



# Regulating rents: international examples & experience

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Prepared for Shelter NSW and Tenants Union of NSW

November 2023

*Recommended citation:*

Sisson, A., & Bowyer-Pont, P. (2023). *Regulating rents: international examples & experience*. Sydney: Shelter NSW & Tenants Union of NSW.

We acknowledge the Traditional Custodians of the land on which Macquarie University stands – the Wallumattagal Clan of the Dharug Nation – whose cultures and customs have nurtured, and continue to nurture, this land since time immemorial. We pay our respects to the Elders, past and present.

This report was made possible thanks to Shelter NSW and the Tenants Union of NSW, as well as a Macquarie University Research Fellowship. The authors would like to thank Gary Cox, Stacey Miers and Leo Patterson Ross for their comments and advice. Any errors are the responsibility of the authors.



**Shelter NSW** is an independent, non-profit, member-driven organisation advocating for better housing outcomes since 1975. We represent the broad interests of a diverse network of members, partners and aligned industry stakeholders who share our vision of a secure home for all NSW residents. Our work involves engaging experts and communities in our work, research, and training. We aim to create a sustainable housing system that provides a secure home for all. Our vision is for an economically, socially, and environmentally sustainable housing system through our critical engagement with policy and collaborative leadership initiatives with government, community and the private sector.

Shelter NSW is especially concerned for low-income households that struggle to afford good-quality and well-located housing in the private rental market and address housing insecurity, increasingly experienced by people on low and very low incomes.

Since 1976, the **Tenants' Union of NSW** has been the peak voice representing renters' interests in NSW, combining legal and policy expertise and direct engagement to ensure a well-rounded, evidence-based approach to improving our renting system. It is a non-partisan, membership-based co-operative.

The Tenants' Union of NSW is the main resourcing body in the NSW network of Tenants Advice and Advocacy Services (TAASs), and a community legal centre specialising in NSW residential tenancies law. Across the network we assist approximately 40,000 people each year resolve their renting issues.

The Tenants' Union receives principal funding from:

- The Tenants Advice and Advocacy Program administered by NSW Fair Trading, using money from the Rental Bond Board Interest Account, and;
- The Community Legal Centres Program administered by Legal Aid NSW.

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# Acronyms

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
CPI	Consumer Price Index
DCJ	Department of Communities and Justice
EU	European Union
FY	Financial Year
GMR	Greater Metropolitan Region
HICP	Harmonised Index of Consumer Prices
LGA	Local Government Area
NSW	New South Wales
OECD	Organization for Economic Cooperation and Development
PRS	Private Rental Sector
RPZ	Rent Pressure Zone

# Executive Summary

Rents in Australia's private rental sector (PRS) have risen sharply in 2022 and 2023. Low vacancy rates and slow construction have led many to predict further rent increases over the coming years. It is widely acknowledged that Australia faces a rental affordability crisis, one that is most severe for lower income households.

This crisis has prompted debate about the merits of rent regulation. Rent regulation, or rent control, has undergone a resurgence internationally in the wake of the COVID-19 pandemic and more recent inflation and cost-of-living pressures. Several jurisdictions have introduced new or updated rent regulations in the past five years, among them the Australian Capital Territory (ACT).

Outside of the ACT, however, Australia is unfamiliar with rent regulation. This unfamiliarity is often betrayed in commentary that makes sweeping claims about rent regulation based on a small number of unrepresentative examples and questionable interpretations of research evidence. Such commentary belies the wide variety of rent regulations around the world.

The purpose of this report is to summarise the range of rent regulations internationally and to present considerations for how rent regulation might be implemented in New South Wales (NSW).

## Key findings

The report involved an extensive desktop scoping activity encompassing all OECD member states and accession candidates. Chapter 2 summarises key differences among 25 nations and numerous sub-national jurisdictions with respect to four crucial dimensions:

1. The limit placed on rent increases, or **rent cap**;
2. **Vacancy control vs. vacancy decontrol** (i.e., whether rent caps apply between tenancies or only within tenancies);
3. The **coverage** of the regulations across the PRS (i.e. which properties are regulated and which are exempt); and
4. Provisions for **exceptional rent increases** above the rent cap in certain circumstances.

Rent regulation policies are characterised by their various approaches to these four main dimensions, yet popular debate tends to focus on the first. There is also wide variation with respect to this first dimension, rendering many generalisations meaningless. For instance, a rent cap that allows rents to rise above the rate of

inflation will not have the same effects as one that limits rent increases to 2% annually.

