vary from short (test) period to medium to long-term (three to nine years).
Germany	Large private rental market sector, but limited social rental, high level of secure occupancy, sector dominated by small-scale landlords, houses a broad section of the population. Non-stigmatised rental sector, dominated by private ownership, in which many people choose to be tenants for life, even though they could afford home purchase. Moderation of rents using local price indicators.
Ireland	Smaller rental sector than Australia under demand pressure. Recent reforms to strengthen security of occupancy (e.g. four-year tenancy terms) plus public/private partnerships to increase long-term renting options and refurbishment programs directed to privately owned rental housing.
New Jersey	Long history of privately owned rental housing developed with public subsidy offering important lessons from this approach. Recently a greater mix of non-profit and privately provided rental under tax incentives. Large housing voucher scheme dominates national policy, but does not provide assistance to many who need it and does not necessarily contribute to access and security outcomes for needy households.
Ontario	Sizeable private rental sector with strong institutional investment underpinning. Measures to improve quality of rental stock linked to social policy goals. Extensive reforms to residential tenancy legislation over time at a provincial level have contributed to a fragmented system, as in Australia.
Scotland	Recent policy attempts to stimulate the relatively small private 'buy to let' market (11%) to complement a shrinking social housing sector and more uncertain home ownership paths for lower-incomes. Recent legislative reforms in Scotland including mandatory licensing of houses in multiple occupation, landlord registration to limit who may let residential properties (via the 'fit and proper person' test), minimum physical standards for the sector, right to adapt for people with disabilities. Non-legislative changes, for example, national voluntary accreditation scheme for landlords and agents.
The Netherlands	Unitary rental market dominated by a large social housing component provided by not-for-profit organisations. Nominated quality standards and centralised indexation of rent increases for 95 per cent of the sector, but subject to deregulation, prospectively. Generous housing allowances. Indefinite tenancy periods.

Sources: Haffner et al. (2008, 2009a, 2009b); Lawson and Milligan (2007); Schwartz (2006); supplemented by advice from country experts.

Researchers contributing the case studies

The case studies were compiled by experts in the housing systems of each country, as outlined in Table 4. They used the common template developed by the Australian research team in consultation with the international researchers (Table 2 and Appendix 2). The case studies were prepared between November 2009 and the end of April 2010. In each case, the contributing researcher prepared a draft, which was reviewed by the Australian members of the research team. The draft was returned with questions and comments and a final report submitted.

Table 4: Contributing researchers for international case studies

Jurisdiction	Researcher and affiliation
Austria	Dr Julie Lawson, OTB Research Institute for the Built Environment, Delft University of Technology, the Netherlands.
Flanders	Dr Julie Lawson, as above.
Germany	Dr Marietta Haffner, OTB Research Institute for the Built Environment, Delft University of Technology, the Netherlands.
Ireland	Dr Michelle Norris, University College Dublin.
New Jersey	Professor John Gilderbloom, University of Louisville, Kentucky.
Ontario	Steve Pomeroy, University of Ottawa Centre on Governance and Focus Consulting.
Scotland	Professor Hal Pawson, Heriot-Watt University, Edinburgh.
The Netherlands	Dr Julie Lawson, as above.

The unpublished international case study reports are referred to in the remainder of this document in the form (Author, CS).

2.2.4 Comparative analysis, thematic analysis and reporting

Research questions 3 and 4 asked:

How effective are these models for providing periods of secure occupancy for renter households in the context of the greater risks faced by lower-income and vulnerable households?

To what extent are these models transferable to the Australian context?

The final stage of the project involved analysis of the Australian and international case studies. There were three steps in this process.

1. We undertook a comparative analysis of the case study data to obtain an overview, to identify key trends and to crystallise key differences in the framework for secure occupancy in countries or groups of countries. This analysis drew in particular on the data on market, policy and legal contexts and is presented in Chapter 5.
2. We undertook a thematic analysis of the case study data on seven key themes (shaded in Table 2). This involved a detailed analysis of the case study data and is presented in Chapters 6–9 of this Final Report.
3. We drew on the analysis to consider the implications for policy and the potential for innovation in Australia in improving secure occupancy in Australia for lower-income and vulnerable households. In this we took a public policy perspective, which attempted to integrate the various lenses identified in Table 1.

Much comparative housing research employs a juxtapositional approach and presents findings for different countries, or regions within countries, in sequence using a common framework and drawing some conclusions across countries. Attempting an integrated, thematic analysis is very challenging and involves not only difficulties in empirical analysis (e.g. comparability of concepts, terms and data) but also requires ‘a more qualitative, culturally sensitive and historically grounded approach’ (Kemeny & Lowe 1998, p.162). Consequently, this Report provides a ‘big picture’ in terms of secure occupancy in different rental systems, substantiated by some practical and detailed examples provided by the expert informants. As indicated earlier, we have also provided concise summaries of the context for secure occupancy in each of the international jurisdictions (Appendix 1).

The analysis was carried out by the Australian research team and to ensure the accuracy of our findings, we circulated the draft Final Report to the contributing international researchers for their comments and suggestions, which were subsequently incorporated into this Report. The interpretation of the findings presented in this Report is that of the research team.

An overview of the project was provided to Australian policy makers and researchers attending the National Housing Conference in November 2009 on Private Rental Housing: Overview and Emerging Policy Issues (Hulse 2009). A final step will be a workshop to be held with Australian policy makers in the housing and residential tenancies domains in early 2011 that will discuss the findings of the project and implications for policy in Australia.

3 MARKET, POLICY AND LEGAL CONTEXTS FOR SECURE OCCUPANCY IN AUSTRALIAN RENTAL HOUSING

This is the first of two chapters that outline the framework for secure occupancy in rental housing in Australia, applying the public policy approach outlined in Chapter 2. In this chapter, we situate the Australian context to enable a *broad* understanding of secure occupancy in rental housing in Australia than is currently available. In the following chapter (Chapter 4), we present the findings of the empirical research that enable a *deeper* understanding of secure occupancy in rental housing in Australia, drawing on the case studies of NSW and Victoria.

This chapter proceeds as follows. We review the market, policy and legal contexts for secure occupancy in rental housing in Australia, and the interrelation between them, insofar as they affect secure occupancy in rental housing. We also make some observations about the cultural norms that shape secure occupancy for renter households in Australia, as manifest in these different contexts. The chapter draws on a review of relevant documentation including: policy reports, legislative reviews, academic and other research. Since the policy and research focus to date has been primarily on the market and policy context, we review these only briefly. We consider in more depth the legal context, which has attracted rather less attention and has not been well integrated with an understanding of the rental market generated through market and social policy lenses.

3.1 Market context for secure occupancy in rental housing

We note that in much Australian housing research, rental housing tenure is assumed to be the independent variable and, indeed, much of the available data is collected and analysed in this way, reflecting an understanding based on dual rental sectors. To the extent possible in this section, we see households who rent as the independent variable and the nature of their housing arrangements as the outcome (dependent variable). This approach generates some new insights into rental housing whilst recognising that there are some key differences between rental sectors.

3.1.1 *Size and composition of the rental sector by sub-sector*

As indicated in Chapter 1, notwithstanding its reputation as a society of homeowners, almost 30 per cent of all Australian households rented their housing in 2007–08, or 2.4 million Australian households.¹³ Three-quarters of these rented in the private rental sector, as shown in Table 5.

More than half of all renter households live in separate houses (56%¹⁴) with fewer than a third (30%) living in flats, units and apartments. These patterns are somewhat different to other Australian households (comprising mainly homeowners), 88 per cent of whom live in single detached houses and only 6 per cent in flats, units or apartments, as illustrated in Figure 1. This figure also indicates that, although there are some differences between the types of property rented from different types of landlords, these are relatively minor. The higher percentages of renter households living in flats, units and apartments increases the likelihood of secure occupancy

¹³ This is 200,000 more than the figure of 2.2 million used by the National Housing Supply Council (National Housing Supply Council 2010) using the same data source. The difference is that we have included 'other landlords'.

¹⁴ In the text, we round percentages up or down to the nearest whole number for purposes of clarity whilst in the tables we present percentages to one decimal point.

being affected by neighbourhood factors including noise and anti-social behaviour (Easthope & Judd 2010).

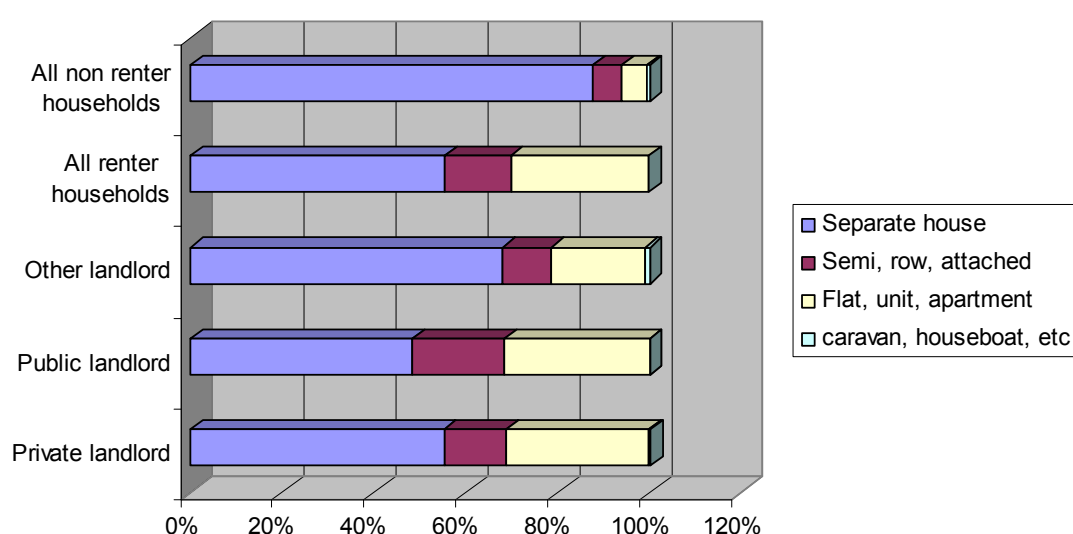
Table 5: Composition of rental sector in Australia by type of landlord, 2007–08

Landlord type	No of households	Per cent of renter households	Per cent of all households
Private landlord	1,787,612	74.4	22.1
Public landlord	365,057	15.2	4.5
Other landlord	251,158	10.4	3.1
All landlords	2,403,827	100.0	29.7

Source: CURF (household) data, ABS Survey of Income and Housing, 2007–08

Notes: Private landlord refers to household renting from real estate agent or person not in same household (other person). Public landlord refers to household renting from state/territory housing authority. Other landlord refers to household renting from person not in same household (parent or other relative) and 'other landlord'. Households renting from church and community organisations are counted as 'other landlord' for this purpose and cannot be separately identified due to sample numbers. This is unlike the ABS Census of Population and Housing where there were 49 660 households in this category in 2006 that could be added to those renting from state/territory housing authorities to constitute 'social housing landlord'.

Figure 1: Renter households by landlord type and other Australian households, by dwelling type, Australia, 2007–08



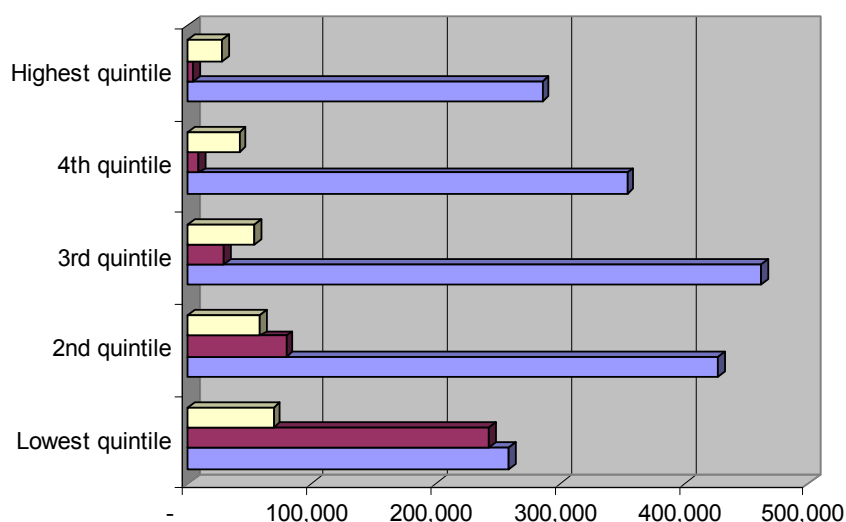
Source: CURF (household) data, ABS Survey of Income and Housing, 2007–08

Note: Landlord types as per notes to Table 5.

3.1.2 Demand for rental housing

Households who rent have diverse incomes, as illustrated in Figure 2. This is particularly the case for households who rent from private landlords and, to a lesser extent, from 'other' landlords and indicates the potential competition between renters on different incomes in the private rental sector if there is an inadequate supply of dwellings.

Figure 2: Number of renter households by income quintile and type of landlord, Australia, 2007–08



Source: CURF (household) data, ABS Survey of Income and Housing, 2007–08

Notes: Landlord types as per notes to Table 5. Household income quintiles are calculated on gross (unequivallised) household income

More than a million lower-income households (lowest two quintiles of household income) rent their housing, as shown in Table 6. These households comprise at least 45 per cent of all renter households¹⁵ and are the main focus of this project. These figures are broadly consistent with administrative data on the numbers of public housing tenants and the numbers of recipients of rent assistance, a payment available to households who are eligible for a Commonwealth Government income support payment, pay rent above a minimum level, and rent from landlords other than a public housing landlord (SCRGSP 2010).¹⁶

As illustrated in Table 6, more than twice as many lower-income households (lowest two quintiles) rent in the private sector compared to the public rental sector. Thus lower-income households rent in circumstances in which institutional settings provide quite different frameworks for secure occupancy, as we discuss later in this chapter. When looking at households with lowest quintile incomes (lowest 20%), roughly the same number of households rent from private and public landlords, as illustrated in Figure 1.¹⁷

¹⁵ Refer to footnote 2 for the data source and measurement issues.

¹⁶ There were 1 038 000 individual 'recipients' of rent assistance in 2008–09 (SCRGSP 2010). Data on rent assistance refer to income units, i.e. adult(s) and any dependent children living in their household. There are thus more income units than households since the latter may include, for example, non-dependent children and other relatives who may also receive rent assistance.

¹⁷ If we separate out renters with lowest quintile household incomes (lowest 20%), the ratio of those renting by landlord type is 44:45:11 (referring to private, public and other landlords respectively). The findings for the rental arrangements for lowest quintile renter households accord with those using a different data source, the ABS Census of Population and Housing 2006 (Wulff et al. 2009).

Table 6: Renter households with incomes in the lowest two quintiles of gross household income by landlord type, 2007–08

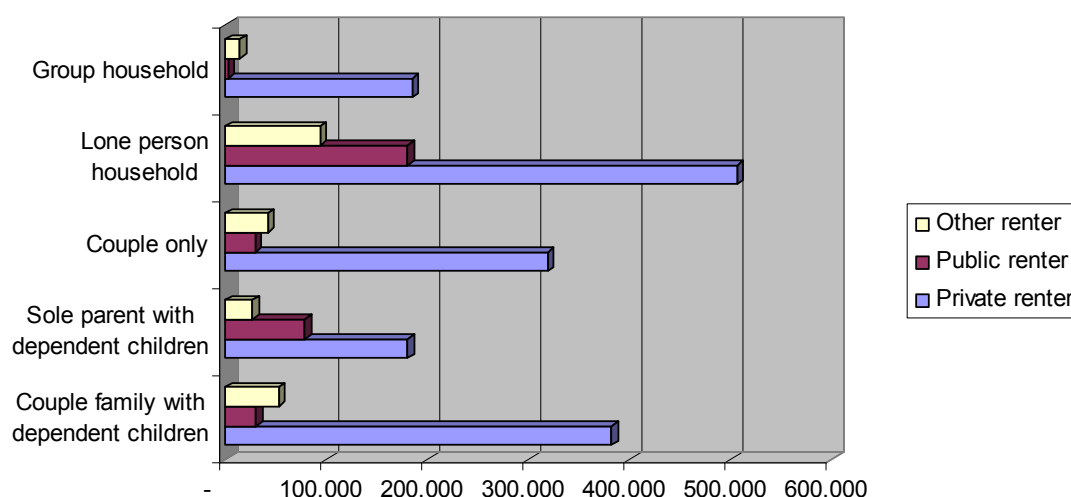
Landlord type	Number in lowest 2 quintiles	Per cent in lowest 2 quintiles
Private landlord	686,030	60.4
Public landlord	322,640	28.4
Other landlord	127,564	11.2
All households	1,136,234	100

Source: CURF (household) data from the Survey of Income and Housing, 2007–08

Notes: Landlord types as per notes to Table 5. Household income quintiles are calculated on gross (unequalised) household income.

A diverse range of households rent their housing as illustrated in Figure 3. In 2007–08, almost half of all renter households comprised either lone person households (33%) or couple only households (16%). Whilst the private rental sector houses a variety of household types, the public rental sector houses primarily households with one adult (lone person and sole parent households).

Figure 3: Renter households by main household type and landlord type, Australia, 2007–08



Source: CURF (household) data, ABS Survey of Income and Housing, 2007–08

Note: Landlord types as per notes to Table 5.

A third of all renter households (31%) had dependent children in 2007–08. This is corroborated by analysis of the more detailed data available from the ABS Census of Population and Housing 2006, which indicates that:

- Twenty-nine per cent of all Australian children aged less than 15 years lived in households that rented their housing.
- Almost one in five Australian children aged under 15 (764 357 children) lived in the private rental sector in 2006, most in lower-income households.¹⁸

¹⁸ This number should be regarded as a conservative one. The Survey of Income and Housing 2007–08 indicated a higher number.

These figures are significant as renting is often seen as a choice made by singles and couples without dependent children. As we shall see in the next chapter, children living in lower-income households who rent from private landlords experience high levels of mobility and instability, which indicate low levels of secure occupancy.

Most Australians aged 65 years and over currently do not rent their housing. According to the 2006 Census, 321 327 older people in this age group did rent, with the public rental sector playing a major role in housing this group. However, there are as many people in this age group paying rent to private landlords as to public landlords, indicating a group whose secure occupancy can be at risk if rents rise faster than the age pension¹⁹ (Morris 2009). Importantly for policy setting for the future, the number and percentage of renter household who are older is projected to increase as more households in younger and middle age cohorts are unable to buy a home at an earlier stage of their lives and thus face a lifetime of renting (Hulse et al. 2010a). The number of renters aged 65 and over living in low-income households is projected to increase by 115 per cent between 2001 and 2026 (Jones et al. 2007, p.viii).

3.1.3 Supply and availability of rental housing

Trends in the supply and availability of private rental housing that is affordable for households with incomes in the lowest two quintiles²⁰ have been investigated by three research projects using a common methodology (Wulff et al. 2001, 2009, 2011; Yates & Wulff 2005). The research findings indicate that whilst there has been a steady increase in demand from lower-income households and in the overall supply of private rental housing, much of the additional supply is neither affordable nor available to lower-income households. In particular:

- A substantial part of the increase in private rental supply has comprised middle and higher rent dwellings that are not affordable by lower-income households.
- To compound matters, lower rent stock, which would be affordable to lower-income households, is often occupied by households on middle and higher incomes.
- At the national level, there is a shortage of 138 000 affordable dwellings for those in the bottom income quintile and this figure rises to 211 000 dwellings once availability is taken into account (Wulff et al. 2009, p.34).

As has been well documented elsewhere (e.g. Berry 2000; Seelig et al. 2009), most investment in the private rental sector in Australia is by small-scale landlords, in particular, household investors, who buy individual dwellings (freehold or strata title) rather than whole multi-unit buildings. Most of this investment is in established dwellings rather than new dwellings. The key reason for investment is the prospect of low risk capital gains although there are often non-financial reasons for investment as well (Seelig et al. 2009). A national review of taxes and transfers (known as the Henry Tax Review) published in 2010 found that 70 per cent of rental investors make use of negative gearing provisions to offset their interest repayments and rental costs against general income tax; and such investors hold their properties for a shorter time periods than those who do not negatively gear (The Treasury 2010). This raises questions about the potentially adverse effects of negative gearing on secure occupancy, since renter households are usually required to vacate in the case of a sale.

¹⁹ 130 569 in the private rental sector and 125 639 in the public rental sector.

²⁰ Lowest 40 per cent of gross unequivalised household income.

In the public housing sector, a lack of available supply relative to demand has been documented and new households entering the sector can be characterised as vulnerable rather than lower-income households:

- At the end of June 2009, there were 173 456 households on the wait list for public housing around Australia and an annual allocations rate to new households in 2008–09 of 20 753 households or 12 per cent of the wait list (SCRGSP 2010, Table 16A.1). This compares with annual allocation rates of about 55 000 dwellings in the mid-1990s (Hulse & Burke 2005).
- Wait lists around Australia have declined since the late 1990s as a result of demand management measures *vis a vis* tight targeting of public housing to those with the most urgent and complex needs. It is likely that eligible households are discouraged from applying and the public housing wait list does not provide an accurate measure of demand for this type of rental housing.
- Notwithstanding the recent injection of funds into social housing (as part of the Federal Government's second economic stimulus package in 2009), and including housing provided by not-for-profit landlords, it will be difficult to maintain the current percentage of all dwellings that are social rental after 2012, even using low household growth projections (National Housing Supply Council 2010, p.89, Figure 4.7).

Some lower-income households are not able to access either the social or private rental sectors, for example, lower-income households in receipt of income support are more likely than other groups to be in informal renting arrangements such as renting from family members or in marginal housing such as boarding houses or caravans (Seelig et al. 2008).

In brief, the market context for rental housing indicates considerable demand pressure relative to supply and availability, such that lower-income and vulnerable households in particular face difficulties in affording to access and maintain their tenancies. This situation is important in considering the policy and legal context for renting housing in Australia.

3.2 Policy context: different policy domains

Policies relevant to secure occupancy in the Australian rental market cover a number of different domains including: tax, income support, housing, consumer affairs and fair trading. As seen in Table 7, the policy context for the private rental sector differs substantially from that of the social rental sector, and there are also important differences between government and not-for-profit housing providers²¹ in the social housing sector:

- Federal level policy settings for the private rental sector centre on tax incentives that apply to investment in rental housing, and demand subsidies to eligible households (rent assistance) to help offset some of the costs of renting. The management of private rental housing is considered for the most part to be an issue of consumer affairs or fair trading and is consequently the subject of legislation and associated regulation at a state/territory government level.
- Policy settings for the social rental sector have been the joint responsibility of federal and state/territory governments departments with responsibility for social housing. Although legislation on landlord-tenant relations applies to the social rental sector as well as the private rental sector (with some exceptions, as we

²¹ These are variously referred to as community housing providers and, in the case of some of the larger organisations, as affordable housing providers.

discuss in Section 3.1.3), the management of social rented housing is the subject of detailed state level policy including: specification of access pathways, criteria for targeting assistance, policies on rent setting, duration of assistance, and protocols if households face difficulties in sustaining their tenancies, for example, because of changes in life circumstances.

- In recent years, most jurisdictions have developed accreditation systems and /or specialised regulatory regimes that apply to third sector housing providers. These aim to ensure public accountability of these providers against established standards that are laid down in a regulatory code (or similar), among other goals (Travers et al. 2010). Such arrangements do not apply to public housing providers and there is an inherent conflict of interest in state/territory housing departments making decisions on the allocation of capital funds between their own property portfolios *vis a vis* that of the third sector providers who they regulate.

A key difference in policy settings between rental sub-sectors has been different provisions for security of tenure. Provisions in public housing and the growing community/affordable housing sector are quite different to those generally applying in the private rental sector where short-term tenancies followed by periodical tenancies are the norm. However, in recent years, a number of jurisdictions have introduced, or have been considering, fixed-term tenancies in public housing, which we discuss in Section 3.3.2 below.

Table 7: Policy context for secure occupancy in Australian rental housing by sub-sector and policy domain

Policy domain	Private rental	Social rental
Federal tax policy.	<p>Tax concessions to private investors applied to rental property:</p> <ul style="list-style-type: none"> → Negative gearing provisions for rental investors. → Fifty per cent discount on capital gains tax on rental investment properties. → Targeted depreciation allowances (newly constructed properties). → NRAS tax credits. 	<p>Tax concessions to third sector providers of social housing:</p> <ul style="list-style-type: none"> → Public Benevolent Institution (PBI) status. → Deductible Gift Recipient (DGR) status. → Goods and Services Tax (GST) exemption. <p>Tax exemptions for all social housing providers (government and third sector):</p> <ul style="list-style-type: none"> → Income tax. → Capital gains tax.
Federal income support/housing policy.	<p>Cash transfer:</p> <ul style="list-style-type: none"> → Commonwealth rent assistance to households renting privately. 	<p>Cash transfer:</p> <ul style="list-style-type: none"> → Commonwealth rent assistance to households renting from third sector organisations.
Federal/state housing policy with programs administered by state/territories.	<p>Cash grants/loans:</p> <ul style="list-style-type: none"> → Private rental assistance to households (administered by states). 	<p>Grant funding:</p> <ul style="list-style-type: none"> → Operating subsidies for state/territory housing authorities, new social housing supply and other housing products. → NRAS subsidies (third sector providers). <p>Regulatory regimes:</p> <ul style="list-style-type: none"> → Third sector housing providers.

Policy domain	Private rental	Social rental
		<ul style="list-style-type: none"> → Management of social housing. → Income related rents (public housing—in kind assistance administered by states). → Protocols between public and third sector housing providers. → Policy coordination and reform. → National Housing Reforms, Council of Australian Governments (COAG).
State/territory consumer affairs/fair trading.	Legislation/regulation: <ul style="list-style-type: none"> → Residential tenancies legislation and regulations. 	Legislation/regulation: <ul style="list-style-type: none"> → Residential tenancies legislation and regulations. → Additional housing-specific legislation and regulations.

Sources: The authors, supplemented by Housing Ministers' Conference (2009); Hulse and Pawson (2010).

Although policy settings are still very much based on a dual rental sector model, as shown in Table 7, provisions which affect secure occupancy in Australian rental housing are not as dichotomous as in previous decades:

- All jurisdictions have schemes dating back to the early 1980s to assist low-income and vulnerable households to rent privately. These involve loans or grants to enable low-income households to pay bond and rent in advance payments. Some jurisdictions also provide funds for community organisations to head lease accommodation from private landlords (especially Queensland and NSW), rental guarantees to private landlords and/or ongoing assistance with rent payments.
- More recently, housing policies have promoted a growing role for regulated non-government housing providers. These organisations have a social purpose similar to public housing, but have more policy and operational flexibility in return for accepting more responsibility. They use their assets and public capital to leverage private finance for housing. In so doing, they are more exposed to financial risks, which can impact on their capacity to assure secure occupancy for the households they service.
- NRAS is designed to provide the benefits of private financing and ownership at arm's length from government whilst ensuring professional management by accredited providers. In effect, it provides a subsidy to investors in return for meeting social objectives in terms of targeting low-moderate income households and offering sub-market rents. Periodic re-assessment of eligibility may result in households having to leave their accommodation if their income has increased substantially, a situation that also applies to households accommodated by some of the larger affordable housing providers. Further, NRAS subsidies are for 10 years, which raises questions about the secure occupancy of households who rent NRAS-enabled housing towards the end of that period.

Whilst housing policies respond to the market context, there have been relatively few attempts in Australia to link these with the legislative and regulatory context for residential tenancies, which we examine next.

3.3 Legislative context for secure occupancy

Residential tenancies legislation centres on the contractual relationship between landlords and tenants, their rights and responsibilities, and means of redress for both parties if there is non-compliance leading to dispute. Residential tenancies legislation in Australia is the responsibility of state and territory governments and, whilst there are similarities in the legislation between jurisdictions, there are also some quite significant differences that affect secure occupancy for renter households, which we discuss in this section.

3.3.1 Key provisions in Australian residential tenancies legislation relevant to secure occupancy

Our focus here is not on a detailed comparison between the legislation of different jurisdictions, particularly since there has been a recent review that does this with the aim of recommending areas of legislative reform (National Shelter 2010). Rather we are interested in providing a national overview of the legislative framework for secure occupancy for households, using the framework developed in Chapter 2. Table 8 highlights some key legislative provisions that affect secure occupancy.

Table 8: National overview of provisions of residential tenancies legislation in Australian states/territories that provide the legislative framework for secure occupancy in rental housing

Provisions affecting secure occupancy	State/territory residential tenancies legislation and practice
Access	
Bonds	Maximum bond usually equivalent to four weeks rent. Paid into a government authority rental bond board or equivalent (note 1).
Rent in advance	Between two weeks and one-month rent in advance (varies in some jurisdictions according to lease period and rent level).
Affordability	
Rent levels	Market rents.
Notice of rent increases	Sixty days/two months notice in most jurisdictions (note 2).
Frequency of rent increases	Limit of once every six months in most jurisdictions (note 3).
Service charges (utilities)	User charges for consumption of water, electricity and gas (if separately metered).
Safety, privacy and quiet enjoyment	
Safety	Smoke detectors and electrical safety switches (note 4).
Privacy	Notice of access by landlord for inspection varies between 24 hours to 14 days (some restriction on frequency and hours). Access to show prospective purchaser is generally 24 hours or 'reasonable notice' (some restriction on frequency and hours). Access to show prospective renter is generally 24 hours (some restriction on frequency and hours). Generally restricted to end period of current tenancy (e.g. last 21 days).

Quite enjoyment	Premises not to be used for illegal purpose, cause a nuisance or interfere with enjoyment of others. There is no legislative provision on pets, although pets are often prohibited in special terms of lease agreements.
Comfort and standard of repair	
Standard of repair	Landlords to provide and maintain premises in reasonable state of repair.
Provision for tenant to carry out emergency maintenance	Permitted up to limits that vary from dollar amounts e.g. \$1000, two weeks rental, or 'reasonable costs'.
Landlord-tenant relations	
Type and length of lease	Typically fixed-term, then renewed on a periodic basis (note 5).
Prescribed grounds for termination (main grounds not related to breaches by tenant)	End of fixed term. Ranges from no notice (e.g. WA, SA) to 90 days (Victoria). Sale of premises (periodic tenancies). Generally 30–60 days' notice. Major repairs/renovations. Ranges from 28–60 days' notice. Required for owners' family. Generally 30–60 days' notice.
Termination without prescribed grounds	Notice to vacate without prescribed grounds and where tenant is not in breach of tenancy agreement. Ranges from 42 days (NT) to 26 week (ACT).
Third party termination	Mortgagee (or inheritor) can give notice to vacate. Ranges from no notice (WA) to no grounds for third party termination (NT). Typically one to two months for mortgages requirement possession (e.g. NSW, Queensland, Victoria, Tasmania).
Specific provisions for social housing	Termination due to no continuing eligibility for social/affordable housing (note 6).
Disputes between landlords and tenants	Conciliation then mediation in areas of disputes. Specialist residential tenancies tribunals or separate list within broader tribunal (note 7).

Sources: Review of legislation by research team; Blunden and Martin (2004); National Shelter (2010); Phippen (2010); Queensland Residential Tenancies Authority (2007).

Notes: (1) Exception is NT, where bonds are held by the landlord or agent. In WA the bond has to be lodged centrally, but can be kept in bank account of landlord/agent. (2) Exception is NT where 30 days' notice is required. (3) Exceptions are ACT: once every 12 months; and NSW: no limit. (4) SA, Tasmania, NT, ACT: do not require smoke detectors. Only Queensland and WA currently require electrical safety switches. (5) Fixed-term leases are generally short (e.g. 6 months in NSW and 12 months in Victoria) although this is an issue of practice not legislation. (6) For example, 60 days' notice for social housing (NSW); 2 months for affordable housing (Queensland); 90 days for public and community housing (Victoria). (7) Exceptions are NT, Tasmania and WA. In NSW the list for social housing tenancies is managed separately.

Table 8 provides a 'big picture' overview of aspects of the residential tenancies legislation that provides the framework for secure occupancy in rental housing. Experiences of secure occupancy reflect practices that are likely to be variable, based on a large volume of transactions between owners, property managers and renter households. There is very little research about management practices in the private rental sector except for research from the University of Queensland (e.g. Short et al. 2006, 2008). For example, we do not know whether there are substantial differences between practices of accredited property managers and landlords who self manage, or within these two groups. Even in the public and community rental sectors, for which

more data are collected by way of regular tenant satisfaction sample surveys (AIHW 2008; Roy Morgan Research 2007a) there is a stronger emphasis on assessing the performance of providers in quantitative terms rather than a more qualitative assessment of practice.

Finally, practices may reflect prevailing cultural norms rather than legislation. Perhaps the best example of this is the practice in the private rental sector of short-term fixed-term tenancies followed by periodical renewal, which are the norm in all jurisdictions for new tenancies. The law does not prescribe this practice. In fact, it often permits fixed-term tenancies that are longer than this, for example, there is a limit of five years for tenancy agreements covered by the Victorian legislation.

3.3.2 Review and reform of residential tenancies legislation

In recent years, there have been incremental changes to residential tenancies and allied legislation in three areas: marginal housing types, exemptions from legislation, and special provisions for social housing tenancies. In some jurisdictions, these have been part of major legislative and/or policy reviews, which we discuss in Section 3.4.2 below.

Marginal housing

In all jurisdictions the legislation covers households occupying mainstream housing (e.g. houses, units, apartments) and renting from private landlords and residential property managers, including real estate agents and public and not-for-profit housing landlords. However, households in some types of rental arrangements are not covered at all, or are covered by different or additional legislative provisions. These include households living in marginal housing (boarders/lodgers and households renting caravans) and social housing tenants.

- In most jurisdictions, residential tenancies legislation now covers rooming/boarding arrangements where residents have their own room, but use shared facilities (e.g. for cooking), and where there is often a resident owner, caretaker or head tenant.²² Boarders are, however, excluded from coverage in NSW (including after new residential tenancies legislation in 2010) and WA. There are exemptions in several jurisdictions where an owner lives on site and lets out less than a prescribed number of rooms (e.g. Queensland). The protections given to boarders are typically less than those for tenants in mainstream housing arrangements (National Shelter 2010). In some jurisdictions, notably Victoria, there has been concern about boarding houses that are sub-standard both in terms of physical quality and management practices. The Victorian Government has accepted the recommendations of a Rooming House Standards Taskforce and has committed to a package of reforms including registration of operators and premises and improving standards of safety and amenity.²³
- There has also been extension of legislative coverage for people renting in caravan or mobile home parks, either through general residential tenancies legislation (e.g. Victoria, Queensland, Northern Territory (NT)) or through specific legislation (e.g. NSW, South Australia (SA), WA). The type of coverage varies between jurisdictions and short stays are often excluded (e.g. Victoria and WA). As with boarding/lodging arrangements, the protections offered to households

²² In the case of SA this is in the form of regulations to govern tenancies in rooming houses introduced in 1999 under the Residential Tenancies Act 1995.

²³ The premier of Victoria announced a \$77 million package to implement all the recommendations of the Rooming House Standards Taskforce, on 30 October 2009 (Victorian Government 2009).

renting caravans and sites, or sites only, are often less than for those renting mainstream housing.

The issue of the extent and type of coverage by residential tenancies and related legislation is significant in view of ongoing research that highlights the numbers of people who live in insecure conditions in boarding/rooming houses, often in metropolitan areas, and 'marginal' renters in caravan/residential parks, often in fringe metropolitan areas and non-metropolitan areas. Often people in this situation have exhausted the short-term options of living with family and friends and live in these rental arrangements in the medium to long term if they cannot access 'standard' rental accommodation (Chamberlain and Mackenzie 2008).

Exemptions

Notwithstanding comprehensive and incremental changes to legislation in all jurisdictions, some types of non-standard rental arrangements are not generally covered by residential tenancies legislation, although they may be covered by other types of legislation. Typically these include various forms of occupancy of aged care units on a rental basis, other types of supported accommodation, tertiary student accommodation, holiday rentals, rent-buy arrangements, head lease arrangements and short-term arrangements such as crisis and transitional housing. As the rental sector becomes more diverse, it is likely that further issues will arise in respect of these types of tenancy arrangements.

Special provisions for social housing tenancies

Whilst residential tenancies legislation covers all mainstream rental housing, some state/territory housing agencies are exempted from parts of residential tenancies legislation. The major example is in SA where key aspects of the regulation of residential tenancies are covered by housing legislation (the South Australian Housing Trust Act 1995). In other jurisdictions, exemptions from residential tenancies legislation refer to distinctive features of public/social housing, in particular, issues arising from income related rents (rent rebates) and administrative allocations procedures.²⁴

Some jurisdictions have also introduced special provisions for social housing. In the case of NSW, for example, the Residential Tenancies Amendment (Social Housing) Act 2005 replaced strong security of tenure for public tenants with renewable fixed-term tenancies of two, five or ten years, depending on the type of household and their circumstances. There are powers to: terminate tenancies of those deemed ineligible for further assistance; require tenants to pay prior debts; and allow termination of tenancy where a tenant refuses an offer of alternative social housing. These changes are a response to a combination of declining vacancies in public housing, more active asset management plans, a lack of new stock (at least until recently) and long waiting times, precipitating a desire to target assistance to make the most effective use of a scarce resource.

A number of jurisdictions have amended legislation to deal with the behaviours of some public housing tenants who engage in anti-social behaviours. The NSW Residential Tenancies Amendment (Public Housing) Act 2004 empowered the state housing agency to require a public housing tenant to enter into an acceptable agreement not to engage in anti-social behaviour. In the event of failure to enter into

²⁴ For example, in NSW, the state housing agency does not have to issue rent receipts and there is no requirement to give 60 days notice of rent increases as for other tenancies, although notice must be given in writing (Tenants NSW n.d.).

such an agreement or repeated/serious breaches, tenancy can be terminated. As indicated above, key aspects of the regulation of public housing tenancies in SA come under the South Australian Housing Trust Act 1995, and the State Government has indicated that it intends to amend the Act to give the Residential Tenancies Tribunal power to terminate a tenancy in the event of unacceptable behaviour. In effect, these special provisions may have very different implications for the rights and security of public tenants compared to other tenants (Martin 2011).

Not all jurisdictions have taken the approach of specific legislation for public/social housing tenants. The Australian Capital Territory (ACT) amended their legislation (Residential Tenancies Amendment Act 2005) to allow the Residential Tenancies Tribunal to evict any tenant who is interfering with a neighbour's quiet enjoyment of their property, covering all tenancies. Similarly, NT introduced new provisions to address anti-social behaviour of all tenants under the Antisocial Behaviour (Miscellaneous Amendments) Act 2006.

3.4 Linking the market, policy and legal contexts

In this section, we examine the connections between residential tenancies legislation, social policies that aim to address the situation of lower-income and vulnerable households and the market context for rental housing.²⁵ In Australia's federal system of government this involves coordination not only across portfolio areas, but also across levels of government.

3.4.1 Connecting social policies and residential tenancies legislation at a federal government level

There have been only three occasions in the last 35 years where federal governments have made explicit connections between social policy objectives and the law regulating residential tenancies. The first of these was at the time of the Commission of Inquiry into Poverty in Australia (1975), which identified a strong association between renting privately and living in poverty. As part of this inquiry, the Sackville Report (Commission of Inquiry into Poverty 1975b) found that landlord-tenant legislation in the states was antiquated and in need of major reform. This led to all jurisdictions enacting comprehensive legislation on residential tenancies (separate from commercial and other tenancies) from the late 1970s.

The second occasion was as a result of the Federal Government's National Housing Strategy (1992), which also highlighted the difficulties facing households in the private rental sector. A comprehensive review of legislative provisions for residential tenancies across Australia was commissioned with a view to establishing minimum standards that could be applied on a national basis. The review recommended a framework for minimum standards for legislation and covered many areas that are important to secure occupancy (e.g. forms of agreements; bonds and condition reports; rent setting and review; anti-discrimination; access provisions and resident privacy; termination, eviction and dispute resolution; and special provisions for non-self-contained housing forms, such as shared housing, boarding houses and caravan parks) (Kennedy et al. 1995).

The current federal government (2007 onwards) has placed strong emphasis on social policies to prevent and address homelessness (Australian Government 2008),

²⁵ In terms of our research questions and the focus on secure occupancy, we are most interested in the interaction between social policies and the market and legal contexts. Other research has focused on the linkages between tax policies and supply (e.g. The Treasury, 2010) and on the supply of rental housing in the context of overall housing supply (National Housing Supply Council, 2010).

which could be seen as being at one end of a continuum of secure occupancy. In this context, it requested National Shelter, a peak housing advocacy group, to examine tenancy laws and tenant protection in Australia as part of its funding agreement. The detailed review (National Shelter 2010) is the first national review of residential tenancies legislation since Kennedy et al. (1995) and a later report by Blunden and Martin (2004). This review explicitly recognises the market context for difficulties in accessing rental housing as a cause of homelessness and a barrier to ending homelessness and makes a number of recommendations for improvement to tenancy law that are specifically focused on mitigating homelessness and tenancy protection:

- Coverage: further extension to cover marginal housing arrangements in all jurisdictions; not using tenancy law to enforce behavioural standards in social housing.
- Changes to specific provisions: regulation of tenancy databases, mitigating excessive rent increases and provision to enable continued tenancy for tenants who repay rent arrears; ensuring minimum standards of habitability and safety, abolition of tenancy terminations without prescribed grounds, consistency in notice periods for tenancy terminations on prescribed grounds, prevention of evictions by mortgagees in the event of foreclosure.
- Changes in practice: providing more support to tenants generally to sustain tenancies as well as improved housing management practices.

National Shelter recommends a cross jurisdictional response through established mechanisms such as the NAHA process and National Partnership Agreements (on Homelessness, Remote Indigenous Housing and Social Housing) of the (Housing) Ministerial Council (National Shelter 2010). However, coordination across portfolio areas would also be required, for example, involving Ministers of Consumer Affairs and Fair Trading and Attorneys-General.

3.4.2 Connecting residential tenancies legislation and social policies at a state/territory government level

Residential tenancies reform has been an ongoing process since the late 1970s both through major reviews and through incremental reform. In the last decade, four jurisdictions have undertaken major reviews. These are:

1. Queensland (Queensland Residential Tenancies Authority 2007) leading to the Residential Tenancies and Rooming Accommodation Act 2008, which came into effect on 1 July 2009.
2. WA (Stamfords Advisors Consultants 2002) leading to separate legislation on residential parks (Residential Parks (Long-Stay Tenants) Act 2006) and further work on mainstream residential tenancies (WA Department of Employment and Consumer Protection 2008).
3. NSW (NSW Office of Fair Trading 2005, 2007) leading to a new Residential Tenancies Bill, which was passed by the NSW Parliament in June 2010 and will become operational on 31 January 2011.
4. Tasmania (Consumer Affairs and Fair Trading Tasmania 2009).

A number of observations can be made about these state/territory reviews:

- The process of amending or passing new legislation in this area is quite protracted due to the representation of what are seen as the largely conflicting positions of landlords and tenants. The review process typically involves production of discussion/options papers and consultation, sometimes in more than one phase.

- Most of these reviews have been conceptualised as policy reviews (rather than statutory reviews) with the possible exception of WA. They are based on an underlying principle of the need to provide balance between changes that give perceived benefits to tenants and those that benefit landlords and property managers. As pointed out, in the Queensland policy review, views on what that balance might comprise vary considerably. This review also highlights a second principle: the need to balance flexibility and specificity in the legislation (Queensland Residential Tenancies Authority 2007, p.14).
- The reviews are seen as primarily within the domain of either consumer protection or fair trading. For example, the review documents in NSW refer to 'streamlining' and modernising the legislation within the domain of fair trading (NSW Office of Fair Trading 2005, 2007). A report on reform to the legislation in WA sees this as part of the Government's Consumer Justice Strategy although it also makes some reference to housing and other policy and research reports (WA Department of Employment and Consumer Protection 2008, pp.iii-iv).
- The reviews increasingly refer to the rental market issues discussed in the first section of this chapter. Of all the reviews, the Tasmanian discussion paper of 2009 canvasses most directly two issues: 1) 'Is there a need to develop an integrated or whole of Government approach to issues in the rental market?' and 2) 'What is the role of the Residential Tenancies Act 1997 in responding to marketplace issues such as shortages in the supply of housing?' (Consumer Affairs and Fair Trading Tasmania 2009). These are broad-ranging issues that go far beyond the 'nuts and bolts' of residential tenancies legislation, such as bonds, rent increases, standards or dispute resolution.
- Finally, whilst the reviews are single jurisdiction, there is evidence of awareness of current legislation in other jurisdictions. There is, however, little reference to the legislative context in other countries.²⁶

3.4.3 *Potential for cooperation across levels of government and portfolio areas*

There are two current areas of coordination across governments that have potential implications for secure occupancy in rental housing, one very general and one very specific.

The National Housing Reform Agenda (2008 onwards) provides a mechanism for coordinating policies and legislation covering different rental sub-sectors. For example, there is an aspiration to provide pathways for households to move from social housing into the private rental sector and home ownership (Housing Ministers' Conference 2009). As we have seen, achievement of this aspiration faces considerable hurdles in terms of market trends and residential tenancies legislation. The key question is what else would be required to enable lower-income and vulnerable households to access and remain in the private rental sector.

The specific example of coordination involves tenancy databases, which have been increasingly used in the private rental sector over the last 20 years. They are run by private operators and provide information on the tenancy history of households, including debts from prior tenancies and other issues. They are used by private property managers as a means of minimising risk for owners of rental properties. Households who are deemed to be 'high risk' are very vulnerable and 'can be forced

²⁶ While this is the case, some of the background research in some jurisdictions has referred to the situation in other countries, most notably a background paper by Griffith and Roth (2008, ch.2) for the NSW Parliamentary Library.

into the more volatile and less secure informal rental market: sharing accommodation, informally sub-letting, relying on parents or friends, and so on' (Short et al. 2003, p.ii). However, as tenancy databases screen prospective rather than current tenants, their operations are not usually covered by state/territory residential tenancies legislation, except in the case of Queensland (Residential Tenancies and Rooming Accommodation Act 2008).²⁷

The Australian Government became involved in this issue since some tenancy databases are national and there are implications in terms of the Commonwealth Privacy Act (1998). The vehicle for the development of standards has been the Ministerial Council on Consumer Affairs (Standing Committee on Attorneys-General Residential Tenancy Database Working Party). The process of review and development of national standards has been protracted. Following a report (2005) and a regulatory impact statement (2005), in 2006 the Ministerial Council on Consumer Affairs agreed to the development of model uniform legislation regulating the use of residential tenancy databases. These model provisions were intended to be the basis of state legislation and there is no uniform approach.²⁸ In 2009, model provisions drafted by Queensland were released for limited consultation (Residential Tenancies Authority 2009) but at the time of writing have not yet been adopted and implemented in state/territory jurisdictions.

The potential sources of ideas and innovation in relation to secure occupancy are constrained by the institutional framework, referring to both policy and legislation. For example, the biennial Australasian Residential Tenancies Tribunals Conference operates separately and in parallel with the biennial National Housing Conference. The former focuses on dispute resolution across the rental sector while the latter focuses mainly on various types of social and affordable housing, and homelessness, with less attention to other parts of the rental sector, which, as we saw in this chapter, house the majority of lower-income and vulnerable households. Opportunities to combine discussion of market factors, legislation, policy and programs affecting the rental sector as a whole have been quite limited.

3.5 Summary

Secure occupancy in rental housing in Australia is shaped by the interrelation of the market, policy and legal contexts. The private rental sector is viewed by policy makers and legislators predominantly through a market lens, with government policy settings designed to increase effective demand or provide incentives to increase supply, and rents set at levels that the market will support. With the notable exception of NRAS, no outcomes are required in return for government subsidies. In contrast, the social rental sector is viewed primarily through a social policy lens and the outcomes are highly prescribed. Policy settings for the public rental sector increasingly emphasise housing management strategies that will get most efficient use from a scarce resource, which has had implications for secure occupancy in some jurisdictions. Policy settings for the emerging not-for-profit sector centre on demand support, capital funding and regulation of housing management; and also prescribe outcomes that include some

²⁷ Only Queensland and the ACT have provision in their residential tenancies legislation to cover tenancy databases. In SA and the NT, consumer affairs/fair trading legislation provided some coverage whilst in NSW there was some coverage from regulations under the Property, Stock and Business Agents Act 2002, as we discuss later in this chapter. In Victoria, WA and Tasmania there is no legislation on the use of residential tenancy databases (Residential Tenancies Authority 2009).

²⁸ Queensland, the ACT and NSW have enacted laws specifically dealing with the use of residential tenancy databases; SA and NT include provisions relating to listing practices for residential tenancies databases in their Fair Trading legislation. Currently, Victoria along with WA and Tasmania do not specifically regulate the use of residential tenancy databases (Consumer Affairs Victoria 2009).

provisions for secure occupancy. Little information is available on the nature of secure occupancy of the more than 10 per cent of households who rent from 'other' landlords.

Residential tenancies legislation, in contrast to housing policy, covers most, although not all, rental arrangements. Whilst legislation has been substantially modernised since the mid-1970s in all jurisdictions, reviews of the legislation are based on the notion of contracts between equal parties within the domain of either fair trading or consumer protection. Legislative reform attempts to maintain a balance between what are assumed to be the opposing interests of landlords and tenants and flexibility, referring to the ability of both parties to exit the contract. In most cases the state/territory government departments responsible for legislation on residential tenancies are different from the department(s) with responsibilities for housing market analysis, housing policy development, and development of programs for lower-income and vulnerable households who rent their housing.

The policy conundrum is that most lower-income renter households must access accommodation through private landlords with financial support (various forms of rent subsidy), but their capacity to enjoy a reasonable level of secure occupancy is constrained by unequal market power relative to renters on middle and higher incomes in combination with the legislative context outlined in this chapter. Both legislation and policy settings appear to be based on cultural norms that see renting as a short-term, transitional housing option with an emphasis on flexibility, referring to easy access and exit by both landlords and households.

4 SECURE OCCUPANCY IN AUSTRALIAN RENTAL HOUSING: PERSPECTIVES AND CHALLENGES

In this chapter, we explore how the Australian framework for secure occupancy in rental housing, which we examined in Chapter 3, plays out in practice. We do this in two ways. First, we scope the nature and extent of secure occupancy in Australia through analysis of data from the ABS Survey of Income and Housing 2007–08 (ABS 2009). Second, we provide a more in-depth investigation of secure occupancy in two Australian states: NSW and Victoria, drawing on documentary evidence and interviews with key informants, as outlined previously in Chapter 2.

4.1 Scoping the nature and extent of secure occupancy in rental housing in Australia

Whether, and to what extent, households have secure occupancy in Australian rental housing is not an easy question to answer as there are significant gaps in the data. For example, data is not normally collected on the reasons that tenants leave their rental housing voluntarily and there is very little data on involuntary exits. Neither is data collected that would give an indication as to whether and to what extent secure occupancy is affected by factors such as noise, pet ownership or cultural obligations to house family members.

The approach in this section is to present the findings of analysis of data from the ABS Survey of Income and Housing 2007–08, which is the best available source, to build up a picture of secure occupancy in Australian rental housing, corroborating against other sources where possible. As indicated in Chapter 3, much existing analysis of rental housing is grounded in separate analysis of different rental sectors. In this chapter, to the extent that this is possible given data limitations, we scope secure occupancy for all households who rent, to avoid making what may be unwarranted assumptions about aspects of secure occupancy in different rental sectors.

4.1.1 Type and length of lease

Australian households occupy rental housing under a number of different legal arrangements, as illustrated in Table 9. About 80 per cent of households who rent have no leases, short-term leases or periodic tenancies, while 20 per cent of all households say that they have indefinite tenure.²⁹

- Half of all renter households have fixed-term leases, mainly of six or twelve months, reflecting different practices in the private rental sector across jurisdictions (e.g. initial fixed-term leases are typically for six months in NSW and for 12 months in Victoria, as noted previously).
- Only 14 per cent of households reported having periodic leases, which usually come after an initial short fixed-term lease. These households were mainly those renting from a private landlord, perhaps reflecting high rates of mobility in the sector, which we discuss below.
- About one in five renter households have indefinite tenure. Many of these (60%) are, not surprisingly, households who rent from public landlords, but almost

²⁹ Whilst the ABS makes every attempt to ensure the validity of the data in the Survey of Income and Housing, information about rental arrangements is self-reported and there is always the possibility of some discrepancy between respondents' recollections/observations and the legal situation in regard to their tenure.

200 000 households renting from private or other landlords also report that they have indefinite tenure.

- Fourteen per cent of households say that they have no formal lease or tenure. This is the dominant arrangement for those renting from 'other landlords'. However, just over 200 000 households renting from private landlords also report this arrangement.

Table 9: Renter households by type and length of lease by landlord type, Australia, 2007–08

Length of lease	Private landlord	Public landlord	Other landlord	All renters	All renters (%)
Twelve-month lease	725,106	9,434	26,539	761,080	31.7
Six-month lease	340,004	3,199	3,067	346,270	14.4
Other fixed period lease	65,210	15,503	12,442	93,156	3.9
Month by month basis	310,091	12,446	13,340	335,877	14
Indefinite tenure (other than lease)	115,430	284,406	81,314	481,150	20
No formal lease or tenure	207,153	27,112	100,873	335,137	13.9
Other	24,618	12,957	13,581	51,156	2.1
Total	1,787,612	365,057	251,157	2,403,826	100

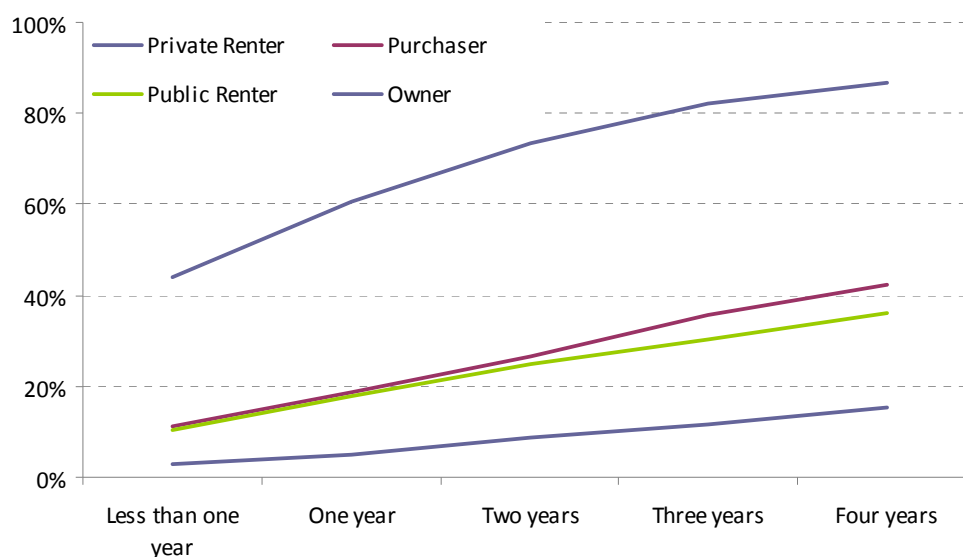
Source: Calculated from Confidentialised Unit Record (CURF) data, ABS Survey of Income and Housing 2007–08.