- We find that the most common type of rent cap is one linked to inflation, with rent increases permitted in line with the annual rate of change in Consumer Price Index (CPI) or similar. However, rising inflation has led to the implementation of ceilings on these caps, which limit rent increases to a maximum percentage. Such an approach mitigates the risk that high inflation leads to high rent increases, which in turn fuel further inflation.
- Another crucial point of difference is whether the cap applies between tenancies or whether rents are set freely between tenancies. The former is described as *vacancy control* and the latter *vacancy decontrol*. Some jurisdictions allow a larger but not unlimited rent increase for a new tenancy, or *vacancy bonus*. Vacancy decontrol tends to mean that the main priority is tenure security, while vacancy control moderates rent growth more strictly. Vacancy decontrol is the more common approach.
- Rent regulations often do not apply to all private rental dwellings within a given jurisdiction. Many exempt new and recently built dwellings – including substantially refurbished dwellings – either permanently or for a certain number of years.
- Such exemptions, combined with the prevalence of vacancy decontrol, mean that there is limited evidence of reduced construction within the empirical literature. However, in attempting to prevent a reduction in construction activity, exemptions for new dwellings allow a sizable portion of the PRS to remain unregulated and incentivise landlords to redevelop or refurbish regulated properties.
- Some regulations only come into effect when a threshold of housing stress is met in a given area, such as low vacancy rates (e.g. New York) or successive quarters of high rent inflation (e.g. Ireland).
- Most rent regulation regimes contain provisions that allow owners of regulated dwellings to raise rents above the cap in exceptional circumstances. These circumstances include major capital expenditure, increased operating costs,

and maintaining a fair return on investment.

- The tendency across the majority of cases is to place responsibility for compliance on landlords rather than tenants.

Across the range of regulations, we identify three generalised approaches that emphasise different, albeit overlapping objectives:

- 1. Regulations for sector-wide rent stabilisation** cover the entire PRS and apply between tenancies as well as within tenancies. The rent cap prevents large rent increases either through a fixed percentage cap or a ceiling on an index-linked cap. Exceptional increases are permitted but tightly regulated.
- 2. Regulations for security of tenure** restrict rent increases within tenancies across the entire PRS so that security of tenure is not undermined by sharply rising costs. However, rents between tenancies are set freely and landlords are more readily granted exceptional increases to ensure that a property remains in the PRS.
- 3. Regulations for lower-income housing affordability** place limits on rent increases for part of the PRS that is more likely to house lower-income renters, while leaving the remainder unregulated. This typically takes the form of excluding higher quality dwellings, whether based on a direct measure of quality or de facto measure such as construction date.

In Chapter 3, we examine rent regulation regimes in the ACT, Ireland, Oregon, Scotland and St Paul, Minnesota. These case studies were selected as measures recently introduced in jurisdictions with little or no recent history of rent regulation.

- Ireland's regulations significantly constrain rent inflation while those in the ACT and Oregon permit substantial rent increases and act mainly as security of tenure measures, preventing the most excessive rent increases.
- The Scotland case balances controlling rents relatively strictly *within* tenancies while allowing market pricing *between* tenancies. This maintains security of tenure for sitting tenants but does not prevent rent inflation caused by new agreements.

- The St Paul case illustrates how the contentious politics of rent regulation can lead to regimes with confused objectives. What initially appeared to be a relatively strict and straightforward cap in fact exempts a very substantial portion of rental properties and readily allows exceptional increases, undermining the original objectives of the law.

Chapter 3 also compares recent rent inflation in Sydney, measured in CPI Rents data, with the rent increases hypothetically permitted under the four rent caps across the five case studies.

- An Ireland-style rent cap (lesser of 2% or rate of inflation) would have led to a \$1,976 saving for a median Sydney tenant beginning their lease in FY2022-23. A Scotland-style rent cap (3%) would have led to a \$1,716 saving.
- An Oregon-style rent cap (lesser of 10% or 7% plus the rate of inflation) would have permitted rent increases well above the rate of rent inflation during 2022-23. So too an ACT-style rent cap (110% of the rate of rent inflation over the past 12 months).
- In the five years prior to FY2022-23, each of these rent caps would have permitted rent increases in line with the rate of rent inflation in Sydney while preventing excessive rent increases.
- For a median Sydney tenancy commencing with FY2013-14, only an Ireland-style cap would have kept rents below the observed rate of rent inflation. For a median Sydney tenancy commencing with FY2008-09, both Ireland and Scotland style rent caps would have prevented rent increases in line with the level of rent inflation, though only until 2020 for the latter. The ACT and Oregon style rent caps would have permitted rent increases significantly above the level of rent inflation and prevented extreme rent increases.

Finally, Chapter 4 highlights key considerations for rent regulation in NSW given the characteristics of the state's PRS. We conclude with recommendations based on these characteristics and the report's earlier findings. These recommendations include:

- **End 'no grounds' evictions for both fixed term and continuing tenancies.** The security of tenure and

predictable rent increases provided by rent regulation would be undermined without these reforms.

- **Regulate rents within tenancies through either (i) a fixed percentage cap or (ii) an inflation-linked cap limited by a maximum percentage.**

Further research should guide the choice of cap and provisions for exceptions. This should include investigating indexes that exclude housing costs to avoid the circular logic of rising rents justifying rising rents.

- Such rent regulations should **cover the entire PRS rather than exempting new and/or recently completed dwellings**. While these exemptions have been seen as a way to minimise impacts on construction activity, they incentivise landlords to prematurely redevelop or refurbish existing rental stock in order to shift it into the unregulated sector. Any impacts on new construction activity can be mitigated by allowing initial rents for new dwellings to be set freely or against reference rents, along with wider planning and tax reform.
- Rent regulations should **cover all forms private rental accommodation**, including student housing, boarding houses, co-living, and sharehouses (excluding non-rent charges such as utilities). If a new tenancy agreement is required following a change in sharehouse composition, or a student's return for the semester, a loophole is opened for a higher rent increase. This should be avoided.
- Rent regulations should **limit the ability of landlords to bank rent increases** (i.e. to save up multiple years' rent increases and charge them at once), as this practice undermines the enhanced security of tenure provided by capping rent increases within tenancies.
- Further research should **consider the impacts of incorporating vacancy control or vacancy bonuses** into rent regulations in NSW. As we have illustrated, these provisions would dampen rent inflation more effectively. While vacancy control may have an impact on new construction, regulations can allow the rent for new dwellings to be set freely for the first lease, as is the case in Ireland. Furthermore, such arguments are weaker in the context of a PRS driven more by capital gains than rental yields,

and where landlords are able to deduct losses against taxable income.

- The need for **differentiation across regional submarkets** is another area for further research. This includes the appropriateness of standard rent regulations throughout NSW versus geographically targeted regulations such as those in Ireland.
- **Improved data collection is essential** for monitoring and enforcing rent regulation. Whether rent regulations are introduced or not, NSW should comprehensively track rents within tenancies by requiring landlords or property managers to lodge a notice of rent increase with NSW Fair Trading. To ensure compliance, prior notification of NSW Fair Trading should be a condition of valid rent increase. Such data would enable much wider evaluation of PRS performance, beyond monitoring and enforcing rent regulations.



# 1. Introduction

Recent years have seen a resurgence in rent regulation internationally. The COVID-19 pandemic, and subsequent inflation and cost of living crises, heightened longstanding concerns about housing affordability and security and prompted many governments to introduce new or updated laws in order to protect tenants from large rent increases and curtail inflation. This includes many jurisdictions with little or no recent history of regulating rents. Australia is among them, with the ACT introducing sector-wide limits on rent increases for sitting tenants in 2019 and several state governments freezing rents temporarily during lockdowns in 2020.

Rent regulation, also known as rent control or rent stabilisation, has recently been the subject of heated debate in Australia. Much of this debate is ill-informed. Many commentators dismiss rent regulation based on one or a small number of cases, or outdated and/or misinterpreted evidence. We often hear that the failure of rent regulation is Economics 101. As with many subjects taught to first year university students, the reality is much more complicated. As Marsh et al. (2022: 8) argue, much talk of “rent control” lacks nuance: it misses important differences in regulatory design’. Contemporary rent regulation covers a wide range of measures which are flexible and sensitive to local housing markets, addressing widespread but context-specific market failure (Coffey et al. 2022). In short, understanding rent regulation requires a ‘system-embedded’ approach that accounts for local market, policy and political contexts (Stephens 2011).

Various types of rent regulation can be found throughout OECD nations – in the United States, Canada, South Korea, and many in Europe. In this report we present the findings of an extensive scoping exercise which brings to light the diverse range of rent regulation regimes found in 25 OECD member states and accession candidates

and their multiple subnational jurisdictions. We summarise key differences with respect to limits on rent increases and various exceptions and exemptions. We examine five recently-introduced regimes in greater detail, and explain how the four rent caps that operate across these five cases might have functioned in Sydney and NSW if they had been implemented in recent years.

The 2018 National Housing and Homelessness agreement set out the objective for ‘tenancy reform that encourages security of tenure in the private rental market’. While the focus has rightly been ending ‘no grounds’ evictions, unlimited and unpredictable rent increases are also a major barrier to security of tenure. Regulating rents *within* tenancies could significantly enhance tenure security for the growing number of renters in NSW. Furthermore, regulating rents *between* tenancies could significantly improve affordability across the PRS. Rent regulation can play an important role in a wider housing policy agenda alongside tenancy, tax and planning reforms, and the much-needed expansion of social housing (Martin et al. 2023).