4.1.2 Length of time in current dwelling

When we look at evidence about the length of time that renter households have been living in their current dwellings, it appears that type and length of lease agreement correlate with landlord type and length of residence. The length of time that public renters have been in their current dwellings more closely approximates other Australian households (homeowners and purchasers) than for private renters. As illustrated in Figure 4:

- Sixty per cent of households renting from private landlords have been in their current dwelling for one year or less, compared to 18 per cent of those renting from a public landlord.
- Eighty-two per cent of private renters have been in their current dwelling for three years or less compared to 30 per cent of public renters.

Figure 4: Length of time living in current dwelling by housing tenure type, Australia, 2007–08



Source: Calculated from CURF data, ABS Survey of Income and Housing, 2007–08

We cannot tell from Figure 4 whether households renting privately have been living in their current dwellings for shorter periods than other Australian households by choice. However, some data on this point are available from the ABS Survey of Income and Housing 2007–08 (not illustrated):

- Thirty-one per cent of all renters said that they *were likely* to move in the next 12 months, but there were quite different patterns between sub-sectors with 37 per cent of private renters, 7 per cent of public renters and 20 per cent of other renters saying this.
- This compares with the 12 per cent of all renters who say that they *want to move* in the next 12 months, with less variation between sub-sectors (11% of private renters, 19% of public renters and 8% of other renters).

Thus it appears that there are different patterns of choice and constraint operating for households in different rental sectors. A substantial group of private renters and other renters think it likely that they will have to move even though they do not want to. Whilst market and legal factors help explain this finding (in particular the uncertainty associated with short-term leases and the difficulty in finding affordable housing), prior research has also indicated that there is a socio-cultural element as well. Hulse and Saugeres (2008b) call this ‘housing instability’, which refers not only to having to move, but also to vulnerability to such change, which is beyond the immediate control of households, and ‘is manifest in cultural expectations of transience, inability to ‘put down roots’ and difficulty in making plans for the future’ (Hulse & Saugeres 2008b).

It also appears that there is a smaller group of public housing tenants who want to move, but are constrained to stay. It is not possible to interrogate this group further from the data source, but qualitative research has found that some public housing tenants have insecure occupancy, despite legal security of tenure, due to problems within their neighbourhood, such as noise and anti-social behaviour, which create a stressful and sometimes unsafe living environment (Hulse & Saugeres 2008b). The only way in which these households can exercise some control over their situation,

given the difficulty of moving within the public rental sector, is to move to private rental accommodation (Hulse & Saugeres 2008b).³⁰

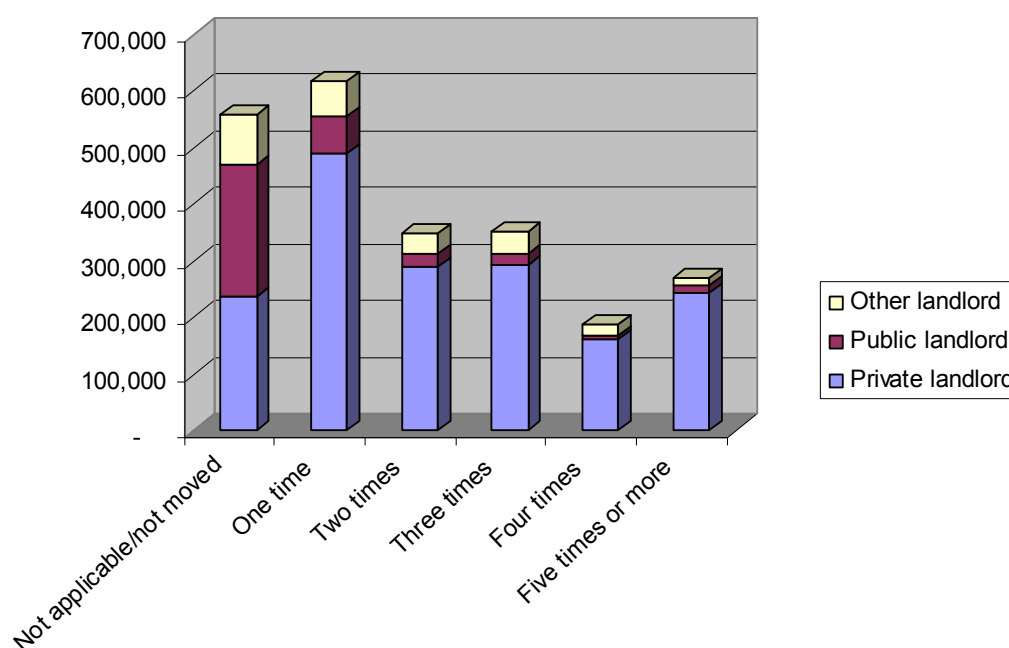
When we look at why renter households did move from their last dwelling within the last five years, many reasons were given, often associated with relationship formation and breakdown. However, the two most common primary reasons given by private renters were notice to vacate (14%) and wanting a bigger/better dwelling (14%).

4.1.3 Mobility

Renter households have quite different patterns of mobility to other Australian households. Three quarter of renter households (74%) have moved at least once during the last five years, compared to 29 per cent of all other households. One-third of all renter households (33% or more than 800 000 households) has moved frequently (three times or more) during the last five years; compared to 7 per cent of all other households.

It appears that there are different patterns of mobility for households living in different rental sectors, as illustrated in Figure 5. In particular, private renters have moved more frequently than other renter households (39% of private renter households had moved three or more times within the last five years compared to 11% of public housing tenants).

Figure 5: Renter household by number of time moved dwellings in the last five years by landlord type, Australia, 2007–08



Source: Calculated from CURF data, ABS Survey of Income and Housing, 2007–08

4.1.4 Length of time in the rental sector

Paradoxically, whilst households renting privately had lived in their current dwelling for shorter periods of time and had moved more often compared to both other renters and

³⁰ Analysis of data from the ABS Survey of Income and Housing 2007–08 offers some support for this explanation. Lower percentages of public housing tenants (75%) said that they felt safe or very safe at home alone after dark than for private renters (87%).

Australian households generally, there is clear evidence of long-term renting amongst private renters (although not necessarily in the same dwelling):

- Sixty-three per cent of all renters (1 524 546 households) have been renting for five or more years continuously. 67 per cent of these are private renters.
- Forty-one per cent of all renters (993 178 households) have been renting for 10 or more years continuously. 60 per cent of these are private renters. Indeed, 33 per cent of all private renters have been renting for 10 or more years.³¹ There are also a substantial number of public housing tenants (290 343) who have been renting for 10 or more years (constituting 29% of longer-term renters).

The findings corroborate previous research, using a different data source, which indicates that households who rent privately are more likely to be short-term renters (less than five years) and long-term (10 years or more) than medium-term renters (five and less than 10 years) (Wulff & Maher 1998, p.88).

4.1.5 *Interconnection between rental sectors*

Finally, we were interested in the extent to which private renters see themselves as renting temporarily until they can access public rental housing. The data suggest that this is not the case for many households:

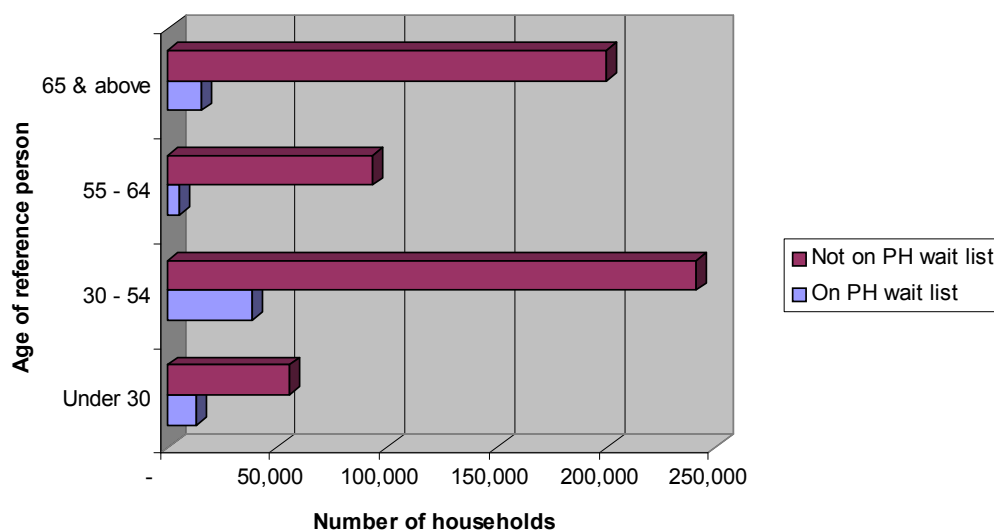
- Only 5 per cent of private tenants (91 900 households) and 5 per cent of renters from other landlords (13 621 households) said that they were on the public housing wait list.
- Four per cent of public housing tenants said that they are on the public housing wait list (15 891 households), perhaps waiting to transfer within the sector.

This does not necessarily indicate the extent of demand for public rental because, as we saw in Chapter 3, allocations to public housing have declined markedly and this decline has been only partially offset by allocations to other types of social housing (SCRGSP 2010, Tables 16A.1, 16A.25). Many households do not apply because they do not meet the criteria associated with stringent targeting and/or they do not want to apply for public rental. Prior research that enables a direct comparison of the views of lower-income private renters who were on the wait list for public housing and those who were not registered found that the three main reasons for not applying were: the waiting times are too long; inability to choose their own dwelling and/or location; and the poor reputation of public housing (Burke et al. 2004, p.11, Table 10). In view of these findings, it is perhaps not surprising therefore that the majority of private renter households who are in receipt of Centrelink payments (i.e. on low incomes) are not on the public housing wait list, across all age groups, as shown in Figure 6.

In summary, the scoping exercise discussed so far in this chapter provides an understanding of the ways in which the market, policy and legislative context outlined in Chapter 3 may shape the nature of occupancy for households who rent in Australia. To develop this understanding in more depth, we next present the findings from the NSW and Victorian cases.

³¹ Wulff and Maher (1998) in a seminal article on long-term private renters indicate that 40 per cent of private renters had rented for 10 or more years. However, this figure includes 'returners', those who have resumed renting after a period of home purchase. When this group is deleted, long-term *continuous* renters comprised 27 per cent of all private renters, somewhat less than indicated by analysis of the ABS Survey of Income and Housing 2007–08 (33%). However, it should be noted that the Wulff and Maher paper was based on a different data source, the ABS Survey of Rental Tenants 1994. Since this survey has not been repeated we cannot exactly replicate their methodology to establish a point of time comparison.

Figure 6: Number of private renter households in receipt of Centrelink payments by age of reference person and public housing wait list status, Australia, 2007–08



Source: Calculated from CURF data, ABS Survey of Income and Housing 2007-08

Note: Private renters in receipt of Centrelink payments refers to households whose main household income is pensions/benefits and who pay rent to a real estate agent or unrelated private landlord

4.2 The New South Wales and Victoria cases: perspectives on secure occupancy

This section puts more flesh onto the bones of the quantitative analysis presented above. We selected two Australian cases for more in-depth examination because, notwithstanding similarities in market context and federal policy settings, there are some differences in state-level residential tenancies legislation and state-level housing policies that may lead to differences in relation to secure occupancy. In this section we provide an integrated analysis of the two Australian cases, highlighting differences where these occur.

As indicated in the discussion of the methodology in Chapter 2, the cases involved review of relevant documents and 15 interviews involving a total of 28 people. These key informants were selected based on their personal knowledge and expertise, rather than as representatives of their organisation. Consistent with the ethics approval for this project, interviewees will not be identified in this report, although we acknowledge their contributions collectively in Appendix 3. In the presentation of the findings we consider how the market, legal and policy contexts interrelate to shape levels of secure occupancy and, as relevant, indicate how these reflect the socio-cultural context for renting in Australia.

4.2.1 The market context: access and affordability

The interviews in NSW and Victoria highlighted that underlying all consideration of secure occupancy is a shortage of rental housing that is affordable and available to lower-income and vulnerable households, across both the private and social rental sectors.

In the private rental sector, this has been well documented in both states.

→ The trend vacancy rate in metropolitan Melbourne in the June 2010 quarter was very low (1.6%) (Victorian Department of Human Services (DHS) 2010a). In

Sydney the vacancy rate for the month of August 2010 was 1.5 per cent, having been as low as 1.1 per cent in March 2010 (Real Estate Institute of NSW 2010).

- The annual rate of increase in the rent index for new lettings was 6 per cent in metropolitan Melbourne and 8.1 per cent in non-metropolitan Victoria in the year to June 2010, compared to an average annual rate of increase over the previous decade of 5.9 and 5.5 per cent respectively (DHS 2010a).³² For metropolitan Sydney, the annual increase in rents for new lettings was 6.3 per cent for the year to September 2010 (HNSW 2010c). These rates are well above the national consumer price index, which was 2.5 per cent for the year ended September 2010 (Reserve Bank of Australia 2010, Table G1).
- In the June 2010 quarter in Melbourne, 9.7 per cent of new lettings were affordable to households if they were to pay no more than 30 per cent of (gross) Centrelink income on rent. The situation was better in the rest of Victoria (63% of new lettings were affordable), however, less than a quarter (23%) of all new lettings in Victoria were in regional areas. Comparable figures for NSW are not available.

In the social housing sector, supply has been unable to keep up with demand due to lower turnover and a lack of investment, at least until the recent funding of social housing, which is part of the economic stimulus package. In 2008–09, 6185 new households were allocated public housing in NSW, a decrease from 10 600 in 1999–2000. In Victoria, there were 3753 new households assisted in 2008–09 compared to 8809 in 1999–2000 (SCRGSP 2001, 2010).³³ In consequence, it is becoming more difficult to access public housing in both states, and waiting times have increased, as reported by many of the interviewees.

In order to manage this situation, allocation of public housing is now being based on 'greatest need', which means households must satisfy increasingly stringent qualifying criteria and demonstrate an inability to resolve their housing need in the private rental market. For example, in NSW the administrative test for whether suitably sized private housing is 'affordable' is whether rent would exceed 50 per cent of the household's total gross weekly income, plus 100 per cent of the Commonwealth Rent Assistance payment (HNSW 2010b). Inability to access social housing means that lower-income households who would have traditionally moved into such housing now have to look for (or try to retain) accommodation in the private rental sector; notwithstanding rents that many of those interviewed suggested were unaffordable to households on these incomes.

Most of the interviewees identified having an insufficient supply of well located affordable housing to rent, whether privately or publicly owned, as swamping all other considerations in respect of secure occupancy:

The core issue is not so much lease conditions but having a large enough long-term rental sector. (NSW interviewee)

This much is well known; what is less well known is how this situation affects particular groups in respect of secure occupancy, which we discuss next.

³² The Victorian Rental Report is based on Residential Tenancies Bond Authority data when bonds for new lettings are lodged.

³³ Comparable figures for new households housed in community housing managed by not-for-profit providers are not available for this period due to problems of data definition. However, public housing comprised about 90 per cent of the social housing sector in 2008–09.

Screening out of 'high risk' tenants

Tightening of access to rental housing across all rental sectors means that landlords and rental property managers are able to screen out whom they consider to be unattractive or high-risk applicants. For example, interviewees reported that people on Centrelink payments, families with small children, large families and people with physical and mental disabilities are finding that landlords/agents in the private rental sector are reluctant to take them on. Other groups who were highlighted as finding difficulty in accessing rental housing include single men, including those working, but on low incomes, and students. As one Victorian interviewee commented, 'the rental market in Victoria is ruthless'. The consequence of being seen as 'higher risk' is that some households have to keep applying for rental properties with low prospects of success.

The most significant trend is the long-term increase in rents in Sydney and in coastal areas. This is driving demand (for priority housing) from groups historically not seeking priority housing, such as low wage earners. Sometimes people have applied to 50 or 60 properties. (NSW interviewee)³⁴

One means of screening out high-risk tenants is tenant databases, which, as discussed in Chapter 3, are not covered by residential tenancies legislation in either NSW or Victoria. Tenancy workers in both states spoke of tenant databases being used to screen out some of the most vulnerable households. Some of those interviewed also expressed the view that tenants are disempowered from exercising their rights during tenancies because they know they can be recorded as 'troublemakers' on tenant databases. Under proposed national standards to apply to regulations to cover all database operators, tenants will have the right to see and dispute their listing, to restrict the length of time for a listing and to provide for residential tenancies tribunals to have jurisdiction over disputes concerning databases. These arrangements will apply in NSW with the implementation of the new Residential Tenancies Act 2010 on 31 January 2011.

When faced with a shortage of available and affordable rentals, households have two main choices: they can try and find marginal housing in which they are less likely to be screened out as high risk or they can try and get into the mainstream rental sector by extending themselves financially. Both of these can place households in a vulnerable position.

Living in marginal housing

Households unable to access the mainstream rental sector may opt to move into marginal housing types in which they are less likely to be screened out as 'high risk'. Rooming houses and caravan parks have become a stopgap option for some of the most vulnerable, including single parent households, who may be forced out of their normal housing circumstances due to, for example, the break-up of a relationship often including domestic violence. With a low income and often without a good credit history, the only option available is caravans or rooming houses:

Before the market changed you would never have seen families and single parents in these 'marginal' forms of private rental. (Victorian interviewee)

³⁴ A rental application fee—typically \$50 a property, which is refundable if the application is unsuccessful—can act as a further screening mechanism. This has become such a problem in some towns that Housing New South Wales now assists applicants (who have been declined for priority housing) with a loan for their rental application fees so that they can afford to apply for multiple properties at the same time.

Several of the Victorian interviewees also pointed out that some, but not all, arrangements in which people rent a room are covered by legislation. In NSW, boarders have never had protection under residential tenancies legislation and this situation will continue under the new Residential Tenancies Act 2010, despite strong advocacy for their inclusion.

Marginal housing is not necessarily cheap. The interviews provided examples of households paying considerable sums for such housing:

The growth in rooming houses opening up is because of the shortage of housing. [They] use the desperation factor to provide poor quality and expensive housing. (Victorian interviewee)

Rooming houses and caravan parks used to be cheap alternatives, but no longer. (Victorian interviewee)

Interviewees in both states talked about the growth in *de facto* rooming houses: large houses let by the room, in which residents have no tenancy rights. Some of these situations involve tertiary students, particularly international students, who may be unfamiliar with Australian law and practice. This situation has recently received some media coverage:

One of the most common scams affecting international students involves a head tenant who signs a lease, taking control of an apartment. The head tenant never moves into the apartment, but then crams the flat full of international students. The head tenant then becomes a middleman, skimming extra cash off students before paying the landlord. (Lateline Reporter John Stuart, Australian Broadcasting Corporation (ABC) 2010).

Tenancy workers in NSW reported to us and to the media that there was an increase in illegal sub-letting and overcrowding in inner-city flats. International students and young people from country areas were identified as most vulnerable to overcrowding, which appears to be a direct result of the overall shortage of affordable accommodation in areas close to educational institutions. Jacqui Swinburne from Inner Sydney Tenants Advocacy Services explains how this can result in chronic overcrowding:

The more extreme cases are probably around four to a small room in bunk beds, so you've got eight or ten per two-bedroom flat. And usually you've got a couple of people in the lounge room as well. And in some extreme cases, you've got people living in enclosed balconies as well. (ABC 2010)

Local governments in NSW (and elsewhere) are now seeking ways to address the overcrowding issue, such as by having powers to inspect premises without notice (ABC 2010).

Once they have found a place in marginal housing, even if this is in the registered (rather than the *de facto*) rooming house sector, households are often vulnerable such that their occupancy is threatened. This is not just about legislative coverage, but also about the standard of accommodation, as highlighted by Victorian interviewees.

We have a compliance authority, but [it's] hard to see quite what they do. (Victorian interviewee)

A number of the interviewees highlighted issues of safety and security in rooming houses that affect security of occupancy. In the case of Victoria, interviewees also identified some large-scale rooming houses that are 'near monopoly' providers. In some cases, these operators use their position to require residents to leave without notice, offering alternative rooming house options for those who agree to leave.

Residents who resisted were not offered alternative accommodation. This situation was described as:

A complicated mixture of coercion and consent. (Victorian interviewee)

Financially stretched renters in mainstream housing

Some households are so desperate to get mainstream rental housing that they stretch themselves financially:

Tenants often can't find something in their price range, so they pay a bit more than they can really afford. This catches up and they fall into arrears. (NSW interviewee)

The lack of affordable and suitable rental housing makes it difficult for tenants to sustain their tenancies, which increases their vulnerability in the marketplace. In both states, households are being forced to the margins of their affordability as rent increases outpace incomes and government rent assistance payments (see Colic-Peisker et al. 2010, p.1). Some of the groups who have been particularly affected by the rising cost of rental accommodation include single young people, men in low paying jobs and students living in traditional 'student areas' that are being gentrified.

Households who are financially stretched are vulnerable to changes in their financial and personal circumstances. Loss of some or all of the household income and fluctuating incomes contribute to rental arrears. Once in arrears, tenants face the prospect of losing their housing and it is then very difficult for them to find somewhere more affordable to rent. As a result:

Tenants often don't contact the real estate agent and tell them they've lost their job ... They think they'll get another one and/or then they're too embarrassed. Agents might be more sympathetic if they knew the issue. By the time it gets to the tribunal it's too late to save the tenancy often. (NSW interviewee)

Over-commitment on rent entails risks that threaten occupancy if there is a change in tenants' personal circumstances or finances. However, households who are financially stretched face risks even if their personal circumstances do not change, as we discuss next.

Ongoing affordability: rent arrears

The largest direct cause of tenancy terminations in both NSW and Victoria is rental arrears (Consumer Traders and Tenancy Tribunal (CTTT) 2009; Victorian Civil and Administrative Tribunal (VCAT) 2009). In NSW in 2008–09, 61 per cent of all terminations in the social housing and 81 per cent of terminations in (private) rental divisions were made on the basis of rent arrears. In total there were 19 148 terminations for rent arrears over the year, representing 40 per cent of all matters concluded in the tribunal (CTTT 2009). In Victoria there were 16 945 applications to VCAT in 2009–10 concerning rental arrears.³⁵ These data underline the significance of tenant circumstances and, more broadly, declining affordability to tenancy security, as discussed above.

While households can fall into rent arrears as a result of a variety of personal circumstances, many of those interviewed also pointed to the nature of rent setting, notably in the private rental sector, as another factor contributing to rent arrears. In both states, rents for new tenancies are set at 'market levels', that is levels at which

³⁵ Personal communication, Heather Lambrick, VCAT, December 2010.

someone will rent the property. Initially, as we have seen, many households have fixed-term leases that are short-term and these often revert to periodic tenancies after the initial period. During periodic tenancies rents can be increased a maximum of once every six months in Victoria and without limit in NSW. Sitting tenants cannot necessarily anticipate either how often rents will be increased or the extent of the increase. They may face a stark choice of remaining and paying rents that are at, or beyond, the margins of affordability, or trying to move and take the chance that they can find something cheaper. Moving entails financial costs (relocation expenses, bond, rent in advance, utility connections, etc.) and often practical and emotional costs (such as changing documentation, leaving a home, leaving neighbours, changing schools, etc.).

As pointed out by several of the interviewees, this is a difficult situation in which the household that wants to stay can pay the increased rent, try to negotiate the rent with the landlord/property manager, or dispute the increase at the tenancy tribunal. Trying to dispute an excessive rent increase at a tenancy tribunal was considered by some of those interviewed as ineffective, because the onus is on the tenant to show that rent is high compared with similar properties of a similar type in the area. Thus the rate of increase in itself is not a factor if the proposed rent is comparable with others in the current market. Data from the NSW Consumer Trader and Tenancy Tribunal shows that only 2 per cent of applications (687 cases) were concerned with excessive rents or excessive rent increases in 2008–09 (CTTT 2009) but it may well be that tenants do not think it worthwhile taking a case to the Tribunal.

In the social rental sector rents have been rising, but for the most part are well below rents charged in the private rental sector, being set as a percentage of household income for most tenants. In NSW, some interviewees suggested that changes to rent setting policies and procedures in social housing may be contributing to the incidence of rental arrears leading to terminations, although it is too early to verify this.³⁶ In community housing, rents in both states have recently been adjusted so that they are now based on a percentage of tenants' income plus the amount of Commonwealth Rent Assistance that they and other household members receive. As the base rent will be higher in these circumstances than an income-based rent in public housing, a higher level of arrears can result. These examples highlight the relationship between rent setting policies for social housing and the risk of rental arrears that can lead to tenancy failures, particularly for very low-income clients or those with less stable incomes and/or households.

Another newly legislated trigger for tenancy termination that is specific to public housing in NSW is arrears arising from non-payment of water usage charges. Under an amendment to residential tenancies legislation in 2008, water usage charges are being passed on from the public landlord to the tenant as a measure aimed at encouraging water usage conservation. Over 500 cases of breaches for water usage were brought before the CTTT by Housing NSW in the first 9 months of the operation of the social housing division (see Section 4.2.2) in 2008–09.

There will be some beneficial changes to the management of rental arrears when the new residential tenancies legislation in NSW is implemented. To assist landlords manage their financial risks, the period to execute an eviction will be reduced by up to two weeks by allowing the landlord to apply to the Tribunal for orders at the same time as giving a termination notice to the tenant. However, if a tenant pays the overdue

³⁶ Since 2008, Housing NSW has had the power to retrospectively cancel rental subsidies in cases where a tenant does not notify the department of a change in their income (that would lead to a higher rent being charged). This action can result in tenants having rental arrears that they cannot repay and thus lead to termination.

rent, or follows a repayment plan agreed with the landlord, termination action will be cancelled (unless the tenant is shown to have frequently failed to pay their rent on time) (NSW Fair Trading 2010b). Previously, landlords could still proceed with terminations when arrears were paid. Respondents in our study generally applauded this reform as important in preventing unnecessary terminations and homelessness. Security could be further strengthened by well-targeted financial assistance and financial counselling for tenants in or at risk of arrears, as discussed later in the report.

Market factors, property ownership and termination of tenancies

The primary reason for tenancy termination in all rental sectors is rental arrears. This is not, however, the only reason why tenancies may not be secure. A range of examples were given by the interviewees where tenants experience vulnerability due to the circumstances of, and actions taken by, landlords, rather than as a result of tenants breaching their tenancy agreements. Private landlords may choose to leave the rental market for a variety of reasons, including wanting to renovate their property, perhaps for their own use, and ridding themselves of high transactional costs arising from problematic tenancies. Some owners also want to sell their property after 12 months to take advantage of the capital gains tax benefit (Wood & Ong 2010).

Tenancy tribunals see tenants who are subject to termination because the property owner requires the property for a variety of reasons. Often, these tenants indicate they would be willing to move, but are desperate to maintain their existing tenancy because of a lack of alternatives, even with the assistance of real estate agents in finding somewhere else. Interviewees knowledgeable about the industry in both states confirmed this view.

The interviews highlighted that a further risk for tenants arises from the financial position of landlords. As seen in Chapter 3, many owners of rental properties are themselves households who borrow against the property. These households may also experience changes in personal circumstances such that they may need to liquidate their asset. There is some evidence, particularly in NSW, of evictions linked to the repossession of properties by mortgagees (Robyn Kennedy & Co. 2008). This can be attributed not only to changes in the personal circumstances of owners, but also economic factors such as changes in interest rates and housing asset prices.

Consequences of insecure housing and tenancy termination for households

For some households, moving between rental properties in circumstances not of their choosing can have significant consequences. As pointed out by interviewees in both states, households with children are particularly vulnerable if they have to move. They may face difficulty in persuading other property owners/agents to house them if the children are young. Further, they are concerned about loss of connections to schools, neighbourhoods and local facilities and services. A similar situation exists for older people who face many challenges in finding alternative rental housing unless they have help from family and friends, and who may be receiving home help services from a local council. Sometimes, they have to move far away from friends, neighbours and services as the only accommodation they can afford is in outer suburban areas.

In the social rental sector, public housing has become housing of last resort. Whilst many households are taken to a tenancy tribunal for rent arrears and other reasons, there are relatively few evictions, although the number of households who vacate under threat of eviction is not documented. In the case of Victoria, there has been a concerted effort in recent years to minimise the number of evictions from public housing through programs such as the Social Housing and Advocacy Support Program that we consider later in this chapter. However, according to some

interviewees in Victoria, public housing tenants may still be vulnerable in terms of tenancy sustainment. When initially housed, they have been receiving support from external organisations, but once housed this support ends as agencies focus their limited resources on those seen as being in higher need. In some cases, this leaves public housing managers with problem tenancies that may ultimately lead to tenancy failure.

4.2.2 Legislative framework (landlord-tenant relations)

In keeping with the conceptualisation of secure occupancy outlined in Chapter 2, this section examines how provisions in tenancy law, and the structuring of landlord-tenant relations, help to shape security of occupancy in the context of a shortage of affordable rental housing in both NSW and Victoria.

As indicated previously, during the course of the project, new legislation was passed in NSW in June 2010 (NSW Residential Tenancy Act 2010) and will come into effect on 31 January 2011. This section is based on interviews with key informants in NSW that took place toward the end of a protracted period of review and consultation prior to this legislation being passed.

In NSW, the Consumer Trader and Tenancy Tribunal (CTTT) is the body responsible for dealing with disputes and making orders pursuant to residential tenancy legislation. It also has jurisdiction over a range of other consumer and trading matters, each of which is heard in separate divisions. CTTT members preside in all divisions. A significant majority of all applications to the Tribunal concerns tenancy matters. In recent years there have been, on average, more than 45 000 tenancy-related applications lodged. There is about a one in eight chance of the parties coming before the Tribunal to resolve a dispute during the course of the average tenancy (Office of Fair Trading 2007).

In response to increasing applications from the social housing sector, a new social housing division of the Tribunal was created in September 2008; separate from the existing tenancy division that now only receives applications from private landlords and tenants. This separation has revealed differences across the two divisions in terms of which party brings applications before the tribunal. In 2008–09, 97 per cent of applications in the social housing division were made by the landlord, while in the tenancy division, tenants and occupants brought around one-fifth of cases. About two-thirds of all landlord applications across both divisions were for tenancy terminations (CTTT 2009).

In Victoria, whilst there has been no comprehensive review of residential tenancies legislation in the 2000s, as discussed in Chapter 3, there has been a process of incremental reform. For example, the Family Violence Protection Act 2008 resulted in amendments to the Residential Tenancies Act 1997 to provide better protection for victims of family violence who rent their housing (VCAT 2009). VCAT is the equivalent of the NSW CTTT and hears disputes between landlords and tenants in mainstream tenancies and rooming houses and caravan parks, under the Residential Tenancies Act 1997. As in NSW, VCAT deals with a large number of issues aside from residential tenancies split across three divisions: human rights, civil and administrative. The residential tenancies list is within the civil division and is by a long way the largest of VCAT's lists. In recent years about 60 000 residential tenancies applications have been heard annually, representing about 15 per cent of all residential tenancies in Victoria (VCAT 2009).

Unlike in NSW, there is no separate structure for hearing applications concerning social housing tenancies. In 2008–09, the vast majority of applications were made by

either estate agents/property managers on behalf of landlords (60%) and the public housing landlord (26%). Only 6 per cent of applications were made directly by private landlords and 8 per cent by tenants/occupiers. Almost half of all applications are for possession of the property. Many of the applications concern rent arrears and, in the case of social housing, have the effect of mandating agreements for households to repay their arrears in order to sustain their tenancies. However, interviewees noted that there were other landlord applications to the tribunal in social housing mainly around illegal use of the premises by the tenant (mainly referring to drug use), anti-social behaviour and occupying without the consent of the owners (sub-letting).

Tenancy contracts in the context of rental market structuring

Interviewees working in the areas of rental property ownership or management in the private sector saw residential tenancies legislation as moderating the landlord-tenant relationship by balancing the actions taken by the state to protect tenants with the needs and interests of the property owners. A recent review of the evidence about rental investors in Australia characterised the majority as small-scale, 'mums and dads', who are interested in achieving capital growth rather than rental returns (Seelig et al. 2006, 2009). Noting this situation, several interviewees questioned the argument about balance, pointing out that the parties to tenancy agreements have unequal market power. As summed up by one interviewee:

In Australia, the significant number of 'mum and dad' landlords militates against secure occupancy. For example, compared to professional investors who are holding a property portfolio for a long-term, mums and dad investors require flexibility and want vacant possession when selling a property (to sell into the first home buyer market), rather than allowing the tenant to continue on with the property after it has been sold to a new owner. [This is] underpinned by the rules for receipt of First Home Owners Grant: buyers getting this grant are required to live in the property for six months. (NSW interviewee)

Another NSW interviewee highlighted that where rental investors own blocks of apartments there are more prospects of stable tenancies. Houses and individually owned flats that are attractive to the first homebuyer market or can be readily sold into home ownership are not secure for tenants. However, the latter situation is becoming more common as blocks of older flats in single ownership are broken up (through strata titling) and sold.

As we will show in Chapter 5, one of the policy drivers that strongly influences security of occupancy in many countries is the provision of incentives and subsidies to private landlords that are linked to regulations concerning access, rent and security of tenure. In Australia, negative gearing of rental investment, as described in Chapter 3, is designed to encourage investment *per se*, rather than to pursue policy objectives, such as security, affordability or improved access for households in need. Another issue that affects security of occupancy is the volatility of investment. A recent analysis of retention of investment among a sample of investors in Australia found that an astounding 25 per cent sold within 12 months of making their investment, although there was a steep decline in sales by investors after one year. Younger, negatively geared investors with low levels of income were most likely to turn over their rental property (Wood & Ong 2010). This has obvious implications for secure occupancy for households who rent.

The impacts of volatility on house prices and affordability (and hence conditions for tenants) is also a concern that emerged from the recent Henry Tax Review (The Treasury 2010). While attributing the recent sharp decline in housing affordability in

Australia primarily to demand factors and a weak supply response, the Henry Tax Review was also concerned about a long-term need to dampen volatility in rental investment, such as through reducing negative gearing provisions that may put investment properties at greater risk by encouraging indebtedness (The Treasury 2010). Moreover, as previously described, in both Victoria and NSW there is a concern that evictions relating to repossession are increasing in the context of the global financial crisis and rising interest rates. Many of those interviewed pointed to the importance of understanding the nature and volatility of rental investment as fundamental to the issue of secure occupancy for tenants:

There is some interesting work around why rental investors invest. The implication is that it is not a particularly sensible investment because there are better ways to invest your money to get capital appreciation. There is a kind of sentimental element. There is the 'safe is houses' sense, but there is also the regular turnover investment. I think the nature of the investment has to change. Sentimental investment is to inherit granny's house versus a portfolio of rental property. Another idea is that we will buy a house here because in three years time our child will go to college here. (Victorian interviewee)

Rent setting

The regulation of rents is a highly contested policy instrument and historic approaches to rent control are widely claimed to account for the decline of private rental sectors in many developed countries (Haffner et al. 2008). In NSW and Victoria, there are no controls on rents for new contracts in the private rental market. Controls on rents for existing tenants on periodic tenancies are limited to a tenant's right to dispute an excessive rent increase in the appropriate tribunal.

In both states, it was noted that a well established argument for not toughening regulation of rent increases is that landlords have a disincentive to increase rents unreasonably for sitting tenants in case it results in a vacancy and a consequential (short-term) loss of income. However, the operation of this incentive is weakened in situations of chronic scarcity and rising rents. Tenancy advice services in NSW have recently reported seeing regular use of 'no grounds' terminations (which we discuss next) to enable rent for the property to be increased significantly, thus avoiding the rent increase notice period and any possible challenge to a substantial rent increase (Robyn Kennedy & Co. 2008, p.60). As well, several informants in NSW claimed that 'retaliatory rent increases' were common place in NSW and that there is no effective protection against this occurring. Tenants may be reluctant to exercise their rights; for example, asking for maintenance to be carried out, if they feel it will provoke a rent increase. However, there are other arguments around rent setting. For example, a Victorian interviewee considered that, if rent increases were to be indexed in some way, as happens in some overseas jurisdictions (as we see in Chapter 6), landlords will automatically increase rents whereas currently where they are satisfied with their tenants, they may not be inclined to raise rents at regular intervals.

Notice periods and no grounds termination

Sudden terminations can have a significant impact on tenants; particularly in tight rental markets where the loss of tenancy means the individual/household will be forced back into a highly competitive rental market. Some of the interviewees were of the view that debates around 'grounds based' termination goes to the heart of understanding security of occupancy. All Australian jurisdictions, except Tasmania,

provide landlords with the option of providing tenants a 'no grounds' notice to vacate³⁷ after expiry of a fixed-term lease, which is typically of six to 12 months duration (National Shelter 2010). At the same time, states have different notice periods for 'no grounds' terminations, with NSW being 60 days moving to 90 days under the new legislation³⁸ and Victoria being 120 days (see Chapter 3, Table 8).

In NSW, there has been long-standing advocacy from tenants groups and other stakeholders to follow leading international practice (see Section 7.2) and adopt 'grounds-based' or 'just cause' termination rules. Under such terms, reasons for termination must be provided and may be disputed in tribunals. Similarly, in Victoria, tenants advocacy groups also hold the view that the 'no grounds' notice should be removed from the legislation. Those working with property owners and property managers, on the other hand, have been consistently opposed to such a move.

Several interviewees (and not only those working with tenant organisations) expressed the view that in practice 'no grounds' termination becomes a *de facto* power of landlords over tenants, undermining the latter's security and legal powers. They suggested that this provision could be used as a retaliatory eviction measure to remove tenants that are trying to exercise their rights:

Retaliatory eviction is increasing as supply shortages help to promote their use.
(NSW interviewee)

Retaliatory evictions evoke strong responses and it is difficult to gauge to what extent they occur. It was acknowledged that the residential tenancies tribunals could rule against retaliatory evictions. Under the new legislation in NSW, tenants will have an explicit right to initiate an action if they consider they are the subject of retaliatory eviction (Brown Couch 2010). Nevertheless, the onus is on the tenant to prove this, which is often very difficult.

A number of interviewees also raised the psychological effects of relying on a tenure in which one could be asked to leave with relatively short notice, sometimes after many years. This accords with an understanding of housing instability identified in previous qualitative research (Hulse & Saugeres 2008b) and indicates the socio-cultural context for renting, as highlighted by an interviewee in NSW:

Security of occupancy is not necessarily about losing tenancies. There is also an idea in the back of all private renters' minds that they can be given two months notice and (they) will have to move. So ... it's a state of mind. (NSW interviewee)

In both states, housing advocacy groups have called for terminations to be on specified grounds only to provide transparency and to support tenants' right to fair treatment. However, some of those interviewed suggested some practical issues around this. One interviewee in Victoria suggested that 'no grounds' termination is an oxymoron since 'there are always grounds'. When a case goes to a hearing before a tenancy tribunal, it is apparent that there are reasons for termination. A further comment was that if 'no grounds' notice is removed from the legislation, property owners would cite other grounds with shorter notice periods, which could work to the detriment of tenants. In NSW, some interviewees took the view that changes to the

³⁷ 'No grounds' termination generally is used in the private rental sector rather than social housing. For example, in NSW, legal precedents have effectively prevented termination without grounds in the social housing sector since the mid-1990s and the provision is no longer used in the Victorian public housing sector.

³⁸ While tenants will be given more time to locate to alternative premises under the incoming provision, landlords will be given greater certainty as the Tribunal will have less discretion to consider the 'circumstances of the case' (Office of Fair Trading 2010).

NSW legislation (see above) may encourage landlords to wait the extra time for a termination without grounds, rather than be subject to the discretion of the CTTT.

With respect to the social housing sector, interviewees in both states were of the view that every effort is made to sustain tenancies³⁹ for those who continue to be eligible:

It takes a lot to lose a social housing tenancy ... Housing NSW allocates significant resources to finding alternatives to eviction. Even in cases where a tenancy of particular dwelling ends, the relationship between the tenant and the department does not end necessarily. (NSW interviewee)

However, a social housing tenancy is increasingly viewed as being within the sector rather than a tenancy in a particular dwelling. Despite this, tenants are generally only asked to vacate their current dwelling in the event of redevelopment or under-occupancy, in which case they are offered appropriate alternative accommodation.

Neither NSW nor Victoria presently use 'no grounds' eviction in social housing. However, some of the NSW interviewees raised concerns regarding whether protection for social housing tenants from 'no grounds' eviction would continue. First, it was noted that policy positions in relation to security of tenure have changed since the National Affordable Housing Agreement (NAHA) replaced the Commonwealth State Housing Agreement (CSHA) in 2009, with the former being silent on this issue, and since 2005 all new public tenancies are on the basis of two, five or 10-year fixed-term, rather than continuing tenancies. Second, there was some concern that the growth of alternative non-government providers of public housing may undermine relevant legal precedent that is based on expectations of transparency and accountability applying to public authorities.

Social responsibilities of landlords

The recent review of tenancy law in NSW renewed debate about the breadth of roles and responsibilities of landlords although similar views were also expressed in Victoria. One view heard in both states is that there are increasing expectations on property owners or their agents not only to manage tenancies and properties in accord with the law, but also to look out for the social welfare of vulnerable tenants. Examples given included: regular rulings by tenancy tribunals in favour of the tenant because of their (hardship) circumstances, rising costs for landlords associated with mediating and adjudicating disputes with tenants through the tribunals, and difficulties in dealing with tenancy advice and advocacy services (see Section 4.2.4). In NSW, given the timing of the interviews prior to new legislation being passed in June 2010, there was concern that proposals in the review would, if they had proceeded, reduce the landlord's power to act against, or be compensated for, costs associated with 'problem tenants', such as those disrupting others or damaging property. While we cannot vouch for the veracity of these claims, it is clear from other evidence that many vulnerable households traditionally supported by social landlords or formerly living in institutional settings now reside in the private rental market and are likely to require appropriate support to sustain their tenancies. We will return to the issue of responsibility for supporting vulnerable tenants in Section 4.2.4, which considers the role and scope of additional support services provided to tenants through government initiatives.

³⁹ However, in NSW for tenancies created after 2005, this is subject to the tenant having continuing eligibility (see Chapter 3).

Longer-term leases

One of the options examined in the recent review of residential tenancies legislation in NSW was whether tenancy law should encourage longer-term leasing as a means of achieving more stability and flexibility for tenants. Suggestions included having a specific option in the legislation for a 10-year lease with a different assignment of landlord and tenant responsibilities to that in short-term leases and/or by having minimum fixed terms (Office of Fair Trading 2007). Introducing options such as these would be consistent with provisions in several countries examined later (see Chapter 7).

Both the Government's review and interviews for our study showed that there was qualified support from those involved in tenant advocacy for promoting longer fixed-term leases and philosophical and practical opposition from those involved in supplying/managing rental housing. Longer-term leases are not prevented under current legislation in NSW or Victoria, but there has been little take-up. Tenants' advocates considered this was partly because tenants are concerned with the costs of breaking their lease if their circumstances change, although this could be mitigated through having hardship provisions. Landlords' views are informed by their motivations as investors, such as a desire to retain maximum flexibility for repossessing their property, and their financial risks, such as rent arrears and rents falling behind market levels over time (Office of Fair Trading 2007).⁴⁰ One way that financial issues can be addressed is through shifting the risks to an intermediary, as occurs with the Defence Housing Authority's (DHA) sale and leaseback model (Phibbs & Hanna 2010) or with community housing properties that are head leased from private owners in NSW.⁴¹ Nevertheless, on balance, tenants' advocates that we spoke to considered that longer-term leases would not become a mainstream option unless institutional investors holding property for the long-term could be encouraged into the rental market. Similarly in their response to the debate on this issue, the Office of Fair Trading concluded that longer-term leasing models required further examination in a wider context than tenancy law reform (Office of Fair Trading 2007, p.27).

4.2.3 Living in rental housing

Interviewees were asked about aspects of living in rental housing that might affect secure occupancy including noise, pet ownership, anti-social behaviours, use of common areas, the ability to make a home (e.g. by personalising a dwelling), as well as level of amenity and standard of repair.

Anti-social behaviours, neighbours and noise

An important factor that undermines secure occupancy in rental housing is the stress of experiencing noise and anti-social behaviour.

Noise is a particularly disturbing issue and has serious implications for resident satisfaction, emotional wellbeing and neighbour relations (see e.g. Environmental Protection Authority Victoria 2008). While noise can be a concern for all tenants, it has been identified as a particular concern for tenants in multi-unit developments in Australia (Easthope & Judd 2010). Building design and the quality of building

⁴⁰ While a long-term lease could include a mechanism for a regular rent increase linked to CPI for instance, it was pointed out to us that rent increases in recent years have been above CPI (see also Section 4.2.1) and this trend is likely to continue in a situation of housing shortages. Therefore, landlords may not have sufficient incentives to offer longer-term leases.

⁴¹ Intermediaries such as DHA and community housing organisations receive various forms of subsidy support and rent guarantees from government.

construction contribute to noise problems, especially in apartments and townhouses where a lack of sound proofing, hard floors and the layout of common areas, for example, can have a significant impact on the transmission of noise. The behaviour of neighbouring residents also has a significant impact on the noise experienced by tenants. In particular, problems with noise can be exacerbated when people with high needs, which may manifest in erratic behaviour, are concentrated in close proximity, as occurs in some public housing, as well as some areas of private housing.

People are desperate to leave if they live in a noisy apartment block. In social housing this is directly related to the impact of allocations policies. Where there are whole apartment blocks that have tenants who have received a property under the existing public housing allocation policy—you get whole blocks of households with high needs but different circumstances—that are often incompatible. Everyone's housing turns insecure at that point. (NSW interviewee)

This is also the case in rooming houses where specific approaches to dealing with anti-social behaviour have been developed. For example, in Victoria, there is provision to give notice to someone to leave immediately if danger is brought to the premises. Often they will be allowed to return later, for example, if the problem was that the person was drunk. According to one interviewee, this is a sensible approach:

Stopping the action there and then is much better than stopping the tenancy. It empowers the landlord and it has worked well. (Victorian interviewee)

There is a perception in both states that noise and other anti-social behaviours are increasing in public housing for reasons including drug and alcohol abuse, mental illness and domestic violence. In other words, tenancies are, 'getting harder to sustain'. The Public Interest Law Clearing House in Victoria recently interviewed tenants in public housing, both those affected by anti-social behaviours and those committing them. The people affected stated that such behaviours were making their lives a misery.⁴² Specific policy settings have led to households with complex (but diverse) needs living in close proximity on estates and in apartment blocks. Inappropriate allocations, an overall shortage of support services and not having support services that were suited to the circumstances of individual residents were identified as key factors contributing to unsatisfactory living experiences for vulnerable tenants.

Nevertheless, as discussed earlier in relation to use of their powers, public housing agencies make continuous endeavours to strike a balance between protecting individual tenancies and maintaining community harmony. In NSW, this was described as:

Staff working from two paradigms [of ensuring compliance and promoting community development] but trying to achieve similar things in the bigger picture—for example, by building community cohesion to influence tenancy stability. (NSW interviewee)

Recently, Housing NSW has moved to bring more focus onto how to improve community cohesion in areas where regeneration teams operate. The expectation is that this will help to shift practice further towards flexible approaches to sustaining tenancies.

⁴² Victoria has an Anti-social Behaviour Pilot in public housing. When such behaviour occurs, the public housing agency uses VCAT to provide a warning to a tenant and prepare a signed agreement whereby the tenant agrees to change his/her behaviour. If the agreement is not adhered to then an eviction notice will follow.

It is early days, but it will be interesting to assess how the behaviours of the tenancy managers are influenced by the regeneration team over time. (NSW interviewee)

There was some ambivalence amongst the interviewees about approaches to managing anti-social behaviour in social housing. On the one hand, while management actions of social landlords may often be intended to protect tenants, they can also contribute to an environment of surveillance and control. Legislative changes in NSW have given greater powers to public landlords (compared to private landlords) to intervene in cases of anti-social behaviour, which can also be grounds for a public landlord to end a tenancy.

Public housing takes a closer interest in your behaviour and your relationship with your neighbours. (NSW interviewee)

Making a home

The issue of secure occupancy begins to take on a broader meaning when examining the extent to which a tenant can turn their rental property into a home. This includes the inside of the dwelling, for example, by hanging pictures, putting up shelves or carrying out minor alterations. It may also involve the outside of the dwelling such as installing outdoor toys or furniture, gardening or having a hutch or birdcage for a family pet. Such actions are important in bringing a sense of autonomy and some control for the resident, which is part of the meaning of home, as identified in empirical research (expanded upon in Chapter 8).

Currently, in both NSW and Victoria, tenants in the private rental sector can only make alterations, or add or remove a fixture, at the sole discretion of the landlord. Changes made must be undone at the end of a lease. Consequent to the review of NSW legislation, in future tenants will require their landlord's written approval if they want to make a minor change to the premises, such as installing child safety locks on windows, but landlords will not be able to unreasonably refuse their request. They will, however, be able to refuse if the tenant wants to paint the premise, make structural changes, or do something that will be difficult to remove (NSW Fair Trading 2010b). Similarly, in the public housing sector, tenants must make a request for a work permit if they wish to make improvements to their property. This is normally made on the clear understanding that they must reinstate the property back to how it was when they moved in.

The issue of making a home appears to be integrally connected to expectations about the length of tenancy. If tenancies are short-term, the household may not want to spend time or money on personalising the dwelling or making changes and it is expensive for the landlord to repair after tenancies have ended. For example, it is costly to replaster and repaint every six to 12 months if there are lots of nails in the walls for pictures or shelves. Tenant autonomy in homemaking is thus associated with expectations and experiences of renting a dwelling.

The keeping of pets was also raised as an important issue in home making. Property owners and private and social housing managers often have reservations regarding pets in terms of noise and damage to property. However, some of the interviewees felt that the concerns of landlords and tenants over pets could be mediated. For example, tenants could provide 'pet references', pay a 'pet bond' to cover the risk of additional cleaning and other costs, and negotiate a 'pet agreement' that sets out the conditions for having a pet.

In sum, making a home in rental housing can be difficult and requires negotiation between tenants and landlords. As pointed out by a Victorian interviewee:

A lot of this is a cultural thing. The agent's approach is that the unit is the landlord's place. The whole culture in Australia is geared to ownership and this defines how we look at rental property and so it is not viewed sufficiently as someone's home. (Victorian interviewee)

Comfort and standard of repair

A further issue discussed in the interviews was the impact of building type and amenity on comfort and running costs for households, which might compromise secure occupancy. This difficulty is often greatest for lower-income and vulnerable households because they are more likely to rent lower rent properties, which may be older and have poorer quality heating with high running costs (as discussed in a recent AHURI report by Gabriel et al. 2010b):

We hear about older people having high utility costs and remaining in bed with an electric blanket to stay warm rather than heating their flat to avoid high utility costs. (Victorian interviewee)

There were, not surprisingly, different views amongst interviewees about the provision of basic amenities that affect comfort and operating costs. Currently the legislation in both states requires that when a property comes with equipment, such as a heater, and it breaks down, the landlord must fix or replace it, although some of the interviewees talked about the prospect of retaliatory rent increases or fear of eviction when such issues were raised, as discussed earlier.

A number of those interviewed also raised issues about the standard of repair in rental properties. In NSW, the CTTT reported receiving a steady stream of cases regarding maintenance across the rental sector. Enquiries about repairs formed the third largest group of enquiries to NSW tenancy advisory services in 2007–08 (CTTT 2009). In the interviews, tenancy workers and advocates indicated that many tenants complained about the difficulties of getting maintenance done and that others do not pursue repairs because they fear retaliatory rent increases or no grounds termination. This situation can also be exacerbated by the poor financial position of some rental property owners:

If you have a 110 per cent mortgage then the landlord cannot afford to do the repairs. It might not even be a case of not wanting to do them and so they may decide to end the tenancy. (Victorian interviewee)

A number of interviewees were in favour of establishing minimum standards for rental accommodation. This is reflected in the Victorian Council of Social Service's (VCOSS) 'Decent not dodgy' campaign⁴³ which is aimed at ensuring that rental property in the private sector is habitable, as well as affordable, with standards set across health, safety and energy efficiency. This could involve regulation of property standards through a consumer framework that provides minimum standards around health, safety and energy efficiency.

Some of those interviewed thought that standards are an issue for the market not regulation whilst others were broadly supportive of this approach, but highlighted some of the dangers:

Minimum standards are good. They have not been incorporated into Victoria and so it would be a good change. There are some dumps out there. But

⁴³ VCOSS is promoting the issue of minimum standards for health, safety and energy efficiency in rental housing. When the campaign began the discussion was about why such standards were necessary. More recently the discussion has shifted to how minimum standards would be implemented.

minimum standards can be a double-edged sword. Even for the smallest renovation the landlord wants to recoup the cost. (Victorian interviewee)

From the perspective of some property owners and managers, compelling investors to provide minimum energy efficiency standards would constitute an unfair cost to landlords. An alternative approach was canvassed for those issues seen as a public good, such as improving energy efficiency. In these cases, the public could bear the cost of energy efficiency in return for the savings through an approach that relies on incentives to private investors⁴⁴ to encourage them to use energy efficient heating equipment.

In the public housing sector, there is concern about the increasing cost of utilities. However, in Victoria at least these are seen as only a small factor in rental arrears and thus of minimal risk to secure occupancy. Some assistance is available to tenants who, due to health reasons, require a certain temperature being maintained in a unit on the request of a doctor. In addition, newly built public housing properties in both states are five-star energy efficiency rated with some being built to the six-star standard.

The issue of level of amenity, comfort and standard of repair for households living in rental housing is a complex one. Whilst the latter is subject to legislation, the first two refer to the requirements of households in the context of community standards. We have no way of knowing, for example, how many households have to leave a tenancy because the running costs push them over the edge financially. The interviewees had quite different perspectives on the issue. Some saw this as an issue of regulation through a consumer framework setting minimum standards for rental property. Others saw the appropriate role of governments being to offer incentives to improve rental properties rather putting the burden on individual property investors.

4.2.4 Specific provisions to support lower-income and vulnerable households

In view of the problems faced by lower-income and vulnerable households in accessing affordable rental housing and sustaining their tenancies, government housing agencies in both states have developed a number of specific provisions to assist such households. In this section we discuss these for each jurisdiction separately in order to make clear the differences between the two states.

NSW

This sub-section briefly examines the purpose and operation of a range of government and community led initiatives in NSW that are designed to support tenants to access and maintain their tenancies. Some of the initiatives are open to all eligible renters, while others are targeted to groups or individuals who experience particular difficulties finding and keeping rental housing.

Example 1: Tenants Advice and Advocacy Services (private and social tenants)

The Tenants' Advice and Advocacy Program (TAAP) supports public and private tenants in NSW by providing information, community education and advice and advocacy services. TAAP is a well-established network of services and resourcing that has operated continuously since 1994, under the auspices of non-profit community organisations. Currently funding of \$8.86 million per annum is allocated to the program from the interest earned on rental bonds lodged with the Rental Bond

⁴⁴ It was noted that there are currently a plethora of incentives. For example, Victoria has a subsidised insulation scheme but only 12 per cent of landlords take it up. Similarly, efficient showerheads being provided for free by government also have a low take-up rate.

Board (NSW Fair Trading 2010a). Table 10 provides an overview of the service models and functions of the program.