## 1.1 BACKGROUND AND CONTEXT

Rents in Australia’s PRS have risen sharply over 2022 and 2023. The COVID-19 pandemic, lockdowns and eviction moratoriums caused a temporary reduction in rents nationally, though this was concentrated in Sydney and Melbourne – many smaller cities and regional areas experienced rent inflation throughout this period (Hanmer & Marquardt 2023; Pawson et al. 2021). As COVID-19 restrictions were phased out, rents nationally quickly returned to, and exceeded, their pre-pandemic levels. The consequences have been deteriorating affordability and rising housing insecurity, as tenants are forced to choose between a rent increase that will place them in (further) housing stress or attempting to find a

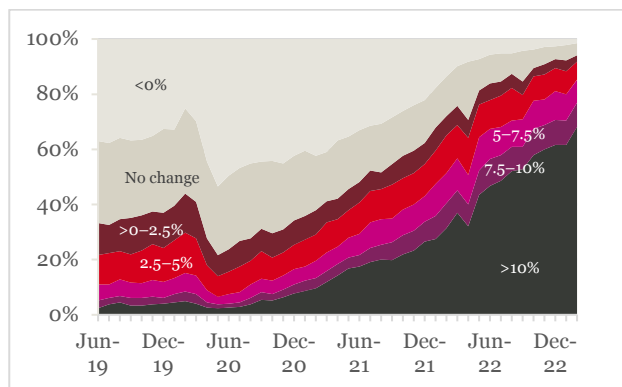


Figure 1: Rent increases for national sample of new tenants (Source: Hanmer & Marquardt, 2023)

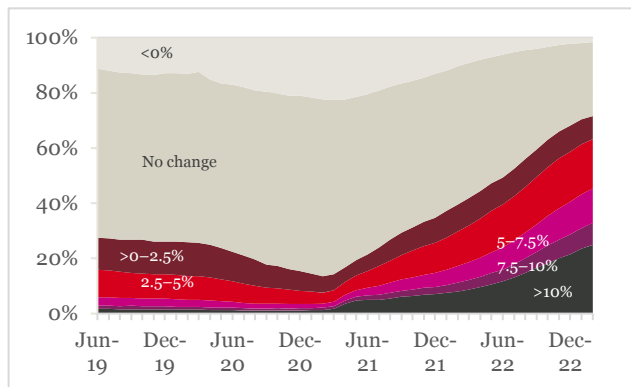


Figure 2: Rent increases for national sample of sitting tenants (Source: Hanmer & Marquardt 2023)

new property at a price they can afford, which is increasingly difficult.

Australian media regularly report on rising advertised rents from one month to the next. While the data is less comprehensive, rising rents are also increasingly apparent among sitting tenants, with CPI figures reporting rents up 7.6% nationally from September 2022 to September 2023. Hanmer & Marquadt’s (2023) analysis of a new sample of several hundred thousand private rental properties nationally provides further evidence, reproduced in part below. Figure 1 shows significant growth in the number inter-tenancy rent increases greater than 10%, from around 2020-21 (several months before the Reserve Bank of Australia raised the benchmark interest rate). By the end of the time series, the majority of new tenants were paying rents more than 10% above the rent of the previous tenant(s). Figure 2 shows a more moderate, but still strongly positive trend in the number of sitting tenants receiving rent increases of more than 10%, with the majority receiving some level of rent increase at the end of the time series. The lower number of rent increases for sitting tenants in the maximum band (>10%) is at least partly due to tenants refusing to pay this rent increase and instead vacating their home. In such cases, rent increase notices serve as a de facto eviction notices.

These trends are mirrored in NSW, as illustrated in Figure 3. While Hanmer & Marquadt’s sample is not broken down by state and territory, rental bond lodgement data published by the NSW Department of Communities and Justice (DCJ) reflects a steep rise in rents from the beginning of 2022 in the Greater Metropolitan Region (GMR) and earlier, though somewhat less steep, in the rest of NSW. Median rents for new tenancies across the GMR fell to \$490pw by the end of 2020 before rising to \$640pw by the middle of 2023. First quartile rents followed the same trajectory, rising from \$400pw to \$500pw. The rest of NSW saw a steady rise throughout lockdowns in 2020

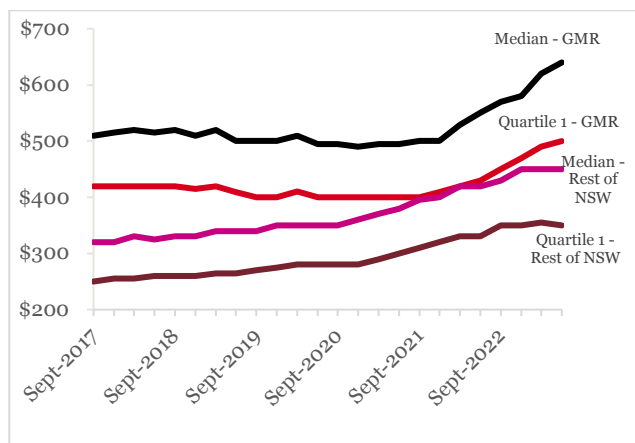


Figure 3: Median rents for new tenancies in NSW (Source: NSW DCJ)