Table 10: Tenants' Advice and Advocacy Program, NSW

Service models	Coverage and function
Geographic services	Fourteen general tenancy support services cover metropolitan and non-metropolitan regions of the state.
Aboriginal services	Four services for Aboriginal tenants one serving each of Sydney and Northern, Western and Southern NSW.
General resourcing	A resourcing body (currently the Tenants Union of NSW) provides: <ul style="list-style-type: none"> → Legal support → Training → Information technology → Resource development → Secretariat support and network co-ordination → Policy development
Specialist resource services	Additional funding is allocated for: <ul style="list-style-type: none"> → Aboriginal Resource Service → Residential Parks Service → Residential Parks Legal Officer → Older Persons Tenancy Service → Aboriginal Legal Officer

Source: NSW Fair Trading, 2010a

Information on demand for TAAP services, documented in a recent evaluation of the program (Robyn Kennedy & Co. 2008), provides further information about a number of issues that impact upon secure occupancy for different groups in NSW. The review highlights:

- An increase in service contacts by 29 per cent from 2000–01 to 2007–08 that, in the context of static funding, has resulted in a shift of resources away from education and advocacy towards direct service provision, including greater involvement with the CTTT. Enquiries to services related to CTTT matters and terminations represented 54 per cent of all matters, up from 47 per cent in 2000–01, when a previous evaluation was conducted.
- An increase in the complexity of cases handled by services and in the process for resolving these (such as measured by multiple contacts, contestation of cases etc.).
- An increased caseload from the social housing sector—rising from 8 to 12 per cent of cases between the two evaluation periods. This was linked to policy changes concerning eligibility and allocations, fraud and arrears management, anti-social behaviour agreements and other policy developments in that sub-sector.
- Within social housing, heavy and increased demand from Aboriginal clients—an increase of 29 per cent of demand from this population group compared to 12 per cent overall. This may reflect several factors including the inequitable impact of some policy changes in social housing on Aboriginal tenants, accelerating rates of

allocations of public housing to this group (Milligan et al. 2010), and changes to requirements for Aboriginal providers in NSW that are resulting in significant rent increases (in order for providers to meet their costs and their maintenance responsibilities).

- A notable increase in caseload associated with residential park closures and rent increases for tenants in parks.

Overall, the evaluation suggests that TAAP services are very well targeted to tenants facing issues threatening their tenancies, but that the pressures on tenants seen by the services are growing. In private housing this is linked to structural factors already discussed. In social housing, changing demand is at least partly a result of policy changes that may be having an unintended consequence of destabilising tenancies for some groups, such as Aboriginal households. During interviews for this study, Housing NSW staff indicated that they were aware of a higher rate of turnover among Aboriginal clients and noted that Housing NSW was now working on a specific strategy to reduce evictions and abandoned tenancies among Aboriginal clients.

[We] have discovered that current approaches to managing rent arrears don't work culturally! People abandon and do not find out their options. (NSW interviewee)

Example 2: Duty advocate

TAAP services have had an evolving role in supporting tenants when a tenancy matter goes to the CTTT. While the CTTT operates on the basis of landlords and tenants not being formally represented at a hearing, in practice many landlords are 'represented' by a professional real estate agent and the tribunal does not oppose tenant representation to ensure fairness. However, in the vast majority of matters brought by the landlord, tenants do not appear before the tribunal and are not assisted to appear. As one indicator of this, only 8 per cent of TAAP clients were assisted or represented at the Tribunal in 2007–08 (Robyn Kennedy & Co. 2008).

Following enabling changes to program funding guidelines in 2001 and a successful demonstration project run by Western Sydney Tenants Service, several metropolitan TAAP services have been providing a part-time duty advocate service (one to three days a week) in the metropolitan offices of the CTTT to provide on the spot advice to tenants, or to represent tenants. Previous research (reported by Robyn Kennedy & Co. 2008) found that this service has been very effective in assisting tenants to be better informed and to get favourable outcomes at the CTTT. Our interview with CTTT members indicated that they had significant concerns about tenants' lack of knowledge of their rights and, consequently, that they valued this service being at hand to assist them to conciliate disputes and to resolve applications by ensuring that tenants understand the procedures of the Tribunal and know their rights. They regularly refer tenants to the service and may adjourn matters pending availability of the duty advocate. However, referral is limited by the capacity of the TAAP services to provide the duty advocate. Due to higher caseloads some city services reported to the evaluation that they had reduced this service in recent years (Robyn Kennedy & Co. 2008). Non-metropolitan services generally cannot offer the service due to geographical and capacity constraints, although the Aboriginal services attempt to follow the CTTT regional circuit to offer duty advocacy in cases of applications for termination affecting this population group (Robyn Kennedy & Co. 2008). Overall, this situation suggests that the capacity for tenants to be in the best position to protect their tenancy at the tribunal may depend on whether they can access appropriate advice and representation.

Example 3: Housing assistance services to support private tenancies

In recent years Housing NSW has been steadily increasing the variety of forms of financial and non-financial services that it offers to selected clients who apply for, but cannot be placed in, social housing. Traditionally, measures such as bond assistance were designed mainly to help with the front-end costs of a new tenancy (Jacobs et al. 2007). The expanded range of services now on offer in NSW has been broadly designed to assist nominated clients to access and maintain private rental housing by removing barriers to them establishing a tenancy and/or helping them to maintain an established tenancy. Individual measures are tailored to the differing needs of clients and several measures have been developed locally and subsequently extended to other areas. Both the state housing agency and community housing providers may offer the various forms of assistance.

There are four main types of services on offer in NSW—financial assistance to commence a tenancy (Rentstart), tenancy facilitation, tenancy guarantees and brokerage. More details on the operation of the services and service levels are given in Table 11. A recent independent evaluation of the facilitation, guarantee and brokerage services (ARTD Consultants 2009) found they were effective. About 50 per cent of people approved for assistance established a private tenancy and two-thirds of those maintained it for at least six months. However, the services were least effective in high rental and lower vacancy rate markets. Client motivation to rent in the private market (usually at a higher cost than social housing) and their stability (income and personal) were identified among the critical success factors.⁴⁵ In the first two years from the introduction of these services, there was close to a 100 per cent increase in the number of clients being assisted (ARTD Consultants 2009).

The initiatives that support private tenants in NSW represent a suite of policy interventions that have been designed to assist households who cannot be placed in social housing to access and/or to stabilise their housing in the private market, using mechanisms that are geared to their particular circumstances. There is likely to be growing pressure on Housing NSW to increase resource allocations to these and other forms of supplementary assistance, so long as capacity in the social housing system remains limited and demand for housing assistance grows, especially among vulnerable households. While well targeted to the needs of particular tenants, these schemes do not address underlying affordability problems and, without other measures such as enhanced rent assistance and more rental supply, will have only limited potential to improve rental stability overall.

⁴⁵ An offer of this kind of assistance depends in part on an assessment of whether a client can afford a suitable private tenancy. The benchmark used is not more 50 per cent of household income (net of any rent assistance received) to be paid in rent. This is a harsher test than that used in most other assessments of housing affordability.

Table 11: Alternative forms of rental housing assistance for qualified social housing applicants, NSW

Initiative	Description/Purpose	Scope/scale
Rentstart	Options for financial assistance to help low-income clients with savings of less than \$1000 establish or retain a private tenancy. Rentstart Standard—provides payment of up to 75 per cent of the rental bond. Rentstart Plus—provides payment of up to 100 per cent of the rental bond and up to two weeks advance rent. Temporary Accommodation—provides up to four weeks' rent in temporary accommodation. Tenancy Assistance—provides assistance with payment of up to four weeks rental arrears for eligible private tenants facing unexpected costs (e.g. as a result of illness) that have contributed to rent arrears.	32 649 unique households in 2008–09. Forms of assistance: ¹ Bond assistance 19 339 households. Advance rent 11 146 households. Temporary accommodation 13 000 households. Tenancy assistance 1549 households.
Rentstart Move	Assistance with rental bond and rent in advance for public tenants with limited savings who are required to leave public housing due to becoming ineligible.	Not available.
Special Assistance Subsidy	Rent subsidy paid to enable eligible clients to rent privately at a similar rent to public housing for a shorter or longer period, depending on the circumstances. Targeted to selected priority, special need or applicants at the top of the wait list whose specific needs (e.g. for an accessible dwelling) cannot be met through public housing.	1538 households in 2008–09.
Rental Brokerage Service	Brokers a private tenancy or other accommodation for clients with complex needs who are homeless or at risk of homelessness, connected to a support package from a support service.	864 clients successfully housed in 2008–09.
Tenancy Guarantees	Financial surety linked to a landlord's acceptance of a client from the brokerage service (see above). The guarantee offered is up to \$1000 to cover rental arrears and/or property damage over and above the rental bond. It is valid for up to 12 months from the start of the tenancy or until the tenancy is terminated, whichever occurs sooner.	488 guarantees were taken up by landlords or their agents and 40 claims were made in 2008–09. Fifteen sites across NSW have this service and another ten have been approved. Sites are chosen on basis of where private rental market supply is available.
Tenancy Facilitation	Private rental specialists assist people to obtain a tenancy (assistance may cover information, property searching/ inspections, preparation of application and other forms, obtaining references, establishing the tenancy, obtaining financial assistance etc.).	15 fulltime Senior Client service officers (private rental specialists) covering about half HNSW's access and demand assessment teams. 7060 clients received this service in 2008–09. ²

Link Point	A self-service terminal in housing offices to provide wide-ranging information about the private rental market and how to access the private rental market.	Pilot scheme in four offices. Expansion subject to development of new strategy for service delivery solutions using technology.
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Sources: ARTD (2009), HNSW (2010a), HNSW internal data, interviews in NSW

Notes:

1. Households can receive more than one type of assistance on any one occasion, and may receive assistance on multiple occasions during the year. Hence the number of assistances is greater than the number of unique households assisted over the year.
2. The service may involve multiple assistance types over a number of occasions.

Victoria

As in NSW, there are a number of government and community initiatives in Victoria designed to support and maintain tenancies. In this section we examine the Social Housing Advocacy and Support Program (SHASP) and schemes designed to enable households to access and remain in private tenancies, as outlined in Table 12.

Table 12: Housing Support Programs

	Social Housing Advocacy and Support Program (SHASP)	Bond Loan Scheme	Housing Establishment Fund (HEF)
Description of program	Aimed at: Establishing successful tenancies and sustaining at-risk tenancies in public rental sector.	Assists qualifying individuals unable to afford a deposit in the private rental sector.	Grant funding to assist homeless to establish and maintain private tenancies.
How it operates	Dept of Human Services: supports a network of community and tenant organisations to provide a range of support services.	Local housing offices make interest-free loans (four weeks + first two weeks rent) for approved rental applications.	Traditional management organisations provide limited funding for emergency overnight accommodation and relocation assistance.
Funding/coverage	DHS: Budgeted \$9.4 million for 2008–09, and assisted 6400 households in 2008–09.	DHS: Funded 8973 bond loans during 2008–09.	DHS: Budgeted \$8.7 million for 2009–10, and assisted 35 500 households in 2008–09.
Effectiveness/ review	Targets for advocacy, assistance to early applications, interventions met, and targets for establishing successful tenancies underachieved.	Little data on the extent to which this enables access to sustainable tenancies.	Tightening of private rental market is increasing the need for crisis funding.

Source: DHS (2009 2010b); interviews in Victoria.

Example 1: Social Housing Advocacy and Support Program (SHASP)

SHASP is part of the Government's commitment to sustaining and supporting tenancies, with the aim of preventing homelessness. It entails:

- Establishing successful tenancies for households entering public housing and housing association tenancies where households come through the recurring homelessness and domestic violence segments of the wait list and are seen as being at risk of tenancy failure.
- At risk tenancy initiative to assist with resolving problems where a public housing tenancy is at risk of breaking down.

There are a number of other facets to SHASP including advocacy for applicants and tenants, referral to other agencies, assistance in the case of rental arrears and helping to resolve problems with neighbours. SHASP works with regional housing offices, other Department of Human Services local offices, housing support organisations and tenant groups offering a range of tenancy services. The Department funds eleven community service organisations to deliver SHASP services in regional locations across the state. A review of the scheme found that targets set for advocacy, assistance to early housing applications and interventions were typically met. However, there was underachievement in terms of targets set for establishing successful tenancies (DHS 2009).

The interviews carried out as part of this study suggested that SHASP is helpful in enabling the public housing agency to have the resources needed to provide support to tenancies and enabled the agency to follow up on its commitment to reduce evictions. However, there were some concerns expressed about the length of support and what happened when support was removed, the role conflict for staff between supporting tenancies and managing rental arrears, and the restrictions on the type of advocacy that could be offered by such a service. One interviewee suggested that such a scheme should be available to households renting in the private sector as well.

Example 2: Assistance to private sector tenants to prevent homelessness

In a broadly similar approach to NSW's Rentstart scheme, the Victorian Office of Housing has funding available to make interest-free loans to low-income qualifying individuals to enable them to pay the deposit (bond) on a private rental property. In Victoria, the full amount of the loan must be paid back at the end of the tenancy, even if the landlord retains a portion of the money, while in NSW the assistance given is in the form of a grant. There are income and asset limits to determine eligibility for a bond loan or grant and, in Victoria, the person must have repaid any previous loans. The bond cannot be used to access a tenancy that would put the person or household in a position of unaffordability (i.e. the weekly rent cannot be more than 55% of gross weekly income). In 2007–08, 8716 households were provided with loans to for bonds on private rental accommodation. The program is demand driven (DHS 2008, p.160).

A second form of assistance is the Housing Establishment Fund (HEF), which provides grants to Transitional Housing Management (THM) organisations, homelessness organisations and community organisations. The grants are used for small amounts of one-off funding aimed at assisting people who are homeless, or at risk of homelessness, and enables them to access emergency accommodation, establish or maintain a private rental tenancy and meet related costs.

In response to tightening in the private rental market the Victorian Department of Human Services has increased its funding to the HEF, which in 2009–10 had a

budget of \$8.7 million. 33 450 households were assisted with the HEF during 2007–08 (DHS 2008, pp.159–160).

As is the case in NSW, the volume of households assisted through these schemes in Victoria is far greater than the number of households offered public housing and community housing. In 2007–08, according to available data (DHS 2010b; SCRGSP 2010), in Victoria:

- New households assisted with public housing – 4337.
- New households assisted with community housing – 1480
- Households that received a bond loan – 8716.
- Households that were assisted with the HEF – 33 450.

It should be noted that some households may have received more than one form of assistance. However, it remains the case that bonds and the HEF address the issue raised at the beginning of this chapter: the market context is such that many lower-income and vulnerable households are not able to access either social or private rental housing without considerable assistance.

4.3 Summary

In Australia, 2.4 million households rent their housing, mostly from private landlords, including many lower-income households, as we saw in Chapter 3. Households renting privately live in their current dwelling for shorter periods and move more often than other Australian households. Whilst households move for many reasons, there is some evidence that some private renters move when they do not want to. Despite high levels of mobility in the private rental sector, there is evidence that a third of private tenants are long-term renters, although not necessarily in the same dwelling. In the public rental sector, long-term renting, often in the same dwelling, is quite common.

Notwithstanding long-term renting, most Australian households occupy their current rental property on a short-term arrangement with little security of tenure because of the terms of lease agreements—predominantly six or twelve months followed by a periodic tenancy—and the legislative provisions that allow for terminations of the latter without grounds. The public housing sector is an exception with historically periods of indefinite security of tenure. However, this situation has changed in NSW (and Queensland) with the introduction of fixed-term tenancies, and other jurisdictions may follow.

The structure of the rental market is shifting in both states. Due to supply constraints and declining turnover associated with the predominance of households who have few other housing options, households that would normally move into public housing are experiencing exceptionally long waiting periods. Analysis of the case study data indicates that supply shortages and lack of affordability are the major factors underlying households' lack of ability to access rental housing. 'High risk' tenants are screened out of mainstream private rental housing and are forced to live in marginal housing, such as rooming houses and caravan parks, which are not only expensive, but offer little by way of secure occupancy. These households are limited by their market position as well as a range of other factors including management practices, the behaviour of other residents, and a low level of amenity and standard of repair.

Others manage to obtain mainstream tenancies by committing to pay more than they can afford. This leaves them vulnerable in the event of changes in household circumstances and/or increases in rent. In both states, there are similar factors contributing to a loss of tenancy. Financial factors, including irregular income and/or

loss of income, lead to rental arrears and can be exacerbated by high ongoing costs of a rental dwelling. In the public rental housing sector there appears to be a range of personal factors that contribute to vulnerability, including mental illness, substance abuse and anti-social behaviours, which reflect increased targeting of this housing to those with the most complex needs. It may well be that increasing controls over public housing tenancies may also be contributing to instability (or perceptions of instability) for some tenants in that sector, as argued by Martin (2011).

The NSW and Victorian cases help to illustrate how the economics of the housing market, the ownership structure of rental properties and landlord investment strategies and finances, and related government incentives, can all contribute to insecurity of occupancy. In the words of one interviewee 'the housing system is structurally insecure'. The bottom line is that households who rent do not know when they may have to move and can be asked to move out for a variety of reasons beyond their control, or without grounds.

There are also many non-financial reasons why it may be difficult to have secure occupancy in rental housing. These include exposure to noise, inability to personalise a dwelling to make it home, and in some cases a low level of amenity and standard of repair. These issues can be improved or exacerbated by management practices.

State governments in both NSW and Victoria have implemented a range of schemes to provide assistance to households with accessing and sustaining tenancies, often in conjunction with community organisations. Some of these are aimed at enabling lower-income and vulnerable households to enter and remain in the private rental sector as an alternative to social housing. The numbers of households assisted by these schemes now dwarfs the number of households allocated social housing in both states and what began as a supplement to social housing has become in many respects the main form of assistance, along with Commonwealth Rent Assistance.

This chapter has shown how the market, legal and policy contexts identified in Chapter 3 intersect in practice and are influenced by some of the cultural norms around renting as a short-term and inferior form of occupancy when compared to home ownership. A key consideration is the expectations of all parties (property owners, property managers, tenants, governments, etc.) about the temporary role of the rental sector and the ways in which legislation and policy reflect and reinforce this. In the next chapter, we examine how these contexts intersect in other jurisdictions, drawing on analysis of our international case studies.

5 COMPARING MARKET, LEGAL AND POLICY CONTEXTS FOR RENTAL HOUSING

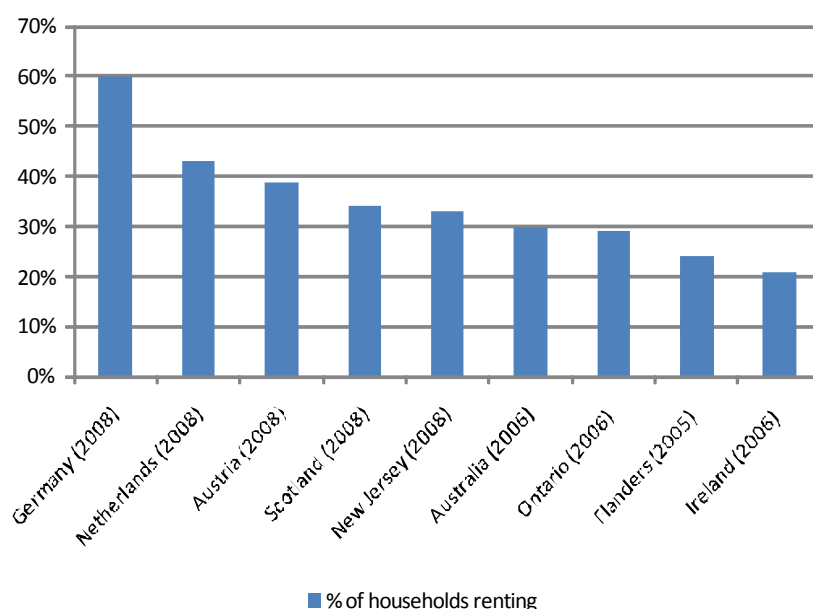
This chapter introduces the comparative analysis. It begins to address the second research question: ‘what models are used internationally for providing periods of secure occupancy for households in rental housing, having regard to legislation, regulation, policy and programs?’ It examines and compares the framework for secure occupancy in rental housing in eight international jurisdictions, making comparison with Australia as appropriate. We are interested in both similarities and differences between jurisdictions having regard to the market, policy and legal contexts. It is important to scope out the broader context before reporting on some of the specific areas of interest to this project (access, affordability, safety, privacy and enjoyment, comfort and standard or repair, landlord-tenant relations and specific provisions and innovations), outlined in Chapter 2 (Table 2) and which are the subject of subsequent chapters (Chapters 6–9). This chapter is based on analysis of the case study reports and some supplementary research.

5.1 Market context

5.1.1 Size and composition of rental sectors

The size of the rental market differs markedly between the jurisdictions covered, ranging from 60 per cent of households in Germany to 21 per cent in Ireland. Australia, along with Scotland, New Jersey, Ontario, could be described as mid-range in terms of the size of its rental sector, as indicated in Figure 7.

Figure 7: Percentage of households renting their housing, by jurisdiction



Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

Note: Treatment of ‘rent free’ arrangements in which the household occupies a unit that they do not own, but for which they do not pay any rent, varies between countries and this may make a small difference to the percentages of renter households.

Overall, the percentage of households who rent their accommodation has declined in all jurisdictions over the last decade or so, except for Ireland, which has the smallest

rental sector. This is the case even in countries that historically have had large rental sectors such as Germany and the Netherlands. However, the extent of the decline varies considerably with, for example, the Netherlands showing a particularly sharp decrease in the size of its rental sector. Two main reasons were suggested by the case study contributors for a decrease in the overall rental sector:

- An increase in home ownership due to a stronger association between higher incomes and owning than previously, relaxed credit and low interest rates that enabled more households to buy (reported in most jurisdictions); and, government policies to promote home ownership in some jurisdictions (e.g. the Netherlands, Flanders, New Jersey and Ontario).
- A decrease in social rental: due to neo-liberal ideas that envisage a smaller role for governments; restructuring of areas of social housing into mixed tenure communities (e.g. the Netherlands, New Jersey and Scotland); and sales to tenants (e.g. the Netherlands and Scotland).

In the case of Ireland, the rental sector increased from 18.5 per cent of households in occupied dwellings in 2002 to 21.3 per cent in 2006, following many years of decline. The increase in the percentage of renter households in Ireland appears to be due to a combination of economic and demographic factors and policy settings, which included fiscal and planning incentives to generate supply and demand subsidies to renter households that we discuss later in this chapter (Norris, CS). In addition, there has been an increased supply of social housing in Ireland (Milligan & Lawson 2008).

The Australian case, which we discussed in Chapters 3 and 4, is unusual, therefore, in the gradual but sustained increase in private rental from 1991 onwards, particularly at the higher price end of the market. However, it is probable that the percentage of households renting will increase again in some of the international case study jurisdictions as households are unable to enter, or fall out of, home ownership due to the effects of the global financial crisis. The data do not yet enable the effects of the crisis on rental sectors to be assessed.

There are also very significant differences in the composition of the rental sectors in the case study jurisdictions, having regard to private and social rental housing, which could be expected to affect secure occupancy. Three patterns can be identified based on the relative size of the private and social rental sectors, which are summarised in Table 13:

- *The rental sector comprises a large social rental sector that has an equal or greater share of the rental sector than private rental.* The Netherlands, Austria, Scotland, Ireland and the Netherlands all have social rental sectors that comprise more than half of the overall rental sector. The share of the rental sector that is social rental in the Netherlands (74%) is much greater than for any of the other countries, despite some decline in the sector in recent years.
- *The rental sector comprises a large private rental sector and a relatively small, but clearly defined, social rental sector.* Ontario, Flanders and Australia do have distinct social rental sectors, but these are small relative to the private rental sector, comprising about 20 per cent of all renter households.
- *The rental sector comprises predominantly private rental housing although some of this may be subsidised to achieve social outcomes.* In the case of Germany, 'social rental' as a concept formally does not exist, only dwellings that are temporarily subsidised in exchange for price limits in combination with allocations

rules.⁴⁶ Thus it is more accurate to refer to a subsidised and a non-subsidised rental sector. In New Jersey, the concept of social housing is also not in use. Rather there is a concept of 'assisted housing', which refers to schemes in which predominantly private landlords receive subsidies to achieve social outcomes in terms of affordability and housing quality (Gilderbloom et al. CS).⁴⁷ The two jurisdictions differ substantially however in terms of the framework for secure occupancy, and in many respects represent different ends of a continuum, as will be discussed later in this section.

Some difficulties in comparing the different housing systems of jurisdictions are to be expected and include ways of differentiating between private and social rental sectors. In considering this issue Haffner et al. (2009a, pp.4–5) argue that the key difference between private rental⁴⁸ and social rental is not ownership, but rather how the housing is allocated; whether through ability to pay, which reflects supply and demand, or according to some concept of need that is politically or administratively defined and interpreted. They use the example of the Netherlands with its large social housing sector, in which the housing associations that own and manage social housing are private organisations that pay tax as corporations and raise private finance. Whilst rents are regulated, this also applies to other type of rental housing. What defines social rental in this case is non-market allocation of housing to 'lower-income tenants, who may have a weak position in the housing market' and regulation of the standard of accommodation and service provided (Lawson, CS the Netherlands).

⁴⁶ About 5 per cent of all dwellings are in receipt of bricks and mortar subsidies for fixed periods and in return for the subsidies, allocation rules and sub-market rents are negotiated (Haffner, CS). The German case illustrates that the use of a concept such as social housing is context specific (see also Oxley et al. 2010, p.148). About 5 per cent of dwellings in Germany are rented from municipal housing companies and a further 5 per cent of all dwellings are in housing cooperatives, mainly tenant cooperatives. If the concept of social housing used in Australia was applied, these dwellings would be considered as social housing whether or not they were currently in receipt of government supply subsidies.

⁴⁷ In the US, just under 5 per cent of all dwellings could be construed as social housing if such a concept was used. This would take into account public housing, project based assistance, Section 8 vouchers and Low Income Housing Tax Credit (LIHTC) units.

⁴⁸ Haffner et al. (2009, p.4) prefer the term 'market' rental to private rental since some social housing providers are in fact private organisations.

Table 13: Composition of rental sectors by jurisdiction

Country/ jurisdiction (Renters as a per cent of all households)	Ratio of households in private rental to social rental	Definition of social rental
Australia (2006) (30% rental)	83:17	Social rental refers to rental from public housing agencies (state), non-profit associations, cooperatives and Indigenous housing organisations.
Austria (2008) (39% rental)	48:52	Social rental refers to dwellings rented from regional and local governments, limited profit associations and cooperatives.
Flanders (2005) (24% rental)	77:23	Social rental refers to rental from social housing organisations, the Flemish Housing Fund, a municipality or a social welfare organisation.
Germany (2008) (60% rental)	93:07	Social rental refers to municipal housing companies, other government agencies and 'other landlords' such as churches.
Ireland (2006) (21% rental)	48:52	Social rental refers to rental from local government and not-for-profit housing associations.
New Jersey (2008) (33% rental)	90:10	Social rental refers to 'low rent' units, housing choice vouchers and combined assistance, and units managed by not-for-profit providers under the Low Income Housing Tax Credit (LIHTC) scheme.
Ontario (2006) (29% rental)	80:20	Social rental refers to rental from public housing (local government), non-profit associations, cooperatives and Aboriginal housing.
Scotland (2008) (34% rental)	40:60	Social rental refers to rental from local government and not-for-profit housing associations.
The Netherlands (2008) (43% rental)	26:74	Social rental refers primarily to housing associations.

Sources: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario); ABS Census of Population and Housing 2006

Notes: Figures for percentages and ratios are rounded to the nearest whole number. Definitions of social rental are derived from case study reports and are based primarily on type of ownership/management. In the case of Germany and New Jersey, the 'social housing' segment is based on a calculation made by the authors to enable comparison between jurisdictions. As noted above, the concept of social housing is not formally used in either of these jurisdictions.

5.1.2 Demand factors: households living in rental sub-sectors

The profile of households living in the private and social rental sectors differs in most jurisdictions, reflecting differences in demand as well as public policies and legislation.

Profile of households who rent

In all jurisdictions, households who rent their accommodation are quite diverse. This is particularly the case in the private rental sector. As illustrated in Table 14, the private rental sector in most of the jurisdictions houses at least three groups:

→ Younger singles and couples.

- Households who are waiting to buy (the 'intermediate market').
- Lower-income households, some of whom are waiting to move into the social rental sector.

In many cases, recent migrants and refugees (including temporary workers) and tertiary students (including international students on student visas) are also housed in the rental sector. In addition, in most jurisdictions, particularly in large cities, some households on moderate to high incomes rent their housing.

In jurisdictions with large social housing sectors, which have provided something of an alternative to home ownership (as in the Netherlands and Austria), households on diverse incomes have rented their accommodation. It appears, however, that in these jurisdictions there is a trend for middle-higher income households to move into home ownership. In Austria, home ownership is becoming the preferred tenure for households with children (Deutsch 2008) and in the Netherlands, moderate-higher income households are more likely to become homeowners than previously.

In jurisdictions that traditionally have had a strong emphasis on home ownership (Flanders, New Jersey, Ontario and Australia), the small social housing sector houses predominantly lower-income households whilst the private rental sector houses those with more diverse incomes. In Ireland and Scotland where there was a rapid growth in home ownership from the 1980s, social housing has also been progressively targeted to those on the lower-incomes and with the most pressing circumstances. In these jurisdictions, the private rental sector traditionally houses younger and/or more affluent households, but also has a proportion of lower-income households.

In Germany renting is a mainstream option for households on diverse incomes. However, even in Germany, there is a trend for middle and higher income households to purchase a home, particularly if they have children.

Table 14: Profile of households living in rental sub-sectors by jurisdiction

Country/ jurisdiction	Private rental sector	Social rental sector
Australia	<p>Four main segments:</p> <ul style="list-style-type: none"> → Younger people (singles and couples). → Starter households. → Tertiary students. → Lower-income household (about 45% of private rental market). 	<p>Different segments:</p> <ul style="list-style-type: none"> → Very low-income people in older public housing and most community housing. → Some diversity of income up to low-moderate incomes in affordable housing.
Austria	<p>Trend towards increasing polarisation of consumption in terms of location quality:</p> <ul style="list-style-type: none"> → Mobile, highly skilled singles and couples on middle-higher incomes who rent quality flats in cities and suburban homes. → Low socio-economic households including recent migrants in low quality flats in cities. 	<p>Two main segments:</p> <ul style="list-style-type: none"> → Municipal housing caters for households up to 6th income decile. → Limited Profit Housing Associations up to 8th income decile.
Flanders	<p>Very large rental sector with diverse range of household incomes:</p> <ul style="list-style-type: none"> → Very high percentages of single men and women and sole parents rent privately. → Rates of renting are significantly higher amongst those aged 40 and under than for older age groups. → Couples with and without children are less likely to rent. 	Not applicable.
Germany	<p>Very large rental sector with diverse range of household incomes:</p> <ul style="list-style-type: none"> → Very high percentages of single men and women and sole parents rent privately. → Rates of renting are significantly higher amongst those aged 40 and under than for older age groups. → Couples with and without children are less likely to rent. 	Not applicable.
Ireland	<p>Private renters are very diverse and include:</p> <ul style="list-style-type: none"> → Households who are waiting to buy. → Household waiting for social housing. → Lower-income tenants who live long-term in the sector. 	<p>Low-income households.</p> <p>Further targeting according to need in the 2000s (low-income and vulnerable households).</p>
New Jersey	<p>Most renters are aged 25–54 years:</p> <ul style="list-style-type: none"> → Renters more likely to have children living with them than owners. → Renters have lower incomes than owners –40% have annual incomes over US\$50 000. 	<p>Very low-income households in public housing.</p>
Ontario	<p>Quite diverse sector housing although renters on average have lower-incomes than owners,</p>	<p>Different segments:</p>

	comprising: → Young people. → Starter households. → Recent migrants. → Lower-income households.	→ Very low-income people in older public housing. → Low-moderate income households in non-profit and cooperative housing. → Diverse household incomes in affordable housing.
Scotland	Single people and young adult only households dominate. Other segments are: → Family households (22% of all private tenants). → Students. → Lower-income households (21–24% in receipt of Housing Benefit). → Ethnic minority and migrant workers.	Older people (36% of tenants aged over 65) and families (27% of tenants, of whom single parent households account for almost half).
The Netherlands	Houses a range of households, but: → Thirty-eight per cent of tenants have household incomes in the lowest quartile. → Of all households with incomes in the lowest quartile, 12 per cent are private renters.	Was broad cross section, but increasingly housing lower-income households: → Almost a half (48%) of social renters have household incomes in the lowest quartile. → Of households with incomes in the lowest quartile almost 70 per cent are social renters.

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario); Australian Bureau of Statistics Census of Population and Housing (2006)

Position of lower-income households in the rental market

In all the jurisdictions in this research, lower-income and vulnerable households are housed in both the private and social rental sectors, although to different degrees.

In jurisdictions with larger social rental sectors (the Netherlands, Austria, Scotland and Ireland as indicated in Table 13), the private rental sector has been ancillary to the role of social housing in accommodating such households in recent times. However, some lower-income households were unable to access, or were precluded from, social housing and had to find accommodation in the private rental sector. For example, in Austria, new migrants without permanent resident status could not necessarily access social housing prior to a European Union directive in 2006. The position of lower-income households in relation to rental housing is, however, changing in these countries:

- In the Netherlands, there has been a clear drift towards housing lower-income households in the private and social rental sectors in the period 1994–2006. This can be attributed to a number of factors including domestic policy changes and European Union policies. For example, in responding to pressure from the European Commissioner for Internal Markets the Dutch Government agreed in 2009 to target social rental more closely to lower-income households (Priemus

2010). In 2006, although 70 per cent of all households with lowest quartile incomes were accommodated in social housing, 12 per cent lived in the private rental sector (calculated from Lawson, CS the Netherlands).

- In Austria, lower-income households living in the social housing sector are accommodated mainly by municipal housing companies. However, some lower-income households enter the private rental sector due to long wait lists for municipal social housing and, until recently, lack of eligibility for social housing due to citizenship requirements. There has been increasing polarisation in the private rental sector, as outlined in Table 14 (Deutsch 2008, p.5 cited in Lawson, CS Austria).
- In Scotland, lower-income renter households are accommodated predominantly within the social rental sector by local authorities and housing associations. The Scottish Government has introduced policies to enable lower-income households to access private rental housing and envisages that this sector will play a greater role in housing lower-income and vulnerable households in the future. Currently, between 18 and 24 per cent of private renters are in receipt of Housing Benefit, indicating the role of the sector in accommodating lower-income households (Pawson, CS).
- In Ireland, renters have lower average household incomes than owner-occupiers. The average gross weekly income of private renters is about twice that of local authority tenants; and private tenants are much more likely to have direct income (wages, salaries, etc) than government cash transfers. Nevertheless, in 2004–05, 14 per cent of private renters had government transfers as their main source of income, providing a conservative estimate of the lower-income segment of the private rental market (Norris, CS). The Irish Government has also introduced policies to enable lower-income households to access private rental housing and have indicated that this sector will play a greater role in housing lower-income and vulnerable households in the future.

In jurisdictions with small social rental sectors (Flanders, Ontario, New Jersey and Australia), the private rental sector is the main source of accommodation for lower-income households. In many respects, the social housing sector could be regarded as ancillary in housing lower-income households, although it may be the primary means of housing vulnerable households, depending on the type of targeting of allocations in this sector.

- In Flanders, it is estimated that about 38 per cent of the private rental sector comprises families on lower incomes occupying older dwellings with poor conditions (Steunpunt Ruimte and Wonen 2009, p.34 cited in Lawson, CS Flanders). In addition, households in the small social rental sector have a weaker socio-economic profile. Given the relative size of the two sectors, this would imply that, as in Australia, the private rental sector houses lower-income households to a greater extent than the social rental sector.
- In Ontario and New Jersey, data do not enable a clear assessment of the number and profile of lower-income households that are housed in different rental sectors.

As indicated previously, the rental market in Germany differs from the other jurisdictions in this study in that it is an integrated rental market with predominantly private landlords but strong security of tenure. Many authors have indicated that this level of security is similar to that available to homeowners in most other countries (Haffner, CS).⁴⁹ Security of tenure stems primarily from legislation and regulation,

⁴⁹ Haffner (CS) cites a number of sources for this: Behring and Helbrecht (2002), Tegeder and Helbrecht (2007) and Toussaint et al. (2007).

which we discuss in Chapter 7. These conditions are available to all tenants; however lower-income tenants may be able to access dwellings that are subsidised, which has an impact on allocation of housing and rent payable.

Notwithstanding the many differences between jurisdictions, there is a general trend towards lower-income households being accommodated in the private rental sector. Whilst social housing is often purpose built and/or managed for such households, the private rental sector is more diverse in both the nature of ownership and regulation of management arrangements.

5.1.3 Supply factors

As we saw in Chapters 3 and 4, the nature of ownership of rental housing in Australia is a key factor in shaping opportunities for secure occupancy; in particular, small-scale investment by ‘mum and dad’ investors, who want to be able to enter and exit the market easily and usually require vacant possession on sale.⁵⁰

The ownership of rental housing in the case study jurisdictions indicated some different patterns, as shown in Table 15. In three jurisdictions (Flanders, Ireland, Scotland), the private rental sector comprises mainly small-scale landlords, often mum and dad investors, as in Australia. Whilst there is a significant component of small-scale landlords in the private sector of most of the jurisdictions, some also have larger-scale company or institutional landlords (Germany, the Netherlands, New Jersey and Ontario). For example, in Ontario, there are both institutional investors, such as pension funds and life insurance companies, and a significant corporate ownership sector in which developers build for their own (large) portfolio and act as landlords.

⁵⁰ As discussed in Chapter 3, 70 per cent of Australian rental investors negatively gear their properties, indicating that they have taken on debt in order to invest (The Treasury 2010). Some are heavily mortgaged and at risk if their financial circumstances change, such that they will need to sell their property.

Table 15: Type and scale of ownership of rental housing, by jurisdiction, as a percentage of all occupied private housing

Jurisdiction/ percentage of rented housing	Ownership in private rental sector	Ownership in social rental sector
Australia (30% rental)	Small-scale private landlords (24.5%).	State housing authorities (4.5%). Community/affordable housing (1%).
Austria (39% rental)	Private landlords—a mix of individuals and private companies (20%).	Municipal landlords (9%). Limited profit companies (7%). Cooperatives (5%).
Flanders (24% rental)	Small-scale private landlords (17%). Large institutional investors landlords (1%).	Housing associations (5%). Municipal welfare organisations and local authorities (1%).
Germany (60% rental)	Small-scale private landlords (37%). Private housing companies (10%). Housing cooperatives (5%). Other landlords (1%).	Municipal housing companies (5%). Government/other landlords (2%).
Ireland (21% rental)	Small-scale private landlords (10%). No data on ownership.	Small-scale local authorities (except for Dublin City Council) (>7%). Small-scale housing associations (<4%).
New Jersey (33% rental)	Small-scale private landlords (17%). Corporate landlords (16%).	N/A
Ontario (29% rental)	Roughly equal sectors owned by: Larger-scale landlords (institutional investors and corporate owners) (approx 11.5%). Small-scale private landlords (approx 11.5%).	Local government (public housing) (2%). Not-for-profit and cooperative housing (4%).
Scotland (34% rental)	Small-scale private landlords (8%). Partnership, trust, company (1.5%).	Local authorities (13.5%). Housing associations (11%).
The Netherlands (43% rental)	Institutions—pension funds, insurance companies and investment funds (7%). Small-scale private landlords (5%).	Housing associations (31%). Municipal companies (<1%).

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

Note: The table follows the categorisation of the case study informants. Thus cooperatives in Austria are seen as social rental and in Germany as private rental.

It does appear that there is a strong association between the nature and type of investment in rental housing and the extent to which rental housing is purpose built and retained for rental purposes. This is particularly the case in social rental sectors where housing is typically purpose built and retained for rental purposes, except in those jurisdictions where there have been significant sales to sitting tenants (e.g. the Netherlands, Scotland and Ireland). In Scotland, some of the social housing that was sold under the Right to Buy scheme to social housing tenants was subsequently on-sold to private investors and has filtered into the private rental sector. An estimated 18

per cent of private rental dwellings in Scotland were formerly part of the social housing sector. This change in occupancy arrangements has a sharp impact on levels of secure occupancy for residents given the differences in legislation/regulation and policies applying to private rental compared to social rental (Pawson, CS).

Large-scale investment in the private rental sector (such as found in Germany, the Netherlands, Ontario and New Jersey) comprises primarily apartment buildings that were built for rental purposes and all units are rented. In these circumstances, although whole buildings may be sold, households are not at risk of having their tenancies terminated through sale of individual dwelling units. However, within a jurisdiction, the situation may be more complex than this. For example, in Ontario, there is a 'formal' rental sector of buildings of three or more storeys comprising older buildings. The rental status of these buildings is protected and a formal process is required to convert to condominium status for sale. With newer rental units, properties are registered under condominium status on construction, which makes it easier to subsequently convert. The other half of the private rental sector in Ontario is mainly owned by small investors and flows back and forth between owner occupation and rental (Pomeroy, CS).⁵¹

In the other jurisdictions, small-scale investment is often associated with individual dwellings moving into and out of the rental sector. For example, unlike other parts of the United Kingdom (UK), most of the increase in private rental in Scotland since 2000 has been in the era of the 'buy to let' boom.⁵² This suggests that the private rental sector's recent growth has come about largely through the purchase of property specifically for this purpose, rather than through inheritance of rental buildings or some other means.

Volatility associated with small-scale investment in rental property is an issue where the private rental sector is large relative to the social housing sector and where most lower-income households are housed in the former. The Australian situation, outlined in Chapter 4, and the consequences for secure occupancy appears to be most analogous to Flanders and the informal/secondary rental sectors in Ontario and New Jersey. It is not inevitable, however, that small-scale landlordism equates to insecure occupancy for renter households. This will also depend on the nature and extent of regulation of the sector, which we introduce in Section 5.3 below and discuss in more detail in Chapter 7.

A distinction should also be made between ownership and management. In the social rental sector of most countries it is usual for ownership and management to be the responsibility of the same organisation. However, in the private rental sector owners of rental property may contract rental property managers, real estate agents or other people/organisations to manage their properties. In many cases these are for-profit companies, although this is not always the case. In Flanders, for example, some of the small-scale private landlords use not only real estate agents, but also intermediary organisations such as Social Rental Agencies to manage their dwellings (Lawson, CS Flanders). Thus in Flanders, the share of rental housing that could be considered to be managed for social purposes is greater than is implied by the figures on ownership of rental properties in Table 14. The same applies to New Jersey, although ownership of rental units is predominantly by private landlords, some have a *de facto* social role in taking on households in receipt of subsidies. For example, where households are in receipt of housing choice vouchers, the landlord is required to agree to some basic conditions, including housing quality standards.

⁵¹ The situation appears to be somewhat similar in New Jersey but specific information is not available.

⁵² Analogous to the term 'rental investment' in Australia.

Table 15 also shows considerable variation in ownership patterns in the social rental sector. Australia is almost unique in its reliance on state-level government housing agencies providing public housing.⁵³ In most cases, it is local governments that are involved in the ownership and management of social housing (as in Austria, Flanders, Germany, Ireland, Ontario and Scotland⁵⁴). In addition, in most of the jurisdictions, not-for-profit/limited profit housing associations own and manage a considerable amount of social housing (Austria, Flanders, Ireland, the Netherlands, Scotland and Ontario). These social housing organisations generally have strong social objectives, which include assistance with sustaining tenancies. However, the nature and type of financing is also likely to affect the intake of lower-income households and their ability to sustain tenancies that run into difficulties. In this sense, the policy context is critical to understanding experiences of secure occupancy.

Finally in terms of supply, dwelling types in the rental sector may also affect secure occupancy. Concentration of rental units in residential buildings could enable more secure occupancy through professional management and improved services, for example, in terms of dwelling quality and maintenance. It could also undermine secure occupancy through factors associated with living in multi-unit dwellings such as noise, neighbour disputes, pet ownership and disputes over use of common facilities and areas (Easthope & Judd 2010). Table 16 shows that in all jurisdictions, renters are more likely than other households to live in flats/apartments. However, there is some variation between jurisdictions:

- There is a strong association between renting and living in multi-unit/multi-family dwellings in three jurisdictions in the study (Germany, Ontario and New Jersey). Also in Austria, most rented accommodation is in urban areas and comprises apartments in residential buildings.
- In Scotland and the Netherlands, renters are somewhat more likely than other households to live in flats/apartments, but this effect is moderated by a social housing sector that has a range of housing including semi-detached and attached houses.
- In Flanders and particularly in Ireland, the majority of rented dwellings are single-family units. In the latter case, there is a high percentage of single-family dwellings in the social housing sector, particularly in local authority housing, but less so in the private rental sector.

⁵³ In Canada there were provincial housing commissions similar to those in Australia. Although investment in new public housing ceased in the mid-1970s, replaced by investment in not-for-profit and cooperative housing, the Province of Ontario continued to own and operate about one-third of the social housing stock via the Ontario Housing Corporation until 2000 when ownership and management were devolved to local municipalities.

⁵⁴ In New Jersey, local housing agencies are responsible for public housing and the administration of housing programs including Section 8 housing vouchers, which are federally funded and for which there are federal policies.

Table 16: Rented and other dwellings by dwelling type, by jurisdiction

Jurisdiction	Rented dwellings
Australia (30% rental)	Seventy per cent of rental is detached, semi or attached houses with little difference between private and social rental housing. Ninety-five per cent owned housing is detached, semi or attached housing.
Austria (39% rental)	Higher proportion of rental dwellings are apartments in multi-storey buildings compared to dwellings generally.
Flanders (24% rental)	Fifty-four per cent of social rental and 42 per cent of private rental dwellings are single-family dwellings. Forty-six per cent of social rental and 58 per cent of private rental are multi-unit dwellings.
Germany (60% rental)	Twenty per cent of rental properties are one and two family dwellings. Eighty per cent of rental properties are in multi-unit dwellings. In the owner occupied sector, the converse applies, i.e. more than 80 per cent of dwellings are one and two family dwellings.
Ireland (21% rental)	Percentage in detached, semi-detached or terrace housing: local authority rented 78 per cent; housing association 63 per cent and private rental 57 per cent. Percentage in flats/apartments: local authority rented 18%; housing association 34 per cent; private rental 38 per cent.
New Jersey (33% rental)	Nineteen per cent of renters live in single-family detached or attached houses. Sixty-four per cent of renters live in buildings with three or more units. Eighty-seven per cent of homeowners live in single-family detached or attached houses. Seven per cent of homeowners live in buildings with three or more units.
Ontario (29% rental)	Fifteen per cent of rental dwellings are detached or semi-detached houses. Sixty-nine per cent of rented dwellings are in multi-apartment buildings. Rental units are more likely to be multi-unit than the general dwelling stock.
Scotland (34% rental)	Percentage detached, semi and attached/terrace housing: private rental 39 per cent, local authority 48 per cent and housing association 32 per cent. Percentage in flats/apartments: private rental 61 per cent; local authority 52 per cent; housing association 68 per cent.
The Netherlands (43% rental)	Percentage in single-family dwellings: private rental 46 per cent; social rental 52 per cent. Percentage in multi-family apartment dwellings: private rental 54 per cent and social rental 48 per cent. Seventy-one per cent of all stock comprises single-family housing (mostly terraced) and 29 per cent is apartments.

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

Australia is at one end of the spectrum in regards to rental dwelling type in that 70 per cent of renter households live in houses (detached, semi-detached or attached), reflecting not only the composition of dwelling stock generally, but also the nature of rental investment (small-scale household investment). In Ontario and New Jersey, where the dwelling stock is also predominantly houses, the presence of larger-scale

investors (as indicated in Table 15) has resulted in residential buildings in which all the units are rented out. In summary, demand and supply for rental housing, and the role and composition of the rental sector, help determine the market position of lower-income households who rent. Such households have a relatively weak market position *vis a vis* other households, particularly in jurisdictions in which the private rental sector is the main source of rental housing. In considering the market context, we have focused on the size and composition of rental sectors, emphasising property ownership and the types of management arrangement. Other factors, however, are important in the framework for secure occupancy including whether rental housing is provided on a for profit, limited profit or non-profit basis, the extent to which housing providers receive supply subsidies from governments or raise finance in other ways, and whether households receive subsidies to rent their housing. In the next section, we consider policy settings that affect the position of households in the rental sector and their ability to have secure occupancy.

5.2 Rental housing policy context: overview

In this section, we provide an overview of rental housing policies that are pertinent to consideration of secure occupancy in rental housing in each of the jurisdictions. This enables the thematic analysis (in Chapters 6–9) to be understood in terms of the broad housing policy context in each jurisdiction.

5.2.1 Rental housing policy settings and governance

Most of the jurisdictions in the study have federal systems of government (Australia, Austria, Flanders (Belgium), Germany, New Jersey (US), Ontario (Canada)). In addition, the devolved government in Scotland could be regarded increasingly as part of a quasi-federal system. Only Ireland and the Netherlands have unitary systems of government. Thus, in most cases, policies in respect of rental housing are determined both at a national level and at sub-national levels—state/province/*Länder*—and, in all cases except Australia, local government. Because they encompass different policy domains and different levels of government in most jurisdictions, policy contexts for rental housing are complex and dynamic, affected by renegotiations of responsibilities between levels of government.

Table 17 provides a summary overview of the policy context in each of the jurisdictions, focusing primarily on direct government assistance: supply subsidies for rental housing and direct assistance to households who rent. Whilst tax incentives to enhance supply are clearly important, particularly in relation to private rental housing, this is a specialist area that is beyond the scope of this project.⁵⁵

⁵⁵ Where supplied as part of the policy context, information on responsibility for relevant taxation measures is included. A more detailed treatment of the means of promoting investment in the private rental sector across seven of the jurisdictions in this study (excluding Austria) can be found in Oxley et al. (2010).

Table 17: Overview of rental housing policy context relevant to secure occupancy, by jurisdictions

Jurisdiction	Federal/national policy context	State/province/Länder policy context	Local government policy context
Austria (39% rental)	Responsible for rent laws and limited profit housing laws. Allocates funds to provinces for housing schemes. Provides tax incentives for investment in affordable rental housing.	Devolution of federal powers since 1980s on design of supply subsidy schemes, eligibility and quality standards. Implements laws regulating limited profit associations. Housing allowances (limited) for tenants of subsidised dwellings.	Municipal housing companies. Active land policy may support affordable rental development (Vienna) Allocation policies on subsidised dwellings. May provide additional housing allowances to various types of tenants (Vienna).
Flanders (24% rental)	Taxation. Right to housing in the Belgian Constitution.	Devolution of housing policy since 1994. Flanders Housing Code 1997. Low interest loans for social housing programs. Limited purpose housing allowances for low-income private tenants (2007). Accreditation of Social Rental Agencies and tenant organisations. Regulation of social tenancies and their rent levels (since 2000). Levy on vacant dwellings.	Largest shareholder in housing associations.
Germany (60% rental)	Taxation—rental housing is treated as an investment good. Housing allowances (social and private renters and homeowners).	Devolved federal powers (2006) for subsidisation of bricks and mortar (price/rent regulation) and allocations. Responsible for grants, low interest loans and public guarantees.	Facilitative role through provision of land, abating tax and determining the nature of local needs; and in setting up the database of reference rents used in rent regulation (Mietspiegel).
Ireland (21% rental)	Fiscal incentives for investors in run down inner city areas (to 2006). Funding for social housing (suspended).	Not applicable (unitary government).	Local authorities directly provide and manage social housing and lease accommodation for re-letting to certain private renting

	Funding to lease vacant private rental dwellings to let to social housing applicants.		tenants.
	Leased accommodation for long-term housing allowance recipients.		They regulate housing associations and are tasked with ensuring adequate supply of social housing.
	Housing allowances (private renters).		.
New Jersey (33% rental)	Depreciation allowance for all landlords against tax.	Low Income Housing Tax Credit—administration.	Administration of housing choice vouchers (budget limited).
	Funding of supply-side subsidies including LIHTC.	Supplementary housing vouchers.	Public housing management.
	Housing allowances—funding of Section 8 choice vouchers (private rental).		
Ontario (29% rental)	All federal programs for supply subsidies to social housing terminated in 1993.	Provincial supply subsidy programs terminated in 1995.	Responsible for managing social housing (most schemes) in Ontario.
	From 2001 onward one-off capital grants to stimulate development of affordable housing.	Devolved powers over social housing further devolved to municipalities in Ontario.	Involvement in affordable housing schemes.
	No housing allowances.	Matching of affordable housing grants from 2001 onwards.	
		Shelter allowances in provincial social assistance.	
Scotland (34% rental)	Limited tax concession for rental investors.	Capital subsidies to social housing providers (housing associations and local councils) responsible for operation of social housing.	Statutory responsibilities regarding homeless people.
	Housing allowances for social and private renters.		Local authority rental housing.
The Netherlands (43% rental)	Housing associations now reliant on private funding (were government funded).	Not applicable (unitary government).	Discounted land transferred to housing associations by local government land companies.
	Enforcement of social performance standards for housing associations.		Local agreements regarding social performance standards.
	Guarantee on borrowings for housing associations.		
	Housing allowances for social and private renters.		

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

Notes: Australian policy context outlined in Chapter 3, Table 7.

Appendix 1 provides further detail on the policy context for each jurisdiction that is relevant to consideration of secure occupancy in rental housing.

5.2.2 General observations about policy context

The broad brush picture of the rental housing policy context, summarised in Table 17 and Appendix 1, indicates that there are some general trends in rental housing policies that have implications for secure occupancy, particularly for lower-income and vulnerable households, as well as markedly different national approaches.

Devolution

There has been significant devolution of responsibility for policy and programs on rental housing in most federated jurisdictions (Austria, Flanders, Germany, New Jersey, Ontario and Scotland). In particular, federal governments appear to be devolving responsibility for supply subsidies, particularly those directed at developing social housing, to lower levels of government. Put simply, federal/national governments in some of the jurisdictions no longer see it as their role to build up a stock of housing affordable to those on lower incomes as they did in previous decades, irrespective of the type of ownership and management. This inevitably means some variation within these federations as to outcomes for households in terms of their ability to access and sustain tenancies. Devolution has perhaps been most evident in Ontario, where responsibility for social housing was devolved to the Province of Ontario from the Canadian Federal Government and then further devolved to municipalities. Scotland is somewhat of a hybrid in that funding for supply subsidies is dependent on the size of the UK Government's allocation of funding to Scotland as well as priorities and programs of the Scottish Government. Ireland and the Netherlands with their unitary systems of government appear to be the exceptions to this general trend to devolution.

Notwithstanding devolution of responsibilities for supply subsidies, federal/central governments have for the most part retained responsibility for policy on, and funding of, direct subsidies to households who rent, which are usually termed housing allowances. This can be seen in Australia, Germany, Ireland, the Netherlands, New Jersey and Scotland. Housing allowances have played an increasingly important role since the mid-1980s in these countries in enabling renter households to access, and remain in, affordable housing. There is no federal system of housing allowances for renters in either Belgium or Canada, affecting Flanders and Ontario respectively, nor in Austria. In Flanders there is a limited scheme of housing allowances to meet specific policy objectives (particularly enabling households to move to better quality accommodation), while in Ontario, lower-income households receive some assistance with their rental expenditures through shelter allowances embedded within the provincial social assistance scheme. In Austria, four of nine *Länder* offer this type of support for tenants (Amman & Mundt 2005).

Recalibrating the mix between supply and demand subsidies

The case study contributors reported many changes in policies and programs in respect of the rental sector in their jurisdiction, with major changes reported in the mid-1980s. A trend over the past 25 years has been a greater emphasis on housing allowances and a lesser emphasis on supply subsidies as a means of enabling lower-income households to have access to rental housing (seen particularly in Australia, Germany, Ireland, the Netherlands, New Jersey and Scotland). This has corresponded with a weakening federal role in respect of supply subsidies, as indicated above. It reflects the influence of neo-liberal ideas about the role of

governments and an understanding that the problems faced by lower-income households are of 'affordability' rather than a lack of affordable housing that offers conditions including the opportunity for secure occupancy. It may also reflect increased differentiation between housing markets within countries and the difficulty of federal/national governments in devising supply subsidy programs tailored to different regional economic conditions. This seems most acute in Germany as a result of the reunification of the former West Germany and East Germany.

There appear to be two main consequences of this recalibration of the mix between supply and demand subsidies that are of relevance to secure occupancy. First, *in lieu* of government supply subsidies there has been an increasing emphasis on private financing of housing for lower-income households in some jurisdictions. In Austria, there is a robust system of public loans and for raising private finance for limited profit housing associations as well as housing allowances for both private and social renters in some *Länder*. In the Netherlands, the national government provides a guarantee on private borrowings by housing associations in addition to a housing allowance scheme for private and social tenants (Lawson et al. 2010). In the German case, responsibility for supply subsidies was devolved to the *Länder* in 2006 and, whilst the extent of subsidies has been curtailed, there are some grants, lower interest loans and public guarantees provided at this level in regard to private financing.

The second implication, as noted by Kemp (2007, p.276) in a comparative review of housing allowances, which included most of the jurisdictions in this study, is that attempts to use public money more efficiently—through phasing out supply subsidies and placing greater reliance on housing allowances—have generally led to higher rents. In turn this has increased expenditures on housing allowances, although not necessarily at the same rate as for increases in rents. Nevertheless, the costs of housing allowance schemes is an issue in all the jurisdictions that have federal/national systems and concern about rising costs has been sharpened in the context of the aftermath of the global financial crisis, which we discuss below.

Extent to which policies delineate between rental sectors

There are significant differences between jurisdictions in the extent to which policy settings (supply subsidies and housing allowances) differentiate between private and social rental housing.

No differentiation between rental sectors

In Germany, tenure neutrality is an important principle of housing policy and applies to both household subsidies that are the province of the Federal Government and supply subsidies for which powers were transferred to the *Länder* in 2006. Thus, any household can apply for housing allowances (owner or tenant) and any investor can apply for bricks and mortar subsidies (owners or landlords) up to a certain income limit⁵⁶ (see also Haffner et al. 2009a). As we have seen, the extent of these subsidies has declined. However, tenants in any sector can access housing allowances, as can homeowners.

Limited differentiation between rental sectors

In Austria, supply-side subsidies apply to almost two-thirds of the stock and are not restricted to social rental housing. Not-for-profit organisations, for-profit landlords and individual households can apply for supply subsidies. This was also the case in the

⁵⁶ The income limit applies to the occupiers: owners in the case of owner occupied property and tenants in the case of properties owned by rental investors (Haffner supplementary information by e-mail 4 January 2011).

Netherlands, where supply subsidies have been provided to private rental as well as social rental. However, the social rental sector in the Netherlands is much larger than the private rental sector and has received most of the subsidies. Since 1995, there have been no new supply subsidies to either sector. However, housing associations have arguably been in a better position to raise private finance than other landlords given that they have very substantial assets and financial resources and there is still an underlying government guarantee. In both Austria and the Netherlands, households renting in either social housing or the private rental sector can access housing allowances; however, these are not consistently available in all Austrian provinces.

It could also be argued that in New Jersey, there is now limited differentiation between rental sectors, although this was not necessarily the case in the past.⁵⁷ The main policy settings in the US, apart from the redevelopment of older public housing estates, are use of tax credits (Low Income Housing Tax Credit (LIHTC)), which can be accessed by for-profit and not-for-profit organisations, and Section 8 housing vouchers that can be used in the private rental sector, which houses the vast majority of renter households in New Jersey.

Medium level of differentiation between rental sectors

In Scotland, the system of grant funding for social housing is quite different from the limited tax concession offered to private landlords. Grant funding in recent decades has been allocated to housing associations and covers about 60 per cent of the capital cost of newly constructed dwellings in the sector. In 2009–10, a new regime was introduced in which local authorities could again receive capital subsidies for newly built social rental dwellings (although these grants typically cover only around 25% of development costs). However, households in both private and social rental can access housing allowances (Housing Benefit). Following changes in 2008, existing differentiation between Housing Benefit frameworks for the two sectors has been increased in that private tenants are subject to a Local Housing Area Allowance system rather than payments directly related to the rent paid by a tenant for their specific dwelling. This is unlike social housing where Housing Benefit can cover most or all of the rent.

In Ireland, from 1985 to 2006, there was a system of fiscal incentives to private landlords who purchased accommodation in run down inner city areas, but this no longer applies. This system was different to supply subsidies to social housing, which, from 1985 to 2009, comprised capital grants, loans and operational subsidies to the not-for-profit sector of social housing (housing associations), in addition to a similar suite of subsidies for local authority provision of social housing that were introduced in the early 20th Century and withdrawn in 2009. There are effectively two forms of rental subsidies in Ireland, income based rents in social housing and rent supplement paid to private tenants in receipt of state benefits. However, in a major change introduced in 2005, recipients of rent supplement for more than 18 months no longer find their own accommodation, but are accommodated in dwellings secured on long-term leases from private landlords by local authorities (under the Rental Accommodation Scheme). Once this transfer is made, the tenant pays income-based rents as in social housing rather than the rent supplement, which provides proportionately less financial support. In 2009, new legislation gave these households the same legal status as social housing tenants, with a major positive effect on secure

⁵⁷ Supply subsidies to develop new public housing ceased in the 1970s, although there has been significant funding for the redevelopment of older public housing estates (HOPE VI). Funding for public housing was largely replaced by project based assistance in which private landlords received a subsidy to achieve certain outcomes, although these arrangements have been phased out.

occupancy (Norris & Coates 2010). Further detail about these changes is provided in Chapter 9, Section 9.2.

High level of differentiation between rental sectors

In Flanders, the Government still provides low interest loans for social housing construction, which constitute 30–50 per cent of construction costs. However, these are not available to private landlords. There are also two different systems of rental subsidy in Flanders. Rents in the social rented sector are set according to incomes and adjusted for sitting tenants according to the 'health index', which is a corrected consumer price index (Haffner et al. 2009a). In 2007, Flanders also introduced a small-scale rent assistance scheme to support low-income private tenants.

In Ontario, supply subsidies were specific to social housing until they were terminated by the Federal Government in 1993 and by the Province of Ontario in 1995. Since 2001, the Canadian Federal Government has re-engaged in supply subsidies to the extent of a program of capital grants for 'affordable housing', which must be matched by the provinces/local government. This can be taken up by consortia of for-profit and not-for-profit organisations, and rents must be below average market rents (by area). As noted above, there is no national system of housing allowance in Canada or a provincial scheme in Ontario, other than some residual rent supplements under old programs. Households in receipt of social assistance get a 'shelter component' within their benefit paid by the province. In the social housing sector, tenants pay rents based on incomes, a *de facto* housing allowance.

Rental housing policy settings in Australia differentiate strongly between rental sectors. Supply subsidies to social housing in the form of government grants are allocated to state housing agencies that may then decide to allocate some of the funding to not-for-profit housing associations. This contrasts with tax incentives for private landlords, which are much more generous than, for example, in Ontario. There are also two distinct rent subsidy schemes: income based rents in social housing and Rent Assistance to private renters in receipt of welfare and/or family benefits.

Link between government subsidies and outcomes for households

Across the case study jurisdictions, investment by government in supply subsidies for social housing involves specification of outcomes in areas such as allocations and rent setting, which could be expected to have a direct effect on the nature of occupancy experience by households. This is the case whether social housing is provided by governments directly, through local government (as in part of the social housing sectors in Ireland and Scotland), or primarily through funding and regulating a not-for-profit or limited profit sector (as in Austria and the Netherlands).

Subsidies tied to outcomes for tenants (across the rental sector)

In jurisdictions where supply subsidies are also available to private landlords, these are tied to outcomes that affect secure occupancy for tenants. In Austria, owners/landlords in all rental sectors must comply with certain cost caps and conditions in setting cost rents. The basic principle in this case is that ownership is not the determining issue of regulatory controls. The key is specifying the outcomes to be achieved through supply subsidies. It is also the case in Germany that any investor can apply for bricks and mortar subsidies (owners or landlords) and if successful, in return for subsidies, negotiates rent levels and allocations rules with the municipality, which have a direct effect on secure occupancy for tenants of these units.

Subsidies tied to outcomes for tenants (large social rental sectors)

In the Netherlands, where almost all direct supply subsidies for both social and private rental had been withdrawn, there are still performance based payments to promote the achievement of specific local targets and limited supply-side assistance channelled through municipalities (e.g. transfer of land at a discount). Individual housing corporations often have well-established relationships with the municipalities they work in and therefore participate in the definition and fulfilment of local housing agreements. Most tenants live in the large, regulated housing association sector in which they pay cost rents and have considerable security of tenure.

In Scotland and Ireland, subsidies are also tied to outcomes for tenants in view of the relatively large component of rental that is social housing. In these countries, there is strong regulation of social housing providers to ensure outcomes, including security of tenure, although there are different forms of rent setting (a form of cost rents in Scotland and income based rents in social housing in Ireland). Ireland's program of fiscal incentives (1985–2006) to private landlords resulted in a large increase in private rental as well as an improvement in the quality of private rental stock. This has resulted in stock renewal in the private sector. It also appears that housing allowances in these countries are tied to outcomes for renter households to a greater extent than in Australia because they are sensitised to local market rents.

Subsidies tied to outcomes for tenants (small social rental sectors)

In the other jurisdictions (Flanders, New Jersey, Ontario, Australia), rental housing policies have generated only a small component of social housing in which households pay rents based on incomes and have a high degree of security of tenure. However, as we saw in Chapter 4, in NSW this security has been weakened considerably through the introduction of fixed-term leases in social housing. Each of these jurisdictions has relatively large private rental sectors in which tax and other concessions to private landlords, some quite generous as is the case in Australia, do not require specified outcomes for tenants. As a result, tenants pay market rents, although as we shall see in Chapter 6, these are moderated to some extent in Flanders and New Jersey through regulation of rents. As noted above, in Flanders and Ontario there is very limited financial assistance to lower-income private tenants to assist with rent payments and thus no expected outcomes for tenants. In New Jersey, Section 8 housing vouchers do have specified outcomes in terms of the affordability of rents and housing quality, but are only available to one in four eligible households (Gilderbloom et al. CS). In Australia, in contrast, whilst all eligible private renters in receipt of statutory incomes and/or family payments can access Rent Assistance, the level of payment is low relative to rents, certainly compared to equivalent payments in Ireland and Scotland.

Effects of the global financial crisis

Finally, the global financial crisis and its consequences for federal/national economies and public finances has caused further changes to rental housing policies that are likely to affect opportunities for households to have secure occupancy in rental housing in the future. In Ireland, cut-backs to social housing had already been agreed prior to the acceptance of a three-year, 85 billion Euro loan from the International Monetary Fund and European Central Bank in November 2010 to stabilise the banking system and budget situation. The conditions attached to the loan will have the effect of increasing taxes and decreasing public expenditure, but it is not known whether there will be any further impact on social and private rented housing. The policy context in the UK/Scotland has also changed quite rapidly in 2010 in terms of

public spending cuts and associated welfare reforms, as well as other new housing policy directions associated with the incoming UK government.⁵⁸

Many other jurisdictions had already curtailed their supply subsidy programs and, subsequent to the global financial crisis, have suspended them. For example, in Ireland all capital grants for social housing were already suspended and social housing providers will be funded to lease vacant properties to rent to social housing applicants. Australia and Canada/Ontario took a different approach in injecting significant additional funds into supply subsidies to social housing to stimulate the economy in the aftermath of the financial crisis.⁵⁹ However, these are temporary measures and there appears to be no immediate prospects of further investment once the stimulus programs have finished.

As federal/national governments have grappled with the economic consequences of the global financial crisis, expenditure on federal/national housing allowance schemes is increasingly also called into question particularly since, with the exception of New Jersey, they are demand driven and not budget limited as is the case with supply subsidy programs. Changes to housing allowance systems are being mooted in a number of jurisdictions including Scotland/UK and the Netherlands. If adopted, these will reduce financial assistance to lower-income households to rent their housing with likely effects on their financial capacity to afford rent. This appears likely to have flow on effects on secure occupancy, particularly in jurisdictions where lower-income households depend largely on the private rental sector and there is no moderation of rents, as in Australia.

5.3 Legal context

The legal context for secure occupancy in the eight case study jurisdictions is complex. It comprises three main types of legislation: general legislation, which has a direct bearing on the ability of households to access and remain in their housing, legislation that has a more indirect impact, and specific legislation that regulates landlord-tenant relations.

Forms of legislation that have a direct bearing on secure occupancy for households who rent their housing include:

- Anti-discrimination legislation in all jurisdictions that makes unlawful discrimination in the provision of goods and services on the basis of attributes such as age, gender, ethnicity and disability. Provision of rental housing can be encompassed

⁵⁸ There are three sets of changes. Firstly, the sweeping welfare reforms announced by the new UK government will have a direct impact on Scotland. In particular, new limitations on housing benefit entitlement will result in benefit-dependent private tenants being able to afford tenancies only in the cheapest third of the sector, rather than the lower half, as under current rules. Especially relevant to secure occupancy, benefit-recipient working-age households in the social rented sector who 'under-occupy' their homes will (from 2013) face reduced payments aimed at encouraging them to trade down to a smaller property. Secondly, given that Scotland's public spending is funded mainly via block grant from the UK government, wider 2011–15 public spending cuts will also impact severely on publicly funded housing capital investment in Scotland. Thirdly, other housing policy reforms are aimed at weakening secure occupancy in social rented housing. Focused on new tenancies granted by social landlords after a given date, these measures will involve the removal of open-ended security of tenure and the imposition of substantially increased rents (set at up to 80% of market rents). However, thanks to the devolution settlement, these latter changes will apply only in England and the prospect of their adoption in Scotland remains politically unthinkable (Pawson, CS).

⁵⁹ In Australia, the federal government injected A\$5.6 billion to construct additional social housing dwellings, and repair existing ones through its Nation Building Economic Stimulus Plan of early 2009 with the funds to be spent by the end of 2010. In Canada, the federal government provided an additional C\$1 billion for affordable housing to be spent over two years (the A\$ and C\$ are roughly on a par with each other).

within general legislation and, in some jurisdictions, there is also specific legislation such as the Truth in Renting Act 2007 in New Jersey.

- Consumer protection legislation, which may cover rental arrangements although not in all jurisdictions (e.g. rental accommodation is not covered by general consumer legislation in Ireland).
- Privacy legislation in some jurisdictions that prohibits unauthorised disclosure of personal data on tenants by landlords.
- Legislation on domestic violence in a number of jurisdictions (e.g. Ontario, New Jersey and Ireland) which has provisions to prevent the perpetrator of domestic violence from entering housing in which the violence occurs, including rental housing.
- Specific legislation on subsidised housing in most jurisdictions, particularly in respect of social and affordable housing.

Legislation in the jurisdictions in the study that are members of the European Union is also affected by the European Convention on Human Rights. This is broad ranging and its effect on specific legislation that concerns secure occupancy can be contested. For example, in Ireland, housing legislation permits local authorities to refuse to let social housing to, or terminate the tenancies of, households engaged in anti-social behaviour on the basis of testimony by a local authority official or the police. However, eviction without third party evidence was found to be in breach of the European Convention in 2008, following a court challenge. Flanders is unusual in that a Housing Code was established to give effect to the right to housing following the incorporation of this right in the Belgian constitution in 1994 (Feantsa 2009). Human rights provisions are not restricted to the European jurisdictions in the study. In Ontario, the Human Rights Code has precedence over specific housing legislation and has also been the source of some controversy, as discussed in Chapter 9.

Other legislation that impacts, perhaps indirectly, on secure occupancy in rental housing includes planning and building regulations and taxation law. For example, in Ontario, there are legislative provisions to waive certain municipal charges and fees for a property being constructed as affordable housing. This means that the municipality enacts a bylaw specifying the exempted charges, their value and the quid pro quo obligations of the developer, including compliance with specified affordable rent levels for a specified duration (minimum 10 years and often 20 years).

Of most direct relevance to a study of secure occupancy, however, is legislation on residential tenancies and landlord-tenant relations. Legislation on residential tenancies is very complex and our purpose in this section is not to provide a detailed comparison, but to enable an overview of approaches that, together with the material on market context and policy context above, enables us to complete the framework for secure occupancy in the jurisdictions in the study. Appendix 1 includes a very brief overview of the legislative context in each of our case study jurisdictions. Table 18 summarises the context in regard to legislation on landlord-tenant relations. It indicates which level of government is involved and the type and coverage of the legislation.

- Austria, Flanders and the Netherlands have national legislation that covers all rental sub-sectors.
- New Jersey, Ontario and Australia have state/provincial legislation that covers all rental sub-sectors.
- Ireland and Scotland have separate national legislation for private and social tenants.

- Germany has national laws covering unsubsidised housing (about 90% of the sector) and additional state/municipal level legislation covering aspects of subsidised housing.

Table 18: Responsibility for, and coverage of, residential tenancies legislation, by jurisdiction

Jurisdiction	Level of government and legislation in place	Coverage
Austria (39% rental)	Federal legislation. General Civil Code. Tenancy Act (1981). Additional federal regulation of social housing under specific legislation Common Good Housing Law (1948).	Legislation applies to both private and social rental (with some exclusions e.g. for students, age person housing). Civil Code covers fixed-term tenancies and rent regulation for single-family dwellings (about 50% of tenants). Tenancy Act covers flats, parts of flats and cooperative dwellings (including municipal and private housing). Common Good Housing Law 1948 regulates limited profit housing associations with established system of cost based rent setting.
Flanders (24% rental)	Federal legislation. The Belgian Rent Act 1991 made rent regulation a separate section of the Civil Code. The Belgian Rent Act 1997 is the current legislation. The Flemish Government also has a strong regulatory role in respect of social housing, including landlord-tenant relations and rent levels, and in regulating housing quality.	Legislation applies to both private and social rental (with some special provisions).
Germany (60% rental)	Federal and Länder legislation. Tenancy law became an integral part of the federal Civil Code in 2001. Responsibility for subsidised housing devolved through federal legislation in 2006 and Länder are now responsible for their own laws on rent regulation and allocation of subsidised rental dwellings.	Federal tenancy law applies to tenancies in most (unsubsidised) dwellings. Tenancies in subsidised dwellings are the responsibility of Länder.
Ireland (21% rental)	National legislation. Residential Tenancies Act 2004. Housing (Miscellaneous Provisions) Act 1994. Housing Act 1966 and supplementary Housing Act introduced since then contain national laws on local authority housing.	Residential Tenancies Act covers private rental, but excludes social rental and some other categories (e.g. landlord in occupation and long occupation equity tenancies). Housing Acts (various years) cover local authority housing and Housing (Miscellaneous Provisions) Act 1994 covers

Jurisdiction	Level of government and legislation in place	Coverage
New Jersey (33% rental)	State of New Jersey Truth in Renting Act 1976. Additional national regulations apply to public housing authorities.	housing association rental. State legislation applies to all rental sub-sectors.
Ontario (29% rental)	Province of Ontario legislation. Residential Tenancies Act 2006. Additional legislation/ regulation of social housing providers through provincial legislation in 2000.	Residential Tenancies Act covers all rental sub-sectors except for cooperatives, which are not regarded as rental tenures. Some housing is excluded (e.g. student accommodation, aged care homes, temporary accommodation).
Scotland (34% rental)	National legislation. The Housing (Scotland) Act 1988. The Housing (Scotland) Act 2001.	The Housing (Scotland) Act 1988 covers private rental, but excludes social rental. The Housing (Scotland) Act 2001 covers social housing.
The Netherlands (43% rental)	National legislation. In 2003 the Residential Tenancies Act was replaced by a new set of rules within the Dutch Civil Code.	Applies to all rental sub-sectors.

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

5.4 Summary

This chapter has provided a broad overview of the market, policy and legislative contexts for secure occupancy in rental housing in the case study jurisdictions, making comparison to the Australian context as appropriate. There are clearly many differences between the jurisdictions as a result of historical factors, cultural influences and institutional settings. However, there are also some clear trends, which are manifest in all jurisdictions.

Households who rent are increasingly lower-income households; this trend can be observed even in jurisdictions that traditionally have had large rental sectors that housed those with middle and higher incomes, including in Germany, which has the largest rental sector of all the jurisdictions. Although the percentage of renter households in most jurisdictions declined to 2006–08 as rates of home ownership increased: this trend appears to have been interrupted as a consequence of the global financial crisis. The role of social rental is becoming more limited, offering less accommodation than previously, even in jurisdictions that have traditionally had large social rental sectors such as the Netherlands, Scotland and Ireland. For these reasons, it appears that the private rental sector will play a much more important role in housing lower-income households in all jurisdictions in the future. Lower-income and vulnerable households will have to compete with others in the private rental sector who may be seen as ‘lower risk’ and their secure occupancy will be affected by policy settings and legislation/regulation in regard to the private rental sector.

Secure occupancy for lower-income renter households depends on a supply of rental accommodation that is affordable and available. Whilst there is institutional or syndicated investment in private rental housing in some jurisdictions (most notably

Germany, Austria, New Jersey, Ontario and the Netherlands), the predominant pattern is small-scale investment across all jurisdictions. Investment by governments in supply subsidies for social housing is declining across all jurisdictions as federal/national governments devolve responsibilities for affordable housing supply to lower levels of government. This pattern of investment does not necessarily have adverse outcomes in terms of secure occupancy. Of critical importance is the nature and type of legislation/regulation of the conditions of access to, and occupancy of, rental housing and extent to which governments specify outcomes to be achieved in terms of conditions of occupancy in return for government subsidies.

Whilst some general trends are discernable, it is premature to identify different models for providing secure occupancy in rental housing at this stage. What we can say is that there are some clear differences between the jurisdictions in terms of the market and policy context presented in this chapter, which are outlined in Table 19.

Whether or not there are distinct models for secure occupancy, the details of such models and possible outcomes for households, requires a more detailed investigation of legislation/regulation and policies/programs than is possible in the broad overview in this chapter. In the following Chapters (6–9), we report on this more in-depth analysis of the elements of secure occupancy identified in Chapter 2 (access and affordability; legal provisions for secure occupancy; living in rental housing; and recent policy developments and innovations).

Table 19: Comparative market and policy context of case study jurisdictions

Jurisdiction	Market size/segmentation	Policy distinction between private and social rental (supply subsidies)	Policy distinction between private and social rental (housing allowances)	Policy distinction (residential tenancies legislation)
Australia (30% rental)	Medium size. Private rental dominant.	Strong	Yes	No
Austria (39% rental)	Large size of cost rent sector with range of landlords.	Limited	Varies	No
Flanders (24% rental)	Small size. Private rental dominant.	Strong	Yes	No
Germany (60% rental)	Large size. Private rental dominant.	Limited	No	No
Ireland (21% rental)	Small size. Social rental dominant.	Strong	Yes	Yes
New Jersey (33% rental)	Medium size. Private rental dominant.	Limited	Yes	No
Ontario (29% rental)	Medium size. Private rental dominant.	Medium	Yes	No
Scotland (34% rental)	Medium size. Social rental dominant.	Strong	Partial	Yes
The Netherlands (43% rental)	Large size. Social rental dominant.	Medium	No	No

Source: Summary prepared by the authors based on a high level overview of the case study reports.

6 RENTAL HOUSING AFFORDABILITY

This is the first of four chapters (Chapters 6–9) which investigate in greater depth the models used in the international jurisdictions for providing periods of secure occupancy for households in rental housing, having regard to legislation, regulation, policy and programs (research question 2). These chapters also examine how effective these models are for providing periods of secure occupancy for renter households in the context of the greater risks faced by lower-income and vulnerable households (research question 3).

- Chapter 6 discusses the ways in which market factors, the regulation of rents and government policy settings intersect to shape the capacity of lower-income households to enter and remain in affordable housing.
- Chapter 7 provides a more detailed discussion of the ways in which the legal context affects secure occupancy in rental housing, in particular, the regulation of landlord-tenant relations.
- Chapter 8 considers legal provisions for privacy, safety and security in rental housing along with other factors that may influence experiences of living in rental housing and the ability to establish a home.
- Chapter 9 explores the current policy context for consideration of secure occupancy across the jurisdictions and outlines specific innovations that have been developed to strengthen secure occupancy for renter households generally and lower-income and ‘at risk’ households in particular.

In this chapter we begin by considering the capacity of households to access suitable rental housing and maintain their tenancies in the different types of rental systems highlighted in Chapter 5. We focus on the ability of households to pay for housing, both when entering a tenancy and subsequently (i.e. the affordability of rental housing both on entry and subsequently). The ability to pay for rental housing is often understood in the context of housing market factors. However, as we shall see in this chapter, the legal context around rent setting and rent increases is also important, as are the policies in place to address perceived issues of affordability for households who rent.

6.1 Rental housing affordability and secure occupancy

Across the eight case study jurisdictions, housing affordability for renters was identified by the country experts as a significant problem in three jurisdictions: Flanders, New Jersey and Ontario. Housing affordability is a particular concern for lower-income tenants renting in the private rental market in these jurisdictions. These three jurisdictions are most similar to Australia in that their rental systems are dominated by private rental: Rental affordability concerns across the case study areas are as follows:

- In Flanders, housing costs have risen faster amongst lower-income private tenants than they have for other tenants and homeowners (Heylan et al. 2007, p.29; Lawson, CS Flanders). While elderly, low-income, unemployed, single and single parent family households pay high percentages of their income in rents, young households with two incomes do not experience the same level of affordability problems (Lawson, CS Flanders).
- In New Jersey, rental affordability is a particular concern for low-income households, but is not a problem isolated to this group. A national survey in 2005 found that less than half of the American population believed housing was affordable (Gilderbloom et al. CS; National Low Income Housing Coalition 2004).

- In Ontario, there is evidence that housing affordability is a much greater concern for private renters than homeowners (CMHC 2009). Concerns around housing affordability in Canada have been a central feature in arguments to develop a national housing strategy (Pomeroy, CS).

Despite some evidence of affordability problems experienced by lower-income renters, particularly those renting privately, rental affordability has not been recognised as a significant policy issue in Scotland and Ireland (Norris, CS; Pawson, CS), perhaps influenced by the fact that the social rental sector comprises a large proportion of their overall rental sectors.

- In Ireland, private tenants devote on average three times more of their income to rent costs than the national average (Central Statistics Office 2007; Norris, CS). Since the 1990s, the percentage of household income being spent on private sector rents has have risen dramatically, especially when compared to income devoted to servicing mortgages or paying local authority rents (Fahey et al. 2004; Norris, CS). However, housing affordability concerns for renters do not appear to have figured strongly in the national policy agenda and such discussions have generally been overshadowed by concerns for the affordability of home ownership (Norris, CS; see Fahey et al. 2004 for a fuller discussion).
- In Scotland, where there is increasing interest in the private rental sector amongst policy makers, a recent survey of private tenants found that 29 per cent experienced difficulty with rent payments, with single parents, multi-adult households and those in receipt of partial housing benefit particularly liable to express such views (Scottish Government private tenants survey 2008 reported in Strachan and Donohoe 2009). Despite this, rental affordability has not been characterised as a significant policy issue in Scotland because of the availability of Housing Benefit. This may change as access to Housing Benefit and level of payment to private renters will be restricted, as discussed in Chapter 5 (Pawson, CS).

Housing affordability for renters appears to be less of a problem in the other three case study jurisdictions: Germany, Austria and the Netherlands, although there are increasing concerns in the Netherlands, which are discussed further below. These three jurisdictions have the largest rental sectors with supply together with rent regulation keeping down rents. However, they also have diverse rental market structures, as outlined in Chapter 5:

- In Germany's large private rental market, rents are curbed as a result of a relatively high rate of vacancies, although there is variation between and within regions (Deutscher Bundestag 2003; Haffner, CS). As seen later in this chapter, regulation of rents for sitting tenants and some subsidised private rental also assist in keeping rental housing affordable.
- In Austria, the cost capped limited profit housing sector plays an important role in the rental sector, providing 48 per cent of all rental housing (Vienna) and contributing to rental affordability across the rental sector (Deutsch & Lawson 2010). However, tenants face significant access costs in Austria, discussed further below.
- While housing in the Netherlands has traditionally been affordable largely as a result of a large social rental sector and generous housing allowance provisions, concerns over rental affordability are increasing with the cost of living in both rental and owner occupied dwellings increasing significantly between 2002 and 2006 (Haffner et al. 2009a). In part, these increases in housing expenditures can be explained by a sharp rise in housing related expenses (an increase of 37% between 2002 and 2006), especially energy costs, as well as a low growth in

average disposal income as a result of slow economic growth (Haffner et al. 2008, p.2; Lawson, CS the Netherlands). Caps on income limits applying to rent allowances have meant that at the same time as rents are increasing, fewer households have been able to access rent allowances (Haffner et al. 2008, p.2; Lawson, CS the Netherlands). At the same time, there is pressure to cut public expenditure by 20 per cent in 2010, and direct expenditure in the form of housing allowances (almost 2 billion Euros per year) is being scrutinised (Lawson, CS the Netherlands).

In the rest of this chapter, we consider how secure occupancy is influenced by the affordability of housing, both in terms of affordability of access, as well as ongoing affordability during a tenancy (illustrated in Table 20). We consider the difficulties faced by households in accessing and maintaining secure occupancy due to affordability constraints and what measures are in place to address these including housing supply, rent regulation and household subsidies. We also discuss other elements of affordability such as the unpredictability and timing of rent increases and other expenditures associated with entering rental housing, such as fees, bonds, rent advances and utility costs.

Table 20: Issues covered with regards to affordability and secure occupancy

Access Affordability (Section 6.2)	Availability of suitable properties at affordable rents (Section 6.2.1). Ability to afford up-front transaction costs (Section 6.2.2).
Ongoing affordability (Section 6.3)	Ability to meet regular rental payments and pay increases in rent (Section 6.3.1). Ability to cover ongoing payments associated with renting (Section 6.3.2).

6.2 Affordability in relation to access

The issue of access to affordable rental housing is a complex one, and tied up with considerations of supply (influenced by taxation policies, construction costs, planning regulations and the decisions made by investors), demand (influenced by incomes, household formation and migration) and management (influenced by tenancy legislation and the policies and practices of landlords and tenants). Some of the non-financial barriers to access are discussed in more depth in the following chapters. In this section, we focus on the availability of rental properties at affordable rents (Section 6.2.1) and households' ability to afford up-front costs when moving into a property (Section 6.2.2).

6.2.1 Availability of suitable properties at affordable rents

In considering the availability of suitable properties at affordable rents, we focus on the impact of supply of housing on rental affordability and the role of rent regulation and housing benefits in moderating rental costs. We address each of these issues (supply, regulation and benefits) in turn, while recognising that it is the interrelation between them that impact upon the availability of suitable properties at affordable rents in each jurisdiction.

Housing supply

The supply of housing has a significant impact on rental costs and hence the ability of tenants to access suitable and affordable accommodation. The supply of affordable rental dwellings can be facilitated by governments through building and managing their own portfolio of public housing, although this has become increasingly unpopular, or by providing subsidies and other incentives to not-for-profit or for-profit organisations to build affordable housing (such as the limited profit associations in Austria and not-for-profit housing associations in Scotland, Ireland, Ontario, New Jersey, the Netherlands and Australia). Governments in a number of countries have also been providing subsidies and other incentives to for-profit providers, sometimes in consortia with not-for-profit organisations, to provide rental housing at sub-market rents, and sometimes with other conditions around eligible households (e.g. NRAS in Australia, the LIHTC in New Jersey/US and the bricks and mortar subsidies in Germany).

In the private rental sector, supply is critical in establishing rents, particularly in those jurisdictions that have largely unregulated private rental markets in terms of new rent contracts, as illustrated in Table 21 below. In such circumstances, a constrained supply of rental accommodation puts upward pressure on rents, especially when coupled with increasing demand as a result of population growth and changing household structures (e.g. an increase in lone person households). In Australia, the Henry Tax Review has attributed the recent sharp decline in housing affordability primarily to demand factors and a weak supply response (The Treasury 2010). The consequences of this for the secure occupancy of lower-income households in high-demand areas of Victoria and NSW were outlined in Chapter 4.

However, limited supply in the private rental sector is not only a concern for those looking to rent properties in this sector. They also face competition from households on middle and higher incomes who choose to live in lower rent properties (Wulff et al. 2009, 2011; Yates & Milligan 2007), thereby displacing lower-income households and putting more pressure on the social housing system. It is for this reason that the distinction has been made in the Australian literature between 'affordable' properties, and 'affordable and available' properties (see e.g. Yates et al. 2004). This distinction between affordability and availability is also made in the US (Vandenbroucke 2007a, 2007b).

In contrast, where demand for private rental housing is low and landlords have vacancies, there is a good incentive for landlords to offer rental contracts that are affordable to lower-income households. An example is the rent supplement contracts to allocate specific units for assisted tenants available in Ontario. However, there is some evidence that when demand is strong, landlords have not chosen to renew those contracts (Pomeroy 2005; Pomeroy CS).

In situations of high demand for rental housing, where the supply of rental properties in the private and social sectors has not increased significantly, social/subsidised housing providers cannot provide housing for all, or even for all who fall within a particular income band, but must instead introduce more stringent eligibility criteria and more complex distributional mechanisms. This situation becomes more extreme when the stock of social housing is diminished at the same time (as has been the case in New Jersey, the Netherlands and Scotland) and/or does not keep pace with the increased demand as a result of population and household growth (as in Flanders, Ontario and Australia).

Indeed, as outlined in Chapter 4, having an insufficient supply of affordable rental housing in either the private or social housing sectors swamped all other

considerations about how tenants can access affordable and appropriate housing in our Australian case study areas. In contrast, in those jurisdictions that have given priority to ensuring a sufficient supply of affordable rental housing, this has had a knock-on effect on rents. For example, in Austria private sector rents have been favourable due to the strong market position of publicly promoted housing, which provides strong competition for the private 'for profit' rental sector (Lawson, CS Austria). Continued supply of rental housing is assured by the availability of suitably priced land delivered via active land policy; provision of public loans requiring landlords to set their rents according to cost rent principles and set aside limited profits for further investment in the construction and maintenance of affordable rental dwellings; as well as a mechanism to attract private investment while reducing financing costs (Deutsch & Lawson 2010).

The property portfolios and intentions of investors also have very important implications for the supply of affordable rental housing. Socially motivated investors, such as limited profit or non-profit companies are more likely to make a development stack up for affordable housing by driving down costs and accepting lower margins. Governments can provide subsidies (such as in bricks and mortar subsidies in Germany) or other incentives (such as NRAS in Australia, LIHTC in New Jersey/US) in return for reducing their rents and targeting lower-income households. Most of the governments in the jurisdictions covered in this study are looking to encourage a greater supply of private rental in these ways (see Oxley et al. 2010 for a detailed investigation of this issue).

Rent regulation (new tenancies)

Rent regulation is another mechanism that is used internationally to promote the availability of affordable rental properties. Rents can be regulated across most of the rental sector or there can be separate mechanisms for private and social/subsidised rental. In this section, our focus is on rent regulation in terms of the setting of rents for new tenancies, rather than rent increases for current tenants (which is discussed further in Section 6.3.1). Table 21 provides a summary of rent regulations in place in regards to rent setting for new contracts across the case study jurisdictions.

In the private rental sector, rents for new contracts (tenancies) can be negotiated according to market conditions in most of the jurisdictions in the study. The exceptions are Austria and the Netherlands, where rents for new contracts are set according to quality standards, although some housing is excluded from this system, particularly at the higher end of the market. In the Netherlands, fair rents are set according to a points system by 59 Rent Commissions (*Huurcommissies*) which draw their membership from local tenant associations, housing associations and real estate agencies; and tenants and landlords must be equally represented. The chairperson of each commission is appointed for six years and members for four years by the Minister of Housing. All commissions are supervised by both the Minister of Housing and a national ombudsman (VROM 2009).

In the social and subsidised housing sectors across our case study locations, rents are set using one of four approaches:

- In reference to household composition and income (in Ireland, New Jersey, Ontario, Flanders and Australia).
- Based on the costs of provision and maintenance (in Scotland).
- Based on the costs of provision with consideration of other factors (in Austria with an allowance for limited profit and in Germany as negotiated in subsidised rental

housing taking into account costs, subsidies, market factors and affordability for occupiers).

→ Based on dwelling quality and amenity (the Netherlands).

Where social tenancies are set with regard to household income and composition, rents should be affordable for households when they enter the sector (and subsequently). When the other three approaches are used to set rents, affordability for lower-income households accessing social/subsidised housing will depend on the adequacy and responsiveness of housing allowances (or similar) relative to regulated rent levels in subsidised schemes.

Thus, regulation of rents for new tenancies appears strongest in the Netherlands and Austria, both of which have rental sectors dominated by social housing systems, as outlined in Chapter 5. The system of rent regulation in the Netherlands has had a major impact on the availability of suitable properties at affordable rents, with a system of nominated rents based on size/quality standards. However, the private for-profit sector tends to offer dwellings that are not bound to this system and thus subject to market forces rather than government regulation (Lawson, CS the Netherlands). Austria also has rent regulations covering a large section of its rental market, which categorises properties according to quality standards and also sets maximum authorised rents and standard rental rates, similar to the Netherlands. However, the basis for setting rents becomes cost rent, with conditional public subsidies employed to generate limited profit housing (Lawson, CS Austria).

Table 21: Rent regulation for new lettings

Jurisdiction	Nature of the regulation
Australia	Rents for new lettings in the private sector are property rents set at market levels (i.e. not regulated). Social housing rents are regulated and based on household incomes.
Austria	Maximum authorised rents and standard rents are calculated on the basis of quality standards across the rental market. Housing association rents come under common good housing law, which specifies cost rents.
Flanders	Rents for new lettings in the private sector are property rents set at market levels (i.e. not regulated). Social housing rents are regulated and based on household incomes. ⁶⁰
Germany	Rents for new lettings for unsubsidised dwellings in the private sector are set at market levels. Rents for temporarily subsidised rental dwellings are based on negotiations between the municipality and the rental investor taking into account market rents for equivalent properties, capital and ongoing costs and a 'normal' profit for the provider.
Ireland	Rents for new lettings in the private rental sector are set at market levels. Social housing rents are regulated and based on household incomes.
New Jersey	Rents for new contracts in the private sector are property rents set at market levels (i.e. not regulated). Public housing tenancies are regulated and based on household income. For households in receipt of Housing Choice Vouchers, project-based housing subsidies and LIHTC, rents for new lettings are regulated according to the provisions of the scheme.
Ontario	Rents for new lettings in the private sector are property rents set at market levels. Once a formal tenancy commences, rents for the new sitting tenant become regulated. A system of rent control (including controlled rents for vacant properties) was in existence until the 1990s, but is no longer in place. Social housing rents are regulated and based on household incomes.
Scotland	Rents for new lettings in the private sector are property rents set at market levels (i.e. not regulated). Social housing rents are regulated property rents, set based on historic costs (repayment of loan debt), current management and maintenance expenditure and provision for future major repairs costs. (In contrast with England) social housing rents are subject to government regulation only to a very limited extent.
The Netherlands	Maximum rents for new lettings are calculated for properties based on size and quality standards across the rental market to a maximum standard. This arrangement covers about 95 per cent of dwellings including social housing (i.e. regulated property rents). Beyond this market rents apply.

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

Household subsidies

As well as supply subsidies/incentives and rent regulation, governments in most of the jurisdictions provide financial or in kind assistance to tenants to assist with rent payments. All of the case study jurisdictions provide some form of targeted assistance to make properties affordable for particular groups of tenants, although the availability and adequacy of this form of assistance varies widely. However, as seen in Chapter 5,

⁶⁰ Social rents in Flanders were cost rents but a new system was introduced following the 2007 Decree on Social Rent, which is designed to introduce a form of market rent (called basic rents). Basic rents are based on a valuation of a representative sample of dwellings and are reset to market rents every 9 years but indexed in between. However, tenants get a discount to the basic rent based on household type/size and property quality and there is an affordability cap in terms of the percentage of income spent on rent.

there is no national housing allowance scheme in Canada/Ontario, Belgium/Flanders or Austria. In Ontario there is only limited assistance to some lower-income households within the social assistance scheme and in Flanders, household subsidies are made available to a small number of eligible renter households for the specific purpose of enabling them to move from poor quality or unsuitable dwellings to higher quality or more suitable dwellings. There are housing allowances in Austria in four of the nine *Länder*, but as we have seen the primary focus is on increasing the supply of affordable housing rather than boosting effective demand.

In Germany, the Netherlands, Ireland, Scotland, New Jersey and Australia, housing allowances are an important policy instrument aimed at assisting households on low incomes to afford to rent suitable housing. The eligibility requirements and size of the subsidy differ substantially between jurisdictions (as documented in Kemp (2007) for most of the jurisdictions). The most common pattern, however, is that governments provide financial support directly to households renting privately to enable them to enter the rental market, although there are sometimes limited exceptions to this, for example, in the case of rental arrears. In New Jersey, housing allowances are always paid directly to the private landlord on behalf of the tenant. In the social housing sector, practice varies with payments sometimes made directly to the social landlord (as in Scotland). All housing allowance schemes are demand driven, with the exception of housing vouchers in New Jersey/US, which are limited and rationed, resulting in three in four eligible tenants not receiving these vouchers (Gilderbloom et al. CS).

The degree to which such allowances help tenants to access affordable housing in the private rental market is largely determined by the extent to which such allowances keep pace with increases in rents. For example, in Australia Rent Assistance has deteriorated in relation to market rents, making it a less effective means of assisting tenants to access affordable housing (Colic-Peisker et al. 2010). Further, Rent Assistance is unusual in that it is not linked to local reference rents as it is in most other jurisdictions that offer such assistance.

In the Netherlands, while the social housing sector is relatively large, private landlords also accommodate a good proportion of low-income households, as we saw in Chapter 5. This is made possible by a combination of housing allowances available nationally to tenants across the sector, and the regulation of rents for all dwellings (private and social) assessed as being under a certain quality/price cap and which applies to 95 per cent of all rental properties (Lawson, CS the Netherlands). In this way, the government can ensure that rents in the private sector do not increase so rapidly as to reduce the effectiveness of housing allowance payments (Lawson, CS the Netherlands).

The example of the Netherlands demonstrates the interconnectedness of the supply of rental housing, rent regulation and household subsidies in terms of the outcomes for tenants in accessing suitable and affordable rental properties. While we have addressed each of these issues in turn for the sake of clarity, all are interrelated. The legacy of past support is also important and while some jurisdictions might be looking to change their rental housing systems, the outcomes of such changes will be mediated by the current and past supply of rental housing.

6.2.2 Ability to afford up-front transaction costs

Housing establishment costs that can impact on a household's ability to access a rental property include bonds; deposits and rent in advance; brokerage costs; taxes and other fees; utility connections; and furnishings and whitegoods. The costs of establishing a tenancy vary considerably between the case study jurisdictions. For example, while private tenants in Ireland must pay the equivalent of two months rent

in advance to enter a furnished property, private tenants in Austria must pay the equivalent of 10 months rent to enter an unfurnished property and low-income tenants in the Austrian social rental sector must also pay a significant amount as an equity contribution (this contribution is intended as a step towards purchase, which is a right after 10 years of occupation). However, in Austria the costs of access are so high that there is currently political discussion of the accessibility of low-income households to the rental market and how to reduce these access costs (Perl 2008, p.11; Lawson, CS Austria).

Table 22 provides an overview of typical costs of accessing tenancies in the private sector across our case study jurisdictions. The Table indicates some convergence around one-month rent in advance and/or one-month damage deposit except in the case of Austria, Germany and Flanders where access costs are somewhat higher. It is likely that this can be attributed to expectation by landlords and tenants alike of longer-term tenancies in these jurisdictions, reflecting socio-cultural norms about renting. However, this is not the case in the Netherlands where there are many longer-term tenancies.

Whilst it is not possible to make a general comparison, it appears that difficulty in getting rental deposits/bonds back at the end of private tenancies is an issue in some jurisdictions. In Ireland illegal retention of deposits by landlords comprise a substantial minority of complaints to the Private Residential Tenancies Board (Norris, CS). In Scotland, as indicated in a 2008 survey of private tenants for the Scottish Government, a significant minority of private tenants experienced problems with their deposit being withheld by the landlord (Pawson, CS). Inability to reclaim a deposit, unless this is warranted due to property damage and other factors caused by the tenant, is likely to have an impact on the household's ability to afford to enter subsequent tenancies.

Access affordability is also affected by whether rented premises are furnished or unfurnished. In most of the jurisdictions, rented premises are typically unfurnished requiring households to have their own furniture and appliances and, in some cases, their own furnishings such as curtains/blinds, as shown in Table 23. In Australia rental of furnished accommodation is uncommon except in the rooming house sector and high end serviced apartments. This contrasts with Ireland and to a lesser extent Scotland where most private rentals involve furnished accommodation. In Flanders rented dwellings may be unfurnished, partly furnished or fully furnished.

Table 22: Standard access costs for rental properties (information refers to private sector tenancies, unless otherwise stated)

Jurisdiction	Rent in advance	Damage deposit	Other fees and costs
Australia	Between two weeks and one-month.	Equal to four weeks rent.	
Austria		Equal to up to six months rent. Refundable at end of tenancy.	A brokerage fee equal to three months rent. Tax equal to one-month rent on signing lease. In cooperative limited profit housing 12.5 per cent of construction cost—can be paid via a no or low interest loan from the state.
Flanders		Not required by law, but can be requested. Up to three months rent. Refundable at end of tenancy.	
Germany		Depends on size (e.g. equal to one-month rent for a room or three months for a dwelling). Refundable within three months of end of tenancy.	
Ireland	One-month rent.	Equal to one-month rent. Refundable at end of tenancy.	
New Jersey	First and last months rent.	150 per cent of first month rent.	Landlords can charge renters for undertaking a background check to establish credit.
Ontario	One-month rent.	Equal to one month rent. Refundable at end of tenancy.	
Scotland		Equal to one-month rent. Refundable at end of tenancy.	A small proportion of lettings involve the payment of other fees for 'administration'.
The Netherlands	Negotiable—usually one to two months.	One-month.	One-month fee to agent. Property users tax to municipalities. Advanced payments for service costs (utilities, furnishings, administration) are regulated.

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

Table 23: Provision of furnishings and whitegoods⁶¹

Jurisdiction	Typically furnished	Typically unfurnished
Australia	Very few—either low end rooming houses or high end rentals.	Vast majority of rental properties.
Austria		All rental properties.
Flanders	Variable. Dwellings may be partly, fully or not furnished.	
Germany		All rental properties, except student housing.
Ireland	Private rental (88.5% furnished in 2006). Special needs social rental.	General needs social rental.
New Jersey		Majority of rental properties.
Ontario		All rental properties.
Scotland	Fifty-five per cent of private tenancies.	Virtually all social tenancies. Forty-five per cent of private tenancies.
The Netherlands		Most rental properties. Typically also lack floor coverings, curtains, cooking and laundry facilities.

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

Some jurisdictions have policies in place to assist tenants in covering access costs for rental housing, which are summarised in Table 24. These are usually highly discretionary payments and are provided through social assistance schemes (as in Ireland and Scotland), through specific housing programs as in the state-based schemes that provide housing establishment and bond costs in Australia (Jacobs et al. 2007), or through charitable organisations as in New Jersey.

⁶¹ In addition, the costs of connecting utilities was also raised as a consideration in our Irish and Canadian case study areas.

Table 24: Assistance in meeting access costs

Jurisdiction	Furniture costs	Rent in advance, security deposits and equity contributions
Australia	Through local not-for-profit organisations.	State level schemes to assist with rent in advance and security deposits (see Chapter 4).
Austria		Municipal housing: assistance is available to tenants in paying their initial equity contribution and rent.
Flanders		Instead of a deposit, tenants can set up a form of insurance and pay a bank handling charge and yearly fee to guarantee them against damage or rent arrears.
Germany		Municipalities may assist. For example, the City of Cologne offers loans to households for deposits, guarantees, shares in rental cooperatives and real estate agent costs.
Ireland	Social security provides for help with furnishing costs as part of the exceptional needs payments program.	Social security provision for payment of security deposits.
New Jersey	Some local private charities and organisations provide assistance.	
Ontario	A number of service agencies operate used furniture programs to help with basic furnishings.	People receiving Ontario Works and Ontario Disability Support Payments (OW/ODSP) can receive a payment to cover cost of first and last month rent in advance. For non-OW/ODSP renters, interest-free loans through rent banks with small repayments are available.
Scotland	Funding available from Department for Work and Pensions Social Fund payments. Eligibility is highly restricted. Local authority initiatives include furniture recycling schemes.	
The Netherlands	No assistance provided.	

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

6.3 Affordability in relation to continued security of tenure

In this section, we consider affordability issues in relation to maintaining a tenancy. We start by discussing the importance of the scale and timing of rent increases and the role of regulation of rent increases. We then discuss some of the non-rental housing costs that can impact upon ongoing affordability and hence security of occupancy.

6.3.1 Ability to pay increases in rent

Where tenants are renting at the limits of their affordability, small changes in circumstance (such as being without work for a week or two), can have a serious impact on their ability to meet regular rental repayments. The predictability, frequency and scale of rent increases are therefore very important in maintaining secure occupancy.

Each case study jurisdiction has some form of regulation over the timing and/or size of rental increases for sitting tenants in the private rental market. However, the extent and nature of these regulations differ significantly as highlighted in Table 25.

- At one end of the scale are those jurisdictions where the frequency of rental increases are regulated, but the size of the increase is determined solely by market forces, as is the case in the Australian private rental market. This is also the case in Scotland and Ireland, but rent increases in these jurisdictions are restricted to once every twelve months, unlike the once every six months that is the minimum provision in most Australian states/territories, as discussed in Chapter 3.
- In Germany, rent changes for sitting tenants are based on the rents of three similar rented dwellings (i.e. essentially market rent). In many cases, this rule is applied through application of a reference rent database (*Mietspiegel*) (Haffner, CS).
- In the other case study jurisdictions (Flanders, New Jersey, Ontario and the Netherlands, however, the size of rent increases is regulated, beyond reference to market rents.

Table 25: Regulation regarding rent increases for existing tenancies across the case study areas (for rents not determined on the basis of household income)

Jurisdiction	Allowable frequency of rent increases⁶²	Allowable rent increases	Onus of proof in disputes over rent
Australia	Twice a year.	Market rent.	Tenant must take dispute to tenancy tribunal (see Chapter 4).
Austria	Annual.	In line with the Consumer Price Index (CPI).	Varies according to province. In Vienna conciliation preferred. This is a free service, which must be utilised prior to any potential court hearing.
Flanders	Annual.	Three-year periodic recalculation. Indexation of rents to the health index.	Landlord must prove renovation/repairs will increase costs by at least 10 per cent. Or landlord or tenant must prove that rent should be at least 20 per cent different because of changed circumstances.
Germany	Twelve or 15 months. ⁶³	Based on rents of three similar dwellings, or on a database of local reference rents. May not increase > 20% over three years.	The tenant has to pay to access the database of reference rents to check whether the rent increase the landlord proposes is correct.
Ireland	Annual.	Market rent.	There is no provision in the legislation for disputing excessive rents.
New Jersey	Annual.	All municipalities have an 'allowable increase'. Some use fixed percentages, while others use the CPI.	
Ontario	Annual.	Maximum allowable increase published as rent guideline by provincial Ministry of Housing.	Landlord can apply to a tribunal for an above guideline increase (e.g. to cover costs of renovations).
Scotland	Annual.	Market rent.	Tenant.
The Netherlands	Annual.	The Minister for Housing decides on maximum allowable rent increases. Currently increases are matched with the rate of inflation.	Rent Commissions mediate disputes over rent levels. These decisions can be contested in Court.

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario).

⁶² Australia is unusual amongst our case studies in allowing two rent increases per year (in most jurisdictions).

⁶³ If there is a clause in the contract rents allowing rent increases, then rents can be increased once every 12 months, if there is no such clause, the minimum frequency of rent increases allowed is 15 months (Wurmnest 2010, p.44).

In many jurisdictions there are programs to assist private tenants who are having trouble paying their rent to sustain their tenancies. These are covered in more detail in Chapter 9.

Perhaps unsurprisingly, those case study jurisdictions with weaker regulation around rent increases were the ones that noted the importance of landlords not increasing rents (or only increasing rents by small amounts) for 'good' tenants. For example, in New Jersey, landlords are thought to limit rent increases for tenants who do not complain, fix things themselves and pay their rent on time (Gilderbloom et al. CS). In Ontario it is also reasonably common for small-scale 'mum and dad' investors to let rents lag behind the market to avoid vacancies, especially in areas where high turnover rates are a concern (Pomeroy, CS). In Australia, a well rehearsed argument for not toughening regulation on rent increases is that landlords have an incentive to keep rents affordable for sitting tenants to avoid vacancies. However, as noted in Chapter 4, this incentive is weakened in situations of chronic scarcity and rising rents.

6.3.2 Ability to cover ongoing payments associated with renting

Just as there are additional costs associated with accessing a rental property (outlined in Section 6.1.2), there are also a series of ongoing non-rent housing costs that can impact upon tenants' ability to sustain a tenancy. The three most important categories identified in the case study reports were the costs of utilities, management and maintenance fees and renovations.

As noted at the beginning of this chapter in reference to the Netherlands, increases in the costs of utilities (electricity, gas and water) can have a significant impact on the ability of households to maintain a tenancy. Practice varies between the jurisdictions in whether these costs are typically part of the rent payment (as in New Jersey) or are excluded (as in the so-called 'cold rents' in Germany).

Whether such charges are included in the rent or paid directly by the tenant (or in the case of Ontario, partly covered by a utility allowance paid to tenants receiving benefits), increases in utility charges can be a concern for tenants. However, where utilities charges are paid directly by the tenant, unexpected increases, or unusually large bills can be a significant shock. In Ontario, failure to pay utility bills is seen as an early warning of pending arrears and risk of eviction (Pomeroy, CS). On the other hand, where tenants pay these charges directly and where separate metering is in existence for multi-unit buildings (as is the case for most households in Ireland and Scotland, some in New Jersey and increasing numbers in Ontario) they do have some control over their use of electricity and can economise if they wish.

In Austria, the cost of heating often adds 30 per cent to housing related expenses, although base rates are relatively low (Lawson, CS Austria). This has also been raised as an area of concern in the more temperate climate of Australia, and especially in NSW where the costs of electricity in particular have begun to increase rapidly and are expected to continue to do so in the near future, by 20–42 per cent over the next three years (Independent Pricing and Regulatory Tribunal 2010).

The extent to which tenants can influence the efficiency of their electricity and water use (e.g. through having efficient heating systems or adding insulation) is also a major consideration. In Austria, for example, the heating bills of tenants in poorly maintained older dwellings owned by private landlords can be exorbitant (Lawson, CS Austria). Subsidies to housing providers for the adoption of eco-innovative heating and hot water systems and greater use of renewal energy sources have recently been implemented in an attempt to address this affordability issue and to reduce environmental impacts (Lawson, CS Austria).