and 2021 and continuing in 2022 and 2023. COVID-19 interrupted a longer-term trend in Sydney of rents outpacing inflation. Figures 4 and 5 compare the all-item CPI for Sydney with the CPI index of rents for Sydney. As Figure 4 indicates, rents rose more rapidly than inflation until 2018-19. Figure 5 further illustrates that, despite rent deflation between 2018-19 and 2021-22, rents are 181% of the level they were 20 years ago (September quarter 2003) while the all-item CPI is 171% of this baseline level. These data are only available for Sydney.

Rental affordability is a particularly serious problem for lower-income households. A small and diminishing number of private rental properties are affordable to households in the first and second quintiles for household income (Hulse et al. 2014; Hulse et al. 2015; Hulse et al. 2019). The effect, when combined with the declining proportion of non-market housing (i.e. social and affordable housing), is rising housing stress. This is seen in the latest available data from the Australian Bureau of Statistics (ABS) on lower income housing stress from 2007-08 to 2019-20, which indicates that more than half of lower income renters in Greater Sydney are in housing stress and more than a third in the rest of NSW (see Figure 6). NSW has a higher proportion of lower income renters in housing stress than all other states and territories.

Many commentators have predicted that rent inflation will continue over the coming years until supply catches up to demand. According to Housing Australia (formerly the National Housing Finance and Investment Corporation), this will take several years and will be particularly challenging in Australia’s major cities, which are also where rents and rental stress are highest (NHFIC Research 2023). Furthermore, the effects of new housing supply on rents is modest; Saunders and Tulip (2019) model an effect of 2.5% for every 1% increase in the total housing stock above demand. Given the current shortage

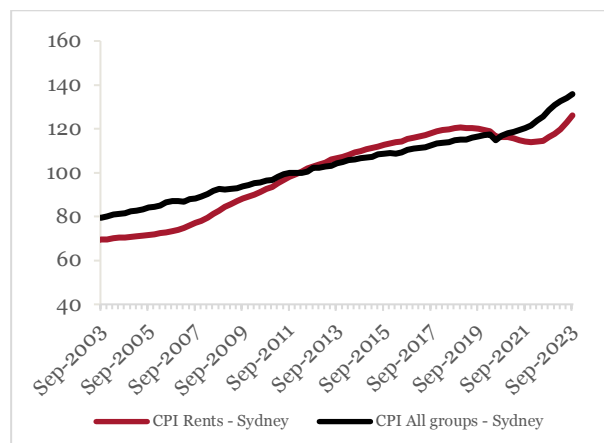


Figure 4: Index numbers for CPI and CPI Rents, Sydney (Source: ABS)

and challenging economic environment, new supply alone cannot solve the affordability and insecurity problems in the PRS (Nygaard et al. 2022). A wider suite of housing policies will be needed, including some form of rent regulation.

## 1.2 LITERATURE OVERVIEW

In recent years there have been several comprehensive reviews of the rent regulation literature. We draw upon these key publications to inform our study. In particular, Gibb et al. (2022), Coffey et al. (2022), Goetz et al. (2021) and Scanlon & Whitehead (2014) are helpful in providing an overview of the state of the academic literature.

Each of these reviews finds widespread evidence that rent regulation produces positive outcomes for tenants. Goetz et al. (2021) focus on literature from the United States, which dominates the international literature on rent regulation. They find a general consensus that rent regulation successfully reduces rents, moderates rent growth over time, and improves security of tenure. The extent to which any regime achieves these benefits depends on the particular characteristics of the regulations and the wider market and policy context in which they operate. Coffey et al. (2022: 16) make a similar assessment of the literature, concluding that the ‘research is clear in finding that existing tenants benefit from rent controls through lower rent levels or lower inflation rates’. Gibb et al. (2022) point to wide support in the social policy literature for rent regulations that, at a minimum, limit rent increases within tenancies.

There is a general consensus that maintenance can decline when regulations do not contain sufficient provisions for landlords to recoup costs. Yet as both Coffey et al. (2022) and Goetz et al. (2022) note, it is increasingly common for rent regulations to allow landlords to gradually pass on the costs of larger renovations and upgrades via rent increases, though this does not extend to

more minor or aesthetic maintenance. Gibb et al. (2022) suggest that rent regulation can even trigger enhanced maintenance activity within regimes where such activity is grounds for a higher rent increase. While improving housing quality, these incentives can drive gentrification.

Somewhat surprisingly, given the public debate, there appears to be scant evidence of rent regulation reducing construction activity. This is because most rent regulation regimes either exempt new construction or allow rents to be set freely between tenancies (and hence for the first tenancy in a new property). As Gibb et al. (2022: 25) explain, ‘rent stabilisation mechanisms that allow landlords to reset rents between tenancies needn’t affect the timing or density of residential construction’ (see Sections 2.3 and 2.4.3). There is, however, evidence of existing properties exiting the PRS in response to rent regulation and, in some cases, a reduction in the size of the PRS. As Goetz et al. (2022) note, in many cases this can be attributed to the aforementioned exemptions for new properties, including provisions which treat substantially refurbished properties as new dwellings. Furthermore, the argument that these PRS exits reduce housing supply rests on the assumption that the owner-occupied and private rental sectors are functionally separate. In fact, households move across these sectors in a way that leads generally to a zero-sum effect.

Misallocation and reduced mobility are common critiques of rent regulation in the economics literature. By blunting the price signal, it is argued, rent regulation incentivises tenants to remain in their homes longer and, over time, leads to a mismatch between rental properties and households, reduces mobility, and impacts economic efficiency (Gibb et al. 2022). A common rebuttal in the social sciences literature is that this mobility reduction is, in fact, a positive rather than a negative, because tenants are protected from displacement that has occurred elsewhere due to rising rents. For instance, Diamond et al. (2019) found that rent regulation in San Francisco

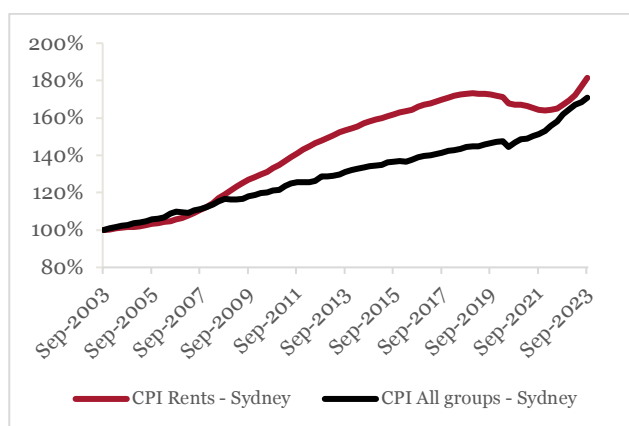


Figure 5: Change in CPI and CPI Rents (Sept-2003 baseline), Sydney (Source: ABS, authors' calculations)

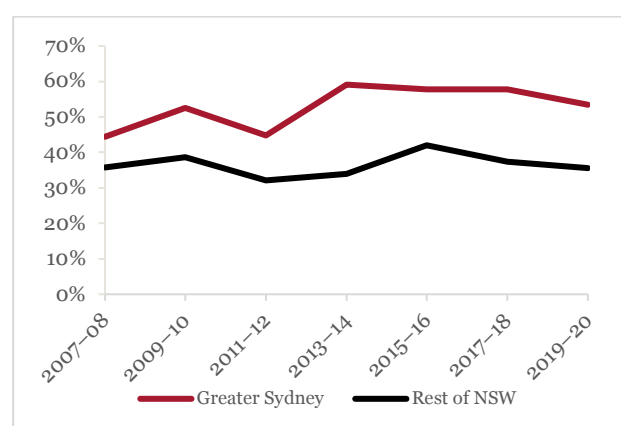


Figure 6: Lower income renters in housing stress, NSW (Source: ABS)

was highly effective at preventing the displacement of lower income households and particularly those belonging to racialized groups. Furthermore, as Gibb et al. (2022) note, these criticisms could also be levelled as easily at homeownership as at rent regulation.

Gibb et al. (2022) offer the most comprehensive recent review of the peer-reviewed and grey literature on rent regulation. They stress the importance of differentiating between models of rent regulation when assessing the evidence, along with the wider policy ecosystem in which particular rent regulations exist. This point is also made by Scanlon & Whitehead (2014). For Gibb et al., a fundamental point of debate over rent regulation is ‘the weight given to context, history and institutions’ (2022: 7). The economics discipline, they contend, tends towards placing less weight on these dimensions, drawing general conclusions about the impacts of rent regulation based on their operation in one or few places – particularly in the United States. As such, they call for more critical engagement with the empirical evidence pertaining to both rent regulation in general and to specific policies.

Furthermore, Gibb et al. argue that the orthodox economic critique of rent regulation ‘relies upon models that do not capture important characteristics of the housing market; data and analytical techniques that do not allow the effect of rent control to be isolated effectively; or the scope for generalising from published results is more circumscribed than is assumed to be the case’ (2022: 11). In particular, they highlight the common assumption that housing markets are perfectly competitive – an assumption they argue is often not sufficiently grounded in empirical research and which leads to often unsubstantiated conclusions. Arnott’s (1995) seminal analysis tested a range of rent regulations under various assumptions from perfect to imperfect competition and, while concurring with the orthodox economic critique regarding rent freezes, found many benefits to other types of rent regulation (see Section 2.1). As Coffey et al. (2022: 16) argue, if a housing market is not perfectly competitive and instead there are ‘market failures, information asymmetries or excess demand (coupled with inelastic supply)’, then ‘there is a clear economic rationale for the use of rent controls’ (see also Arnott 1995; Turner & Malpezzi 2003).