In Belgium, the Federal Government has introduced tax reductions for renovations in dwellings rented at a regulated price through a Social Rental Agency to promote energy efficiency in housing (Lawson, CS Flanders). Funds for energy efficiency programs are also available in Austria. Similarly, in Canada, a federal program provides landlords of lower rent units with a grant (a forgivable loan) to assist with upgrading properties, including improving insulation. However, while various energy retrofitting programs exist, the shift of utility costs towards tenants mean that there is less incentive for landlords to participate in these programs (Pomeroy, CS). Recent research for AHURI has highlighted the challenges in regard to energy efficiency in private rental housing in Australia (Gabriel et al. 2010b).

Management fees are also a significant cost in some areas. For example, tenants in apartment buildings in Scotland and Flanders pay charges for cleaning and maintaining common areas and facilities such as hallways, lifts and gardens (Lawson, CS Flanders; Pawson, CS). In Ireland, private and social tenants must pay for refuse collection (Norris, CS). These charges can be considerable. In Flanders for example, they can be up to 20 per cent of the rent (Lawson, CS Flanders). In Germany, such costs are known as 'second rent' and include not only utility costs, maintenance and waste collection costs, but also street-cleaning, water and sewerage, land taxes and insurance (Haffner, CS).

In addition to these charges, in Germany tenants are also required to pay for some of the costs associated with renovations to their property. Landlords can renovate their properties and subsequently increase the rent by 11 per cent. However, tenants can also undertake modernisations themselves in agreement with the landlord and can recoup their (depreciated) investment on moving out (Haffner, CS). In the Netherlands, a property can be renovated by the landlord only with the permission of the tenant and tenants can apply for a lower rent and compensation during the renovations (Lawson, CS the Netherlands; VROM 2009).

6.4 Summary

In summary, affordability of rental housing both at the point of entry and during the tenancy helps shape secure occupancy in complex ways. Of importance in all the jurisdictions is the way in which availability of suitable rental properties at affordable rents is influenced by the interrelationship between housing supply, the nature of rent setting, rent regulations and household subsidies:

- Constrained housing supply can negatively impact upon affordability in a market context. This is accentuated in jurisdictions experiencing declining investment in, and supply of, social housing, resulting in more tenants remaining in the private rental system.
- Whether rents reflect supply and demand, are set in relation to a household's income and composition and/or the costs of providing and maintaining the dwelling fundamentally affects housing affordability.
- Rent regulation for new tenancies is apparent in only two of the jurisdictions. However, all jurisdictions have regulations in place regarding rent increases for existing tenancies. These vary greatly and impact significantly on both affordability (ability to pay increases) and security of occupancy more widely (ability to plan for increases and concerns surrounding potential increases).
- Household subsidies, whether these are provided to tenants directly, or on their behalf to landlords, can have a significant impact on tenants' ability to pay the rent. Subsidies can also assist with up-front transaction costs and ongoing costs associated with renting, such as utilities bills and service charges.

Access affordability and ongoing affordability are linked. If households are faced with high up-front costs when accessing a property and are also renting at the limits of their affordability, any rent increase will pose problems for ongoing affordability. This problem is further compounded as the more often tenants move, the more often they must pay these access costs. Australia has very weak regulation of rent increases for sitting tenants compared to the other jurisdictions, even when compared to what otherwise appear to be similar private rental systems (Flanders, New Jersey and Ontario). Only Scotland and Ireland allow rent increases for sitting private tenants to be set at market levels, but only one rent increase a year is allowed compared to the twice yearly maximum in Australia.

7 LEGAL PROVISIONS FOR SECURE OCCUPANCY

In Chapter 5 we described the legal frameworks that govern landlord and tenant relations in the case study jurisdictions in broad terms. In this chapter we provide more detail on the contractual terms by which a household enjoys the right to occupy a rental dwelling. Our aim is to flesh out those facets of tenancy law that have strong bearing on tenants' security of occupancy and to compare legal frameworks for residential tenancies across jurisdictions.

The following sections consider and compare legal provisions for establishing the form and length of leases, the rules for tenancy termination, special legal provisions that apply to the social housing sector, and how any disputes over these matters are adjudicated. In addition, the chapter considers regulatory provisions, standards and practice that are aimed at promoting good quality management of rental housing and can thereby help to promote secure occupancy for tenants.

7.1 Forms and terms of leases

The types and terms of leases used in the study countries are compared in Table 26. The majority of jurisdictions in our study—Austria, Flanders, Ireland, Germany and the Netherlands—utilise unlimited or long-term fixed tenancies as a means of providing periods of secure occupancy to private tenants. In these countries, social housing tenants also enjoy secure occupancy (unless they breach the conditions of their tenancy) as a matter of either law or prevailing policy, although specific legal provisions may be different to those applying to private tenants:

- In Germany and the Netherlands, all standard leases are for an indefinite period.
- In Austria, the vast majority of tenants living in multiple occupancy dwellings have unlimited tenancies with specified grounds for termination only (see Section 7.2). For single-family dwellings fixed-term tenancies apply. These are for a minimum of three years.
- In Flanders, the standard rental agreement is for nine years. However, only 45 per cent of registered contracts were in this form in 2007. The majority of agreements (52%) were short-term contracts for a fixed period of three years or less. However, a short-term contract that is not terminated after one renewal automatically becomes a nine-year agreement. Use of three and nine-year contracts in Belgium is seen as a buffer against excessive increases in rents and discourages landlords from terminating tenancies to increase property rents (Lawson, CS Flanders). Social housing tenants have indefinite tenure after a two-year trial period.
- In 2004, Ireland moved to improve security of tenure for private tenants with a four-year fixed tenancy (including a six-month trial period) becoming the norm. Social tenancies in Ireland are regulated under separate legislation and continue to enjoy security of occupancy provided they do not breach their tenancy agreement; although this occurs as an outcome of policy and the application of case law rather than through specific legal provisions (Norris, CS).

Turning to the other jurisdictions, security of occupancy is not assisted specifically through the option of long-term leasing in New Jersey. However, there are no limitations on lease terms, renewal of existing leases is automatic and cannot be denied by a landlord without a valid ground, and grounds for eviction are prescribed (see Section 7.2). These conditions in combination could be expected to assist existing tenants to retain their tenancies, if they wish to.

In Ontario and Scotland short-term contracts (of six or twelve months typically) are offered to private tenants with provisions for tenancies to continue on a month-to-

month basis after that, subject to notice periods that are of similar duration to those in Australia (see Table 8). In both jurisdictions security of occupancy for social tenants is generally assured (by legislation in Scotland and through policy in Ontario), subject to legal breaches of tenancy agreements that can lead to an order of termination by an independent judicial body.

Overall, comparison of standard tenancy terms shows that the normal practice in Australia of offering short-term leases to private tenants is likely to result in most private tenants having less certainty of occupancy beyond their initial six- or twelve-month lease term, than in most of the other jurisdictions we have considered, except for Scotland and Ontario. However, as Scotland has a much higher proportion of social tenancies than Australia or Ontario, less reliance is being placed on short-term forms of private renting overall in that country (see Table 13). Of the case study jurisdictions examined, NSW is the only one where lease terms for public tenants are now fixed with renewal being subject to a review against policy criteria (see Section 3.3.2). While the UK Government has indicated that it will legislate to give social landlords the option to use more flexible tenancies for new tenants, it appears unlikely that this option will be taken up in Scotland (Pawson, CS), as discussed in Section 9.1.

Table 26: International comparison of typical lease types and terms

Jurisdiction	Type and terms of lease
Australia	<p>State level residential tenancy laws mostly provide for fixed-term tenancies, followed by a periodic tenancy if the lease is not terminated by either party. In practice, lease periods in the private rental market are generally for six or twelve months (see Table 9).</p> <p>NSW and Queensland have fixed-term leases for new public tenants (Housing NSW 2010d). In other Australian jurisdictions, public tenants currently have unlimited occupancy subject to a termination by an independent body for a proven breach of their tenancy conditions.</p>
Austria	<p>Tenancy contracts are either fixed or unlimited (see Table 15). Fixed tenancies are covered under the civil code and apply mainly to single or two family homes. They are for a set period (minimum three years) after which they can expire without notice. They may be terminated by either party on important grounds, such as unhealthy housing conditions or rent arrears. There is an option to seek an extension of the term by either party, which can be exercised three months before expiry.</p> <p>Unlimited tenancies are subject to statutory law (Tenancy Act 1981) that applies mainly to apartments and cooperative dwellings, whether in the municipal sector or privately owned. These can be terminated only under specified grounds (see Table 27), with strict procedural requirements. In 2004, there were 1.32 million contracts under this law.</p>
Flanders	<p>Under Belgian rent laws, there are four different types of rental agreements: life-long agreements, long-term agreements (for a specified period longer than nine years), nine-year agreements and short-term agreements (three years or less). In 2007, long-term and life-long agreements made up around 3 per cent of all registered contracts. Nine-year agreements made up 45 per cent and short-term agreements made up 52 per cent. Since 1997, short-term contracts can only be extended once, under the same terms. After that they must become nine-year contracts.</p>
Germany	<p>A lease contract can be for a limited or an unlimited period of time. The four grounds for termination are expiry (if a limited period was agreed upon), termination by mutual agreement, transfer of the contract to a new tenant accepted by the landlord, and termination by notice. Extensive legal specifications apply to termination by notice and there are relatively few ways that the landlord can exercise this right, ordinarily (Wurmnest 2010, pp.33–</p>

Jurisdiction	Type and terms of lease
Ireland	<p>34).</p> <p>Since 1971 tenancies in the former West Germany have generally been for an indefinite period. Fixed-term contracts only apply under special circumstances and chain contracts of fixed terms are discouraged. Reforms in 2001 achieved harmonisation in tenancy terms between the former East and West Germany.</p> <p>Private tenancies are generally for four years under the Residential Tenancies Act 2004. The Act enables landlords to terminate private tenancy agreements without specifying grounds during the first six months. After six months, legitimate grounds of termination must be given (see Table 27). Tenancy conditions can be reset at the end of four years, when a new tenancy can commence by agreement between the landlord and tenant. Tenants and landlords can agree to shorter-term tenancies.</p>
New Jersey	<p>In the social housing sector, tenancies are periodic but secure in the sense that they can only be broken if the tenancy agreement is breached.</p> <p>Leases may be written or verbal. There are no limitations on the term of the lease, but a lease of more than three years must be written. Month-to-month or year-to-year leases are typical. These renew automatically unless a valid notice to terminate is given by either party. A landlord must allow a tenant to renew a lease unless a valid action for eviction is taken (see Table 27).</p>
Ontario	<p>There are additional national regulations applying to public housing, but these do not affect ongoing security unless breached by the tenant.</p> <p>New rental contracts are typically annual. Initial fixed-term leases, if not formally renewed, revolve into an ongoing month-to-month arrangement with a notice period for termination for private tenants of generally 60 days. This form of periodic tenancy tends to dominate.</p>
Scotland	<p>Social housing tenants have month-to-month tenancies, but their security of occupancy is protected by law. By regulation, leases in social housing specify additional conditions concerning matters such as approved occupants, sub-letting and requirements to advise on changes in income or household composition.</p> <p>There are two forms of tenancies in the private sector—assured tenancies (AT), which offer an ongoing tenancy and Short Assured Tenancies (SAT), which provide six months tenancy, after which a two-month notice period applies. However, the latter has become the default form of tenancy for the private sector. Under a 2010 reform, local authorities can negotiate for landlords to establish private tenancies for 12 or more months for households found to be homeless and therefore legally entitled to local authority assistance in accessing a home.</p> <p>For social housing tenants, the Scottish Secure Tenancy (SST) introduced under separate legislation in 2002 generally applies. SSTs offer open-ended security subject to a proven breach and court order to evict. In addition, a Short Scottish Secure Tenancy (SSST) can be used in social housing in defined circumstances (e.g. previously evicted tenants with anti-social behaviour or where the property concerned is being occupied by a person receiving support from an organisation that has leased the dwelling from the landlord).</p>
The Netherlands	<p>Tenancy contracts for both private and social housing are usually for an indefinite time period unless they are holiday homes or scheduled for demolition.</p>

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario), except where otherwise specified.

7.2 Termination grounds and procedures

The grounds and processes under which a landlord can terminate a tenancy are closely linked to the degree of certainty that tenants can have over the continuation of their tenancy and control over their living arrangements.

Table 27 provides information on the general conditions that apply to termination of tenancies by a landlord for each country examined.⁶⁴ The table covers normal arrangements in the private and /or social sectors, but does not purport to set out all detailed requirements and special circumstances that may apply.

Of the jurisdictions studied, only Scotland compares with Australia in having short-term tenancies in the private rental sector that can be terminated readily without grounds or a judicial order. Even jurisdictions like Ontario and New Jersey that have comparatively large private rental sectors and are similar to Australia in several other policy and market respects (as discussed throughout this Report) have specified grounds for ending a private sector tenancy. While Flanders has fixed-term tenancies of up to three years that can be terminated at the end of the term without grounds, they also have a longer-term (nine years) option, which applies to nearly half the residents of the sector. This suggests that objections to removing the option of landlords to terminate tenancies without specified grounds because rental investment may be adversely affected are not borne out by international experience.

In jurisdictions such as Scotland and Australia that allow a landlord to terminate a tenancy without giving a reason, security of occupancy can be undermined not only directly (through evictions without grounds), but also indirectly, by weakening tenants' power to exercise their rights for fear of termination, as discussed in Chapter 4. As expressed by the Centre on Housing Rights and Evictions (COHRE), an international organisation concerned with housing and human rights,⁶⁵ 'without security of tenure ... forced eviction can become a real and perpetual threat' (quoted in Pippin 2009, p.23).

The other jurisdictions examined in this study all require landlords to give reasons for terminating a tenancy. Although the number and specific details of grounds that allows a landlord to terminate a tenancy vary, prescribed grounds generally cover most or all the following types of circumstances:

- Serious or persistent breaches of the tenancy agreement by the tenant, including non-payment of rent, destruction of property, disorderly or threatening conduct, exceeding allowable occupancy levels and illegal use of premises.
- Departure of the original tenant and their family (where sub-letting is not permitted).
- A change in tenant circumstances that negates their right to the property, such as loss of employment to which the property was tied or, in student housing, completing the period of study.
- Dwelling conditions that are unsafe or unhealthy and require the property to be vacant for the owner to address these.

⁶⁴ Conditions for termination by a tenant are not considered in this section as these do not impact directly on a tenant's security of occupancy. In most countries, notice periods for tenants to end a periodic tenancy voluntarily are similar to those applying to landlords. For fixed-term contracts, financial penalties, such as loss of bond or payment of future rent may apply. In some countries a tenant can sub-let or assign an existing lease to a new tenant. Failure by a tenant to terminate an expiring lease results in automatic renewal of the lease in some jurisdictions.

⁶⁵ COHRE's International Secretariat is based in Geneva, Switzerland with a number of offices and programs/activities around the world (COHRE 2010).

- Demonstrated need for the landlord to use the property for their need or to meet their family's need.
- Plans for change of use or sale of the property.

In some countries there is a requirement to secure continuing housing for a tenant, particularly if termination is for circumstances that are beyond their control (such as occurs in Austria, the Netherlands and Germany). In Vienna (Austria), the city government is advised of pending evictions and can thus intervene to try to mediate with both parties in order to avoid eviction (Lawson, CS Austria). In Germany, municipalities have a reserve power to order a landlord to allow a tenant to stay on beyond the landlord's valid termination of the contract if a household is at risk of becoming homeless. However, avoiding homelessness is not the landlord's responsibility. Thus municipalities are expected to only use this measure as last resort, such as when there is no space in the publicly owned accommodation for the homeless (Wurmnest 2010). In other cases (e.g. Ontario), even when grounds are established, the adjudicating body may take into account the circumstances of the tenant and whether provision has been made by the landlord to provide alternative housing before proceeding to termination (Pomeroy, CS). In Germany, notice periods may be extended to give tenants more time to relocate successfully (Haffner, CS).

Allowing terminations by landlords for transparent and evidenced reasons provides a strong basis for continuing security of occupancy by tenants who meet the conditions of their tenancy agreement and for ensuring consumer protection from retaliatory or arbitrary action by landlords. Furthermore, in cases where it is requirement for landlords to find alternative housing if they want to end the tenancy, continuity of housing is assured and homelessness is prevented.

In situations where the tenant breaches a tenancy agreement, the procedure to terminate may also affect the housing outcomes for the tenant and their family. In terms of the quantity of potential evictions that may be involved, the most significant matter concerns landlords seeking terminations as a result of rent arrears. Most case study informants noted an increase in this activity in their jurisdiction, a trend that is likely to be at least partly attributable to rising rents in both the social and private rental sectors, as discussed in Chapter 6. To address the heightened risks of homelessness that result, some jurisdictions (e.g. Ontario and the Netherlands) have introduced reforms to enable a termination to be rescinded or reversed where the ground for termination is non-payment of rent and a tenant pays their debt or, in some circumstances, enters into an agreement to pay their debt before the notice to quit is executed. As discussed in Chapter 4, a similar approach now applies in NSW under a new tenancy law passed in 2010 (Residential Tenancies Act 2010 NSW). These initiatives may also be associated with debt assistance programs, some of which are highlighted in Chapter 9.

Strong tenancy protection can create unintended outcomes, such as the phenomena of so called 'renting nomads' in Germany who apparently take advantage of normally lengthy dispute procedures and/or long notice periods by moving from one dwelling to another without ever paying full rent. Reforms are under discussion in Germany, which would make eviction easier for such cases (Haffner, CS). This illustrates an approach that seeks to deal with situations where the intent of the law is being circumvented by using special provisions, rather than through weakening the basic intent to protect tenants.

Only limited information was available from the case study reports about the influence of different national approaches to setting tenancy terms and termination grounds on the reasons why tenancies end. This situation seems to reflect a general lack of

information and research (such as exit surveys) on why tenants vacate in both the social and private rental sub-sectors. Without this sort of data it is very difficult to establish the effectiveness of different legal and social policy provisions that are aimed at protecting tenants and maintaining tenancies. In Scotland, social landlords are now being monitored annually for the level of new tenancies that are sustained and associated research is providing some limited information about why tenancies in the social sector are terminated (see Section 9.2.2 for more details).

Table 27: International comparison of termination of a tenancy by a landlord

Jurisdiction	Termination grounds and process
Australia	Private landlords can end a periodic tenancy without giving a reason. Case law has led to the public housing landlord normally being expected to give a reason for termination to be proved before a tribunal, if contested by the tenant. Prescribed grounds for ending either fixed-term or periodic tenancies are listed in Table 8 (National Shelter 2010; NSW and Victorian interviews).
Austria	<p>Termination of tenancy by landlords can only occur through a procedure in the courts and for valid reasons, which cover serious tenancy agreement breaches; departure of the original tenant and their family; urgent needs for the dwelling for another specified purpose such as landlord occupancy, necessary refurbishment or demolition, or other strong grounds. For grounds that are beyond the control of the tenant, such as alternative use of the dwelling, a replacement dwelling has to be found for the tenant to secure a termination.</p> <p>Once termination is requested by the landlord the tenants have four weeks to protest in order to begin a counter process through the courts. Termination becomes effective if uncontested.</p>
Flanders	Short-term contracts (three years or less) can be terminated quickly by both parties at the end of the period, but cannot be ended prematurely by one party acting unilaterally (without proof of breach). Nine-year contracts can only be terminated by the landlord during the life of the agreement under specified provisions defined in law. Landlords are encouraged to register rental agreements. If an agreement is not registered, tenants can leave without notice or reimbursement to the landlord (De Decker 2001).
Germany	Terms for termination are specified in the German Civil Code. Landlords must provide a reason for terminating a tenancy. Other than an immediate termination for a hazardous reason, acceptable reasons are limited to manifest breach by the tenant, habitation required for the landlord or their immediate family and current use of premises is not economically justifiable. Some grounds may be allowed only when they would not cause unacceptable inconvenience to the tenant or after a delay of up to 12 months depending on the tenant's circumstances. The tenant is also allowed to transfer the contract to a new tenant accepted by the landlord. A contract cannot be terminated if the aim is to increase the rent for the property. Notice periods for terminations are comparative lengthy and increase with the duration of the tenancy. For example, the time limit for an eviction varies between one-month and one year (Wurmnest 2010).
Ireland	<p>Private landlords can terminate tenancy contracts without grounds within the first six months of the agreement. For the 3.5 years immediately following, terminations can only be on six grounds that cover tenant non-compliance, landlord requirements to occupy, sell, refurbish or change the use of the dwelling, and unsuitability of the dwelling to the tenant.</p> <p>All conditions are reset at the end of the four-year period (i.e. no-grounds termination possible between 4–4.5 years). The termination notification period increases in line with the duration of the tenancy.</p> <p>Under social housing legislation social tenancies can be terminated by one month's notice. Through case law, however, tenants have gained more rights</p>

Jurisdiction	Termination grounds and process
New Jersey	<p>to security of occupancy, similar to NSW (see Section 4.2.2) and in practice social tenancies are only terminated by the landlord on the breach of the agreement; mainly for rent arrears or anti-social behaviour.</p> <p>Eighteen grounds for eviction are listed under the New Jersey Anti-Eviction Act. These include: tenant breaches; housing or health code violations that require the tenant to move; situations where the landlord wants to live in the property or convert it to another use; certain criminal convictions or threats against the landlord by the tenant; and where a tenant loses a job that is tied the rental unit.</p> <p>Eviction on the non-payment of rent may be effected immediately. For all other grounds for eviction, waiting periods generally range from three days to one-month.</p>
Ontario	<p>A landlord has the right to issue a notice of termination only for a number of specified reasons, the primary grounds being non-payment of rent, conduct of illegal activities, undue damage to the property, contravention of applicable municipal occupancy standards (illegal overcrowding), recurrent disruptive behaviour (of tenants, guests and pets), or if the landlord wishes to require the property for self or immediate family's use. The landlord may also request lease termination if the unit is sold (only applies to properties with three or fewer units).</p> <p>The tribunal may reverse any termination found in favour of the landlord if other means of addressing the hardship that led to the termination proceedings can be arranged.</p>
Scotland	<p>Private landlords can end a Short Assured Tenancy (in place for more than six months) at two months notice with no need to provide grounds or to obtain a court order.</p> <p>Social tenancy agreements can only be terminated by court order where the landlord can provide evidence that the tenants have breached the terms of the tenancy agreement. Around 0.5 per cent of all tenants are dispossessed of their homes in this way annually (in the vast majority of cases, associated with rent arrears).</p>
The Netherlands	<p>Termination by the judiciary can only be made on the basis of approved grounds set out under the Civil Code, including tenants' non-compliance with the tenancy agreement, the landlord having urgent personal need of the dwelling; the dwelling is needed for demolition or renovation, the dwelling was specifically constructed/modified for the elderly or disabled persons, the dwelling was specifically constructed for housing students and is required to allocate to a new student tenant, demolition and construction of a new dwelling in compliance with an existing land-use plan.</p> <p>The general termination notice period is between three and six months depending on the grounds.</p>

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario), except where otherwise specified.

7.3 Legislative provisions for social housing tenancies affecting security of occupancy

Special provisions for tenants of a social landlord are provided for in different ways across the case study jurisdictions. Three patterns can be observed:

- The same general rules of tenancy apply to tenants of private and social housing under the same primary legislation. This is the case in the Netherlands, Germany and Austria, which have been characterised as having unitary rental systems.

- There is separate tenancy legislation for social and private tenancies, whereby the duality of rental systems is embedded in the legal framework. This is the case in Ireland and Scotland.
- There is one set of legislative provisions for all tenancies, but there may also be significant special provisions in primary or separate legislation, or additional regulations, applying to occupancy in parts or the entire social rental sector. Some of these provisions have been long-standing and are mainly intended to reflect administrative procedures and policy differences in social housing, such as having specific eligibility requirements, different rent setting procedures or special arrangements for repairs. Flanders, Ontario, New Jersey and Australia reflect this pattern.

Where there is a complete or partial distinction between tenancy legislation affecting the private and social rental sectors, there has been an emerging trend to impose additional conditions on public (or social housing) tenants retaining their tenancies either via amendments to general tenancies legislation or via the introduction of special legislation. The new conditions that have resulted go beyond the governance of traditional tenancy law by linking grounds for eviction to fraudulent, criminal or anti-social behaviour of tenants and in some cases to the behaviour, or unapproved occupancy, of other household members. Some jurisdictions, like Flanders and Ireland, also have probationary tenancies for new entrants to this sector, as does NSW.⁶⁶ In general it could be said that these kinds of provisions are intended to introduce greater controls into social housing in the hope of protecting the interests of the sector at large (e.g. by reducing fraud), enabling quiet enjoyment by neighbouring tenants and other household members (e.g. by deterring violence or anti-social behaviour), or reducing household overcrowding and its ill effects.

In Australia at least, recent moves to introduce much tougher and wider tenancy controls in public housing can be linked to changes in the occupancy of public housing towards high proportions of high-needs and disadvantaged households (AIHW 2009a). In these circumstances, having special provisions may have the unintended consequence of further stigmatising the tenure and its residents. Moreover, making broader provisions for controlling the behaviour of social housing tenants (via new grounds for, and streamlined routes to, eviction) extends landlord powers considerably and, arguably, increases the vulnerability of some tenants, such as those with mental health issues. Little is known in Australia, or elsewhere, about the effectiveness of this legalistic approach to deterring disruptive behaviour or about the impacts the trend is having on social housing tenants' privacy, freedom from surveillance and autonomy, all key aspects of secure occupancy and making a home, which we discuss further in Chapter 8. Countries with unitary rental systems and uniform legislative models (Germany, Austria and the Netherlands) do not appear to have used tenancy legislation to address anti-social behaviour issues.

Beyond residential tenancy law provisions, there is a wide array of other legislative and regulatory requirements in the social housing sectors in our case studies. While these are aimed mainly at ensuring the service quality and financial performance of social landlords, they can indirectly affect a social landlord's capacity to assist a tenant to access and sustain housing. For example, requirements on social landlords to house applying persons who are homeless in Canada and Scotland may assist the most vulnerable to secure housing. Impacts of the regulation of landlord services more generally are discussed in Section 7.5.

⁶⁶ Although the provision is not used currently. (Housing NSW 2010d)

7.4 Dispute resolution

Landlord and tenant disputes and the way they are handled can potentially have a very significant bearing on the continuation of a tenancy. Typical areas of tenancy law that can be expected to give rise to disputes that can threaten security of occupancy include the scale, frequency and handling of rent increases or increases in service charges (especially where these are not closely regulated); the landlord's performance of their responsibilities for repairs to and maintenance of a property; a tenant's right to safety, privacy and quiet enjoyment in their home; a breach of a tenancy agreement by the tenant that causes the landlord to seek redress or eviction; and disputes over a landlord-initiated termination that is not related to a breach of the tenancy agreement by the tenant. In this section, we discuss the methods by which these and other disputes are resolved, rather than the nature of landlords and tenants' specific rights and responsibilities as these are covered elsewhere in Chapters 6 to 8 as appropriate.

The institutional arrangements for dispute resolution differ both within and between countries, but fall into three basic models:

- The court system is used to resolve disputes in respect of all rental housing (Flanders, Germany and New Jersey).
- Disputes in respect of all rental housing are heard by specialised tenancy or consumer tribunals that are intended to promote easy and timely access for tenants and landlords to conciliation and arbitration of disputes.⁶⁷ This applies in Austria, the Netherlands, Ontario and Australia.
- There are two different systems for resolving disputes founded in separate legislation for the two main rental sub-sectors. In Ireland and Scotland, disputes in social tenancies are resolved through the courts and specialised tribunals are used to resolve disputes in the private sector.

A consistent trend across all jurisdictions seems to be a move to have more matters, such as disputes over repairs and occupancy conditions or small financial matters, mediated before arbitration commences, in order to reduce workloads on courts and tribunals.

In terms of protection of, and assistance to, tenants involved in a dispute, all the case study jurisdictions either provide directly, or fund, some level of specialised tenant advice services for tenants. The extent to which tenants are represented legally or can receive and access free or low cost legal advice differs considerably, but we were unable to assess and compare how comprehensive such services are in each jurisdiction. Dedicated national, regional and or local tenant organisations that advocate on behalf of tenants and provide advice and mediation services are widespread. In some instances, such agencies have been the instigators of major reforms to protect tenants, or to push back on prospective or actual rule changes that would be adverse to tenants' interests. Examples of service innovations driven by tenants' organisations are included in Chapter 9.

It has not been possible to draw conclusions from the information provided to us about the impact of differing approaches to dispute resolution on outcomes for tenants. In general, however, our informants in Australia and overseas provided evidence that suggests that tenancy disputes are more likely to be brought by landlords than tenants and are more likely to be resolved in favour of landlords rather than tenants.

⁶⁷ Appeals against the decisions of tribunals are heard in courts. In Austria, if conciliation through a tribunal fails, a court may be used.

Notwithstanding that lease contracts are construed as arrangements entered into freely by equal parties, this situation suggests some imbalance in the relations between landlords and tenants that is highly pertinent to secure occupancy. In relation to success rates of eviction notices, the only hard evidence came from Ontario where it was estimated for 2007–08 that that roughly half of the disputes brought before the Landlord and Tenant Board that related to a notice of eviction did proceed to eviction. It is believed that mediation is frequently involved in settlement of the other half (Pomeroy, CS).

There was also no widespread evidence of whether private tenants or social tenants were more likely to be involved in disputes (allowing for the respective size of these sectors). However, this situation could be expected to vary considerably depending on the characteristics of each sector: especially according to tenant profiles; management standards; the extent and nature of rules that are likely to cause disputes; and the extent of provisions (covering legal rights and financial or social services) that are directed to helping to sustain tenancies.

What is clear is that socio-cultural factors underpin landlord and tenant relations as much as legislation and policy settings. Landlord and tenant relations, and how disputes are resolved, are likely to have major bearings on tenants' security and satisfaction. However, overall there appears to be very little empirical evidence to tell us what works well in individual jurisdictions or to enable a comparative evaluation to be made of the impact and outcomes of different approaches. If practice in dispute management is to be advanced so that tenants can use what legal rights they have to protect their tenancies readily and effectively, this important evidence gap must be addressed.

7.5 Quality of rental management

Whilst legislation and regulation on residential tenancies and housing provides the framework for landlord-tenant relations, management arrangements also contribute to secure occupancy, through their effects on the level and quality of services that tenants can obtain.

The variety of arrangements that are in place for the management of rental housing is closely related to the type and nature of landlords, the sub-sectors of the rental system and the key institutions that provide management services. These were described in Chapter 5. Table 28 summarises information provided by the country experts on features of the management systems in the case study jurisdictions. It identifies a range of matters that can impact on management quality, including the development of standards, the level of regulation, and arrangements for professional development and training. The information included is that which our informants highlighted and mostly concerns matters that fall outside of specific tenancy laws. As such, it may not cover all of the provisions in a particular country.

As could be expected, regulation, training and supervision of landlords vary across the different segments of the rental market both within and across jurisdictions. In most cases, management by social landlords is an increasingly regulated and professionalised activity. Exceptions to this trend occur where many small providers remain in the social rental sector, such as in Ontario.

One of the most highly contested issues in the social sector recently has concerned how best to deliver safeguards and protection for tenants of social housing landlords in contexts of declining new supply and policy reform (Cave 2007). For example, Lawson (CS the Netherlands) reports that there has been increasing concern expressed about the voice of tenants in the Netherlands, particularly those affected by

redevelopment in the context of large-scale demolitions and renewal projects there. In NSW and Victoria, new regulatory arrangements include tenant outcomes as a key area of performance for not-for-profit providers, but there is little public information on the findings of the regulators.

In the private rental sector, the general pattern suggested by the information obtained for this study is for less policy and regulatory attention to be given to consumer standards, quality of management activity or to the development of professional approaches. Several of the case study informants also noted that rental management (beyond social housing) is an under-researched area and little is known of levels of management efficiency and effectiveness.

The existence of significant numbers of small-scale individual landlords ('mums and dads' investors) in all countries appears to be a major factor underlying the lack of attention to the performance of rental managers. Where intermediaries such as managing agents are used, industry-based professional standards and self-regulation are more likely to apply. Also, professionalised management services have developed where there are large portfolios of rental stock held by institutional investors and/or large multi-unit rental developments (as in Ontario, New Jersey and Germany). In Australia, the preference being given to the use of accredited and regulated not-for-profit housing managers for rental housing supplied under the government subsidised NRAS scheme (see Chapter 3) is a sign that management standards are being applied at least to parts of the rental sector. This may have cumulative benefits for tenants as the scale of that program increases.

Among our cases, Scotland appears to have progressed furthest in considering an inclusive approach to promoting quality tenancy management. Table 28 lists several government initiatives in the private sector in Scotland that have been instigated by the Scottish Government or local governments, along with a well-developed approach to improving management of social housing through the adoption of a mix of government and industry based strategies. For example, mandatory registration of private landlords requiring that they be 'fit and proper persons' was introduced in 2004 to try to drive the worst landlords out of the sector.

It is clear that tenants' capacity to obtain redress for those service matters that can adversely affect their tenancy may well depend on the type of landlord they have and in which sub-sector they reside. Increasing numbers of lower-income and vulnerable households, and households who are most marginalised (such as foreign migrants), have to rely on the private market, where there is evidence, from Austria and the Netherlands for example, to suggest they are likely to be less well protected from poor quality, exploitative or discriminatory management practices than in the social rental sector (Fassmann & Kohlbacher 2007; Kullberg 2009). In other jurisdictions, including parts of Australia, groups housed in certain forms of accommodation, such as boarding houses,⁶⁸ supported housing and some types of housing for older people, that are not covered by residential tenancies legislation have more limited options for addressing any problems with their tenancy. In several jurisdictions, this situation has led to increasing attention being given to human rights concerns arising in the rental housing system. For example, a policy response on human rights and rental housing has been developed and implemented in Ontario, as described in Section 9.2.6.

⁶⁸ As seen in Chapter 3, in Australia practice varies and boarding houses are covered by residential tenancies legislation in Victoria but not in NSW, even after the new Act of 2010.

Table 28: International examples of approaches to the regulation, supervision and professional development of rental managers

Jurisdiction	Approaches
Australia	<p>Not-for-profit housing providers are regulated by specialist agencies in most jurisdictions and there is a proposal for nationally consistent regulation of this sector (Australian Government 2010). There is also an established accreditation system, which is voluntary in most jurisdictions.</p> <p>Public landlords are not independently regulated, but are subject to parliamentary and government scrutiny. Complaints and appeals mechanisms for public tenants exist in most jurisdictions and are being extended to the not-for-profit sector. Adjudicating bodies generally do not have legal powers and decisions are non-binding on public landlords.</p> <p>State Departments of Fair Trading or Consumer Affairs offer landlord advice services of a general nature.</p> <p>Management of private rental housing is through real estate intermediaries or by landlords themselves. There has been some limited development of specialised private rental management firms. Accreditation and training of private landlords and real estate agents is industry driven.</p> <p>The tertiary education sector offers vocational qualifications in tenancy management and one university (Swinburne) offers a graduate qualification in housing management—these courses are mainly accessed by employees in the social housing sector.</p>
Austria	<p>The large social rental sector is regulated and professionally managed. Housing organisations operate at scale (average 4000 dwellings), which helps to support professional management.</p> <p>Private rental housing is managed by a mix of private individuals and companies.</p>
Flanders	<p>Social housing associations and Social Rental Agencies (intermediaries that manage private housing) are subject to the Flemish Housing Code, in which the Ministry responsible for housing undertakes supervision and registration and an umbrella organisation provides guidance and financial support.</p> <p>The private rental sector is also subject to regulation under the Flemish Housing Code for housing quality, which derives from a constitutional 'right to decent housing' in Belgium.</p> <p>Individual owners dominate the private rental sector; typically having a small number of dwellings that they either manage themselves or use commercial agents (29%), or head lease to Social Rental Agencies (10%). There are two large property management companies: Home Invest (since 1999) and Aedifica (since 2006) listed on the stock market.</p>
Germany	<p>Law on the regulation of intermediation contains rules about the contractual relationship between the prospective tenant and the intermediary (real estate agent) (Wurmnest 2010).</p>
Ireland	<p>Housing associations are subject to registration and there is also de facto regulation via the terms of government funding schemes for new social housing output, which can influence management practices amongst social landlords. In addition local authorities are required to publish information on their compliance with housing management performance standards annually.</p> <p>There are a range of professional development and training options for housing managers in the local authority and housing associations sectors.</p> <p>The vast majority of landlords in the private rented sector are 'amateur' landlords, who commonly contract out their management responsibilities to a letting or estate agent and the staff working in these sectors often have professional qualifications and are members of the estate agents' professional representative bodies. However, there is no specialised training or continuing</p>

Jurisdiction	Approaches
New Jersey	<p>professional development for landlords or managers in the private rented sector.</p> <p>Complaints about breaches of compliance with standards of rental housing management in the private rented sector are investigated by the Private Residential Tenancies Board. The Ombudsman performs a similar function in the local authority social rented sector. There are no equivalent arrangements in the housing association rented sector.</p> <p>There is mandatory registration process for all landlords of non-owner occupied housing and the identity of the landlord must be disclosed to the tenant.</p> <p>To be able to legally rent out a property in New Jersey an owner must form some type of corporate entity, with the most common form being a Limited Liability Corporation.</p>
Ontario	<p>Professional companies usually undertake the management of large multi-unit properties, whether these are owned individually or by a single owner. This sometimes includes not-for-profit owners using private management firms. Smaller rental holders are managed by the landlord or a managing agent.</p> <p>In the formal rental sector purpose-built, multi-unit rental apartments are usually professionally managed by property management companies with certified staff.</p> <p>In the informal rental sector (mainly rented homes, apartments in homes and rented condominiums) there is a higher incidence of informal amateur management, with the owner generally performing this duty directly.</p> <p>Within the social sector, the one-third of social housing that is owned and operated by local municipalities is professionally managed by in-house specialist departments. In the remaining two-thirds, the large providers are highly professionalised. However among the many small providers, most lack the economy of scale to have full-time property managers, and often retain only part-time staff, or contract out to professional management firms.</p>
Scotland	<p>There is no formal certification of social housing property managers, although many do complete a general certification as Certified Property Managers. Across the rental sector more broadly there are education and accreditation programs, including those run by The Institute of Housing Management.</p> <p>There have been numerous initiatives to improve the standard of housing management in the social rented sector. Sector-wide regulation was introduced in 2002 and incorporated defined housing management standards (Communities Scotland 2006) and associated performance indicators, as well as a large-scale programme of on-site inspections (The Scottish Housing Regulator 2010).</p> <p>The Scottish Housing Regulator is charged with promoting good practice in housing management. Similarly, the Chartered Institute of Housing seeks to build managerial capacity and capability among personnel within both social housing and private landlord organisations.</p> <p>Social landlords have established benchmarking, peer review and good practice exchange forums largely aimed at improving management standards. Much of this activity is co-ordinated through the Scottish Housing Best Value Network (Scottish Housing Best Value Network 2010).</p> <p>In private rented housing much activity is on an amateur basis. At a UK level, industry groups have called for letting agents to be regulated, a proposal backed by recent officially commissioned research (Jones 2009).</p> <p>Mandatory registration of private landlords was introduced in 2004. With the stated aim of driving out poor landlords, this requires that an applicant seeking to let property is deemed by the local authority as a 'fit and proper person' to</p>

Jurisdiction	Approaches
The Netherlands	<p>play this role.</p> <p>A national landlord accreditation scheme was set up in 2008 and a more specific Repairing Standard aimed at improving private rental housing conditions has since been established. In response to tenant complaints, compliance is enforced through the Private Rental Panel, which has the power to impose an order to reduce rent payable on the property until the specified work has been completed. The local authority may also carry out work that is not done and recover its costs from the landlord.</p> <p>Some local authorities are also active in developing landlord education programs.</p> <p>Housing association performance is subject to supervision under the Social Rented Sector Management Decree 1993. Performance measures relate to: preservation of the quality of dwellings and their environment; consultation of tenants; securing financial continuity; providing housing and care arrangements; and promoting liveability.</p> <p>Additional instruments have been developed by the sector itself to assess and promote the quality of services to tenants. These include the Dutch Quality Centre, established in the late 1990s, which uses an assessment and labelling system covering issues such as landlord services, tenant participation, community interaction and good governance. Since 2007, a system of self-regulatory performance audits has been piloted by the sector, through which an independent committee of three assess landlords. Members of the social landlord's umbrella organisation Aedes (Association of Housing Corporations) must submit to a performance audit once every four years under seven fields: housing affordability, housing supply, liveability, support services, housing production and quality, urban regeneration, sustainability (Bortel & Mullins 2009).</p> <p>Very little research has been undertaken of the management efficiency and effectiveness of private rental housing in the Netherlands (Priemus 2003). Anecdotal evidence suggests that a range of management vehicles are used, including local real estate agents and residential property management and sales companies that cater for larger portfolios owned by insurance companies.</p>

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario), except where otherwise specified.

7.6 Summary

This chapter has explored how legislation and regulation on landlord-tenant relations and management may affect secure occupancy for households renting in both the social and private rental sectors. The jurisdictions in this study appear to fall into three qualitatively different groups:

- Those that have a well-established philosophy that promotes secure occupancy by: offering most tenants unlimited tenure (subject to proven breaches of a lease agreement by the tenant that are grounds for termination action by the landlord); not allowing arbitrary (no grounds) evictions by landlords; and adopting other strong consumer protection measures, such as requirements on landlords to locate alternative housing and having lengthy notice periods. Austria, Germany and the Netherlands fall into this group.
- Those that encourage longer-term leasing through law, policy and/or practice and, in most, but not all cases, also prescribe grounds for terminations by landlords of

private as well as public tenancies. These jurisdictions include Ontario, New Jersey, Flanders and Ireland.

- Those that offer the least certain security of tenure and leasing options for private tenants in law and /or practice and have laws that allow for arbitrary tenancy terminations by private landlords, namely Scotland and Australia.

Overall, the comparative analysis in this chapter suggests that Australia lies at the bottom of this field in terms of the extent to which its legal framework and management practices for rental housing promote continuing occupancy by tenants where they desire it, in both the private and social rental sectors. NSW is unique among the jurisdictions examined in limiting security of tenure for public tenants and, arguably, in the extent of additional controls over behaviour that apply to public tenants' rights to a continuing tenancy. However, the UK Government is proposing to end the requirement for tenancies for life in social housing for new tenants. The flow-on effects to Scotland, in what is now a quasi-federal system, are unknown.

What is clear from the analysis in this chapter is that it is possible to develop a legal and policy framework for renting as a long-term and relatively secure tenure, including for lower-income and vulnerable households. This is most apparent in Austria, Germany and the Netherlands, but there are also key aspects of legislation/regulation in countries that have rental systems that are more similar to Australia (such as Flanders/Belgium and Ireland) and which, in principle at least, should enable more secure occupancy. The important point is that although all jurisdictions rely increasingly on private rather than government investment in most cases they have been able to maintain medium to large rental sectors and to offer better provisions for security of occupancy than Australia.

There is very little qualitative or quantitative information about how residential tenancies perform, or end, in the evidence we examined for this study. Without information of this kind, further conclusions cannot be drawn about the effectiveness of different approaches to residential tenancies law, dispute resolution and tenancy management that we have outlined in this chapter, but we suggest this is an area that warrants further empirical research.

8 LIVING IN RENTAL HOUSING

In addition to the matters discussed in previous chapters, including affordability and legal provisions for rental tenancies, secure occupancy is also about daily living and the ability to make a home now and for the future, to the extent that households wish to do this. This chapter explores how the different types of rental systems included in our study provide the framework for enabling households to live their lives and make a home.

Many researchers have emphasised the distinction between the physical attributes of a dwelling (housing) and the 'home' (e.g. Dupuis & Thorns 1998; Easthope 2004; Hulse & Saugeres 2008b; Mallett 2004; Somerville 1992). Housing is a physical entity and a commodity whereas some of the key elements of home are: safety, physical comfort, privacy and lack of surveillance, having a secure base in which the routines of daily life can be carried out, a place to enable emotional sustenance and to have intimate relationships, and a place to belong. It is likely that some of these elements are common to any living arrangements (i.e. safety, physical comfort, privacy and lack of surveillance, and a base for the interactions and activities of daily life). Whether households develop strong emotional attachments to home and sense of belonging centred on home and place while renting is an issue for empirical research and may well depend on cultural expectations about renting.

In Australia, many of the key elements that constitute the meaning of home are associated almost exclusively with home ownership. In policy and research, as in daily life, we talk about 'buying a home' and 'renting housing'. Underpinning this distinction is a belief that renting is a transitory stage in life. This is despite evidence of long-term renting presented in Chapter 4 and elsewhere (Wulff & Maher 1998) and some limited research that indicates how households that rent attempt to make a home in their dwellings (e.g. Mee 2007). This is not necessarily the case in rental systems in other jurisdictions, which, as we have seen in previous chapters, vary considerably. This suggests that in addition to differences in the legal and policy context, the socio-cultural context in each jurisdiction is important in shaping the type of rental systems that we have documented in previous chapters.

This chapter is based on analysis of the jurisdiction case studies, some supplementary literature, and investigation by the research team. It is not possible to make a systematic and comprehensive comparison between jurisdictions as in Chapters 5 to 7 due to qualitatively different information generated in response to the case study template, differences in concepts and definitions, and a general lack of data. For our purposes, this is of interest in itself since it indicates that far more is known about rented dwellings, rental housing affordability and legal provisions than about renters' daily living and experiences of home. The methodology for the study did not enable us to identify social attitudes and cultural norms directly. Thus, our approach in this chapter is to identify some broad patterns and to highlight some ways in which policies and regulation provide the framework for selected aspects of living in rental housing, using examples for individual jurisdictions that relate to themes from the literature.

8.1 Physical comfort: housing quality and condition

The literature on the meaning of home suggests that physical comfort is a basic precondition for feeling at home. Physical comfort is individual and subjective and if people do not enjoy a tolerable level of physical comfort, for example, if they lack basic amenities or cannot get repairs done, their secure occupancy may be jeopardised. Lack of physical comfort may be experienced in any housing situation,

but households that rent face particular issues as they usually have a lesser degree of control over their living environment. Thus, the degree to which they are able to achieve a satisfactory level of physical comfort depends not only on their own perceptions, behaviours and decisions, but also on aspects of housing quality and amenity that are outside of their direct control, such as building performance and condition and state of repair.

Table 29: Key dimensions related to physical comfort for renter households

Housing quality/level of amenity	Housing condition/state or repair
Covers: Level of amenity. Dwelling performance. Building performance.	Covers: Condition of amenities, fixtures and fittings. Structural condition of dwelling/building and common areas. Quality of dwelling/building services.
Relevant factors: Structure and performance of dwellings/buildings. Investment by dwelling/building owners.	Relevant factors: Structure and performance of dwellings/buildings. Investment by dwelling/building owners. Housing management practices. Behaviours of household members.

In this section, we discuss housing quality and condition separately, as they involve different types of factors (see Table 29). In practice, however, it is the combination of housing quality and condition that contributes to safety and physical comfort.

8.1.1 Housing quality

In most jurisdictions, the quality of rented housing is considered to be good, although this varies somewhat between rental sub-sectors, and each jurisdiction has particular challenges in this regard (see Table 30). There is an acknowledged problem with housing quality in the private rental sector or in particular parts of that sector in Flanders, Germany, Netherlands, Ireland, Scotland and Ontario. There is also an acknowledged problem with housing quality in some instances in older social housing in Australia, Austria, the Netherlands and New Jersey.

Most jurisdictions deal with issues of the structure and performance of dwellings and residential buildings through building codes either at a federal/national or sub-national level. Such codes typically focus on newly constructed residential buildings and do not distinguish between types of occupancy. They are also usually very technical and not easily comparable. However, as we saw in Chapter 5, many rented dwellings in all jurisdictions are old (i.e. they are established dwellings that were either originally constructed for rental purposes or their occupancy has been transferred from ownership to various types of rental, and sometimes between rental sub-sectors).

Table 30: Quality of rental housing and strategies for improvement in case study jurisdictions

Jurisdiction	Quality of rental housing	Issues	Strategies for improvement (if applicable)
Australia	Overall, the quality is considered to be good, but there are problems in some low rent private housing (e.g. VCOSS 2010); some older social housing; and specific sub-markets (e.g. some registered and de facto rooming houses).	Energy efficiency is an issue in some rented housing (private and public). No information on the quality of housing rented by housing allowance recipients (Rent Assistance).	Regulation of standards for rooming houses (e.g. Victoria). Renewal and redevelopment of some older, poor quality public housing.
Austria	Social rental dominates rental sector and quality is generally good. Eighty-seven per cent of rental dwellings regulated under Tenancy Act (MRG) have inside toilet, bathroom, heating and hot water supply (up from 15 per cent in 1971) (Lugger 2007).	Thermal performance is an issue (along with small size of some older apartments).	Building codes amended to ensure higher thermal quality. Housing subsidies conditional on aspects of energy efficiency. Tenants pay monthly maintenance and improvement charge paid in addition to rent.
Flanders	Quality lower in private rented dwellings (e.g. central heating, toilet, shower, hot water) than for owned or social rented dwellings.	High cost of renovation relative to low return in the private rental sector.	Flemish Housing Code says that every dwelling must meet basic quality standards. The Flemish Government agencies have powers of inspection using a points system—landlords can be ordered to make improvements.
Germany	Overall the quality of rental housing is good, particularly in the former West Germany.	Large number of vacant properties particularly in former East Germany.	Demolition of sub-standard buildings particularly in areas with high vacancies.
Ireland	Overall the quality of rental stock has improved due to new construction. Generally the quality of rental stock is similar to	Much lower levels of central heating in rented stock than owner occupied. Small sections of the private rental sector are poor quality—	New minimum standards for both social and private rented dwellings (2008). Large-scale refurbishment of local authority housing including installation of central heating.

Jurisdiction	Quality of rental housing	Issues	Strategies for improvement (if applicable)
New Jersey	that of owner occupied stock. Census data indicate very low levels of rental properties without complete plumbing or kitchen facilities.	particularly those subsidised under the rent supplement scheme (Coates & Norris 2006a). Renters with incomes below poverty line are more likely to lack plumbing than other renters, but proportion is still very low (2%). Rented accommodation generally older than owned housing.	Increased inspection by local authorities of private rental dwellings as part of the Rental Accommodation Scheme.
Ontario	Generally quality is good, but 10 per cent of rental units in Ontario need major repair.	High cost of repairs and renovations relative to rental return.	Local municipalities have minimum property standards. Some modest allowance for rent increases as a result of quality improvements subject to approval by tribunal.
Scotland	Private rental sector has the poorest housing quality historically and somewhat more likely to be in disrepair.	Percentage of private rented dwellings with poor energy efficiency four times that of other sectors (Scottish Government 2008).	Scottish Housing Quality Standard, which social landlords have to comply with by 2015. Grants to private property owners to carry out repairs. Repairing standard for private rental and Private Housing Review Panel to enforce implementation. Licensing of houses in multiple occupation.
The Netherlands	Quality of social rental generally equates to that of owner occupied stock, but older parts of the private rental sector are lower quality (Thomsen & van der Flier 2007).	Older social rental stock less likely to meet current standards.	Wholesale demolition of older sub-standard social rental blocks and replacement with mixed tenure higher quality dwellings particularly in high land value areas.

Source: Case Study Reports 2010 by Gilderbloom et al. (New Jersey); Haffner (Germany); Lawson (Austria, Flanders, the Netherlands); Norris (Ireland); Pawson (Scotland); and Pomeroy (Ontario), except where otherwise specified.

Some jurisdictions take a regulatory approach to prescribing minimum standards, either for all rental housing or in delineating standards for either the social and/or the private rental sectors separately. The following provide examples of these approaches:

1. In Ireland, the vast majority of rented dwellings are subject to mandatory minimum standards regulations, which are set out in the Housing (Standards for Rented Houses) Regulations 2008. These new regulations provide for much higher minimum standards for rented accommodation than the previous regulations adopted in 1993. They include structural soundness, specified bathroom and kitchen facilities, fixed heating in each habitable room that the tenant can control, adequate natural light and kitchen ventilation, and an adequately maintained electricity and gas supply (Department of the Environment, Heritage and Local Government, 2008 cited in Norris, CS).
2. In Scotland, in addition to a statutory Tolerable Standard for all residential accommodation (basically 'fit for human habitation'), there is also the Scottish Housing Quality Standard, which is intended as a strategic tool to raise the quality of Scottish housing generally (Scottish Executive 2003). The Standard stipulates that dwellings must be:
 - Compliant with the 'tolerable standard' (e.g. on dampness)
 - Free from serious disrepair (e.g. leaking roof)
 - Energy efficient (in terms of both heating and insulation)
 - Equipped with modern facilities (e.g. kitchen less than 20 years old, bathroom less than 30 years old).

Social housing providers are expected to bring all their dwellings up to this Standard by 2015 (Pawson CS).

A key issue with the regulatory approach using minimum standards is monitoring and compliance, as illustrated in the cases of Ireland and Scotland discussed above. In Ireland, there is currently no means of enforcing minimum standards in social housing provided by local authorities and housing associations. However, local authorities are responsible for inspecting rented private dwellings to ensure compliance with the minimum standards regulations. Initially, rates of inspection were low (Norris & Winston 2004), but from 2006 the numbers of inspections almost doubled with more focused attention on the quality of private rental accommodation and more funding for inspections (Norris, CS). In Scotland, whilst the Tolerable Standard is enforceable by local authorities, compliance with the Scottish Housing Quality Standard is monitored via regular Scottish Housing Condition Surveys and through social landlords' annual statistical returns. It is only enforced directly in the case of licensing of houses in multiple occupation (e.g. rooming houses). In the social rental sector, social housing providers self-assess whether their properties meet this standard and there is no independent inspection of housing quality (Pawson, CS).

In all the jurisdictions, there has been a concerted attempt to improve the quality of older social housing through housing policies and subsidies, rather than through regulation. A striking example of this can be seen in the social housing renewal projects in Austria over the last three decades, particularly in the State of Vienna, which have focused on improving quality through 'soft renewal', social inclusion and most recently, energy efficient design. Vienna has established competitions for housing projects by both social and for-profit developers, or increasingly a combination of the two, using common standards to promote innovation in the achievement of quality housing. These projects often involve land allocated by the city and housing subsidies, which are tied to the achievement of quality objectives. Some of these developments have achieved international renown, such as the conversion of the 19th century gas storage towers (Lawson, CS Austria).

Design and implementation of housing policies to improve the quality/amenity of housing in the private rental sector is inherently more difficult, particularly where there is a prevalence of small-scale investors and often a proliferation of housing managers. An approach in some jurisdictions has been to tie housing allowances (rental subsidies) to households with minimum housing quality standards in private rental housing, although this may owe as much to a concern with accountability for the expenditure of public funds as to improving physical comfort for renter households. For example:

- In New Jersey, payment of housing choice vouchers (made directly to private landlords)⁶⁹ is conditional on the property meeting minimum quality standards upon inspection and standards must be maintained as long as the landlord receives the voucher payments (HUD 2010a). Housing quality standards are prescribed by the Federal Government, which funds the program, and there are minimum standards for each room type (HUD 2010b).
- In Ireland, where the segment of the private rental market that is accessible by households with a rent supplement (housing allowance) is generally of low quality (Coates & Feely 2007), private rental housing is head leased to accommodate households who have been in receipt of the rent supplement for more than 18 months (discussed further in Chapter 9, Section 9.2). However, there are no direct or indirect supports available to subsidise the cost of major refurbishment of private rental housing (Norris, CS).