To summarise, each of these reviews (i) stresses the need to engage with the complexity of any given rent regulation regime within its particular context; (ii) cautions against generalising from one or a few cases; (iii) encourages critical engagement with evidence both ‘for’ and ‘against’ rent regulation; and (iv) points to the possibility of designing effective regulations by considering

local housing market and policy contexts. It is in this spirit that we have produced this report.

#### *Box 1: The San Francisco study*

*There is significant confusion in the public debate regarding the effect of rent regulation on housing supply. One frequently cited study is Diamond et al.’s (2019) analysis of rent regulation in San Francisco, following an amendment to the city’s rent control ordinance in 1994. Rent regulation here exempts all dwellings built after 1979, when the ordinance was introduced. Until 1994, it also exempted small buildings of up to four attached units. The 1994 amendment extended rent regulation to all apartments built prior to 1980 and thus created a ‘natural experiment’ for the authors to observe: newly regulated units in pre-1980 small complexes being the treatment group, and units in small complexes built between 1980 and 1990 being the control.*

*Diamond et al (2019) found that, by 2015, there was a 15% decline in the number of renters living in buildings that became subject to rent regulation and 25% decline in the number of renters living in regulated units, due to the conversion of some buildings to condominiums and the redevelopment of others. This is interpreted as a reduction in rental housing supply – a point that has been repeated frequently in the media and in some scholarship. It is not, however, a reduction in total housing stock, nor necessarily in total rental stock. Indeed, if redevelopment led to a net increase in units, it could be argued that the regulations increased housing supply. Diamond et al. provide no information to this end. As such, rather than rent regulation reducing housing supply, the authors find that exemptions to rent regulation incentivised condo-conversions and redevelopments which led to a modest rate of attrition among regulated rentals over a 20-year period, particularly among corporate landlords. Such an outcome is not unexpected given the incentive created by exempting new properties coupled with the increasing age of many regulated properties. This is not to say that the outcome was desirable; the replacement of older regulated rental stock with newer, more expensive housing stock raises implications for affordability.*

## 1.3 REPORT STRUCTURE

The remainder of the report is structured as follows. Chapter 2 provides a detailed overview of the four key dimensions of rent regulation based on the desktop scoping. These are: the rent cap, vacancy control vs. decontrol, coverage, and provisions for exceptional rent increases. These four dimensions characterise a given rent regulation regime and vary significantly from one jurisdiction to the next. Their particular combination determines the main objectives of rent regulation. The majority of the regimes we examined have at least one of three main objectives: (i) rent stabilisation for the whole PRS; (ii) security of tenure; and (iii) lower income housing affordability. We outline these in the conclusion to Chapter 2.



Chapter 3 provides further detail on five recently introduced rent regulation regimes: in the ACT, Ireland, Oregon, Scotland, and St Paul, Minnesota. Each case involved the introduction of regulations into a jurisdiction that didn't have a recent history of regulating rents. Each was introduced in the past five years, except for Ireland where rent the current system came into effect in 2016. As such, the cases offer insights that are relevant to NSW. They also illustrate the diverse approaches to rent regulation vis-à-vis the four dimensions and three objectives summarised in Chapter 2, ranging from relatively stringent to highly permissive regulation of rents. Chapter 3 also applies the four rent cap mechanisms utilised across these case studies to a range of tenancy scenarios in Sydney. This analysis shows that the more stringent rent caps, such as those in Ireland and Scotland, would have provided significant protection from the steep rent increases observed in Sydney over the last 12-18 months. Over the decade prior, these rent caps would have had a more modest effect, allowing rent increases in line with rent inflation and preventing excessive rent increases. More lenient rent caps, such as those in place in the ACT and Oregon, would have permitted rent increases above the level of rent inflation throughout this period and prevented some extreme rent increases.

Chapter 4 concludes the report by summarising key considerations for rent regulation design based on the particular characteristics of the PRS in NSW and Australia. Some characteristics, such as weak protections against eviction, would undermine the efficacy of rent regulations. Others, such as PRS investment driven by capital gains more than rental yields, are arguably more favourable for rent regulation. The lack of data on rents paid by sitting tenants in NSW would also undermine monitoring and enforcement of rent regulation and should be rectified regardless. Further recommendations in Chapter 4 include introducing a regime to limit rent increases within tenancies for all tenants in the private rental market, investigating options for limiting rent increases between tenancies, and ending 'no grounds' evictions for both fixed term and continuing tenancies.