8.1.2 Housing condition, repair and safety

In all jurisdictions, the primary means of dealing with issues of housing condition and state of repair is through lease agreements between individual landlords and tenants, which specify the rights and responsibilities of both parties, supplemented by policies, standards and practices. For example, in New Jersey, the obligations of landlords and tenants for the maintenance of dwelling units are based on a combination of lease provisions, New Jersey statutes, local municipal ordinances and court decisions. Landlords must maintain the property in a 'liveable manner' and keep it that way. They are required to respond to repair requests to 'vital facilities' caused by normal wear and tear; and tenants are responsible for taking adequate care of the property during their tenancy ('fair wear and tear') (Truth in Renting Act 2007). In Scotland, there is a specific Repairing Standard that specifies landlord obligations in the private rental sector in terms of wind and water tightness, dwelling/building structure, supply of water gas and electricity, arrangements for sanitation, space heating and water heating, and fixtures and fittings (Scottish Executive 2007).

There is, however, little information available in any of the jurisdictions about the nature of landlord-tenant relations concerning repairs, the extent to which they enable the condition of a dwelling/building to be maintained and the effect on the physical comfort of tenants. Often it is difficult for prospective tenants to gauge the landlord's performance in this area, particularly in the private rental sector. In New Jersey, however, there are many electronic tenancy databases provided by private services that enable both landlord and tenants to check on the extent to which each fulfils their rights and responsibilities. Not only can landlords check tenants' credit reports, run background checks and look for previous problems with landlords, as in Australia, but renters can also access information about the landlords, including the quality of the units, complaints registered by tenants and ways in which landlords respond to problems of dwelling/building condition and repair.

⁶⁹ As discussed in Chapter 5, housing vouchers in the US are budget-limited and many local public housing agencies close their wait list and allocate vouchers using a lottery.

In the social rental sector, there is often more information available to prospective tenants about housing condition and repairs. In the Netherlands, as we have seen, the condition of housing determines how rents are set, and there are also social housing performance standards that are regulated through local agreements and enforced by central government, in which providers have to ensure quality living environments and consult with tenants (as well as ensuring the availability of appropriate services and maintaining a sound financial position).

All jurisdictions use legislation to regulate rent contracts, which specify landlord and tenant responsibilities in respect of maintenance and repairs. Typically, where there are concerns, this requires initiation by the affected party: for example, action in respect of breach of tenancy by the landlord (e.g. where there is damage to the property) and action by the tenant in the event of failure to maintain the property or carry out requested repairs. In the latter case, some jurisdictions have provisions for withholding rent if the tenant has reported serious maintenance problem to the landlords and no action has been taken. For example:

- In Germany, where there are deficiencies (e.g. dampness/mould, noise, malfunctioning of appliances such as the lifts, boiler or heater, or issues such as a leaky roof), the tenant is allowed to pay less rent than the rent payable if the landlord is not doing anything about these problems. The procedure is that the tenant has to prove the deficiencies and that he/she has reported them (Deutscher Mieterbund 2010a). If the dwelling is unfit for occupation, the tenant can leave the dwelling without handing in a notice. If the landlord does not agree, he/she can either try to prove that it is not a large deficiency or that the tenant knew about it before entering into the rental contract (Haffner, CS).
- In New Jersey, the Truth in Renting Act 2007 provides for 'repair and deduct' and 'rent withholding' as remedies where there is a defect in a vital facility (e.g. heating, running hot and cold water and an operating toilet, or a condition that is hazardous to residents). This provision does not apply for normal maintenance situations. These two remedies have been upheld in decisions by the New Jersey Supreme Court (Gilderbloom et al. CS).
- In Scotland, the Private Rented Housing Panel can respond to a complaint in respect of the Repairing Standard outlined above and issue an enforcement order requiring that necessary work be undertaken. Subsequently, the Panel can impose a rent relief order to reduce the rent payable on the property until the specified work has been completed. The local authority may carry out work that is not done and recover its costs from the landlord (Pawson, CS).

Whether tenants are in a position to take up these options in the event of non-response to maintenance requests may well depend on a number of factors, including the importance of the repair to them and the terms and conditions of tenancy. For example, in Scotland, where most private tenants now occupy their homes on Short Assured Tenancy terms (as discussed in Chapter 7), they are in a weak position to initiate such action. A landlord pressured to address issues of quality and/or condition can give two months notice to end the tenancy (after it has run its first six months), a similar situation to that reported in respect of Australia in Chapter 4. Social renters in Scotland have a specific 'right to repair' (Housing (Scotland) Act 2001), although this refers only to low value 'qualifying repair' jobs (Pawson, CS).

In the social rented sector in all jurisdictions, there are specific strategies for improving the condition/repair of housing including: rolling programs for maintenance and minor upgrades, major improvements, sales, or demolition and rebuild. Increasingly, these strategies are framed in terms of strategic asset planning. For example, in the Netherlands, historically there was an emphasis on planned maintenance programs to

improve the building fabric and common areas of multi-unit developments, with some improvement to internal equipment and finishes (Straub 2004). Priorities were set according to technical assessment of quality improvements required. However, in more recent years, there has been greater attention to strategic asset planning in the context of market conditions, driven by changes in the funding regime and the regulation of the sector. As a result, there has been wholesale demolition of poorer quality, multi-unit buildings with smaller apartments and their replacement with mixed tenure, large and higher quality dwellings. This is particularly the case in high land value locations in which redevelopment can generate profit (Lawson, CS the Netherlands).

A major issue in improving the condition of properties in the social, and particularly in the private, rental sector is whether there are financial incentives for landlords to do so. If rents are set too low, there may be insufficient funds to carry out maintenance and improvements, and tenant comfort will suffer. This is a difficult problem to address and has to be seen in the context of affordability for the tenant and financial viability for the landlord. We can see examples of more comprehensive measures to deal with this issue in the jurisdictions with the largest rental sectors:

- In Austria, limited profit social landlords play a major role in the Austrian rental system as we saw in Chapter 5. There is a monthly maintenance and improvement charge on top of tenants' rents. By law, these landlords must set aside these funds for maintenance and improvement, and tenants have the right to ensure that landlords comply. Further, renovation works can be funded through a combination of limited rent increases for existing tenants and low cost loans to landlords. These measures, together with the ability of landlords to raise rents for new contracts, have increased the security of rent revenues and encouraged investment by landlords in maintenance and improvements, thereby raising the quality of Austrian rental housing (Lugger 2007, p.32; Lawson, CS Austria).
- In Germany, tenants pay a 'second rent' in addition to the so-called 'cold rent', which includes quite substantial costs for street-cleaning, waste collection, water and sewerage, land taxes, insurance and maintenance (Busch-Geertsema 2000 cited in Haffner, CS). If the dwelling is modernised, in principle, the landlord can increase rent with 11 per cent of costs, if utility increases and environmental savings become reality (Deutscher Mieterbund 2010b). If the landlord does not do any modernisation, the tenants can do this themselves, but have to arrange for a modernisation agreement with the landlord, which covers means of recouping (depreciated) investments when moving out. There are different ways of trading off rent levels and maintenance tasks (Haffner, CS).
- In the Netherlands, the quality points system for setting rents in most rented properties by Rent Commissions (*Huurcommissies*) (discussed in Chapter 6), specifically ties rents to property quality and condition and also mediates tenant-landlord disputes concerning maintenance and service costs (VROM 2009). This system means that landlords cannot get rent increases for properties that are sub-standard or poorly maintained. This arrangement appears to reflect not only the large social rental sector in the Netherlands, but also longer-term tenancies in which households regard the dwelling as their home (Lawson, CS the Netherlands).
- In Canada, there is a federal scheme to encourage the renewal and rehabilitation of private rental accommodation (Rental Residential Rehabilitation Program). This offers financial assistance (forgivable loans) to landlords of affordable housing to pay for mandatory repairs to self-contained units occupied by low-income tenants. In this case, landlords must agree to place a ceiling on the rents that may be charged after the repairs are completed, limit rent increases during the term of the

agreement, and agree to limit new occupancy to tenants with incomes at or below the income ceiling to dwellings funded under the affordable housing program (bilateral agreement between Canada and the Province of Ontario) (CMHC 2010; Pomeroy, CS).

Finally, in addition to regulation of the structure and performance of dwellings/buildings, most jurisdictions have some specific safety standards, either in respect of all dwellings or applied specifically to rented dwellings. Typically, these are included in building regulations, which may be prescriptive or performance based. The most common area covered in relation to safety appears to be fire safety. Other safety provisions in a number of jurisdictions include those relating to supply of utilities. For example, the Scottish Housing Quality Standard specifies the safety of electrical, gas and oil systems and appliances. In the case of gas supplied to a rented property, there is a requirement for an annual gas safety certificate from a suitably qualified and registered gas plumber (Communities Scotland 2004; Pawson, CS).

Some jurisdictions also have specific provisions that are aimed at ensuring the safety of particular groups. These include measures to improve safety for children and people with disabilities. An example of the first can be found in New Jersey, where landlords must provide, install and maintain approved child protection window guards on windows of apartments in multi-unit dwellings that are occupied by children aged ten years or younger, on the request of the tenant (Truth in Renting Act 2007). Germany provides an example of specific provisions for people with disabilities. In Germany, a tenant has the right to adapt the dwelling to make it safe and suitable for their use and the landlord cannot unreasonably withhold their permission (Wurmnest 2010). However, it appears that the tenant often pays for the modifications and the landlord can ask for a reasonable guarantee to change the dwelling back to its normal state when the tenant leaves (Haffner, CS).

As has been identified in the housing research literature, feeling safe involves far more than having minimum standards for dwellings/buildings. Feeling safe is subjective and based on expectations, fears and experiences. Other important factors include relationships within the home, interactions with neighbours, and the behaviours of other people, as well as more general effects such as consequences of stigma associated with living in particular areas (Jacobs et al. 2011). This study does not enable any observations on these points.

8.2 Physical comfort: thermal temperature and noise levels

Living well in rental housing also raises issues of sensory comfort, referring to ambient temperature, air quality, light, noise and smells. Secure occupancy is put at risk through experiences of physical discomfort and associated psychological stress, due to being too hot or too cold, living in damp or draughty conditions, having insufficient natural light and fresh air, being exposed to unacceptable types and levels of noise and being unable to exclude unpleasant smells.

As shown in Table 31, there are many contributing factors to sensory comfort. These include the structure and performance of rented dwellings and buildings, which in all jurisdictions are the subject of building regulations applying to new rental housing, for example, insulation, noise proofing, ventilation and a range of other areas that affect sensory comfort for residents. However, these regulations may not apply to established housing, particularly if this is converted from owner occupation to rental. Further, sensory comfort is also affected by perceptions and behaviours of landlords, the residents themselves and other residents in the same building, as well as external factors that penetrate dwellings, such as noise generated by people in the neighbourhood, traffic noise and pollution. Sensory comfort has received rather less

attention in the housing research literature than housing quality and condition, although sensory comfort has been investigated in disciplines ranging from psychology to the health sciences (e.g. Easthope & Judd 2010; Howden-Chapman et al. 2009). In this section we discuss two aspects of sensory comfort that appear to be of particular importance to making a home: thermal comfort and noise.

Table 31: Dimensions of, and contributing factors to, sensory comfort for renter households

Sensory comfort	Contributing factors
Covers: → Temperature → Moisture → Light → Noise → Smells	Refers to: → Structure and performance of dwellings/building. → Housing management practices. → Perceptions and behaviours of household members. → Perceptions and behaviours of other residents.

8.2.1 Thermal comfort

There has been increasing attention in all the jurisdictions to environmental sustainability, energy efficiency and energy usage, largely as part of the wider debate about climate change but also in view of increasing evidence about the relationship between lack of thermal comfort and poor health, in particular respiratory illnesses (e.g. Howden-Chapman et al. 2009). A part of this debate has been the efficiency and cost of utilities, which, as we saw in Chapter 6, can add considerably to rental costs in some jurisdictions. In this section, we are interested in the ways in which these broader concerns have highlighted the issue of thermal comfort for renter households and consequent policies and regulatory approaches.

Most of the case study jurisdictions appear to have problems with levels of thermal comfort for households living in rental housing, with the primary concern being capacity to enjoy adequate levels of heating in what are generally colder climatic conditions than those in Australia. Whilst the situation has improved generally, several jurisdictions are attempting to improve rates of central heating and/or insulation (e.g. the Netherlands, Flanders, Ireland and Scotland). The main concern is the lower-cost private rental sector and some older social housing, both of which are occupied mainly by lower-income households. For example, in Austria, ground level and basement apartments in the private rented sector are the least popular as they are too cold. As a consequence, these properties are often occupied by (lower-income) migrants (Perl 2008).

Whilst in many parts of Australia, thermal comfort requires measures to cool rather than heat properties, there are areas of southern Australia where low ambient temperatures and inadequate heating and/or insulation mean that the premises are too cold for comfortable living in winter, and this may compromise secure occupancy, as highlighted by some of the Australian interviews discussed in Chapter 4. The issue has been addressed mainly through rolling programs in public housing and remains an issue in some private rental housing as identified in recent research for AHURI (Gabriel et al. 2010a, 2010b).

Regulatory approaches

The case study contributors reported a number of different regulatory approaches. Detailed prescription of performance standards in terms of heating or any other form of thermal comfort is quite unusual. The clearest example can be seen in New Jersey,

where regulations prescribe temperature levels for rental buildings with three or more units at different times of day and night. The landlord is responsible for supplying the required fuel or energy and maintaining the heating system in good condition so that it can provide the required amount of heat, and the regulations are enforceable by local building or health offices (Truth in Renting Act 2007).

Of growing importance is regulation that requires the energy performance of all dwellings, including rented dwellings, to be made explicit. In this way households can make an informed choice about likely thermal comfort and additional levels of expenditure associated with heating and using other appliances. This type of regulation has been introduced in the European jurisdictions in this study. A European Union directive requires that a Building Energy Rating be provided on the sale and leasing of all dwellings. Examples of responses to this directive from the case study reports include:

- In Germany, a so-called 'energy pass' for existing dwellings has been mandatory since 1 October 2007⁷⁰ when renting or leasing dwellings, as well as when sold. The pass needs to be shown to prospective tenants/buyers.
- In Ireland, new Building Regulations introduced in 2008 require Building Energy Rating be furnished on the letting and sale of all dwellings. This identifies the energy efficiency of the dwelling and will help the tenant to estimate the heating costs. As these regulations are relatively recent no information is available on the extent of landlord compliance.
- In Scotland, all properties being sold or rented have been required to have an Energy Performance Certificate (EPC) from January 2009. Landlords must provide prospective tenants with an EPC free of charge before letting the property.

In Australia, whilst there are energy efficiency ratings for new homes, there is as yet no scheme for established homes that are being rented. The ACT currently has Australia's only mandatory energy efficiency rating scheme for residential dwellings in respect of sale/purchase and is considering extending this to rental arrangements covered by the ACT Residential Tenancies Act 1997 so that tenants have the same information on energy efficiency available to them as home purchasers (ACT Planning and Land Authority 2009). Other state/territory governments are also planning similar schemes.

Financial incentives for landlords

Another means of improving thermal comfort is through provision of financial incentives to landlords to make improvements, such as installing insulation or more cost effective heating systems. A sticking point is that landlords incur the cost but may not be able to recoup this through the rent (see Gabriel et al. 2010a for further discussion). Some of the interviewees in the two Australian case studies discussed in Chapter 4 made this point quite strongly. The case studies revealed three main ways of addressing this issue:

- Setting rents that take into account the quality and condition of the property. This is the approach in the Netherlands, where the points based rents system includes features that address thermal comfort, in particular, central heating and insulation. Thus, social and other landlords who invest in measures to improve thermal performance will be able to recoup some of the cost through additional rents.
- Taxation incentives. The Belgian Federal Government uses the tax system to promote energy efficiency in housing, introducing a tax reduction for renovation

⁷⁰ See Unabhängige Energieberatung (2010).

expenditures where private dwellings are rented at a regulated price through Social Rental Agencies, as discussed in Chapter 6.

- Provision of direct subsidies. In Austria energy efficiency is a high priority of the federal and state (*Länder*) governments. From 2009, subsidies given to rental housing providers for oil-based heating systems are being phased out and replaced by significant subsidies for installation of eco-innovative heating and hot water systems and a greater use of renewable forms of energy. Subsidies for energy efficiency programs are tied programs, unlike most other payments from the Federal Government to the *Länder*, which are now untied (Lawson, CS Austria).⁷¹

Behavioural change by tenants driven by user costs of energy plus some targeted assistance

A rather different approach is to try and drive behavioural change by tenants through making them fully responsible for their energy costs. Once multi-unit buildings that have had common hot water and heating systems are separately metered, energy costs can become the responsibility of the individual household, as has been done in Ontario and the Netherlands. In the Netherlands, this has led to reduced consumption amongst tenants amidst rising cost of gas and electricity (Straub & Vijverberg 2004 cited in Lawson, CS the Netherlands).

This type of approach can also be seen in Australia. It can change behaviours, but does not in itself address issues of dwelling and building performance that affect thermal comfort, unless accompanied by other measures. Indeed, there is a risk that shifting utility costs to tenants may mean that there is less incentive for landlords to incur the capital expenditure to participate in rehabilitation energy retrofit programs (Pomeroy, CS).

It should also be noted that some jurisdictions recognise that cost shifting to households in respect of thermal comfort can have quite adverse effects on lower-income households, sometimes referred to as 'fuel poverty'. Some jurisdictions have specific means of financial assistance for lower-income households that recognise this. For example, since 2009, German heating costs are subsidised within the housing allowance scheme. In New Jersey, the Home Energy Assistance Program helps very low-income residents with their heating and cooling bills and makes provisions for emergency heating system services and emergency fuel assistance.

8.2.2 Noise

Noise experienced in and around the home can be an important issue for many households whether they occupy their dwelling on an ownership or rental basis, for example, noise from neighbours and traffic. It may be more of an issue for renter households who have significantly less control over aspects of dwelling and building performance (e.g. level of insulation), are more likely to live in multi-unit developments where neighbours may be in close proximity, and experience issues of noise in common areas such as stairwells and lifts; and since rental dwellings are concentrated mainly in urban areas, external noise may also be an issue (e.g. traffic).

If we examine the three countries with the largest rental sectors, Germany, the Netherlands and Austria, we see a variety of approaches:

⁷¹ Tied subsidies are allocated for specific programs, whereas untied subsidies are transferred from one level of government to another as part of general funding arrangements.

- In Germany, too much noise is considered to be a deficiency of the dwelling (Deutscher Mieterbund 2010a), whether this refers to construction noise in the building, surrounding, or noise by neighbours (e.g. taking a shower, having noisy children, or practicing an instrument). The tenant must report the deficiency to the landlord who has an obligation to mediate. If the tenant has proof of the deficiency (and has reported it to the landlord), they can pay a lower rent as long as the deficiency continues. In addition, and similar to other jurisdictions, there are rules applying to particular buildings or complexes. The tenants' umbrella organisation (*Deutscher Mieterbund*) has standard house rules that accompany a standard lease (Deutscher Mieterbund 2010c). These include a rule that the noise levels need to be 'normal' at given times and cover situations such as giving a party and restrictions of children playing in some common areas (Haffner, CS).
- In the Netherlands, where there are often compact living environments sometimes close to industrial and transport areas, measures to protect all residents (not just renters) from excessive noise have been an important element of regulation since the 1950s, with reforms introduced in 2006 to modernise standards. For example, the Netherlands is one of the few countries in the world to require acoustic protection between spaces within the same dwelling (Visscher and Meijder 2006). There are regulations governing noise levels in residential environments during different parts of the day, between dwellings in the same building and within zones of the same dwelling. Noise is a particular problem for households renting in multi-unit apartment buildings, especially where ceilings are inadequately insulated and the sound of upstairs movements is easily transmitted. If there is excessive noise, the approach taken in the Netherlands is to encourage good communication between residents, promoting agreements specifying simple modification to behaviour such as removal of shoes within the house and placement of felt under chair and table legs. Noise reduction also often involves the police, environmental inspection services, housing associations and health departments in order to promote good behaviour and measure and enforce acceptable noise levels. Typically, methods of education and mediation, rather than prosecution, are used (Berry et al. 2002 cited in Lawson, CS the Netherlands).
- In Austria, neighbourhood noise was a big issue up to the 1980s, but there have been improved standards of sound insulation in subsidised housing construction so this is now less of a problem, as tracked by a micro census that takes place every three years (Koster 2007 cited in Lawson, CS Austria). In Vienna, there has also been a concern with traffic noise and there has been a focus on reducing noise from railways and other forms of transport within urban and transport policies as well as in conditions of housing subsidy (Vienna Environmental Report, 2007). Vienna is now considered to have very strong standards for reduction of noise relative to other European countries (Rasmussen 2010 cited in Lawson, CS Austria).

In most of the other jurisdictions (with small and medium rental sectors), noise is seen more narrowly in terms of the behaviour of residents, rather than building performance and/or an issue of urban/environmental planning and development. There are general provisions for noise nuisance in residential environment, for example in Ireland, where new noise nuisance regulations were introduced in 2006 for all tenures, and in Ontario where city bye-laws deal with issues of noise. In addition, residential tenancies legislation covers noise, and there are specific provisions in tenancy agreements about 'quiet enjoyment' in most jurisdictions. Dealing with noise issues is also seen as an issue of housing management, for example, the 'house rules' for rental apartment buildings in Flanders deal with noise. Finally noise may be seen, as in Australia, as a manifestation of anti-social behaviour and regarded as a breach of the tenancy agreement and may lead to legal action. This is also the case in Scotland, but in

recent years, social landlords increasingly used techniques such as mediation and acceptable behaviour contracts, as well as new legal powers including Anti-social Behaviour Orders (DTZ and Heriot-Watt University 2007; Pawson, CS).

8.3 Autonomy in making a home

Much of the housing research literature equates autonomy with ownership of the dwelling rather than occupancy. As a number of authors have pointed out, particularly in the Anglophone countries, the ideology of home ownership is such that ideas about ownership are seen as inseparable from ideas about home (e.g. Dupuis & Thorns 1998; Mallet 2004; Ronald 2008). This ideology informs socio-cultural norms about renting, almost by default, such that questions are rarely asked about how households make a home in rental accommodation and the effects of involuntary loss of home. It is also embedded in the legislative context, in which home as a psycho-social construct is often not recognised in a legal context, such that the claims of landlords for possession of properties ('recover their asset') take precedence over the claims of households to continue to occupy their housing ('keep their home') (Fox 2002).

The literature on the meaning of home points to the importance of autonomy in the making of home, referring to the ability of households to have some control over how they live. This may well vary in a continuum from expectations of home as a convenient place to sleep, eat and store possessions to a deep emotional attachment to home. In the latter context, home may be a place in which household members can have intimate relationships, welcome family and friends, store and display treasured possessions, and personalise the dwelling for their particular requirements, for example, through redecoration or minor improvements. Whatever their expectations, making a home also refers to a base from which household members can engage in the routines of daily life, ranging from having a pet to having relatives and friends over to stay. The literature also recognises that for some household members, home may also be a site of work and, in some cases, a place where they experience abuse and violence, which is hidden from public view (e.g. Hunt 1989; Munro & Madigan 1993).

Similarly, issues associated with involuntary loss of home are often recognised only in the case of homeowners who have to vacate involuntarily (e.g. due to default on their mortgage contract). Owner households in this situation (usually described as 'losing their home') have been found to experience sadness, grief, anxiety and lack of security, which along with the change in their material circumstances contribute to a decrease in emotional and physical health (e.g. Ford et al. 2001). There is, however, very little research into the emotional as opposed to the material consequences of loss of home for households who rent and are required to vacate either due to a breach of their tenancy agreement or because the landlord requires the property for some reason. This perhaps reflects cultural norms that equate emotional attachment to home only with ownership.

We sought to explore how policy and legislation/regulation address aspects of autonomy that are likely to be of importance to households living in rental housing. We start by examining Germany, which, as we have seen, has the largest rental sector of all the jurisdictions. Indeed, the majority of households in Germany rent their housing from private landlords of different types, as discussed in Chapter 5, so renting can be regarded as mainstream and often long-term. As reported by the German peak tenants' organisation, *Deutscher Mieterbund*, whilst tenancy leases outline the basic framework within which tenants can exercise autonomy, there have been a number of significant challenges through the highest federal court (*Bundesgerichtshof*) and other courts about restrictions on home making. These include:

→ Small animals are always allowed in rental dwellings.

- A buggy and wheel chair may be stored in the hallway if there is no other option and the hallway is big enough.
- Smoking, even excessively, is considered normal use of the dwelling.
- Taking a shower or a bath is allowed at every hour of the day.
- Playing of children is allowed, but children are not allowed to jump off beds and chairs or use roller skates. The landlord has to mediate if the noise of children is louder than normal.
- Playing an instrument is allowed and cannot be forbidden by the contract. There may be quiet times included in the contract.
- Making holes in the wall (e.g. to hang pictures) is considered normal usage (Durtscher Mieterbund 2010d; Haffner, CS).

The standard lease presented by *Deutscher Mieterbund* contains clauses about making a home and draws on these rulings. For example, renter households can keep small animals, although the landlord can refuse pets in some circumstances, when this goes against the interests of all tenants. In another example, if there is a garden, the tenant is entitled to use this and the tenancy agreement will specify responsibilities for maintaining the garden. Further, the lease may also contain provisions for compensation for improvements made by the tenant. If the landlord does not do any modernisation, the tenant will be able to do that himself, but a modernisation agreement with the landlord is required to enable them to recoup (depreciated) investments when moving out (Haffner, CS). This suggests that, in practice, key aspects of autonomy are affected by tenancy agreements that attempt to specify the rights and responsibilities of owners/landlords and tenants. The German case identifies the range of issues around daily living and making a home that are likely to be of importance to households, namely:

- Pet ownership.
- Personalising the accommodation (cosmetic improvements such as painting, hanging pictures, changing floor coverings) and treatment of these improvements when the unit is vacated.
- Use of dwellings in multi-unit developments, e.g. use of stairwells, prohibition of laundry on private balconies.
- Use of common areas in multi-unit developments, e.g. parking.
- Use of garden/yard (where applicable) and responsibilities for garden upkeep and maintenance.
- Leaving properties unoccupied for periods of time.

The issue of pet ownership perhaps best illustrates some of the issues involved. Households may want to have pets as they establish a home, or already have family pets before the move into a rented dwelling. They may have a strong emotional attachment to their pet(s) as 'part of the family'. Landlords are typically concerned about the risk of additional wear and tear and damage to property as well as complaints from neighbours. Neighbours may also have an interest in the issue, particularly in multi-unit developments. Whilst we do not have comparable data for all jurisdictions, there are some interesting examples of different approaches:

- In New Jersey, the Truth in Renting Act 2007 does not provide a right to have pets, but protects existing renters with pets when landlords change their position on the acceptability of pets. However, a landlord can prohibit the housing of any replacement or additional pets that those tenants may acquire in the future. The

Act also outlines responsibilities for tenants to maintain control of their pets and obey any lease requirements regarding the care and control of a pet's behaviour. In practice, landlords often support 'pet friendliness' and usually charge a fee depending on the number of pets. They may also limit the number, type and size of pets that are acceptable (Gilderbloom et al. CS).

- In Ontario, a lease clause prohibiting pets would be unlawful under the Human Rights Code. However, it appears that, in practice, policies on pets vary between landlords, who often prohibit or discourage pets in multi-unit apartments (Pomeroy, CS).

In other jurisdictions, it appears that regulation of keeping pets is a matter for lease agreements and practice varies between types of landlords and even individual landlords. For example, in Ireland, leases for local authority housing commonly prohibit some types of pets (e.g. dangerous dogs and pigeons) (Norris, CS). The Australian case studies identified issues about pet ownership, including some positive means of trying to balance the interests of tenants and landlords, such as 'pet references' and 'pet bonds', as discussed in Chapter 4.

Another aspect of autonomy in making a home is the ability to personalise a dwelling. In most of the jurisdictions, the lease agreement appears to be the main means of attempting to balance autonomy for individual households with the asset management concerns of landlords. The main approaches seem to be:

- In jurisdictions with larger social rental sectors, and where longer-term tenancies are the norm, it is common for tenants to make minor alterations to a dwelling to adapt it to their particular needs. For example, in the Netherlands, tenants often install new floor coverings, curtains, paint the walls and make minor upgrades to the kitchen and laundry. However, major works, such as removing walls, can only be undertaken with the permission of the landlords. Legally the tenant must hand back the dwelling in the same state as when they moved in, but in practice most make an arrangement with the incoming tenant so that the improvements are retained. In the social housing sectors of Ireland and Scotland, tenants can make minor improvements with the consent of the landlords, such as hanging pictures, painting and changing floor coverings and, in the case of Scotland, can be compensated for improvements provided that these have been undertaken with landlord consent and add to the property's value.
- In jurisdictions where private rental is the predominant form of renting, tenant autonomy in making improvements appears more limited. For example, in New Jersey, tenants can make improvements if they are approved by the owners, but if not approved, or the improvements do not meet the landlord's standards, this can result in the loss of the security deposit, even if improvements increase the value of the rental unit (Truth in Renting Act 2007). In Ontario, most private landlords permit cosmetic improvements such as painting, provided that this is done in neutral colours and the landlord can require the tenant to repaint prior to vacation if the colours do not comply with this requirement.

In multi-unit rental buildings, there may be additional regulation that attempts to balance autonomy for individual households with living conditions for other residents. We have already seen how this applied in Germany, while in Flanders tenants' associations adopt house rules that are enforceable by municipalities. These may affect the autonomy of individual households in redecorating external elements of the dwelling such as doorways, balconies and windows, in addition to rules around noise considered above (Lawson, CS Flanders).

In some jurisdictions, residents of social or subsidised housing also face additional provisions that can affect their autonomy in making a home. These are compliance

provisions associated with the receipt of housing assistance, which may affect aspects of living such as the ability to have family members and other people stay with them or the ability to go away for a while, leaving the rental unit unoccupied. For example, in New Jersey, there are specific provisions for leases entered into by households in receipt of Housing Choice Vouchers and other forms of assistance. These entail both requirements (e.g. notification of household members including the birth of children and visitors other than short-term ones, and restrictions on leaving the unit unoccupied) and prohibitions on a variety of activities (ranging from sub-leasing to engaging in drug-related or violent criminal activity) (New Jersey Department of Community Affairs 2010). In Ontario, there is generally no requirement for a private tenant to remain in occupancy (as long as they pay the rent). However, a social housing tenant cannot leave their dwelling unoccupied for more than 60 consecutive days. If they do, they cease to qualify for a subsidy. Similarly, in Ireland, in the social housing sector, permission from the landlord is required to leave the unit empty for a long period, even if the rent is paid. The rationale for these conditions is typically to ensure effective targeting of government programs.

Finally, schemes that enable tenants to buy their property can also be seen as encouraging households to look after their property and to make a home. This is the case in the social rental sector where, in jurisdictions such as Austria, the Netherlands, Flanders, Scotland and Ireland, tenants are able to buy dwellings that they have been renting (albeit with some conditions). For example:

- In Austria, as we saw in Chapter 6, it is common for households to make an equity contribution towards their tenancy, with assistance of by way of a loan in the case of lower-income tenants. Where the contribution is more than €60 per square metre for a dwelling, the tenant has the right to purchase after 10 years (Lawson, CS Austria).
- In Ireland, households who have rented from local councils for more than three years have had the right to buy their dwellings in country areas since the 1930s and in cities and towns since 1966. They are able to buy at a discount to market price set at 3 per cent per annum to a maximum of 30 per cent discount after 10 years (Norris, CS).

It is important to note that while the right to buy schemes enable individual households to make a home they have also been strongly criticised as leading to a decline in social rental stock, particularly where the more desirable properties are sold to sitting tenants, thereby limiting the housing options of other lower-income households (e.g. Murie & Ousby 2009).

8.4 Summary

We know from prior research that having a safe, secure, comfortable and private base for daily activities and the ability to exercise some autonomy in making a home have important psycho-social benefits, and that there are psychological and health effects of loss of home. However, the focus of that research has been on homeowners and relatively little is known about the meaning of home for households who rent, or the effects of involuntary loss of home on those renters. This is of concern for renters generally and in particular where renting is the only option for lower-income households.

This chapter explored the framework for daily living and making a home in rental housing in international jurisdictions within different rental market contexts (as presented in Chapter 5) and different policy and legal contexts (as discussed in Chapters 5–7). More information is available on physical comfort than any of the other elements of home identified in the literature, since this relates to aspects of dwellings

and buildings, which are more easily observed and quantified than experiences of safety, privacy and autonomy which are subjective.

The case studies suggested that even where housing quality/amenity and condition is generally high, there are problems in respect of some older social housing and lower rent private housing. Whilst most jurisdictions have strategies to address the former, tackling the latter appears more problematic, particularly where there are many small-scale landlords who may be unwilling to invest in maintenance and/or improvements if they cannot get an immediate financial return. The jurisdictions have taken a range of approaches to this issue, including tying rents directly to an individualised assessment of quality and condition (the Netherlands), regulation of standards in the private rental sector (Ireland and Scotland), renovation and rehabilitation incentives (Ontario) and hybrid systems such as the combination of 'set aside' funds for maintenance/improvement together with limited rent increases and low cost loans to landlords in Austria.

This chapter highlights to what extent issues of daily living and making a home in rental housing are considered in different jurisdictions (either directly or indirectly as a consequence of other concerns such as climate change). It also indicates the large scope and variety of ways in which the range of issues embodied in living appropriately and making a home can potentially be considered and promoted for renters. These include a variety of approaches including strategic approaches (e.g. environmental noise), dwelling/building performance, regulation of landlord-tenant relations, financial incentives/subsidies to landlords and/or tenants, and housing management practices in relation to tenant behaviour. In general, the jurisdictions with larger social rental sectors are more likely to include a variety of approaches than those in which renting is predominantly private rental, where the focus is mainly on regulation and housing management practices in relation to tenant behaviours.

The example of Germany indicates, however, that even in a large private rental sector where long-term renting is the norm, aspects of daily living and tenant autonomy, such as pets, visitors and personalisation of dwellings, can be difficult to resolve and may be contested through the courts. This appears to reflect the sometimes conflicting interests of individual renter households, their neighbours and rental property owners/managers, particularly in multi-unit buildings.

9 RECENT POLICY DEVELOPMENTS AND INNOVATIONS

In Chapters 3–8 of this report, we have presented a detailed empirical analysis of the market, policy and legal frameworks that shape the nature of occupancy in rental housing in two Australian and eight international jurisdictions.

Applying the conceptualisation of secure occupancy that we have developed to a comparative analysis of rental housing systems shows that in any jurisdiction many factors operate together in complex and dynamic ways to determine the extent to which household expectations of, and needs for, reasonable levels of secure occupancy in rental housing are met. Recapping from the analysis so far, the extent to which secure occupancy is delivered at a broad level can be understood as the result of interactions in different socio-cultural contexts between market factors, policy and legislation/regulation, as summarised below.

Market factors

- The size, structure and composition of the rental market, which defines the role of renting in a system of housing provision and has consequential political, economic, social and cultural ramifications.
- Patterns of investment in, and ownership of, rental housing that affect the supply and price of rental housing.

Policy setting

- The nature and extent of subsidies (supply-side and demand-side and their interactions) that are channelled to the rental sector to help make appropriate housing more affordable to lower-income households.
- The extent and effectiveness of specific interventions that are designed to address the circumstances that may prevent more vulnerable households from forming a tenancy or put their existing tenancies at risk.

Legislation and regulation

- The legislative framework for landlord-tenant relations including the protection of the rights and interests of tenants to occupy their housing on terms that promote continuing occupancy in a safe and appropriate residential environment.
- Regulation of rents and rent increases that affect initial and ongoing affordability.
- Regulation of management arrangements that influence landlord-tenant relations, service quality, liveability and home-making.

In this chapter, we review the current policy context for considerations of secure occupancy in and across the countries studied and discuss innovative features of policy development in particular places that either directly or indirectly improve security of occupancy. The material presented draws on assessments made by the country experts, which has been supplemented by desktop research into some national or regional initiatives. Each expert was asked to:

- Assess the extent to which secure occupancy in rental housing, or some rental housing sectors, is a policy issue in the country/jurisdiction.
- Identify innovations that have been aimed at improving secure occupancy in rental housing, in particular for lower-income and vulnerable households.

- Indicate the main sources of ideas about innovation in the area of secure occupancy (e.g. tenants' groups, governments, property owners, consumer affairs, welfare agencies and researchers).

Section 9.1 provides an overview of the current policy context in each country. Section 9.2 describes innovative approaches to improving security of occupancy identified in the case studies and their genesis where this has been noted.

9.1 Current policy directions

In Australia, the recent focus on secure occupancy as a public policy issue has emerged from the increasing reliance being placed on private renting as the main option for lower-income households without urgent and complex needs, as well as debate about the appropriate duration of assistance for households with such needs who are allocated social housing. There are associated considerations of how to activate pathways out of social housing for current tenants who no longer need intensive assistance. It is these policy questions that generated interest in a comparative study of the framework for secure occupancy in rental housing in a cross section of other jurisdictions.

In this section, we consider the extent and focus of current policy interest in secure occupancy as a policy issue in the international case study jurisdictions. All the countries in this study seem to be facing issues associated with increasing numbers of lower-income and vulnerable households living in the private sector without some of the conditions for secure occupancy that traditionally apply in social housing. However, the starting point for addressing this issue is different in the Netherlands, Austria and Germany because there are long-standing laws giving tenants strong formal rights to secure occupancy and rents are regulated as a norm. The Netherlands and Austria have also built and retained comparatively large social housing sectors that provide a major component of secure and affordable rental housing. While Germany has relied more heavily on the housing market for rental housing provision, it also has retained a strong regulatory framework to directly influence access, rents and occupancy terms for renting households and, until recently, used investment incentives to drive a component of private investment into affordable rental housing. From a comparative perspective, tenants in each of these countries can generally be regarded as being well protected and having good access to affordable and appropriate rental housing. For the remaining jurisdictions in the study, expectations and norms about long-term secure renting have not been so strongly embedded in rental institutions and laws, and thus policy challenges of a similar kind to those in Australia have arisen. In this context, policy approaches in continental Europe that have traditionally linked government supply and demand subsidies, investment incentives and regulatory controls to specific tenant outcomes may be worthy of revisiting, as we will discuss further in Chapter 10.

Noting this general context, assessments made by the country experts of specific contemporary policy debates in each of jurisdictions are summarised briefly below.

Austria

Strong legal protection of tenants and regulation of rents is well established in Austria, alongside a tradition of subsidising rental housing supply. Social housing remains a mainstream housing option and accommodates low-income and middle-income households. It is widely viewed as a pathway for young households *en route* to home ownership and a tenure option to return to over the life course, if circumstances change (Deutsch & Lawson 2010).

Important policy issues addressed recently in Austria have concerned secure occupancy for tenants of buildings undergoing renovation and access to social housing by new Austrians. In relation to the first issue, the Housing Renovation Act was designed to enable improvements to older dwellings in both the private and social sectors without evicting tenants. The approach adopted involves giving existing tenants greater say in the improvement process, and rent setting and subsidy arrangements that are specifically designed to assist tenants to manage movements in rents associated with upgrading.

Provisions discriminating against migrants were removed from all social housing schemes in 2006, after pressure from the European Union, although some Austrian cities had long maintained more liberal allocation rules. However, stringent residency conditions governing social housing allocation (such as five-year residency) remain.

The high cost of entry into the private rental sector (brokerage fees and taxes) and into limited profit housing schemes that require equity contributions from tenants (noted in Chapter 6) are also the subject of current policy debate. Liberalisation of private rent setting in recent years has necessitated broadening of rent assistance as a form of assistance. However, Austria's use of rent assistance as an instrument to achieve affordability is more constrained than in most other jurisdictions represented in this study (Lawson, CS Austria). Having lower outlays for rent assistance has been linked to the ongoing promotion of adequate housing supply as a means of dampening house price inflation (Deutsch & Lawson 2010).

Flanders, Belgium

Improving security of occupancy appears to be a vexed issue in Flanders. Attempts dating from the 1990s to improve security of occupancy through the use of long-term contracts have been undermined by the widespread practice of landlords offering short-term contracts, which were intended to be exceptional not standard. This unintended outcome has been attributed to the scarcity of rental housing overall, the influence of professional agents and the lack of knowledge among tenants of their right to negotiate a longer-term contract (de Decker 2001).

Social rental tenancies have become less secure in Flanders also, with the introduction of a two-year trial period before confirmation of nine-year contracts. Recent changes to social housing policy may also impact adversely on non-citizens and immigrants, as language skills and participation in citizenship courses are prerequisites for retaining social housing.

Flanders continues to attempt to adjust its policy and legal settings to help strengthen security of occupancy. For example, housing allowances have been introduced, although take up so far has been low. Problems in the quality of private rental stock are being tackled by increasingly stringent inspection and enforcement powers. There are also new provisions that discourage the landlord from ending tenancies in order to increase rents (see Section 9.2.3). Finally, there is currently a drive to increase the supply of social housing by 2020 (Lawson, CS Flanders).

Germany

With large numbers and a greater share of households renting than any other jurisdiction in this study, Germany's approach to rental occupancy is well developed and tenancy laws and constitutional provisions offer strong protection to tenants as a norm, even though 93 per cent of tenants reside in privately owned housing. Tenants' interests are also well represented by the tenant umbrella organisation, *Deutscher Mieterbund*, which includes as members over 320 local tenants associations. The

main attention to this issue currently concerns plans for a range of legislative amendments that will make it easier for landlords to deal with tenancy issues—such as having shorter notice periods for eviction and similar notice periods for both parties for contract termination, and by landlords becoming recipients of directly debited rent payments for income support beneficiaries. According to Haffner (CS), the general orientation of the proposed set of changes is to adjust the balance between the economic interests of landlords and the needs and rights of tenants somewhat more in favour of the former.

Ireland

In Ireland concerns about secure occupancy, particularly in the private rental sector, received considerable attention from policy makers and tenants organisations from the late 1990s in the context of the prevailing poor protection of tenants and a booming housing market. There were also concerns about the value for money of rent supplement supporting private renting compared to mainstream social housing, which encouraged the Irish Government to address the lack of security of tenure of rent supplement claimants. This set of considerations culminated in the new Residential Tenancies Act in 2004 (see Section 7.1) and initiatives to secure better quality housing for long-term claimants of rent assistance (see Section 9.2.1).

The main debate related to tenant security in the social sector has been concerned with the impact of anti-social behaviour laws (enacted in 1997) on tenants. Advocates from the legal sector and community groups have been critical of the potential of these measures to be abused, their discriminatory application in social housing, their alleged breach of human rights conventions and their contribution to homelessness, and have mounted some successful court challenges. In practice however, there are few evictions on these grounds. There is an ongoing debate on the right to housing in Ireland. This is centred on the state's duty to house homeless people, but not on security of occupancy *per se* (Norris, CS).

New Jersey, the US

While our report is centrally concerned with security of occupancy for households renting, the current policy focus in the US is a reminder that there can be circumstances where homebuyers may face systemic risks of losing their home, with knock on effects in the rental sector. Recent policy deliberations in the US have been mostly concerned with historically high rates of mortgage foreclosures that have resulted from the sub-prime mortgage crisis and the collapse of house prices in many parts of that country, putting many homeowners in a negative equity position. Movements to promote the rights of renters have declined dramatically since the 1970s when tenancy protection laws were passed in many states, including the New Jersey Truth in Renting Act of 1976. According to Gilderbloom et al. (CS) successive governments since that period have tried to weaken tenancy laws, especially rent control provisions.

Ontario, Canada

Pomeroy argues that Canada, and especially Ontario, has benefitted from over four decades of community driven effort to establish and enshrine tenant rights in legislation and subsequently to actively pursue the enforcement of these rights. Landmark cases have clearly established tenant rights and most landlords (many of whom are companies) are very aware of what is legal and when they risk an appeal to the Landlord and Tenant Board for discriminatory practice. As a result, Canada/Ontario can be characterised as having a relatively mature and strong system

of tenant protection, which forms a key component of security of occupancy. However, the critical outstanding issue in Canada/Ontario is the limited size of the social rental sector and ongoing erosion in the number and availability of lower rent dwellings to meet the needs of the lower-income population (Pomeroy, CS).

Scotland

The major ongoing concern of consumer advocacy groups in Scotland is with the very limited security that is available to most private tenants. In the context of greater utilisation of the private rental sector by low-income households and the use of private rentals by local authorities to discharge their statutory duty to homeless people, there are calls from organisations, such as Shelter Scotland, for reforms that would encourage longer-term rentals, perhaps along the lines of the post 2004 Irish model. In 2010, a special measure has been put in place to facilitate the use of private tenancies for households found to be homeless by local authorities as an additional means for these agencies to discharge their responsibilities to the homeless. These tenancies will involve a tenancy of at least 12 months (rather than the standard six months) where agreed by a landlord. While an applicant will retain the right to reject such an offer (e.g. to 'hold out' for a social tenancy), housing advocacy groups have criticised the move as a retrograde step (Pawson, CS).

As noted earlier in this report, Scotland has a devolved government that is part of a quasi-federal system. It is of relevance, therefore, that in neighbouring England, there has been debate for some years about introducing fixed-term tenancies in social housing (along similar lines to the reform introduced in NSW in 2005) and in November 2010 the newly elected coalition government in the UK announced that reforms to tenancy terms in England will proceed (CLG 2010). So far Scotland has not moved to consider having more flexible tenancy terms in social housing, although there may be flow on effects from the major cutbacks to national funding for housing supply and housing benefit announced by the UK Government in October 2010. According to Pawson (CS), the policy direction in Scotland until now has been more towards a rights-based framework, as indicated by the broadening of local authority responsibilities on homelessness under the Housing (Scotland) Act 2001.

The Netherlands

Over the last decade there have been repeated moves to reduce the cap below which rents are regulated in the Netherlands (currently covering 95 per cent of rental properties) with the aims of liberalising a greater proportion of the rental stock and encouraging private investment. There has also been a long-term interest in promoting a better match between household incomes and rents paid, to help to reduce the incidence of higher income households occupying cheaper rental stock, a debate that resonates in the Australian context (Wulff et al. 2009). Recently, concern about the cost of rental assistance has intensified, amidst austerity measures and government deficits. However, political difficulties faced by coalition governments in the Netherlands have prevented reform in these strongly contested areas. A new conservative coalition government, which was formed in October 2010, aims to proceed with reform in these areas. In this context, the main threat to secure occupancy in the Netherlands seems to be coming from policy directions that could contribute to rising rents and reduced subsidies and, hence, less market power for consumers. A sharp rise in evictions linked to rent arrears has been noted by the *Woonbond* (Tenants Union) in recent years. However more active debt recovery strategies by housing associations have also reduced arrears and thus the basis for eviction (Lawson, CS the Netherlands).

9.2 Innovative policy and practice

As explained above, the innovative policy and practice included in this section comprises of initiatives that the case study informants have judged to be of international interest because of their ground breaking character, the learning that they have generated and their potential to be adopted more widely. Some of the innovations included are large-scale and national while others are smaller-scale and locally derived. While they offer a wide variety of examples, they are not intended to provide a comprehensive record of policy ideas. For presentation purposes, they have been grouped into broad areas of policy and practice according to our assessment of their primary intent. However, many of the types of initiatives, such as hybrid tenures and tenancy sustainment programs, have multiple goals and may impact on security of occupancy in a variety of ways. The grouping of innovations we use in the section is as follows:

- Hybrid tenures—forms of tenure where the governance and control varies in ways that may help to reduce conflicts between property owners and residents and thereby improve prospects for more secure occupancy.
- Tenancy support and eviction assistance programs—policy initiatives targeted at improving the establishment and success of tenancies, especially for vulnerable households and those with a history of exclusion from the rental market, such as long-term homeless people.
- Rent adjustments—robust approaches to maintaining rent levels that are affordable, while protecting the economic interests of landlords.
- Information, education and advocacy—efforts to build better practice in rental management and adjudication of tenancy disputes, to safeguard tenants and protect their rights. This section is split into two parts: landlord monitoring and education, and tenant-oriented information and advice.
- Housing rights movements—community and tenant led moves to build wider acceptance of tenants' rights to decent, secure and affordable housing and to overcome discriminatory barriers in rental housing.
- Enhancements to living environment—innovations that are designed to improve housing conditions and thereby help to promote tenant satisfaction and stability.

9.2.1 *Hybrid tenures*

As shown in the comparative analysis in Chapter 5, ownership and management of rental housing can be organised in different ways that have the potential to alter the degree of control that a resident can achieve over their housing. There has been a growing trend in many countries to promote innovative arrangements for ownership and management of rental housing as a means of creating the conditions for greater resident control and responsibility, among other aims. Such hybrid tenure models include:

- Forms of collective ownership such as housing cooperatives⁷² and community land trusts.
- Shared equity and shared ownership schemes⁷³ where residents contribute equity to their dwelling in return for having greater day to day control of their housing

⁷² Housing cooperatives are classified differently—as private rental, social rental or a form of shared home ownership—in the jurisdictions covered in this report.

⁷³ The UK has been at the forefront of shared ownership models—see Pinnegar et al. (2008) for more information.

(along with other benefits akin to those of home ownership, such as a share of any capital appreciation).

- Head leasing schemes that operate under an intermediary that has the power to control tenancy allocations and to offer a range of financial and non-financial supports to establish and sustain tenancies and other forms of regulated private market provision.

Models such as these may be designed to provide an alternative to mainstream social or private renting for very low-income and vulnerable households, or they may represent another option for households generally, as indicated in the specific examples below.

Rental housing cooperatives, Germany

In Germany, housing cooperatives have developed as important providers of rental housing accounting for around 9 per cent of the rental sector and accommodating over 2 million households (Haffner, CS). Residents of cooperatives buy a share in the cooperative, which typically amounts to 1 per cent of the building value and this investment is traded for lower-than-market rents. Residents are also encouraged to save and build up their equity (Haffner et al. 2009a). The model helps to overcome any conflict of interest between the occupant and the owner. In the last decade, the German Government has been promoting cooperative housing as a third pillar of the housing system. There are, however, no special subsidies for tenant cooperatives other than the ability to apply for temporary bricks and mortar subsidies, as for any other owner, and exemption from corporation tax (which was withdrawn from other not-for-profit providers). According to Haffner (CS), tenant cooperatives are increasingly being regarded as a model for improving neighbourhood cohesion and the position of vulnerable households in Germany. For instance, they may be incorporated into urban renewal sites to promote social stability and prevent unnecessary dislocation of existing residents. The elderly (including those needing care) and households with children are examples of beneficiaries.

Limited equity ownership, Ontario Canada

Limited equity affordable home ownership schemes are another example of an intermediate or hybrid tenure that seeks to expand the availability of affordable housing as a way to help address a key issue in security of occupancy—the insufficient volume of affordable options. An example of this model taken from the case studies is the Not-for-Profit Condo in Canada, which is a new tenure arrangement sponsored by The Centretown Affordable Housing Development Corporation (CAHDCO), a subsidiary of a mid-size non-profit provider in Ottawa. They have created a non-profit ownership option for modest income residents who would otherwise rent. The key to the project's affordability is modest design and low developer profit, as well as cross subsidisation from profits on the sale of market housing included in the development. Under this model, owner-occupiers forego much of the appreciation in value of their property, retaining only their original purchase price plus any increase or decrease in the housing component of the CPI during the time they have owned their home. The subsequent qualified purchaser then buys at the revised price, which is still significantly discounted against market value. Occupiers pay the financing costs, taxes, utilities and a monthly fee for a share of common expenses. During occupancy these owners enjoy security of occupancy similar to any homeowner. The program sponsor (CAHDCO) is not involved in the management of the housing, but retains control of resale to ensure long-term affordability and they have an option to buy back the unit (Pomeroy, CS).

Community Land Trusts, United States

A similar approach to providing a mechanism for expanding and preserving the stock of affordable housing is via the community land trust model, which is most well developed in the US (Stone 2006). Community Land Trusts (CLTs) are non-profit, community-based organisations that acquire land and lease it to resident members, who raise their own finance to build their houses. They retain ownership of land to ensure that housing remains affordable and the lease contract incorporates a resale requirement, which is intended to balance the interests of present homeowners (for example, family succession rights and equity gain), with the long-term goals to provide affordable housing for future homeowners. There is a strong level of resident involvement in the governance of CLTs, which includes responsibility for qualifying residents for housing, providing support and training to enable their continuing residency, ensuring property maintenance is kept up and managing resales to support continuing affordability and targeting of housing (Greenstein & Sungu-Eryilmaz 2005).

Head leasing schemes, Flanders and Ireland

Head leasing schemes offer a way of mediating tenancy conditions for low-income and vulnerable households, particularly in the context of a limited supply of social housing. Head leasing schemes can be differentiated from rental brokerage and tenancy guarantee schemes (discussed in Chapter 3) because they use a social agency to manage the rental dwelling on an ongoing basis. NSW was one of the first jurisdictions in the world to initiate a head leasing scheme in 1982. Under that scheme not-for-profit housing organisations were funded to lease private rental housing for sub-letting to clients of the social housing system. The scheme had a number of objectives, one of which was to expand the immediate supply of housing for low-income clients under terms that were as close to the conditions of public housing as possible (Milligan et al. 1985). Those terms included income-related rents, providing appropriate management and personal support to tenants and offering security of housing assistance.⁷⁴

Flanders and Ireland have adopted broadly similar head leasing schemes more recently. In Flanders, an additional source of dwellings for not-for-profit housing agencies (known as Social Rental Agencies⁷⁵) is housing that is head leased from private landlords and sub-let to vulnerable tenants, using a points-based allocation system. About 10 per cent of private rental dwellings in Flanders are allocated and managed in this way (Lawson, CS Flanders). Property owners have reduced management tasks and receive a guaranteed level of rental income in return for providing reasonable periods of leasing of their properties by the intermediary. The intermediary is assisted with their operating costs by the Flemish Government. Owners with a net income under €50 000, who have let to a Social Rental Agency for at least nine years, may also apply for renovation subsidies from the Flemish Government (Haffner et al. 2009a).

In Ireland, since 2006 local authorities (municipalities) have been head leasing dwellings from private landlords to house long-term (18 months or longer) claimants of rent supplement as a means of targeting vulnerable private renters and improving their housing conditions. Legislation passed in 2009 affords those long-term claimants living in head leased housing the same legal status as mainstream social housing

⁷⁴ As individual dwellings head leased were subject to general provisions for termination in NSW (see Chapter 3), security of tenure could not be guaranteed. However, the head leasing agency was responsible for rehousing tenants when a head lease ended.

⁷⁵ There are over 40 registered Social Rental Agencies in Flanders accredited by the Flemish government.

tenants (Norris, CS). In effect this means that public or private tenants can be treated similarly and private ownership of the dwelling becomes a less influential factor in determining occupancy rights.

Some useful lessons arise from early evidence about the implementation of this arrangement (known as the Rental Accommodation Scheme (RAS)), which has proved much more challenging than was originally envisaged (Norris and Coates, 2010). Landlords proved unwilling to participate in the scheme because it aimed to achieve cost savings for government by paying landlords a below market rent for their properties (on the grounds that the scheme would provide them with guaranteed income over the long-term). In addition, many dwellings occupied by rent supplement claimants were found to be substandard and local authority inspectors took the view that they were unsuitable for inclusion in RAS. However, despite slow progress and higher than envisaged implementation costs, the scheme has significantly improved the secure occupancy of rent supplement tenants (who now enjoy secure occupancy for the duration of the lease, which is generally 10 years) and it has also been effective in addressing the longstanding problems of poor quality accommodation available to rent supplement claimants (Norris, CS).

As discussed in Chapter 5, in 2009, in the aftermath of the global financial crisis and in the context of an oversupply of housing, the Irish Government announced that for the foreseeable future it would acquire all social rented dwellings via long-term leasing of vacant dwellings from the private sector, rather than through purchase or construction. While it is too early to assess the impacts of this decision, it appears that it is intended as a fiscal austerity measure rather than a measure to alter the tenancy conditions of social tenants.

Schemes that promote private investment in socially oriented rental housing, Germany, the United States and Austria

As an alternative to head leasing by social housing providers, there is a family of schemes that aligns private investment in rental housing with social goals. Among our selection of countries, Germany has had a long-standing privately owned and publicly subsidised rental sub-sector that demonstrates how this model operates (see Chapter 5). Australia's recent NRAS initiative described in Chapter 3 is another example of this type of scheme.

Perhaps the most significant continuing scheme is the LIHTC program in the US. Commencing in 1986 and made permanent by Congress in 1993, the LIHTC program is the largest initiative to provide additional affordable rental housing in the US and is backed by a broad coalition of for-profit and non-profit developers, banks, business leaders, equity investors and consultants (Gilmour & Milligan 2008).

Under the scheme, business tax credits can be used for building or rehabilitating long-term affordable rental housing. Tax benefits only flow to investors if the scheme remains compliant for 30 years (and longer in some states) with rules set when the tax credits were allocated, for example, the proportion of tenants on or below particular income levels. Applicants for tax credits need to provide at least 20 per cent of units for tenants earning less than 50 per cent of the area median income or, alternatively, a minimum 40 per cent of units for tenants earning less than 60 per cent of the area median income. Only units occupied initially by eligible tenants attract tax credits. Rents are set at 30 per cent of either 50 or 60 per cent the area median income (depending on the target income groups in the scheme). Affordability typically does not reach very low-income households unless other subsidies (such as Section 8 Vouchers or additional soft loans from state or local government sources) are also included in the financing structure of projects. However, developers normally target a

range of different income groups as residents and fierce competition for the allocation of tax credits helps decision makers (in state governments) to optimise social outcomes. Tenants can remain in occupation until their income reaches 140 per cent of area median income, but there is flexibility for property managers who may allow the tenant to stay longer provided that the entire scheme is compliant with targeting requirements (Gilmour & Milligan 2008).

The LIHTC has generated an industry of specialised private and not-for-profit developers and managers. Between 1986 and 2005, it helped to fund 1.53 million units of affordable housing in 27 410 schemes across the US (Gilmour & Milligan 2008). The scheme has remained resilient over a long period and, although a significant downturn in investment occurred following the global financial crisis, investment is picking up again in many housing sub-markets (Joint Center for Housing Studies of Harvard University 2010).

The Austrian approach to channelling private investment towards affordable rental housing, in the context of declining public funds, was investigated in Lawson et al. (2010). This report compared six national mechanisms for channelling private finance towards affordable rental housing. In a contributing case study report, Deutsch and Lawson (2010) confirmed that the Austrian model of using Housing Construction Convertible Bonds (HCCB) was both efficient and well targeted. HCCB have been available in the Austrian market since the 1990s. There are an estimated 300 000 HCC bond holders. Bonds are sold by five competing banks and have generated around €15 billion (\$20.5 billion) in funds, accounting for more than 40 per cent of investment in new affordable rental housing in Austria. Based on multi-stakeholder evaluation, HCCB were found to be popular amongst investors, both efficient for banks and cost effective for the public sector and, most importantly, able to raise substantial amounts of low cost funds that could be targeted to the affordable housing sector to meet demand. Austria's experience demonstrates the success of co-financing approaches—combining public grants and loans and a long-term, low risk tax privileged private investment instrument—to attract and channel funds towards approved rental housing developments by a well-regulated sector of limited profit providers.

9.2.2 Tenancy support and eviction assistance programs

Legal protections for tenants notwithstanding, vulnerable households are perennially at risk of losing their housing. In response, a strong trend in the development of housing policy in many countries has been introduction of tenancy support programs that aim to help vulnerable tenants to establish and/or sustain a tenancy. In many places, programs directed to helping tenants have emerged as one part of a broader strategy to address homelessness using preventative measures and early intervention. For example, a number of the initiatives of this kind in NSW and Victoria (described in Chapter 3) are funded under homelessness prevention strategies. In this context, tenancy support programs are generally designed either to avoid eviction and prevent entry into homelessness or to support tenants who have difficulties establishing a tenancy because of a history of homelessness and lack of experience renting (Flatau et al. 2009).

While tenancy support programs of this kind have mainly begun in the social rented sector, they are also progressively being directed to private tenants. Comparing approaches across the case studies highlights some trends. First, programs of this kind are increasingly being designed as an integrated package of financial and non-financial measures aimed at resolving a household's immediate housing problem and assisting them to develop a plan for preventing future housing instability. Second,

there are a variety of agencies involved in these programs across and within countries, including municipal, not-for-profit and private agencies and dedicated service agencies.

Examples of an array of approaches that are being used to help establish and support tenancies and prevent evictions are highlighted below.

Rent Bank Program, Ontario⁷⁶

In Ontario following from an initial pilot rent bank program in Toronto (1998–2001), the Provincial Government established and funded a province-wide program in 2001. The Provincial Rent Bank Program is administered by the province's 47 Municipal Service Managers, although in most municipalities the daily activities are contracted to community-based organisations. Tenants facing eviction for non-payment of rent can apply to the local Rent Bank to receive financial assistance. If a tenant's application is approved, the outstanding rent is paid directly to the landlord on behalf of the tenant.

Under general provincial guidelines, each locality defines the criteria for eligibility as well as maximum levels of assistance. The program allows assistance to be provided either in the form of a grant or interest free loan and most municipalities have adopted the latter so that the fund becomes a revolving source of assistance.

Typically, a tenant may access up to two months of rental arrears from a Rent Bank. A tenant can apply for assistance only once every two years. However, where assistance is provided as a loan and the tenants pay back their loan sooner than the two-year period, the municipality may allow them to re-apply for assistance under the program.

Under an expansion of Rent Bank's role, an Emergency Rental Deposit Loan Program provides an interest-free repayable loan for one month's rent deposit to households where changes in their economic situation necessitate a move to more affordable housing. A separate companion program exists to help tenants also facing a challenge with payment of utility bills.

Identification of at risk households and use of mechanisms such as provincially funded rent bank programs to avoid arrears and evictions are being adopted across more municipalities in Canada, although, as always, staffing resources are limited and the rent bank can only provide short-term assistance, while the insufficient availability of affordable housing continues to impede municipalities in facilitating placement of at risk and homeless individuals and families (Pomeroy, CS).

Glasgow Housing Association Tenancy Sustainment Strategy and Action Plan, Scotland

In Scotland the need for an active 'tenancy sustainment' strategy is increasingly being recognised by social landlords. One of the most ambitious is that developed by Glasgow Housing Association (GHA) in response to research demonstrating that one quarter of all new tenancies terminated within 12 months, an unusually high rate in the UK context (GHA 2007; Pawson & Munro 2010). Research on factors associated with terminations by tenants of GHA in 2003 showed the main risk factors were: dissatisfaction with the location or condition of their home, experiences of anti-social behaviour or harassment, debt problems, lack of support (for vulnerable tenants) and lack of furniture and amenities (GHA 2007). The GHA tenancy sustainment strategy is designed to respond to all of these factors. Actions cover provision of more property

⁷⁶ Information on this program was taken from Pomeroy, CS. For more information see Ontario Ministry of Municipal Affairs and Housing (2010).

choice, ensuring better condition of properties at letting, providing more furniture options, better assessment of tenant support needs and giving tenants easier access to financial advice.

This model and the research that underpinned it highlights the importance of understanding the variety and complexity of factors that may contribute to tenancy breakdown, even when social housing that is considered affordable and secure is offered. In the Glasgow case, ineffective management, individual tenant vulnerability and inappropriate housing allocations had all been significant in undermining tenant security (Pawson & Munro 2010).

Centre for Secure Tenancy, Austria

In Austria, a dedicated not-for-profit organisation, the Centre for Secure Tenancy (FAWOS), was established in Vienna in 1996 to provide rapid and efficient help to persons facing eviction from social housing or private accommodation, with the overall aim of preventing homelessness. FAWOS was instrumental in lobbying for an amendment to Austrian tenancy law to require notification as soon as eviction proceedings are instituted. Once notified of a pending eviction, FAWOS helps clients to retain their dwelling by providing counselling on legal aspects, information on available financial support and their entitlement to benefits, household planning, short-term, intensive social work and *ad hoc* financial support. According to Lawson (CS Austria), FAWOS has been successful in more than halving evictions resulting from court decisions. In two-thirds of cases where eviction proceeds, FAWOS has been able to secure social housing for evicted tenants. This initiative has been recognised by United Nations (UN) Habitat as an example of best practice in the field of social cohesion (Lawson, CS Austria).⁷⁷

Eviction Prevention Program, Ontario

Toronto in Canada provides a similar example of an eviction prevention approach that, according to Pomeroy (CS), is highly regarded and has been very successful in reducing evictions. The Centre for Equality Rights in Accommodation (CERA) is a tenant rights education and advocacy organisation (based in Toronto and founded in 1987) that has been operating an eviction prevention program to provide timely assistance to tenants facing eviction across Toronto since 1999. CERA works in cooperation with tenant advocacy groups and landlords and CERA staff work closely with housing providers across the city to distribute information on emergency income supports for tenants struggling to pay the rent.

Over the duration of the program, CERA has used different means to contact tenants threatened with eviction and then to provide them with information on their rights and obligations and link them with resources to help them keep their housing, including information and help in using the rent bank program described above. Since 2006, tenants have been reached via the Landlord and Tenant Board (LTB) which provides information packages to any tenant receiving notice on CERA's behalf. It is then up to the tenant to make contact whereas prior to changes to privacy provisions in 2003, CERA had the information to initiate contact. As a result of their outreach, CERA staff and volunteers work with over 200 tenant households across Toronto every month (Pomeroy, CS).

⁷⁷ For more information, see also FAWOS (2007).

Homelessness Prevention and Rapid Re-Housing Program, United States

In 2009, the largest intervention in homelessness prevention and rehousing in the US, the Homelessness Prevention and Rapid Re-Housing Program (HPRP), was established under the American Recovery and Reinvestment Act with the overall goal of providing housing stability to homeless people and those at risk of homelessness. Under the program, funding of US\$1.5 billion is being used to provide homelessness prevention assistance for lower-income households who would otherwise become homeless and for rapid re-housing assistance for persons who are homeless. Funds are available for a variety of forms of assistance, including short-term (up to three months) or medium-term (up to 18 months) rental assistance and housing relocation and stabilisation services, which cover activities such as mediation, credit counselling, assistance with bond or utility deposits, utility payments and moving costs and case management services, including developing individualised housing plans, legal services and house searching and placement (HUD 2010c). The design of this program highlights a coordinated approach to assistance.

9.2.3 *Rent adjustments*

In Chapter 6, we outlined the main ways that countries use policy and legal instruments to control rent levels and rent increases. While there has been a long-term move away from tightly controlled rents especially for new lettings, deteriorating access and ongoing affordability for a significant component of households that rely on renting in countries such as Australia means that policy makers may have to consider suitable ways of moderating this trend, particularly in highly inflationary rental markets and when other controls on tenancies (such as requiring grounds for termination) do not apply.

Impeding tenant evictions that enable increases to rent levels, Flanders

Flanders has an innovative approach to graduated rent adjustments that helps to prevent threats to security of occupancy that can be caused by the changeover of occupants to achieve rent increases—a practice that appears to be on the increase in Australia, as discussed in Chapter 4. As mentioned in Section 7.1, short-term contracts, which can be terminated quickly by either party, are common in Flanders. However, to discourage terminations that may result in rent increases provisions in the Rent Act 1991 impede the flipping of tenancies and recalibration of rent agreements. Short-term rent contracts can only be extended once and under the same conditions, thereafter they must become long-term contracts (nine years). Rents on long-term contracts are annually indexed, and the rent can be re-calibrated on the basis of markets conditions every three years. When a tenant ends this agreement, the landlord is free to commence a new agreement with another tenant. When the landlord ends the agreement, the next contract must be for three years and the new rent price must not be higher than the rent of the previous tenant, indexed by the rent index (Haffner et al. 2009a). According to Lawson (CS Flanders), these provisions for longer-term contracts and rent indexing form a buffer against rapid rent changes and protect tenants from abusive practices by landlords, such as changing tenants to lift rents more rapidly.

9.2.4 *Landlord monitoring and education*

Another trend that emerges from our comparative analysis of rental housings systems concerns regulation of landlord functions and professionalisation of management.

Internationally social housing providers are being subject to a wide and growing range of housing specific regulation including statutory requirements and contractual

obligations, as well as self regulation agreements and standards (Robyn Kennedy & Co. 2001; Travers et al. 2010). One key aim of these regulatory arrangements is to safeguard tenants and to protect their rights (Cave 2007).

There are also moves in a number of countries to improve management standards in the private rental sector through regulation and landlord education programmes. An example of the latter identified in our research is Edinburgh's Letwise service (City of Edinburgh Council 2010), which publishes advice material for landlords and arranges training. A major focus of this activity is improving landlords' understanding of their legal obligations and recommendations contained in good practice advice.

Landlord registration and accreditation, Scotland

Another innovative approach to improving management standards is Scotland's national Landlord Accreditation Scheme (LAS). This is a voluntary scheme for landlords and letting agencies set up in 2008 that is gradually absorbing and replacing local accreditation schemes previously run by local authorities. The aim of the scheme is to improve standards in the Scottish private rented sector by:

- Promoting best practice by informing landlords of the benefits of becoming an accredited landlord or letting agent.
- Ensuring that Accredited Landlords comply with the Scottish Core Standards for Accredited Landlords.
- Providing access to support, information and landlord training in all aspects of managing residential property in Scotland (Landlord Accreditation Scotland 2010).

The emergence of schemes, like this one in Scotland and elsewhere in the UK, reflects a shift in approach away from enforcement of standards by government authorities towards working with the industry to encourage and promote good practice. The Scottish Core Standards for Accredited Landlords cover the following areas:

- Communication with the tenant.
- Equality issues, complaints and disputes.
- Management of the tenancy.
- Minimum property conditions.
- Repairing Standard.
- Repairs and maintenance.
- Facilities and fittings.
- Heating, insulation and energy efficiency.
- Health, safety and home security features.

Scotland has also operated a landlord registration scheme since 2004, with the stated aim of driving poor landlords out of the industry. Registration requires assessment of whether an applicant is a fit and proper person to be a landlord. While no criteria for making this assessment have been established, there is provision for a letting code to be developed that could include such guidance (Pawson, CS).

9.2.5 Tenant- oriented information and advice

Truth in Renting booklet, New Jersey

The Truth in Renting Act of New Jersey (2007) is a long-standing law, originally passed in 1976, that requires the state (through the Department of Community Affairs)

to regularly provide a statement of information to all tenants about their rights, the rights and responsibilities of landlords, and developments in law, regulation or case history related to tenancy. It is a legal requirement that landlords make the Truth in Renting booklet available to all tenants (New Jersey Department of Community Affairs 2007). The booklet covers all forms of renting including private dwellings, public housing, boarding and rooming houses and mobile homes and provides information on a wide variety of aspects of renting including lease terms and conditions, deposits, rent setting and increases, habitability, health and safety, pets, discrimination and credit checks.

While all jurisdictions provide some information of this kind, the New Jersey approach can be considered to exemplify best practice because of features such as its statutory foundation, scope, regular updating and accessibility to residents.

Housing advice, Flanders

Flanders has a strong network of independent housing advice and information services that uses a shop-front concept. The housing shop (*woonwinkel*) is an accessible form of service provision where people can come at no cost for advice and guidance on a wide range of housing and support issues, regulations, assistance and services. There are approximately 50 *woonwinkels* across Flanders.⁷⁸ Their local character enables them to build up a good knowledge of useful local resources in the community and apply their specialist knowledge of housing regulations and support. Most services function as a municipal service or on a contracted basis as part of a social welfare service. A minority are private initiatives. They have a local management board and employ staff using municipal and/or regional social support funds (Lawson, CS Flanders).

Housing information system, Vienna (Austria)

Assisting vulnerable households to obtain housing is a specialised and time-consuming task. Austria has a specialised service, the Housing Exchange (*Wohndrehscheibe*), which was established in 1997 with municipal funding, with the aim of improving access to housing for people with little income and who face very specific challenges in obtaining adequate housing. An initial driver for the service in Austria was the limited access that many immigrants (non-citizens) had to housing as a result of language barriers, racism and discriminatory practices by landlords, and a lack of personal resources. The issues being addressed are very similar to those faced currently by humanitarian migrants in Australia, who were identified by interviewees for this study from NSW and Victoria as one of the most marginalised (or excluded) groups in the local housing system.

The client target group for the service is those with language problems or a lack of adequate and appropriate information. Advice is geared to finding long-term housing solutions. Individuals seeking housing are registered with *Wohndrehscheibe* by more than 80 social service agencies and municipal departments, where they are already receiving social services of some kind. Most clients do not have Austrian citizenship, coming from more than 100 different countries of origin.

The main activities of the agency include: assessing the need for housing information, advice and support; assessing available housing options; intensive searching for a wide range of housing across municipal districts to avoid concentrations in anyone area; support and guidance to help establish tenancies; and referrals of individuals in need of support to maintain their tenancy. The agency is also oriented to advocacy

⁷⁸ For more information, see Woonwinkles (2010).

around policy change and new solutions, educating landlords and overcoming discrimination and to finding a better supply of permanent housing for migrants in cooperation with other agencies in the field. It has become a central point of advice and a key networking agency in Vienna. It received a best practice award from UN Habitat in 2004 (UN Habitat 2008).

Consultation with tenants, the Netherlands

Consultation between tenants and landlords has been regulated by a special Consultation Act (Dutch: *Overlegwet*) since 1998. This requires all landlords (both housing associations and private landlords) with more than 100 rental dwellings to consult with their tenants concerning policy matters relevant to tenants and provides tenants with certain rights with regard to information and consultation. In addition, amendments passed in 2009 required smaller housing providers to consult on major repairs.

A summary of the coverage of the Consultation Act is provided below.

- Recognition of tenants' organisations—tenants' organisations in the meaning of the Act are recognised by landlords as consultation partners. The act sets criteria for tenants' organisations; for example, that all tenants must have the opportunity to become members of a tenants' organisation. An organisation that satisfies these criteria must be recognised by the landlord. The landlord may also recognise organisations that do not satisfy all the criteria (Ouwehand & van Daalen 2002, p.74).
- Right to information and consultation—the Act lays down the matters over which the landlord must in any case, on request, give information to the tenants' organisation such as the policy with respect to the rents, maintenance, management, letting and allocation of dwellings. The landlord gives the opportunity to the tenants' organisation to enter into consultation about this information (Ouwehand & van Daalen 2002, p.74).
- Right of tenant organisations to advice and consent—if a housing association wishes to alter its policy on one of these matters mentioned in the Act, the tenants' organisation must be asked for its consent. Tenants' organisations have a minimum of four weeks' time to draw up their recommendations and give their consent. Landlords who do not agree to comply with the advice given by their tenants' organisations are required to communicate their arguments to them in writing within fourteen days of the advice being given (Ouwehand & van Daalen 2002, p.74).
- Financial contribution of the landlord to the tenants' organisations—it is also stipulated in the Consultation Act that landlords pay the tenants' organisations a compensation for the costs of the consultation and informing the tenants. Usually a small annual contribution per dwelling is involved and the provision of meeting facilities for the tenants' organisation. Often the associations also ask tenants for a contribution from their members (Ouwehand & van Daalen 2002, p.74).

These are the minimum requirements. In the social sector particularly, landlords and tenants often develop additional levels of engagement, such as undertakings for tenant approval of policy changes and neighbourhood renewal plans (Ouwehand & van Daalen 2002). Such approaches are designed help to break down adversarial relations between the two parties.

9.2.6 *Housing rights movements*

Under international law, housing is a human right and discrimination in housing is prohibited. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights recognise the right to housing. Other international treaties that have affirmed the right to housing include the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child (Ontario Human Rights Commission 2009). The European jurisdictions in the study are also affected by the European Convention on Human Rights (1950).⁷⁹ Ontario provides a leading example of the application of a human rights perspective to improving the protection of tenants in that jurisdiction, as discussed in more detail below.

A human rights perspective is also apparent in Flanders/Belgium where, as discussed in Chapter 5 (Table 17 and Section 5.3) there is a right to housing in the 1994 Belgian Constitution. The Flemish Housing Code specifies how the different regional institutions responsible for housing policy should implement this constitutional right (Feantsa 2009). In Victoria, as discussed in Chapter 4, the Charter of Human Rights and Responsibilities Act 2006 came fully into effect in 2008. This includes general human rights taken from the International Covenant on Civil and Political Rights (1966) but does not include protection of other economic, social and cultural rights from other international conventions, such as a right to housing (Debeuak 2008).

Policy on Human Rights and Rental Housing, Ontario

In Ontario, the Human Rights Commission (HRC) has become increasingly pro-active in the area of housing. It is responsible for the Ontario Human Rights Code, which offers protection against discrimination in a broad range of areas related to housing. Under the Canadian code, people cannot be refused a dwelling, harassed by a housing provider or other tenants, or otherwise treated unfairly because of one or more of the following grounds:

- Race, colour or ethnic background.
- Religious beliefs or practices.
- Ancestry, including individuals of aboriginal descent.
- Place of origin.
- Citizenship, including refugee status.
- Sex (including pregnancy and gender identity).
- Family status.
- Marital status, including those with a same-sex partner.
- Disability.
- Sexual orientation.
- Age, including individuals who are 16 or 17 years old and no longer living with their parents.
- Receipt of public assistance.

⁷⁹ The European Convention on Human Rights does not specifically mention housing but does specify that 'everyone has the right to respect for his private and family life, his home and his correspondence' (Article 8).

People are also protected if they face discrimination because of being a friend or relative of someone identified above (Ontario Human Rights Commission 2009).

The tenancy tribunal may take the Code into account in making their decisions and tenants and landlords and housing providers appearing before a tenancy tribunal can use the Code to assist their application. The Code has primacy over residential tenancy law (Ontario Human Rights Commission 2009).

To bring specific focus to issues of discrimination in rental housing, the Human Rights Commission has issued a policy on human rights and rental housing that applies to landlords and tenants in all forms of rental housing. This elaborates how aspects of tenancy law and practice can be held to be in contravention of the Human Rights Code. The extensive document deals with all issues related to renting housing that could be subject to a human rights claim, including processes for choosing or evicting tenants, occupancy rules and regulations, such as the legal right to accommodate people. The policy is Canada's first comprehensive look at how barriers to housing can be identified and eliminated. It was released in 2009, following extensive research and consultation with tenants, housing providers, policy makers and other stakeholders. Its aim is to provide tools, practical scenarios and information that can be applied to everyday situations, so that human rights problems can be eliminated quickly or prevented from happening in the first place (Pomeroy, CS). Overall, the focus of the efforts of the HRC in this area are described as identifying systemic patterns of discrimination and building a culture of protection against discrimination by educating and guiding tenants, landlords, decision-makers, tribunals, courts and legislators about the application of the Human Rights Code to residential tenancies (Ontario Human Rights Commission 2009).

9.2.7 Enhancements to living environment

As discussed in Chapter 8, key factors influencing tenant decisions to leave their housing voluntarily include when it is in poor condition, poorly located or unsafe. In particular, social housing neighbourhoods in many countries have been subject to high rates of breakdown in tenancies because of resident dissatisfaction, generating costs for landlords and tenants (Pawson & Munro 2010). Renovation and/or demolition and restructuring of poorly functioning social housing areas has become a major policy priority in all countries studied. Some of the most extensive programs have been in the US, Scotland (especially Glasgow), the Netherlands and Ireland (especially Dublin). Some large and small-scale examples of innovative programs from the US and the Netherlands, which are geared to housing quality and service improvements, are described below.

HOPE VI, United States

Perhaps the largest revitalisation program has operated in America for nearly two decades under the program brand HOPE VI. This massive undertaking has driven management, physical and service improvements into over 250 different areas covering more than 130 public housing authorities since 1993, with expenditure totalling more than US\$6 billion by 2006. HOPE VI grants were used to demolish 96 200 public housing units and produce 107 800 new or renovated housing units, of which 56 800 were to be affordable to the lowest-income households. The new and renovated housing units were mixed income, less dense and sought to attain better design and integration into the local neighbourhoods. New funding for HOPE VI has now ceased and federal grants are being directed to a new program called 'Choice Neighbourhoods' under the Obama Administration (HUD 2010d).

Compensation for relocation and protection from rent increases, Austria and the Netherlands

While programs such as HOPE VI are intended to be beneficial to tenants in the long-term by offering better standards of housing and living environments, in the short-term many tenants can be disrupted or displaced under such processes. In the Netherlands social and private tenants are compensated when they are forced to move during a renewal process. The compensation rate, which is indexed, is currently over €5100. In Austria and the Netherlands existing tenants are protected from rent increases that might otherwise flow on from renovation. In Austria, for example, rents are capped by an arbitration committee, which assesses whether the increased rents exceed a certain percentage of the tenants income. In those cases, rent subsidies are offered to sitting tenants. In the Netherlands also, tenants in housing that has serious maintenance problems are entitled to a rent reduction of 40 per cent until such problems are rectified.

A number of other innovations that have been developed in the Netherlands to assist tenants to achieve healthier and safer living environments are outlined briefly below.

Self assessment of housing conditions for healthy and safe living, the Netherlands

The Dutch Tenants Union (*Woonbond*) has developed an innovative web tool for testing the comfort and safety of a dwelling. Four themes are covered: air quality, comfort (temperature and drafts), noise and safety. Questions are asked concerning the dwelling and resident behaviour, providing an overview of performance, outline of the risks and list of tips and suggestions on how to improve the health and safety of the dwelling. Questions are also asked about the context of household circumstances (sensitivity to allergies, breathing problems, etc.) so that tenants can take action to improve their situation (Lawson, CS the Netherlands).

Promoting the improvement of poorly insulated dwellings, the Netherlands

The *Woonbond*, together with the Trust for Nature and Environment, has established a Complaint Point for Energy Waste. Tenants can report poorly insulated dwellings let by landlords, with the aim of developing a plan to improve the responsiveness of landlords to these issues. A related website identifies the worst offending landlords and there is an annual election for the best and worst landlord in the Netherlands. On this site, both tenants and landlords can also access information concerning insulation techniques.

Safety index on social housing estates, the Netherlands

Since 2001, Rotterdam Municipality has kept a safety index of the 33 major social housing estates in five areas of the city. Each estate is scored between one and 10 and five grades are given: unsafe and dangerous, serious problems, safety under threat, in need of attention, and safe.

According to Randall (2005), the published index has helped to concentrate the minds of local agencies and encouraged housing organisations, the police and others to improve estate safety. Safety has improved on all but two estates since the scores were introduced. Several other Dutch cities are now adopting this approach.

9.3 Summary

This chapter has reviewed the latest general policy directions in the international cases and a variety of culturally contingent initiatives, both large and small-scale,

which were identified by the case study contributors as important to improving secure occupancy for renter households, in particular lower-income and vulnerable households. The purpose of the review is not to promote specific innovations, but to broaden thinking about the scope of rental policies, programs and laws so that particular issues that may systemically threaten tenancies can be addressed.

As indicated in Chapter 5, these developments and innovations should be seen in the context of some overarching issues including: national/jurisdictional responses to the effects of the global financial crisis; concern about the cost and effectiveness of housing allowance schemes; and, in many jurisdictions, a withdrawal or weakening of government investment in subsidies to generate more affordable rental.

More specifically, a major trend in policy development directly relevant to secure occupancy seems to be growth in a range of alternative tenancy options that have elements of both renting and ownership and promote greater resident control and responsibility. Additionally in some cases, these are associated with redevelopment of areas of run down housing and are intended to enhance resident stability and community cohesion. Another clear cross-national trend is to expanded use of more integrated packages of financial measures and other services that are designed to assist vulnerable households and those who are homeless to access (private or social) tenancies and prevent subsequent tenancy breakdown. A third major arena of innovation concerns building constructive relationships between tenants and landlords, such as through information and education programs for both parties and through promoting best practice standards of rental management. Related to this are broader advocacy movements situated in a human rights discourse that aim to achieve societal acceptance of tenants' rights to secure, affordable and decent housing and associated policy and law reforms. Finally, improvements to the living environments of tenants, especially in older social housing and private rental neighbourhoods, have received specific policy attention recently, although sometimes neighbourhood revitalisation has been achieved at the expense of the previous level of provision of affordable housing.

How successful some of these moves to reform have been in enhancing tenant wellbeing cannot be judged from this kind of overview, but many of the ideas highlighted by the country experts and showcased in this chapter are worthy of greater scrutiny in the Australian context. We turn now to the overall findings of our study and a discussion of their implications for Australian policy and practice.

10 CONCLUSIONS AND IMPLICATIONS FOR POLICY

This chapter presents some conclusions from the detailed analysis of the Australian and international case study material presented in previous chapters. In this chapter we:

- Discuss current provisions for providing periods of secure occupancy for renters in Australia, drawing in particular on the case studies of NSW and Victoria as well as the analysis of secondary data (research question 1).
- Identify four different rental housing models and the ways in which these shape secure occupancy, based on the analysis of the international case studies (research questions 2 and 3).
- Consider some of the implications of the research for public policy in Australia (research question 4).

10.1 Provisions for secure occupancy in Australia

Research question 1 asked: 'What are the current provisions for providing periods of secure occupancy for renters in Australian jurisdictions?'

Three in 10 Australian households rent their housing at any one time. Some of these are on middle and higher incomes and rent by choice. Over a million lower-income households⁸⁰ (approximately one in seven Australian households) rent their housing and have very constrained housing choices.

Secure occupancy is only possible where households are able to access rental housing in the first place. There is strong demand for rental housing in Australia from households with a variety of incomes, due to a range of factors discussed in Chapters 2 and 3. However, a very important driver of demand for rental housing is from lower-income households, who comprise about 45 per cent of all households in the rental sector. Traditionally, such households could apply to the social housing sector, which was developed to provide a low rent and secure option. However, unmet demand for social housing, due to inadequate supply and significantly lower levels of vacancy turnover than previously, means that only households with urgent or complex needs are now able to access this sector. Indeed, six in ten lower-income renter households now rent from private landlords.

It has been well documented that the supply of affordable rental housing, and indeed housing supply generally, is inadequate relative to household demand (National Housing Supply Council 2010). Further, lower-income households face further difficulties as they must compete with higher income households for available private rental (Wulff et al. 2009, 2011). The majority of investment in private rental housing is small-scale and debt-financed (making use of negative gearing tax concessions) and often driven by the prospect of capital gain (which is also subject to concessional tax treatment). This type of investment is inherently volatile, as many investors hold their properties for relatively short periods (The Treasury 2010). The lack of supply at the lower rent end of the market, despite considerable demand pressures, indicates market failure. Whilst there has been an emphasis on increasing supply of social rental since 2009 as a result of the Australian Government's economic stimulus package (Nation Building), these funds will be exhausted shortly and it is far from clear that there will be any further significant injection of capital funds (except from private and charitable sources) that can be accessed by the emergent not-for-profit sector.

⁸⁰ See footnote 2.

Current policy settings for the rental sector treat its private and social components in quite different ways. The private rental sector is approached primarily through a market lens, with federal government policy settings designed to increase effective demand (through Rent Assistance) and to encourage supply through tax incentives for rental investors (negative gearing and capital gains tax concession). State/territory government policies have been largely ancillary in providing additional subsidies and other means of assisting lower-income households in renting privately, as they have been designed mainly as a means of managing demand pressures on the social housing sector. The social rental sector is primarily an arena for achieving social policy goals, with an emphasis on access for homeless people and others with urgent and complex needs and a focus on demand management and housing management.

No outcomes are required in return for government subsidies and tax concessions in the private rental sector, either in terms of rent levels or security of occupancy, which differs from most of the international jurisdictions in the study. The recent NRAS initiative provides a notable exception in prescribing eligibility/access requirements and a specified discount to market rents. In comparison, outcomes for social housing are highly prescribed in respect of allocation priorities, affordable rents set as a percentage of household income, and greater security of tenure than in the private rental sector. However, a combination of demand pressures, limited supply and a lack of financial viability in the public housing sector has resulted in changes to this system with NSW and Queensland introducing fixed-term tenancies for new tenants in public housing to facilitate regular reviews of continuing need, as well as even greater prescription of outcomes in other areas, such as allocations targeting and rules and conditions of occupancy.

Whilst there are 'dual' policy settings, residential tenancies legislation applies across the mainstream rental sector, although there is a trend to introduce specific provisions for social housing. Whilst legislation has been substantially modernised since the mid-1970s in all Australian states/territories, there are usually lesser protections for some types of marginal housing (e.g. caravan parks and boarding houses) and in some cases boarders are not covered by the legislation (e.g. in NSW). The current situation in relation to occupancy is outlined below:

- Most Australian renter households occupy their current rental property on a short-term lease arrangement with little security of tenure, typically a fixed-term lease for six or twelve months followed by a periodic (month-by-month) tenancy.
- Households can terminate their periodic tenancies with quite short notice periods if they choose to do so.
- Landlords can terminate periodic tenancies with quite short notice periods for a variety of stated reasons, either due to the tenant's breach of the tenancy agreement (mainly rental arrears), or landlord requirement for the property (e.g. for sale, or for the landlord's personal or family use).
- In both NSW and Victoria, tenants can have their periodic tenancy terminated without prescribed grounds (with a notice period of 120 and 90 days respectively), although this provision is rarely used in social housing.
- Private sector rents are set at market levels both at entry and during tenancy and can be reset up to twice a year in most jurisdictions (rent increases are not limited in NSW). In the social sector, rents are set by housing policy and regulation and are based on a percentage of household incomes, usually up to a market rent cap.
- Both landlords and tenants can take disputes in relation to tenancy agreements to mediation and administrative review but the vast majority of cases for determination in NSW and Victoria are brought by (private and social) landlords.

Residential tenancies legislation in Australia is based on the notion of contracts between equal parties, each of which have defined rights and responsibilities, and is understood in terms of either fair trading or consumer affairs. Legislative reform attempts to maintain a balance between what are assumed to be the largely opposing interests of landlords and tenants, such that providing additional rights to one party takes them away from the other. The system provides great flexibility in entry and exit and this may be of benefit to both landlords and some tenants. However, the Australian case studies have illustrated that where there is unequal market power due to a lack of affordable housing in either the social or the private rental sector, lower-income households cannot benefit from this flexibility. If they have to leave a rental property, it is very difficult to find somewhere else to rent. The private rental market is currently structured around quick and easy access and exit options for investors, including the convention of sale of dwellings with vacant possession. These factors may help investors to manage their own financial risks and returns, and suit households who see renting as a short-term option, but are detrimental to the prospects of secure occupancy for lower-income households who are likely to be renting in the longer term. The study found that:

- Households renting privately live in their current dwelling for shorter periods and move more often than other Australian households.
- Despite high levels of mobility in the private rental sector, there is evidence that a third of private tenants are long-term renters, although not necessarily in the same dwelling.
- In the public rental sector, long-term renting, often in the same dwelling, is more common.⁸¹

The case studies of NSW and Victoria illustrated in more detail how a combination of market failure, housing policy settings based on dual rental sectors, and legislation that enables easy access into, and exit from, rental housing affects lower-income households. The rental market context means that it is difficult for lower-income households to access rental housing in either the private or social housing sectors. Households that are assessed as higher risk due to low income and/or other factors are screened out of mainstream private rental housing and are forced to live in marginal housing, such as rooming houses and caravan parks, which is not only expensive but offers little by way of secure occupancy, or share with family or friends. Others commit to paying more than they can afford in order to secure housing, which leaves them vulnerable in the event of changes in household circumstances and/or increases in rent. Lower-income households without urgent and complex needs are also screened out of the social rental sector.

State governments in both NSW and Victoria have implemented a range of schemes to provide assistance to lower-income households with accessing and sustaining tenancies, often in conjunction with community organisations. Most of these schemes are aimed at enabling lower-income and vulnerable households to enter, and remain in, the private rental sector. Indeed, the numbers of households assisted by state-level private rental support schemes now dwarfs the number of households that are allocated social housing in both states and these households have much lower levels of secure occupancy than is available in social housing.

There are also many challenges for households in remaining in their rental housing. Where rent payments are at the margins of affordability, even temporary changes in circumstances can jeopardise tenancies (such as reduction in wages and/or social

⁸¹ Data are not available to make an assessment about long-term renting for households in the not-for-profit segment of the social rental sector.

security payments, or household disruptions). In the private rental sector, rents can be increased frequently and the timing and rate of increase is unpredictable, making budgeting difficult. Households may also face higher than anticipated costs associated with living in the dwelling, including being supplied with older appliances that are costly to operate. There are also many non-financial reasons why it may be difficult to have secure occupancy in rental housing. These include low levels of amenity and standard of repair, exposure to noise and lack of safety and privacy. In public rental housing, in particular, increased targeting to those with the most complex needs has been reflected in increasing incidences of anti-social behaviour that can contribute to vulnerability, ranging from noise disturbances to threatening behaviour, including behaviour associated with mental illness and substance abuse by either the tenant and/or their neighbours.

The case studies have also highlighted the importance of cultural norms, which refer to taken-for-granted assumptions that underpin perspectives and behaviours. Despite evidence to the contrary, residential tenancies legislation and policy settings around private rental imply that renting is still seen as a short-term form of occupancy. For this reason, households who rent have limited autonomy in personalising their dwelling and in making a home. The policy conundrum is that there is both market failure in responding to demand, despite investment incentives and great flexibility in realising investments, and institutional settings that are based on assumptions of short-term occupancy. The challenge is to consider what policy settings might deliver better outcomes for lower-income households who are likely to be long-term renters.

10.2 Models used internationally for providing periods of secure occupancy

Research question 2 asked: 'What models are used internationally for providing periods of secure occupancy for households in rental housing, having regard to legislation, regulation, policy and programs?'

Research question 3 asked: 'How effective are these models in providing periods of secure occupancy for renter households in the context of the greater risks faced by lower-income and vulnerable households?'

Every jurisdiction has a distinctive rental system that is a product of economic, social, political and legal factors, as well as being contingent on historical and cultural context. The detailed analysis in Chapters 3–9 highlighted many differences between jurisdictions. In this section, we are interested in some common patterns (what we have called 'models') that are in use internationally for providing periods of secure occupancy. This requires a level of abstraction of the key dimensions that affect secure occupancy for renter households and lower-income households in particular.

We have identified four broad models through which rental systems provide the framework for secure occupancy for renter households:

- A dominant and strongly regulated social rental sector that drives provisions for secure occupancy over all or most of the rental system (based on Austria and the Netherlands).
- A leading and strongly regulated social housing sector that provides secure occupancy, but is structurally separated from a small and less regulated private rental sector in which households have much lower levels of secure occupancy (based on Ireland and Scotland).
- A leading and lightly regulated private rental sector with limited provisions for secure occupancy that is structurally separated from a small and strongly

regulated social housing sector, which provides for much greater secure occupancy (based on New Jersey, Ontario, Flanders and Australia).

- A dominant and strongly regulated private rental sector that drives provisions for secure occupancy over all or most of the rental system (based on Germany).

10.2.1 Four models for secure occupancy

We now consider features of each of these models, and their implications for secure occupancy, in turn.

Model 1: integrated and regulated with a dominant social rental sector

In this model, the social housing sector is the driver of the rental sector, not only in terms of its absolute and relative size, but also in terms of the development of policy and legal settings for the sector as a whole. The key features of this system are:

- Past public investment and facilitative policy settings have enabled the development of a large and mature social housing sector with a very substantial asset base that can be used to raise private finance for future housing development and the redevelopment and revitalising of existing portfolios.
- There are now effective mechanisms for securing significant private investment in social housing or housing that is privately owned but can deliver outcomes in terms of housing quality, rent setting rules and access arrangements. This investment model has been supported through ongoing direct or indirect support from governments.
- The dominant social housing sector is professionally managed by housing associations (or similar), which provide the full range of rental housing functions: financing, development/procurement and housing management.
- There is individual/household and company/institutional investment in the private rental sector. Investment by companies and institutions at scale enables professional management of some private rental housing, particularly multi-unit rental buildings.
- Rents are set at cost and/or according to the quality of the dwelling and adequate housing allowances are available to eligible households across the sector to assist in rent payments.
- Regulation of residential tenancies is strong. Lease agreements are either unlimited or medium-length fixed-term leases that can be renewed. Across the rental sector, rents for new contracts and rent increases for sitting tenants are regulated (with some limited exceptions). Termination of a lease by a landlord is by prescribed grounds only.
- Renting is a mainstream and often longer-term option for households with a range of incomes and circumstances. There is scope for personalising the dwelling through minor improvements and pathways to purchase are available.

The essence of this model is policy and legislative support for long-term renting as an option for many households on diverse incomes, linked to assistance measures for lower-income households. It enables the development of large rental sectors in which expected standards in the social housing sub-sector in regard to tenant outcomes generally apply across the whole rental sector.

There are some key differences between Austria and the Netherlands, the jurisdictions from which this model is abstracted. For example, the Netherlands has a national system of housing allowances that apply to households across the rental

sector whereas in Austria this is only applicable in four of the *Länder* (states). Further, Austria has a unique system for raising private finance for the construction of new rental housing through tax privileged convertible bonds whereas in the Netherlands there is a government guarantee for private borrowings made by housing associations, both intended to channel private investment to new rental housing and to lower the cost of funds.

Model 2: Dual system and separate regulation with a substantial social sector

In this model, the social housing sector makes up the largest part of the rental sector but, unlike Model 1, the social and private sectors operate as dual and parallel systems with different policy settings, legislation and types of regulation. The key features of this system are:

- Past public investment and facilitative policy settings have enabled the development of a large and mature social housing sector.
- Social landlords receive supply subsidies in exchange for tightly prescribed outcomes in terms of housing supply and quality, rent setting, access rules and housing management.
- The social housing sector is professionally managed by housing associations and/or governments (either directly or using arms length arrangements) that have the full range of rental housing functions: financing, development/procurement and housing management.
- Social housing landlords are expected to use a substantial asset base to raise private finance for future housing development and the redevelopment and revitalising of their existing portfolios.
- Investment in private rental is predominantly done by small-scale individual/household investors as supply subsidies are not available (although investors may be eligible for limited tax concessions). There are limited outcomes required of private landlords who benefit from tax concessions in terms of housing quality, access rules and housing management.
- Rents are set differently in the social and private rental sectors. In the social rental sector there is a historic emphasis on costs and affordability, and controlling rates of rent increase. In the private rental sector rents are set at market rates, in terms of both initial contracts and subsequent rent increases.
- Regulation of residential tenancies varies considerably between rental sub-sectors. In the social rental sector, tenancy agreements are unlimited and periodic, whilst in the private rental sector they are short/medium and fixed-term. Termination of a lease by a landlord is by prescribed grounds only in the social rental sector, while no grounds termination is permitted in the private rental sector in some circumstances.
- Living in rental housing for the longer term is the norm in the social rental sector, with some limited scope to personalise dwellings and make improvements. Short to medium term tenancies are the norm in private rental, with limited autonomy and little incentive to make a home.

The key to Model 2 is the development of a sizeable social rental sector, but parallel policy and legal settings mean that the capacity of this sector to influence key provisions for secure occupancy in the private rental sector is more limited than in Model 1. Outcomes for low-income households are likely to be quite different in each of these sub-sectors.

There are some key differences between the rental housing systems in Ireland and Scotland, the jurisdictions from which this model is abstracted. The major difference is Ireland's move to introduce four-year fixed-term tenancies in the private sector, with termination by prescribed grounds only (with an initial six months enabling termination without grounds) and other initiatives aimed at achieving better outcomes from housing assistance to private sector tenants.

Model 3: Dual system and separate regulation with the private rental sector dominating

In this model, unlike Models 1 and 2, the private rental sector dominates the rental sector and there is a small social housing sector. The private and social rental sectors operate as dual and parallel systems with different policy settings and regulation, although residential tenancies legislation may apply across the sectors. The key features of this system are:

- There has been public investment in supply subsidies over many years directed at the social rental sector, although the scale of subsidies has been far less than in jurisdictions characterised by Models 1 and 2.
- Supply subsidies to social landlords are associated with a high level of regulation in terms of housing supply, rent setting, access rules and housing management.
- The social rental sector is much smaller than in those jurisdictions characterised by Models 1 and 2, and the subsequent asset base is not sufficient to enable large-scale leverage without substantial government subsidy.
- Incentives for private investment are predominantly via tax concessions taken up by individual/household investors, although there is investment by corporate/institutional landlords where there is a tradition of multi-unit rental buildings. Outcomes required of private landlords who benefit from tax concessions are minimal.
- The social housing sector is professionally managed by housing associations and/or government agencies. Where there are multi-unit rental buildings and large-scale investors, there is also professional management.
- Housing allowances provided are less adequate and/or access to them is more limited than in the jurisdictions characterised by Models 1 and 2.
- Rents are set quite differently in the social and private rental sectors. In the former, rents are predominantly based on household incomes, while rents are set at market rents in the latter, both initially and when reset during tenancy.
- Regulation of residential tenancies generally covers the rental sector, but policy settings provide additional requirements for social housing, which lead to differences in tenancy terms and conditions. In the social rental sector, tenancy agreements are unlimited and periodic (although there are signs that this is changing), whilst in the private rental sector; they are generally fixed-term contracts that can be renewed or which revert to periodic tenancies. Termination is generally by prescribed grounds only in both sectors.⁸²
- Living in social rental housing for the longer term is the norm but conditions of occupancy are highly regulated and there is limited scope to exercise autonomy. Living in the private rental sector is regarded as a temporary situation for most people and there is little scope for households to personalise their dwellings and make a home.

⁸² We saw in Chapter 7 that Australia is an exception in this regard.

In brief, the model relies on the development of the private rental sector, and the social sector is too small to influence provisions for secure occupancy across the entire rental sector. Lower-income households live in both the private and social rental sectors and the outcomes for households in terms of secure occupancy are quite different between these sectors.

There are some differences between the jurisdictions from which this model was abstracted. In particular, the private rental sectors in Ontario and New Jersey are segmented into a larger-scale professionalised sector and a small-scale 'mum and dad' sector in which management is less professionalised, with consequences for the quality of management and secure occupancy of residents. Further, the housing allowance scheme in Australia (Rent Assistance) offers broader coverage compared to that of other jurisdictions in this group. Assistance designed to enable lower-income households to access private rental housing if they are eligible for, but unable to access, social housing also appears to be more developed in Australia (particularly in NSW) than in other jurisdictions, as discussed in Chapter 4.

Model 4: Integrated and regulated with a dominant private rental sector

In this model, the private rental sector is the driver of the entire rental sector in terms of relative size as well as the application of policy and legal settings:

- Public investment in rental housing is via supply subsidies available to any investor/landlord, including small landlords and larger companies/institutions. In this respect, there is not an institutionalised social housing sector, only a subsidised one.
- Any landlord can apply for a subsidy. These subsidies are time-limited and tied to specific negotiated outcomes (e.g. regarding rent/price limits and allocation rules).
- Any household across the rental sector can apply for a housing allowance to help pay the rent, and these subsidies are transferable between rented dwellings.
- Lease agreements are generally unlimited and periodic, although there is some provision for fixed-term leases. Termination of a lease by a landlord is on prescribed grounds only. Sale of the property does not normally affect the occupancy of the tenant.
- New contracts in the unsubsidised private rental sector are set at market rates, but in a way that follows the market rather than anticipates it. The timing and extent of subsequent increases in rents for sitting tenants is regulated.
- Renting is regarded as mainstream and is often long-term. Tenants are able to personalise their dwelling (with some constraints) and have considerable autonomy in making a home.

The crux of this model is a large private rental sector, in which a balance of public subsidies/incentives and strong tenancy regulation provides for secure occupancy and long-term tenancies for a broad range of households, including those on lower incomes.

The model is based on Germany and derives from a social market philosophy in which governments 'actively take part in the construction and continual maintenance of markets' (Kemeny 1995, p.15). As with the other models, history is important in that widespread supply subsidies in previous decades enabled the development of such a large rental sector. In some respects, it could also be argued that New Jersey (included under Model 3) has a less regulated version of this model, although without the same underlying philosophy.

10.2.2 Drivers of change

Rental housing systems are dynamic and the research indicated that all the models face challenges, with some of the jurisdictions contemplating or introducing significant change.

Some of the common challenges facing the case study jurisdictions that have affected (or are likely to affect) provisions for secure occupancy are:

- An increase in home ownership, particularly amongst middle and higher income households. This represents a significant shift in those jurisdictions in which households on a variety of income levels and at different stages in life cycle have seen renting as a secure and mainstream housing choice (in particular jurisdictions falling within Models 1 and 4).
- Withdrawal or curtailment of supply subsidies over the past 15 to 20 years. Government are not investing in subsidies to bricks and mortar to the extent that they did in previous decades and in many (although not all) cases have given preference to provision of housing allowances to renter households.
- Questioning of the cost and effectiveness of housing allowance schemes since, with the exception of New Jersey, these are demand-driven and subject to cost blow outs, in the context of market failure.
- Devolution of responsibility for rental housing policies and programs has occurred in most of the jurisdictions in the study, and across all models. This can result in greater difficulty in maintaining a national policy focus, and allocation of resources, to address rental housing market failure. It also adds complexity in coordinating policies and resources across different levels of government in addition to different portfolio areas. There are also some advantages to devolution in terms of encouraging greater flexibility in responding to local market conditions.
- European jurisdictions in the study have been affected by European Union policies and directives that are driving convergence in national policy settings, for instance with respect to access to social housing.
- Public expenditure cuts have been introduced in many jurisdictions as a consequence of deficits incurred by governments both before, and as a consequence of, the global financial crisis.

In addition, there are some specific challenges facing the four models we have identified.

Model 1

Even large and mature social housing sectors (as in Model 1) face difficulties in being self-sustaining and developing new housing options without exhausting the potential to leverage against their asset base and/or compromising their social objectives. Austria appears to be more robust in this respect with an established means of raising and lowering the cost of private funds for affordable rental housing in conjunction with some continuing supply subsidies, whilst maintaining strong regulatory controls on its limited profit housing sector. In the Netherlands, in the absence of government subsidies, and notwithstanding a long-standing guarantee system for the borrowings of housing associations, there has been disinvestment in social rental housing as housing association resources have been exhausted or restricted (e.g. reduced land holdings and capital reserves, and lower profits from market activities following cancellation of tax benefits and the impacts of the global financial crisis). In the Netherlands, income eligibility for social housing has been introduced for new tenants and there is pressure to provide a better match between household income and rents

paid and to reduce the cap below which rents are regulated. This seems to indicate that the social housing sector will focus more on housing lower-income households in the future.

Model 2

The challenges for Model 2 are also consequent on a declining social rental sector. This decline is generating recognition that lower-income households will also have to access a private rental sector that is ill-equipped to meet this need. There are some quite positive examples in both Ireland and Scotland of attempts to tackle this issue that are of relevance to the Australian public policy context. In Ireland, there is a move towards more integration between rental sub-sectors with four-year fixed-term tenancy agreements in the private sector and the introduction of the Rental Accommodation Scheme, which gives tenancy conditions that equate to those of social tenants to private tenants who have been in receipt of housing allowances (rent supplements). In Scotland, the mandatory landlord registration and voluntary landlord accreditation schemes provide examples of government moves to promote quality management of private rental housing.

Model 3

The main challenge for Model 3 is in enabling those households that have insufficient income to buy, and are unable to access social housing, with greater levels of secure occupancy, either through the private rental sector and/or through the development of hybrid rental arrangements that cut across traditional dual rental sectors. There are also specific challenges in maintaining small social housing sectors in view of historically inadequate and declining levels of public investment. The small social rental sector also means that where some leveraging of the asset is possible to develop additional rental housing (i.e. there is not already debt held against the asset), this is unlikely to be sufficient to address need. Greater rationing of access and scrutiny of occupancy in the social rental sector, along with tenant experiences of stigmatisation and a reduction in autonomy, may combine to impact adversely on secure occupancy.

Model 4

The challenges for Model 4 are in maintaining a robust private rental sector that offers secure occupancy to lower-income households in view of sharp decline in the subsidised housing sector as a result of the withdrawal of subsidy arrangements. In the context of Germany, on which Model 4 is based, subsidy periods for existing schemes are beginning to end and no new schemes are commencing. Further, subsidised rental housing is now found primarily in multi-unit buildings on the outskirts of cities, raising issues of spatial segregation and locational disadvantage. There are also ongoing debates about adjustments to the regulation of residential tenancies to provide greater flexibility for landlords, although these do not appear to pose a huge threat to secure occupancy for tenants in view of cultural norms around long-term renting.

10.3 Implications of the research findings for public policy in Australia

Research question 4 asked 'To what extent are these models transferable to the Australian context?'

As indicated in Chapter 1, consideration of the 'transferability' of the models is about situating the Australian framework for secure occupancy in the context of the

experiences in other developed countries and developing a broader and deeper understanding of the range of factors involved in considering policy change. It is not our intention to identify particular policies or programs from other countries and suggest that it is possible to transplant them to Australia.

In terms of the models discussed in Section 10.2, the Australian framework for secure occupancy is currently most similar, but by no means identical, to that of Ontario, New Jersey and Flanders. Importantly, these are all jurisdictions that have long promoted home ownership as a cultural norm and in which renting has often been seen as a transitional and flexible housing option that is suited to particular life stages and personal circumstances.

Comparative research throws up puzzles and paradoxes that stimulate our thinking (Castles 1991). Below we give some examples from our findings that challenge taken-for-granted thinking:

- In the Australian public policy context, it is often asserted that even 'soft' regulation to improve secure occupancy for tenants is incompatible with maintaining and encouraging private investment, as reflected in some of the interviews conducted for the NSW and Victorian case studies. However, the research indicates that Germany has both stronger regulation and a larger private rental sector than Australia (see also Kemp & Kofner 2010 for a recent discussion of this issue in respect of England and Germany). Further, even within the other jurisdictions that, like Australia, have relatively large private rental sectors that are structurally separated from small social housing sectors (Model 3), there are some regulatory provisions to enhance secure occupancy.
- The research findings indicate that all jurisdictions in the study rely substantially on small-scale investment by 'mum and dad' investors in the private rental sector (even in Germany). Five of the nine jurisdictions (Austria, the Netherlands, New Jersey, Ontario and Germany) also have some company or institutional landlords. As we saw in the previous section, we have characterised these jurisdictions as having different models in respect of secure occupancy. In other words, attracting institutional/corporate investment at scale may well be desirable in detaching issues of occupancy from those of investment and decreasing volatility of investment that impacts on tenant security. It may also produce more professional management, thereby contributing to secure occupancy. However, as the German case demonstrates, it is possible to have secure occupancy and longer-term tenancies in a system in which there are many small 'amateur' landlords.⁸³
- In jurisdictions that are characterised by dual rental systems (Models 2 and 3), it is often assumed that only social rental housing can deliver reasonable levels of secure occupancy for households that rent and that secure occupancy is inimical to the interests of investors who are concerned with relative returns and managing risks. Other jurisdictions with more integrated systems are able to provide greater levels of secure occupancy, whether the social rental sector is dominant (Model 1), or the system is dominated by a regulated private sector (Model 4).

We conclude this Report by suggesting some general approaches to improving secure occupancy, based on the findings of the research, which could be considered in more detail in the Australian context.

⁸³ In a recent paper for the Joseph Rowntree Foundation about the UK, Ball (2010) argues the dominance of 'mum and dad' investors is 'unproblematic' and that, given these small investors have been successfully driving recent expansion of the private rental sector, governments should not worry unduly about trying to find ways of enticing institutional investment in the sector.

A whole of system approach

To address the needs of tenants for stability and secure occupancy, it is important to take a comprehensive view of rental housing systems and to develop a framework across portfolio areas and levels of government. This requires:

- Better coordination of the governance, policy, subsidy and legal framework for the Australian rental system than is currently the case (with the COAG providing an established process for consideration of the governance issues that would be involved).
- Fostering a more integrated rental sector, in which there are a range of investment/ownership/management options within a policy and regulatory framework that promotes greater choice to households on a range of incomes.
- Development of coordinated strategies involving policy settings, subsidies and management and tenancy support options (as appropriate) for lower-income and vulnerable households who are likely to be renting for long periods. There are some positive approaches and innovative ideas discussed throughout this Report that could assist in this process.

We note that while better coordination and integration in terms of rental housing have been advocated for some time in a number of countries, progress in achieving these goals has been slow. In part, this seems to be because there is a contradiction within government itself. On the one hand, governments have applied 'new' public sector management principles which have had the effect of emphasising vertical lines of accountability for functional areas whilst, on the other hand, governments have encouraged 'whole of government' approaches that rely on horizontal linkages and network governance. This tension needs to be acknowledged and greater focus given to performance management across portfolios and with other agencies in a network governance model.

Below, we outline some specific components of a coordinated and integrated approach that are suited to the Australian context. While listing these separately, we want to stress that what is required is a set of actions that balances supply-side, demand-side and regulatory influences on the Australian rental system.

Investment

Short-term and volatile investment in rental housing, encouraged by current policy settings, is inimical to secure occupancy. Turning this around will require strategies to encourage more stable and long-term investment in rental housing. This could be achieved by encouraging greater private investment either in the social rental sector (as in Austria and the Netherlands) and/or in the private rental sector in return for specified outcomes (as in Germany and New Jersey). Such private investment could come from corporate/institutional investors, small investors (perhaps syndicated to enable better results for tenants), not-for-profit companies, or some combination of these. One of the lessons from jurisdictions such as Ontario, New Jersey and even Germany appears to be that there is ongoing tension between attracting and maintaining investment in rental housing and providing reasonable levels of secure occupancy, with resulting shifts in the balance between the two objectives over time.

The important point, however, is that additional government support for investment (via demand and/or supply-side subsidies, guarantees, concessions and incentives) will be required in order for more lower-income and vulnerable households to be able to access and sustain suitable and affordable rental housing in the context of market failure. Public subsidies of various types should be tied to outcomes to encourage retention of, and further investment in, the affordable end of the rental market.

In an Australian context, some of the implications are:

- Encourage longer-term investment horizons for rental investors (through either incentives and/or disincentives, e.g. measures to limit tax advantages associated with the sale of rental property for capital gain after short periods).
- Target tax concessions for rental investors to achieve some basic policy outcomes (e.g. newly constructed rental housing, affordable rentals, offering longer-term leases, energy efficiency in rental housing, etc.).
- Make available supply subsidies to investors/landlords (government, not-for-profit or for profit) on the basis that they can achieve outcomes (in respect of housing quality, location, rent setting rules and access arrangements). In particular, making an NRAS-type scheme permanent would give confidence to the residential investment market to move in this direction, as occurred following a similar decision in the US.
- Consider options for lowering the costs of private funds for social and other landlords providing affordable housing (e.g. through tax effective investment vehicles for long-term affordable rental housing, as in Austria, or loan guarantees as in the Netherlands in the context of strong regulation of landlord financial viability and performance).
- By providing scope for more intermediaries to 'de-risk' housing management activities for small private investors. Social Rental Agencies in Flanders provide an example of how this could be done as well as historic head-leasing schemes involving not-for-profit organisations in NSW and Queensland and the DHA model. This may also involve guaranteeing rental payments.

Management

Professional management appears to provide a better basis for secure occupancy, particularly in regard to lower-income and vulnerable households, although as we have noted above, the German example shows that strong regulation can also have this effect where there are small 'amateur' landlords. This can be achieved in a number of ways as evidenced throughout this report:

- Through the development of highly professional housing associations (as in the Netherlands, Austria and Scotland).
- Through using accredited rental managers (government, not-for-profit or for-profit agencies) who have to regularly demonstrate capacity and performance.
- By introducing measures to improve practices by landlords through education and training, development of basic standards and voluntary accreditation systems (Scotland and Ontario provide some examples in this regard).
- By developing and implementing eviction prevention schemes (the Rent Bank in Ontario and other schemes discussed in Chapter 9 provide some examples of such schemes).
- Encouraging hybrid (or intermediate) tenure models, under which tenants can have more control over their housing.

Legislation/Regulation

The research found that soft rent controls (i.e. some limitation of rental increases during tenancy) exist in most jurisdictions. These controls serve to moderate rental increases for sitting tenants and are found in all four models for secure occupancy discussed earlier in this chapter. Australia stands out in allowing frequent rent

increases to reflect market changes and permitting ‘no grounds’ terminations of leases by landlords. When combined with tight rental markets and rising rents, these provisions erode the ability of tenants to sustain a tenancy or to obtain alternative accommodation (especially those tenants who are relying on limited Rent Assistance or who experience a setback in their personal circumstances).

The following could be considered in an Australian context:

- A maximum of yearly increases in rent for sitting tenants with some moderation of (annual) rent increases (e.g. through indexing to a relevant measure or as a percentage of the rent).
- Initial tenancies with scope to terminate if the tenancy is not working out, but termination on prescribed grounds only thereafter (Ireland and Flanders provide examples of ways of doing this). This enables landlords to mitigate risk and see how tenancies develop and for tenants to have the prospect of more secure occupancy after the initial period.
- Consideration of a rights framework that promotes more proactive thinking about the means of overcoming discrimination that may be inadvertent and systemic, as well as dealing with instances where discrimination is intentional and individual (Flanders and Ontario provide examples of how this can be done).
- Reviewing the rationale for, and effectiveness of, specific regulation for social housing tenancies.

Housing policy and practice

All jurisdictions had examples of innovative policies and practices to improve secure occupancy for particular groups of households. As discussed in Chapter 9, these vary between jurisdictions and are both large-scale and national, and smaller-scale and locally derived. They include: hybrid tenure models, tenancy support and eviction prevention programs, new approaches to rent adjustments, housing rights movements and enhancement to the living environment for renter households.

We also provided details of tenant access and support provisions in NSW and Victoria in Chapter 4. Most of these are driven by the need to funnel demand away from social housing and to ‘be able to offer something’ to households who cannot otherwise secure private rental housing. Many of these play important roles, but are often fragmented or of insufficient duration. We suggest the following:

- More coordinated tenancy access and support provisions that aim to assist lower-income and vulnerable households to access and sustain private rental (rather than as a holding measure in place because social rental is not available).
- Integrated packages of financial measures and other support services that are designed to assist vulnerable households and those who are homeless to access (private or social) tenancies and prevent subsequent tenancy breakdown.

There is also an option in the Australian context of enhancing Rent Assistance (as identified in the Henry Tax Review (The Treasury 2010)). For best effect, we suggest that this would need to be carefully designed and incorporated into an integrated approach that links the provision of additional rent subsidy (Rent Assistance Plus) to achieving more secure tenancies for low-income households (Burke 2006)—for example, by providing the extra subsidy through those agencies that invest in affordable supply, targeting low-income households and offering longer-term leases.

Living in rental housing and making a home

This research has highlighted the importance of cultural norms around renting. In Models 1 and 4, many people live their whole lives and make a home in rented accommodation, and policy and regulation is geared to long-term tenancies. This is also the case in the social rental sectors but not the private rental sectors in the dual rental systems (Models 2 and 3). In Australia, if all parties (investors/owners, rental managers and tenant households) assume that renting is a short-term option and less desirable than owner-occupation, then this will affect their actions. Our interviews in NSW and Victoria indicated that there is a need for a cultural change. Cultural norms do change over time and change in this respect can be encouraged by:

- An open and honest public debate about long-term renting as a reality for increasing numbers of lower-income households, and the consequences in regards to the health and wellbeing, family functioning, social participation and economic engagement of these households if there is no change to current policy and legal settings.
- Discussion of ways of enabling further investment in, and management of, rental housing as a long-term investment that can generate reliable revenue for investors and lower management costs associated with turnover, vacancies and reletting.
- Thinking through some of the consequences of rental housing as a home environment for almost a third of Australian households, including promotion of good practice in measures that enable people who rent to live their lives and make a home (e.g. to manage the risks of pet ownership, to enhance thermal comfort and encourage energy efficiency and to effect repairs and make home improvements more readily when needed).

A final word

The approach that we have taken in this Report is to think broadly and systematically about secure occupancy in rental housing based on an in-depth analysis of how, to what extent, and for whom, secure occupancy has developed in a range of rental systems. Understanding the conditions for secure occupancy entails taking a holistic view of the rental sector that encompasses its market context, policy settings, legislation/regulation and cultural norms. In Australia, the challenge we face is to develop a sustainable rental system in which households that are likely to be long-term renters can achieve higher levels of secure occupancy than is currently possible, without compromising those aspects of the Australian system that work well. This is as much about a cultural shift as about technical details of policy and regulation.

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APPENDIX 1: INTERNATIONAL JURISDICTION SUMMARIES

This appendix summarises the policy and legislative context of the rental housing system of each international jurisdiction included in this study. The aim is to present a brief consolidated overview by jurisdiction of material that has been presented thematically in the body of the report.

Austria

General

Austria has long recognised the economic role of housing and central government has played an influential role in promoting housing supply, although policy implementation is increasingly devolved to regional government (Czerny et al. 2007). Municipal government is also active in housing policy, particularly through land supply measures to support affordable housing and local allocation policies. Social landlords and private landlords together provide nearly 40 per cent of dwellings, in roughly equal shares. Subsidies for additional supply have been widely available across the rental system in return for landlords meeting housing quality standards, cost caps and rent setting rules. Subsidised housing is referred to as 'limited profit', reflecting financial controls on landlords.

Austria has not experienced the boom and bust cycle in housing prices to the same extent that has occurred elsewhere in Europe and North America over the last decade, a result that is attributed to the effectiveness of supply-side interventions in dampening house price inflation. Having a well developed and strictly regulated limited profit sector has assisted in moderating rents, especially in the main city, Vienna, which has high proportion of rental households (Deutsch & Lawson 2010).

Policy context

Commencing in 1993, Austria has developed a robust and reliable means of raising private finance for the construction of new rental housing. The centrepiece of the model is the Housing Construction Convertible Bond, which is a tax privileged investment option marketed to individual and institutional investors. Specially established Housing Banks (subsidiaries of private banking institutions) sell the housing bonds and channel the funds raised to new housing and refurbishment projects that are subject to regulation concerning quality, size, rent setting and rent increases (Lawson et al. 2010).

Additional subsidiary supply-side subsidies (public, grants low-income loans and land price discounts) apply to almost two-thirds of the rental stock in Austria. Not-for-profit organisations, for-profit landlords as well as individual households can apply for supply subsidies. In return, owners/landlords must comply with conditions for limiting profits, meeting government cost benchmarks, quality standards and rent setting regulations.

Initial rents for housing in the regulated parts of the sector are based on project costs, including the cost of finance, operating provisions (for maintenance, management, etc.) and a risk mitigation factor (2% allowable additional return). With this approach, having an effective mechanism to lower finance costs and maintaining an efficient and well functioning limited profit sector are critical factors to keep rents affordable. Following completion of loan repayments, rents must be kept below a regulated maximum (Bauer 2004).

Housing allowance programs are determined at the provincial level with four (of nine) provinces offering this form of support to tenants (Amnan and Mundt, undated). This form of subsidy constitutes a small, but growing, percentage of total housing expenditure. There is, however, quite strong resistance to the trend to increasing reliance on housing allowances from providers of limited profit housing, who fear a decrease in supply subsidies (Lawson, CS Austria).

Some additional household subsidies are available on a provincial or municipal basis and for specific purposes, including for low-income tenants who are faced with large cost-based rent increases due to renovation work, and to enable a low-income tenant to make an equity contribution for their housing, which is intended as a first step towards purchase—a right after 10 years. Since 1993, this has resulted in sales of around 15 per cent of limited profit rental housing. Reliance on tenant equity contributions has increased with rising construction costs and declines in federal subsidies. This situation is leading to growing concerns about affordability for those on the lowest incomes (Lawson et al. 2010).

Municipal housing companies cater to the lower-income households (up to the 6th income decile), while limited profit companies have a wider remit (up to the 8th income decile). There were exclusionary provisions for non-citizens in the social housing sector until 2006, when these were removed following representation from the European Commission.

Legislation/regulation

Fixed-term tenancies and rent regulation for tenants in single or 'two under one roof' dwellings are provided for under the civil code. Multiunit dwellings are covered under residential tenancy legislation (Tenancy Act 1981), which provides for unlimited tenure. Both sets of provision apply across the rental sector. Additional regulation applies to the large limited profit sector under the Common Good Housing Law (1948), which covers rent setting (to accord with cost rent principles) and rent increases. Properties are categorised according to quality standards and maximum authorised rents apply.

Strong legal protection of tenants is well established in Austria. Fixed-term tenancies are for a minimum of three years, after which they can be readily terminated. Either party has an option to extend. Unlimited tenancies (about half of all tenancies) can only be terminated on specific grounds after strict procedural requirements are met. Landlords may be required to find alternative accommodation for a tenant where the grounds do not relate to tenant breaches.

Flanders

General

Flanders is the largest of the three regional states of Belgium and, with a population of over 6 million, includes over 60 per cent of Belgian's population. In many respects, its housing system appears very similar to that of Australia; most households are homeowners and just under one in three households rent their housing. Unlike some of its Western European neighbours, most households rent in the private sector from small-scale landlords and social housing comprises only about 6 per cent of all dwellings, or 15 to 20 per cent of the rental market, depending on the locality (De Decker 2001, pp.21–22).

Policy context

The policy settings relevant to secure occupancy in Flanders should be understood in the context of significant devolution (since 1974) of responsibilities for housing and urban policy to the regional states of Flanders, Brussels and Wallonia within the Belgian federation. Nevertheless, the Belgium Government retains policy responsibility for important tax issues related to housing and for rent regulation and tenancy law (De Decker 2008, pp.165–168).

Regionalisation means that Flanders determines housing policies and financing for housing taking into account the transfer of federal funds and its own revenue raising capacity. National home ownership policies have long played a dominant role in housing policy. There is limited public subsidy support for social housing. Since 2003, the Flemish Government has provided low interest loans for social housing construction, which constitute 30–50 per cent of construction costs, with the remainder being privately financed. There is also a small component of operating subsidy for social housing in some areas. Rents in the social rented sector are set according to incomes. Housing associations (private organisations in which municipalities are the largest shareholders) are the preferred providers of social housing.

A small share of private rental properties are leased to Social Rental Agencies, which are specialised organisations that lease and sub-let properties to vulnerable tenants, thereby providing an intermediary between property owner and tenant. Incentives for this model to operate include guaranteed income and renovation subsidies for property owners (De Decker 2002). Eligibility for rent assistance (see below) has also been extended to tenants of these properties.

A right to housing was included in the Belgium constitution in 1994. The Flemish Housing Code (1997) gives effect to this by outlining the right to decent housing, housing objectives and policies, and the responsibilities of the key actors and institutions in that jurisdiction. Key policy issues that have been addressed under the code include health and safety, quality standards and local needs assessment (Lawson, CS Flanders).

In the face of mounting evidence of high housing costs and poor housing quality in the private rental sector (Winters 2005), Flanders introduced a rent assistance scheme to support low-income private tenants in 2007. This had the specific purpose of encouraging lower-income households to move from poor quality or overcrowded dwellings into better housing conditions within a rent cap. Both upfront assistance (to move) and an ongoing subsidy are provided. Take up of these rental subsidies has been low so far (Lawson, CS Flanders).

Legislation/regulation

Tenancy law in Belgium is viewed as a matter of contract (not as a matter of housing policy). National residential tenancy legislation has sought to improve tenant security and achieve more effective control over rising rents. In 1991 rental housing legislation was given a separate section in the Belgium Civil Code. The 1991 legislation established a standard form of lease agreement of nine years that could only be terminated by the landlord under special conditions or reasons. The legislation also allowed for short-term agreements (of three years or less) for special circumstances. In practice, the intention of normalising longer-term leasing has been circumvented to a considerable extent by private landlords preferring to use short-term agreements, which now make up more than half of the registered contracts (De Decker 2001; Haffner et al. 2009a).

The 1991 legislation also established that rents would be adjusted according to the 'health index', which is a form of consumer price index. This was designed to keep rents constant in real terms. In response to the practical difficulties faced by the Belgium Government to improving tenant security and controlling rents, additional rules were introduced in 1997 to limit the number of short-term contracts to one and to prevent rent increases when these contracts were terminated by landlords. However, the effectiveness of these reforms has been limited by overall shortages of good quality affordable rental housing, and securing adequate subsidies for rental housing remains a key policy challenge (De Decker 2001; Haffner et al. 2009a).

While tenancy law is a national responsibility, regulation of other housing policy matters (for example, income eligibility, allocations policies and rent setting for social housing) occurs at the regional level (Winters & Elsinga 2008, p.219).

Germany

General

Germany has perhaps the most distinctive policy context, as well as arguably the most complex policy environment, of the case studies, as a result of the reunification of the former West Germany and East Germany. One of the consequences of reunification in what is by far the largest country in the study⁸⁴ has been uneven regional development including regions characterised by economic decline and those with high rates of economic growth. In consequence, housing markets in different parts of the country vary enormously from regions of low demand and vacant housing to regions with high demand and shortage of housing (and high prices/rents). This variation in market conditions poses challenges for policy makers.

The German policy context is also quite distinct in that it is based a social market economic philosophy (Kemeny 1995) which posits that:

social welfare is best served by bringing about economic progress; the market dominates, and government intervention is designed to support the proper operation of market forces (Busch-Geertsema, 2000 and 2004). The time-limited bricks-and-mortar subsidization, the market-led rent regulation and the fact that mainly market investors are providing subsidized rental housing are characterising features of the housing system that Droste and Knorr-Siedow (2007: 90) call 'market-based' system. (Haffner, CS).

Policy context

German housing policy is tenure neutral. This applies to both bricks and mortar subsidies and household subsidies. Thus, any household can apply for housing allowances (owner or tenant) and any investor can apply for bricks and mortar subsidies (owners or landlords (see also Haffner et al. 2009a).

Social rental housing as a concept does not formally exist in Germany. The non-profit tax status for social landlords in the former West Germany was largely abolished in 1990 and landlords in Germany are private landlords, including municipal housing companies, which are private companies with shares owned by municipalities. Some dwellings units temporarily receive bricks and mortar subsidies in return for rent/price limits and allocations rules. Bricks and mortar subsidies are seen as a 'concession

⁸⁴ Germany has a population of more than 82 million (2005) and 39 million households (2004). There are almost 24 million occupied rented dwellings (60% of all dwellings). The rental sector appears to be the biggest in the European Union 25 country group (Haffner, CS).

model', temporarily ring-fencing subsidised dwellings from the rest of the housing market under a special regime' (Haffner et al. 2008; Haffner, CS).

Federal powers for subsidisation of bricks and mortar were devolved to the *Länder* (states) in 2006. A rationale for this appears to be a requirement to tailor policies to the quite different housing markets in different parts of Germany. This means that the *Länder* are responsible for setting the rules on eligibility, allocations and rent setting for subsidised rental dwellings.

The size of the rental sector in receipt of bricks and mortar subsidies in Germany has shrunk from 2.5 million dwellings in 2005 to an estimated 1.8 million dwellings in 2010. Thus less than eight per cent of all rental housing is subsidised and this is primarily in multi-family buildings on the outskirts of cities. Importantly, as the subsidised sector has shrunk, low-income households can increasingly be found in the unsubsidised rental sector.

Housing allowances (*Wohngeld*) are an important part of German housing (Kofner 2007). These are available to homeowners and tenants in any form of renting and (for tenants) are based on household size and local rent levels. They are also transferable from one dwelling to another. However, the number of recipients has slumped due to changes introduced in 2005 to means tested unemployment benefits (Hartz IV), which means that recipients receive an allowance for housing within their payment rather than as a separate housing allowance.⁸⁵

There is also a third sector of cooperative housing in Germany, which refers mainly to tenant cooperatives rather than ownership cooperatives. Such cooperatives own more than 6 per cent of all housing stock in Germany. They provide strong security of tenure, as in other forms of rental and enable tenant-owners to build up equity and embody principles of self-help, self-government and self-responsibility. These are qualities that the Federal Government wishes to encourage in view of projections about the ageing of the population and the challenges of managing very uneven regional development.

Legislation/regulation

In line with the social market philosophy, regulation of rental housing in Germany is aimed at enabling private landlords to make a competitive profit, while ensuring high levels of secure occupancy for tenants. The conditions of occupancy for the vast majority of unsubsidised rental dwellings are regulated by tenancy law, which is an integral part of the German Civil Code. Incorporation into the Civil Code means that tenancy law is affected by several constitutional influences including a guarantee of property ownership rights, personal autonomy; freedom of information and the protection of marriage and family (Wurmnest 2010 cited in Haffner, CS). Tenancy law was modernised and harmonised between the two parts of Germany in 2001.

In the unsubsidised sector, there is strong rent control for sitting tenants, but less so for new tenancies. Rents for new contacts are generally set at market rates, although exorbitant increases at change of tenancies are in principle illegal under German economic criminal law, which 'declares profiteering to be a regulatory offence' (Wurmnest 2010, p.10 cited in Haffner, CS).⁸⁶ Rent adjustments for sitting tenants are set by reference to three market rents for comparable rental properties, often using a

⁸⁵ In 2004, prior to these changes 9 per cent of all German households (or 3.5 million households) received housing allowances (Kofner 2007, p.159)

⁸⁶ The general rule under economic criminal law in Germany is that newly set rents should not be higher than 20 per cent above local reference rents.

database of reference rents (*Mietspiegel*).⁸⁷ This type of rent regulation appears to have slowed down rent increases when rents are rising. Rents for subsidised dwellings were a form of cost rent, but are now set as part of subsidy contract between with the landlord and the municipality (subsidy giver) in which a maximum rent is negotiated. In some federal states (*Länder*) there are provisions for a rent surcharge in the case of tenants whose incomes increase beyond the eligibility limits set for subsidisation, but there is no termination of tenancy in these circumstances.

The standard lease in Germany, regardless of the rental sub-sector (subsidised or not) is an indefinite one with little provision for fixed-term leases. Termination by the landlord is only allowed in special cases, such as their own use of the dwelling, tenant's breach of the contract or the landlord's inability to make 'acceptable' economic profit'. Sale of the dwelling does not affect the secure occupancy of the tenant. Under the present legislation, after five years of tenancy, the notice periods differ between tenant and landlord: three months for the tenant and nine months for the landlord. However, the German Federal Government announced plans to review legislation on security of tenancy in 2009 and there may be changes in the future, in particular around shorter notice periods for landlords (Kemp & Kofner 2010).

In some areas of Germany, particularly in the former East Germany, there is a surplus of rental dwellings and this is perhaps the most effective means of keeping rents low in these areas.

Ireland

General

The Republic of Ireland has an estimated population of 4.4 million. Historically there has been a strong focus on home ownership and Ireland has the smallest rental sector of any of the case study jurisdictions (21% of households or an estimated 1.45 million households in 2006 (Norris, CS)). Ireland has a unitary system of government and the National Government and local governments are involved in housing policy and assistance. The global financial crisis has had a particularly adverse effect on Ireland, resulting in the provision of an emergency loan to the Irish Government by the International Monetary Fund and the European Union in November 2010. The associated fiscal crisis will affect public policy across all domains including housing.

Policy context

The Irish policy context was distinguished for many years by emphasis on direct expenditure via supply subsidies to social housing, mainly in the local authority sector. In the mid-1980s, the central (unitary) government changed these settings quite radically. One of the main changes was that supply subsidies (capital grants and loans, and operational subsidies) were provided to the not-for-profit sector of social housing (housing associations). In addition, there were fiscal incentives to private landlords who purchased accommodation in run down inner city areas, resulting in a large increase in private rental as well as an improvement in the quality of private rental stock. No new fiscal incentives were granted after 2006.

As a consequence of the effects of the global financial crisis, the Irish Government announced in 2009 that all capital funding for new social housing would be withdrawn. Instead, and for the foreseeable future, local authorities and housing associations are

⁸⁷ Where a database of reference rents (*Mietspiegel*) is not in operation in a municipality, the tenant has to agree to any increase in rent. To justify a rent increase, the landlord has to find three similar rental properties in order to justify an increase in rent.

to be given funding to secure long-term leases on vacant dwellings to on-let to prospective social housing tenants. In December 2010, the Irish Government also announced that existing fiscal incentives to private landlords would be withdrawn (Norris, CS).

Assistance to households in paying their rents differs between the social and private rental sectors. In the social rental sector, rents are set according to incomes. In the local authority sector, each authority determines its own scheme within guidance set by the central Housing Ministry (Coates & Norris 2006b). Housing associations also set their own rent schemes, following the same guidance, and the association receives an annual per property subsidy, which could be regarded as a *de facto* housing allowance.

Private tenants on welfare benefits are eligible for a rent supplement, which is calculated according to a national formula, with some variation to reflect local market norms, and payments cover an average of 86 per cent of the tenant's rent (Norris et al. 2008). In a major change introduced in 2005, recipients of rent supplement for more than 18 months no longer find their own accommodation, but are accommodated in dwellings secured on long-term leases from private landlords by local authorities (Rental Accommodation Scheme). Once this transfer is made, the tenant pays income-based rents as in social housing rather than the rent supplement. For households on welfare benefits, the Rental Accommodation Scheme provides proportionately less financial support, however, if they move into employment, they retain a proportion of their subsidy, which declines as their income rises, whereas rent supplement is withdrawn entirely when claimants enter employment. In 2009, new legislation gave these households accommodated via the Rental Accommodation Scheme the same legal status as social housing tenants, with a major effect on secure occupancy (Norris & Coates 2010).

Legislation/regulation

Ireland regulates its private and social rental housing sectors under different legislative regimes. Private rental dwellings are covered by the Residential Tenancies Act 2004, which sets out rights and responsibilities for landlords and tenants. Social rental housing is subject to a number of national laws, but predominately the Housing Act (as amended), and because this type of stock is delivered by local authorities, through local bye-laws. Housing association provided rental stock is subject to its own legislation, which enables local authorities to fund associations while setting down procedures to assure their status is maintained.

In the private rental sector, security of tenure has been significantly increased, from one month's notice to six months notice (no grounds), extending to 3.5 years once the tenancy has extended beyond the initial six months. Conditions for terminating the new tenancy are set down, however, the periods for notice increase on the part of both landlords and tenants in line with the increasing duration of the tenancy.

Legislation on local authority and social housing association rental stock provides tenants with much less secure occupancy rights than their counterpart in the private rental sector; with periodic tenancies are allowed to be terminated after one month's notice, provided the tenancy agreement is breached. However, developments in case law, particularly in the local authority sector, has resulted in gains in secure occupancy rights, generally overshadowing those in the private rental sector.

In line with the Residential Tenancies Act, all private tenancies must be registered with a tenant board, which is empowered to mediate or adjudicate in order to resolve

disputes between landlords and tenants. Local authority and social housing association disputes are resolved in the mainstream courts.

Ontario

General

Ontario is the largest province of Canada's nine provinces in terms of its share of population. Over 12 million people or 38 per cent of the Canadians live in the province, many of these in 15 large urban centres, including two conurbations of Toronto and Ottawa-Gatineau. The housing system in Ontario appears similar to Australia with more than 70 per cent of households owning or purchasing and just under one in three or 1.3 million households renting their housing in 2006. The rental sector comprises predominantly private rental housing with a small social housing sector (6% of all housing). Public policy development in all Canada's provinces/territories is affected by the constitutional division of powers between Canada and the provinces/territories as well as evolving renegotiation of federal and provincial responsibilities in many areas, including housing policy (Pomeroy, CS).

Policy context

Realignment of federal and provincial responsibilities in Canada has resulted in subsequent devolution of responsibility for many facets of housing policy to Ontario. Whilst the Federal Government retains substantial taxation powers, there are few measures that are intended to stimulate investment in rental housing. This is unlike the period 1974–85 where there were specific federal stimulus measures (e.g. construction incentives and favourable tax treatment of rental investment⁸⁸) (Dalton 2009). Since 1985 there have also been no federal initiatives and no direct expenditures in respect of the private rental market (Miron 1995; Pomeroy 1995).

There were a variety of federal supply subsidy programs to construct social housing in Canada in the post war period. Initially this involved public housing run by the provinces, but primarily involved the not-for-profit sector after the early 1970s (Dreier & Hulchanski 1993). A significant part of this investment was in Ontario, with about one-third of all social housing in Canada being in the province (Bacher 1993). In 1993, the Federal Government terminated all new development of social housing programs (supply subsidies). Two years later the Government of Ontario terminated its unilateral funding of new social housing development. Between 1995 and 2001, there were no new supply subsidy programs in Ontario (or most of Canada; only two provinces, British Columbia and Quebec maintained small unilateral programs). Further, responsibility for existing social housing programs was devolved to the province through the Ontario Social Housing Agreement. In Ontario (although not in the rest of Canada) responsibility for existing social housing programs was further devolved from the province to local municipalities.

Since 2001, the Canadian Federal Government has re-engaged in supply subsidies to the extent of implementing a program of once only capital grants, which must be matched by the provinces/local government. This is intended to stimulate affordable housing and is covered by a bilateral Affordable Housing Agreement between the Federal Government and the Province of Ontario.⁸⁹ Under the terms of the program,

⁸⁸ Canada had full negative gearing before 1972 (similar to Australia) but this was removed in 1972. It was partially reinstated 1974-81 under a specific program, the Multiple Unit Rental Buildings Program, but was then removed again.

⁸⁹ Similar Affordable Housing Agreements were negotiated with all Canadian provinces and territories after 2001.

rents have to be below average market rents (by area) so are aimed at the bottom 50 per cent of the rental market rather than being specifically targeted to those on the lowest incomes. This funding stream has generated more than 19 000 units in Ontario.

There is no national system of housing allowances in Canada nor is there a provincial scheme in Ontario, other than some residual rent supplements under old programs. In the social housing sector, tenants who have incomes below a federally defined limit for each city, pay rents according to their incomes (Rent Geared to Income), in effect a *de facto* housing allowance. Lower-income households on welfare benefits and renting privately receive a 'shelter component' within their provincial benefit (social assistance), but these are quite limited in scope (Steele 2007).

Legislation/regulation

The Canadian Government has not passed specific legislation governing residential tenancies, except for general legislation around tax and contract law. The provinces have exclusive jurisdiction over property matters, with Ontario having its own dedicated legislation. An exception is the Ontario Human Rights Code, which holds precedent on issues such as discrimination.

Private and social rental are regulated under the Provinces Residential Tenancies Act 2006, which applies equally to all types of landlords—large corporate, institutional and individual small investors. This Act replaced the 1997 Tenant Protection Act introduced by a conservative government, which was viewed as tilted in favour of landlords in its aim of stimulating private investment. The 2006 Act was intended to re-balance the relationship. Rent controls were not, however, included in the Act. Such controls had been in place since the mid-1970s but were gradually disbanded under the 1997 Act. Tenant's advocates are currently lobbying for their reinstatement. The 1997 Tenant Protection Act and the 2006 Residential Tenancies Act both include a provision to restrict the frequency and level of rent increase for sitting tenants—with a maximum increase guideline in place. However when a unit becomes vacant, the rent can be reset to current market rates (a process of 'vacancy decontrol')

The part of the social rental sector in which the province had a subsidy involvement is also regulated under the Provinces Social Housing Reform Act 2000. The Social Housing Reform Act is an extensive and complex piece of legislation and relates to the devolution of administration and funding of social housing to local municipalities. In addition, it imposes a set of obligations on both social housing providers and municipal service managers. The legislation has the effect of reinforcing security of occupancy for low-income and vulnerable tenants, e.g. by imposing priority placement requirements on providers.

Cooperative housing is covered by its own Co-operative Associations Act, and residents are considered to be members of a cooperative rather than tenants.

New Jersey

General

New Jersey is a state in the north-east of the US with a population of 8.7 million and over 3 million households. Just over a third of households (or over 1 million households) in New Jersey rent their housing (State of New Jersey 2010). Households live in multi-unit dwellings to a greater extent than for the US as a whole and this is particularly the case for households who rent (US Census Bureau 2010).

New Jersey is of particular interest to the current study as it presents something of a paradox. The prevailing ethos is very much about a 'free market' in rental housing, characterised by private ownership and management, and in which very little rental housing is subsidised to enable lower-income households to access and sustain their tenancies. On the other hand, there has been a strong history of tenant advocacy and activism in New Jersey dating back to the 1970s and only New York comes close to New Jersey's wide range of tenant protection laws.⁹⁰

Policy context

The history of supply subsidies to rental housing in the US mirrors that of the US generally. Funding for new public housing ceased in the 1970s, from which time, there was an emphasis on subsidies to private landlords to construct properties to be let to lower-income households, with specified outcomes in terms of rents payable. These schemes have also largely been phased out. Since 1986, the federal Low Income Housing Tax Credit (LIHTC) scheme (an indirect taxation expenditure rather than a direct subsidy measure) has been applied to increase the supply of affordable rental housing. Household incomes for residents of LIHTC units are generally higher than in public housing or project-based assistance (Schwartz 2006, p.92).

The main form of direct federal subsidy to lower-income households since the 1980s has been Housing Choice Vouchers, which are also commonly known as 'Section 8' vouchers. Housing Choice Vouchers are federally funded, with federal guidelines, but are administered by local housing agencies. Whilst they are primarily for rental, there is also some scope to use the vouchers for home purchase. Unlike the housing allowances in the other jurisdictions in the study, they are not demand driven, but rather budget limited. In consequence over time only one in four households eligible for a voucher have been successful in getting one (Gilderbloom et al. CS). Voucher holders find a private landlord that is willing to let to them and accept the conditions of the program, including an inspection to meet federal housing quality standards.

Housing Choice Vouchers are intended to ensure affordability, such that rent payments constitute no more than 30–40 per cent of household income and in that respect are akin to the ways in which rents are set in social housing in jurisdiction such as Australia, Ontario and Ireland. There are some controls over rents paid that must be based on fair market value assessment for that area (set by the federal government in conjunction with local authorities) (Newman 2007). New Jersey also has a small supplementary scheme of state-funded vouchers (Retsinas & Belsky 2008, pp.340–1). Tenants in the small and residual public housing sector in New Jersey also pay incomes based on a percentage of their income. Households in receipt of welfare payments have a component to cover rental costs included in their payment, as in Ontario.

The federal government has moved away from tied programs and largely devolved responsibility for housing programs to lower levels of government. States and municipalities finance housing assistance programs through a mixture of federal block grants (e.g. Community Development Block Grants and HOME Investment Partnership Block Grants) and housing programs funded by non-federal sources. Financing of housing programs for lower-income households in New Jersey includes 142 municipal housing trust funds (2004), funded through municipal fees on private real estate development (developer levies), and inclusionary zoning to mandate

⁹⁰ The nature and consequences of these laws, in particular, rent controls, have been studied by the case study contributor Professor John Gilderbloom and his colleagues over 20 years (Gilderbloom 1981; Gilderbloom & Markham 1996; Gilderbloom & Ye 2007).

provision of affordable housing in new, mainly suburban, developments (Schwartz 2006, pp.177–204).

Legislation/regulation

At the federal level, legislation/guidelines flow from particular programs, such as the Housing Choice Voucher program, and other national concerns such as preventing discrimination and maintaining tenant privacy.

New Jersey has laws that relate to secure occupancy in rental housing. An omnibus piece of legislation (Truth in Renting Act 2007) shapes the nature of occupancy in rental housing, ranging from anti-discrimination measures to housing quality to pet ownership. The Anti-Eviction Act (1974) requires a landlord to establish specific grounds to remove tenants from dwellings and is intended to ensure tenants are not evicted without due process. It also covers situations where rents are raised to remove tenants so that properties can be relet at higher rents. Overall, the legislation is not designed with the intent of effecting secure occupancy, but rather is aimed at concerns around safety and equality.

A third of New Jersey's 304 cities have local rent controls. Rent controls apply primarily to sitting tenants and rent increases are kept to a specified percentage increase, usually no more than once a year. In most cases, rents are decontrolled upon vacancy and market rents are set for new tenants. Rent controls can be mild, moderate or strong and have been controversial where they have been implemented in New Jersey and other US cities, and arguably have had more of a political than an economic impact (Gilderbloom & Ye 2007).

There is no distinction in legislation on occupancy in rental housing between subsidised housing, corporation-owned housing, or legal structures that manage blocks of apartments, i.e. all rental sectors are treated similarly.

Scotland

General

Scotland is part of the United Kingdom (UK) and, following a referendum in 1997, was granted devolved powers from the UK Government over many policy areas, including housing. In 1999, a new Scottish Parliament was set up and a Scottish government, which is responsible for the devolved administration (initially called the Scottish Executive).

Scotland has a population of 5.2 million and an estimated 2.5 million households (2008). Whilst the majority of households are homeowners, Scotland has a medium size rental sector, which accommodates just over a third of all households. The rental sector comprises mainly social housing, owned and managed by local authority and housing association landlords. There is also a small private rental sector. The social and private rental sectors have been quite distinct in terms of access and conditions of occupancy. However, as it has contracted since the 1980s, the social housing sector has become more residualised, as it increasingly accommodated vulnerable and other low-income households. The private rental sector appears to be playing an increasing role in housing lower-income households (Scottish Government 2009; Shelter Scotland 2009), although recent expansion has also involved a growing 'upmarket' sub-sector catering for mobile middle and high earners (Gibb & Nygaard, 2005).

Policy context

In Scotland, the recent policy context has been shaped by the effects of devolution of powers to the Scottish Parliament in 1999, including the priorities of the Scottish Government, and the consequent financial and other relations with the UK Government. This is particularly apparent with the election of a coalition Conservative-Liberal Democrat UK Government in 2010—a political alignment inconceivable in the Scottish Parliament.

In terms of supply, there are quite different types of assistance to the rental sub-sectors: tax subsidies to private landlords and supply subsidies to social landlords. Private landlords have had limited tax concessions (offsetting of rental costs including mortgage interest against rental income and limited exemption from the goods and services tax) and promotion of Real Estate Investment Trusts after 2007. However, assistance is not dependent on achieving specific outcomes. On the other hand, supply subsidies to social housing have many conditions attached and outcomes are closely monitored. Initially this involved revenue subsidy funding to local authorities and, in more recent decades, capital grants to underwrite housing association development. In Scotland, this funding covers about 60 per cent of the capital cost of newly constructed dwellings in the social housing sector. In 2009–10, a new regime was introduced in which local authorities could receive capital grants covering about 25 per cent of the cost of newly built social rental dwellings.

The newly elected UK Government in 2010 has introduced large-income changes to the system of financing social housing in England, with a 50 per cent reduction in capital grant funding announced in October 2010. Instead, there will be an emphasis on funding 'affordable' homes with rents of up to 80 per cent of market rent, such that an increased share of house-building costs are underpinned by future rental income. Whilst these changes do not apply to Scotland, a part of the expenditure cuts will be a reduction in the allocation of the Scottish budget, from which supply subsidies to Scottish social housing are funded.

At the time of devolution, the UK Government reserved powers on social security. As housing allowances to assist households with their rental costs are an integral part of social security, they continue to be funded by the UK Government, which also sets policy, while payments are administered by local authorities. Unlike supply subsidies, this assistance to households (called Housing Benefit) provides assistance with rent payments across the rental sector in and has grown in importance from the mid-1980s. Figures for Britain (rather than Scotland) indicate that about 15 per cent of all households receive Housing Benefit. Many of these are older or have disabilities and live in the social rental sector. However, about 20 per cent of recipients of Housing Benefit rent privately (Kemp 2007, pp.115–7). Following changes in 2008, private tenants are paid according to a Local Housing Area Allowance rather than actual rent paid (and by household size and composition as before). This is unlike social housing where Housing Benefit remains directly tied to the rental charge for the specific dwelling concerned. The new UK Government is proposing major changes to Housing Benefit as a result of its Comprehensive Spending Review. If adopted, these changes will have major impacts on the incomes of tenants in Scotland (both social and private renters) and their ability to access secure housing. They will also impact on the revenue of housing associations and their capacity to offer tenancies to lower-income households with affordable rentals (Scottish Federation of Housing Associations, 2010).

The Scottish Government has also had a very strong focus on homelessness prevention and intervention, particularly in respect of 'rough sleepers' (Pawson & Davidson 2008)

Legislation/regulation

Legislation and regulation pertinent to secure occupancy differs substantially between the social and private rental sectors. In the social rental sector, legislation in 2001 created Scottish Secure Tenancies to be applied across the sector. These provide virtually unlimited security of tenure as well as other rights. The same legislation also created the Short Scottish Secure Tenancy, which can be used for, limited and defined purposes. In the private rental sector, Short Assured Tenancies have become the norm; providing a minimum 6 months initial tenancy, but where landlords may subsequently terminate tenancies with only two months notice (Bailey 1999). Private sector rents are set at market levels and the only leverage by governments is via the Local Housing Area Allowance, which determines the amount of Housing Benefit payable to private tenants. In the social rented sector, rents remain pegged at well below market levels and are subject to regulatory monitoring.

Since devolution, there has been a focus on the standard of rental properties and the regulation of management practices. By 2015 social landlords must bring all their homes up to the Government-defined Scottish Housing Quality Standard. This requirement involves a major reinvestment program. Innovations focused on the private sector include a landlord registration system supposedly to exclude poor landlords from the sector, and the mandatory licensing of houses in multiple occupation. The Scottish Government has also introduced a voluntary landlord accreditation scheme for private landlords.

The Netherlands

General

The Netherlands is distinguished by having a comparatively large social housing sector, which historically has catered to a broad mix of households, supplemented by a small private rental sector (comprising 11% of households). Social housing peaked at around 42 per cent of all households in 1992, but the share has now been reduced to 32 per cent through the twin processes of disinvestment in, sale and demolition of social housing, and the rapid expansion of home ownership (Priemus 2010).

This situation (of a very large social rental sector) is a legacy of a government-led system of housing provision that persisted in the Netherlands until the latter part of the 20th century. The Dutch model promoted social housing as a mechanism for reducing pressure on wages and enhancing economic growth, in the context of significant population growth and shortages of developable land. Promotion of home ownership and the marketisation of housing provision have been introduced progressively since the 1970s (Milligan 2003).

Policy context

Traditionally, the respective roles of central and municipal governments in the provision of social housing were centred on providing public loans for construction and low cost land for development. Housing associations have become the main social housing providers since the 1990s, replacing municipalities. Social landlords dominate the rental market, although there are a variety of other landlords, including institutional investors (such as pension funds, insurance companies and developers) and private individuals (Lawson, CS the Netherlands).

In a major policy shift in the 1990s, central government ended the provision of public loans for social housing and handed responsibility for future investment to housing associations, which were expected to draw on their large reserves and valuable asset

base to raise and service their own finance for new supply and neighbourhood revitalisation. Government has continued to assist the development of this private financing model by offering a guarantee (established in 1983) on housing association loans, which reduces the cost of capital market borrowings. The guarantee is funded by fees paid by social landlords and backed by central and local government (Lawson et al. 2010). Gradual marketisation of land supply (away from municipal provision) also developed from this period, although a power to set aside land for social housing in new development areas has recently been established under national planning policy (Gurran et al. 2008).

Rents for social housing are set on the basis of a quality system that is concerned with the size of the dwelling, quality of the environment, amenities in the dwelling and the build-quality of the property. A centralised point system, the Housing Appraisal System, is used to determine rental values from these measures. Demand subsidies in the form of housing allowances were introduced in the 1970s, initially as a temporary measure to assist lower-income households, but these have grown in importance. An estimated 30 per cent of renter households receive housing allowances, including one-third of social housing tenants.

Today, rental assistance is the largest remaining rental housing expenditure in the Netherlands, consuming 2 billion Euros in 2009. However, the size of this expenditure should be considered in light of untargeted indirect subsidies available to home purchasers via mortgage interest rate tax deductibility. It is estimated that this cost the Dutch Government 15.5 billion Euros in foregone revenue in 2009. (Lawson, CS the Netherlands).

Rent assistance payments are made according to a formula that takes into account household income, household composition and property rent. Assistance is available to households occupying dwellings below specified rent levels, but these include all but the most expensive dwellings in the market.

A major task of housing associations in recent decades has been renewal of social housing neighbourhoods, especially those comprising older, poorer quality rental housing in the major cities. However, as their reserves have gradually dwindled and house prices and development/redevelopment costs have escalated under market forces, many housing associations have found it increasingly difficult to provide funding for their social housing supply and neighbourhood renewal activities. This situation was exacerbated following the global financial crisis when more associations faced liquidity issues. Adoption of a cross subsidy model involving significant levels of profitable private market activity to increase funding for social investment has also damaged their reputation as social agencies and brought them into intensifying conflict with central government expectations of their primary task: to provide decent quality, affordable housing to lower-income tenants who have a weak position in the housing market (Travers et al. 2010). As a result of these political and policy tensions, housing associations have recently lost their tax exempt status, have been subject to a new tax levy from government on their retained earnings and have been the focus of plans for stricter regulation.

In 2009 following pressure from the European Commission, the Dutch Government agreed that the target groups for access to social housing in future should be those earning less than €33 000, about 43 per cent of all households in the Netherlands. Concerns have been raised about the effect of greater targeting, as the Netherlands has largely avoided problems of stigmatisation and segregation of social housing in the past (Priemus 2010).

In 2010, the future role of housing policy has been subject to considerable debate as part of a general review of public expenditure and revenue brought on by weaker economic conditions. It is anticipated that there will be reforms to housing allowances to contain their costs, new regulations applying to housing associations and deregulation of rents (see below) in a larger part of the rental sector (Lawson, CS the Netherlands).

Legislation/regulation

Tenancy law in the Netherlands goes back to the Dutch Civil Code of 1838 (which had its origins in the French Civil Code). This set out general clauses around contracts, transfers, termination, obligations between landlords and tenants, and so on. Since that period, Dutch jurisprudence has established norms around these issues.

The rental market in the Netherlands is highly regulated. However, there are moves to deregulate a larger share of the private stock to promote additional investment. Allowable annual rent increases are set by government and currently are aligned with the inflation rate.

The same rules of tenancy apply to both private and social rental housing tenants and tenancy contracts in both sectors are usually for an indefinite period of time. Termination by the judiciary can only be made on the basis of approved grounds set out under the Dutch Civil Code.

Landlords in the two sub-sectors are subject to different regulatory regimes. Under social performance standards, regulated through local agreements and enforced by central government, social landlords are obliged to ensure quality living environments, consult with tenants and ensure the availability of appropriate services, as well as maintain a secure financial position. All landlords with more than one hundred rental dwellings are required to give tenants appropriate information and to consult with them about relevant policy matters (Ouwehand & van Daalen 2002).

APPENDIX 2: INTERNATIONAL CASE STUDY TEMPLATE

PART A: MARKET AND POLICY CONTEXT

A.1 GENERAL

A1.1 What is the size of the overall rental sector measured in a) private dwellings and b) households (if different)?

A1.2 Briefly explain the policy settings for rental housing:

- What emphasis is there on direct (expenditures) and indirect assistance (tax system)?
- What are the main subsidies to suppliers of rental housing and to households who rent?

A1.3 What identifiable sub-sectors are there in the rental sector and what is their size in terms of private dwellings (or households if different)?

A1.4 What role do these rental sub-sectors have in the housing market and:

- Has that changed in the recent past?
- How does it correspond with policy aims for rental sub-sectors?

A.2 RENTAL DWELLINGS

A2.1 What is the composition of the rental sector by dwelling type?

A2.2 To what extent is the rental stock constructed or bought specifically for rental purposes and to what extent does it filter into rental from home ownership or inheritance?

A2.3 What is the ownership structure of the rental stock?

A2.4 Are there significant issues of housing quality in the rental stock? If so, what are the main concerns and how are these being addressed?

A.3 HOUSEHOLDS WHO RENT THEIR ACCOMMODATION

A3.1 What is the profile of households living in rental housing in each of the sub-sectors identified above and how do they compare?

A3.2 To what extent is rental housing occupied by lower income households—a) those on welfare payments; b) those on low wages or c) some combination of both?

A3.3 Is the capacity of lower income households to afford to rent housing a significant policy issue? If so, to which rental sub-sectors does this refer?

A3.4 What are the main eligibility criteria for subsidies for households to rent housing?

A3.5 In which sub-sectors can households receive housing allowances; are there different systems between sub-sectors, and can household move within and between sectors and continue to receive their housing allowance?

PART B: LEGISLATION, REGULATION, POLICY AND PROGRAMS

B.1 LEGISLATIVE FRAMEWORK FOR SECURE OCCUPANCY IN RENTAL HOUSING

B1.1 What is the type and coverage of residential tenancies legislation (ie specific legislation setting out the rights and responsibilities of landlords and tenants) and how does it vary, if at all, between rental sub-sectors?

B1.2 To what extent is secure occupancy in rental housing also affected by other types of legislation?

B2: ACCESS TO RENTAL HOUSING

B2.1 To what extent, and how, do selection processes for rental housing affect secure occupancy?

B2.2 What incentives are there for landlords to take on lower income and vulnerable households?

B2.3 To what extent does the costs of establishing a tenancy pose financial burdens that may compromise secure occupancy?

B3. AFFORDABILITY OF RENTAL HOUSING

B3.1 To what extent do rent payments, and changes over time, affect secure occupancy in rental housing?

B3.2 Is there evidence that other types of expenditures incurred by tenants affect secure occupancy over time; if so are there policies or programs to assist tenants with these expenses?

B4. SAFETY, PRIVACY AND QUIET ENJOYMENT

B4.1. Are there mandatory or recommended standards about rental dwellings which are designed to improve safety for residents?

B4.2 To what extent, and how, can residents exercise autonomy in making a home in their rental dwelling?

B4.3 Are there any particular measures to support privacy and quiet enjoyment of rental properties?

B5 COMFORT AND STANDARD OF REPAIR

B5.1 What means are there of ensuring basic standards of physical comfort?

B6. LANDLORD-TENANT RELATIONS

B6.1 Are there policies and programs which attempt to improve the quality of rental management and to provide information for landlords and tenants?

B6.2 How does the form of tenancy agreement (if applicable) affect secure occupancy in rental housing?

B6.3 Are there ways in which the management arrangements for rental properties provide incentives or disincentives for secure occupancy, even if unintended?

B6.4 What evidence is there on the length of tenancies and the reasons why tenancies finish?

B6.5 What mechanisms are there for mediation/conciliation and arbitration in disputes between landlords and tenants? Is there any evidence on their effectiveness?

B6.6 How professionalised is management of rental housing and how does this vary by sub-sector?

B6.7 What umbrella organisations, if any, represent the interests of landlords and tenants of residential properties? Are they based on a national/federal, state/province or local scale?

B7. SPECIFIC PROVISIONS TO IMPROVE SECURE OCCUPANCY FOR LOWER INCOME AND VULNERABLE HOUSEHOLDS

B7.1 Are there programs to support and/or advocate for low-income and vulnerable households who are facing difficulties in maintaining their tenancies?

B7.2 Are there any policies and programs which aim to identify at risk tenancies?

B7.3 Is there any financial and/or legal assistance for tenants whose secure occupancy is threatened whether by their own actions or those of landlords/housing managers?

PART C: POLICY CONTEXT AND INNOVATIONS

C1 POLICY CONTEXT

C1.1 Is providing for more secure occupancy in rental housing an issue of policy debate in the country, and why?

C1.2 Has secure occupancy in rental sub-sectors declined or increased in importance over time and why?

C1.3 What is the main source of ideas about innovation in the area of secure occupancy (e.g. tenants' groups, governments, property owners, consumer affairs, welfare agencies, researchers, others)?

C2 INNOVATIONS

C2.1 Please identify innovations in the country/jurisdiction which have been aimed at improving secure occupancy in rental housing, in particular for lower income and vulnerable households?

C2.2 Please give details on up to three of these which you think have been significant either because they worked or because they provided valuable learning about means of improving secure occupancy (even if they failed)?

C3 ANY OTHER INFORMATION?

NOTE

The original template included:

- A preamble outlining the background to the project and an explanation of key concepts.
- An extensive series of prompt questions to assist the contributors in completing the template.

An annotated version of the template is available on request from khulse@groupwise.swin.edu.au.

APPENDIX 3: INTERVIEWEES FOR THE NSW AND VICTORIAN CASE STUDIES

Participants for the interviews were selected on the basis of their knowledge and expertise on various aspects of secure occupancy in rental housing, rather than as representatives of the organisations for which they worked. However, they drew their expertise from work with consumer organisations, such as tenants unions and resident groups, industry groups such as real estate institutes and property owners associations, government organisations (policy and programs), and landlord/tenant mediation and dispute resolution.

The following people were interviewed in NSW:

- Anonymous, Property Owners Association of NSW
- Deborah Brill and Laurie Galina, Housing NSW
- Lynden Esdaile, Housing Appeals Committee
- Chris Martin and Ned Cutcher, Tenants Union NSW
- Tim McKibbin, Real Estate Institute
- Robert Mowbray, Older Persons Tenant Service
- Nada Naser and Joe Parsons, Housing NSW
- Mary Perkins, Shelter NSW
- Kay Ransome, Consumer, Tenancy and Trader Tribunal, led a group meeting attended by Graeme Dune, Susan Corley, Rex Butler, Anne Lynch, Vikki Hardwich and four other Tribunal members who preferred not to be named.

The following people were interviewed in Victoria:

- Toby Archer, Tenants Union Victoria
- Heather Lambrick, Victorian Civil and Administrative Tribunal
- Robert Larocca, Real Estate Institute of Victoria Ltd
- Chris Povey, Promoting Law in the Public Interest, Victoria
- Howard Shell, Victorian Department of Human Services
- Sarah Toohey, Victorian Council of Social Service.

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