## 2. Four key dimensions of rent regulation

There are four key dimensions of rent regulation. These dimensions are:

1. The limit placed on rent increases, or a *rent cap*;
2. *Vacancy control* vs. *vacancy decontrol* – that is, whether rent caps apply between tenancies or only within tenancies;
3. The *coverage* of the regulations across the PRS – that is, which properties are exempt and which are regulated; and
4. Provisions for *exceptional rent increases* above the rent cap in certain circumstances.

These four dimensions define rent regulation in any given jurisdiction. However, public debate tends to focus on the first dimension and often overlooks the wide variety of approaches within it. This chapter unpacks all four dimensions in order to shed light on the wide range of regulatory approaches, summarised in Figure 8. The information in this chapter is based on a desktop scoping activity encompassing all 38 OECD member states as well as accession candidates. In total, we identified 25 nations with forms of rent regulation, including:

- 19 nations in Europe (Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Germany, Ireland, Italy, Luxemburg, The Netherlands, Norway, Poland, Portugal, Scotland, Spain, Sweden and Switzerland);
- The United States (California and Oregon, the District of Columbia, and municipalities in California, Maryland, Minnesota, New York and New Jersey);
- Canada (British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Quebec);
- South Korea;
- Argentina;
- Brazil; and
- Australia (ACT).

This scoping exercise was limited to publicly accessible online information, and so may not represent the full extent of rent regulations across the OECD.

### 2.1 THREE GENERATIONS OF RENT REGULATION

Rent regulation is typically categorised as first, second or third generation. These categories describe different approaches to dimensions one and two. As described by Arnott (1995), first generation regulations freeze rents at a certain level or otherwise tightly restrict rent increases. Today, first generation rent regulation is uncommon, with most examples phased out during the second half of the 20<sup>th</sup> century. In recent years, however, some first generation regulations were introduced as temporary measures to protect households during the COVID-19 pandemic. This was the case in the states of Victoria, South Australia, Tasmania and Western Australia from March 2020, and in many other jurisdictions around the world. Some remain in place, including in the Canadian provinces of Manitoba and Prince Edward Island (where they are due to expire at the end of 2023). Other jurisdictions have introduced temporary first-generation regulations in response to cost-of-living crises. This was the case in Berlin in February 2020, where rents were frozen at their June 2019 level. In March 2021, however, the law was declared unconstitutional. Scotland introduced a temporary rent freeze as part of its *Cost of Living (Protection of Tenants) Act* in 2022, before introducing a 3% cap on rent increases in April 2023. The Belgian regions of Brussels, Flanders and Wallonia operate hybrid regulations in which rents are frozen for dwellings that fail to meet an adequate standard of energy efficiency, while rents for other dwellings can be increased within certain limits.

Second generation rent control is ‘softer’, allowing rent increases up to a certain level and generally ensuring a reasonable rate of return on investment for landlords. Third generation rent regulations similarly cap rent increases at a certain level within tenancies, but they allow for unlimited rent increases between tenancies. This means that rents can be set freely at the beginning of each new tenancy. As such, second and third generation rent regulation differ with respect to the second key dimension: *vacancy control* (second generation) vs. *vacancy decontrol* (third generation).

The basic differences between first, second, and third generation rent regulations are illustrated in Figure 7. In these hypothetical scenarios, market rents are appreciating at 5% per annum, while the rent cap for the second and third generation regulations is 3% per annum. Third generation rent regulations allow rents to return to market rates with each new tenancy, assumed here to be

every three years. As such, third generation rent regulation is more a security of tenure measure than PRS-wide affordability measure, protecting sitting tenants from destabilising rent increases without significantly lowering average or median rents.

There is, however, a high degree of variation within second and third generation rent regulations. As Arnott (1995: 102) has argued, generalisations about these types of regulations are unwise (see also Lind 2001). There are not only significant variations in the size of rent increases permitted, but also the extent of their coverage of the PRS, as well as possible exceptions. Furthermore, some regulations sit between second and third generation in that they offer a ‘vacancy bonus’ rather than full deregulation of rents between tenancies. As such, the three-generation framework can obscure some crucial differences and is used sparingly in this report.

## 2.2 LIMITS ON RENT INCREASES

A key feature of any rent regulation framework is the limit, or ‘cap’, that is placed on rent increases within a defined period of time. Across the jurisdictions surveyed for this report, there are five different mechanisms for capping rents:

1. fixed percentage caps;
2. caps based on an index of inflation or cost-of-living;
3. caps based on an index up to a maximum percentage;
4. caps based on utility value and/or operating costs; and
5. caps set through deliberation and/or bargaining.

Each of these are explained below.

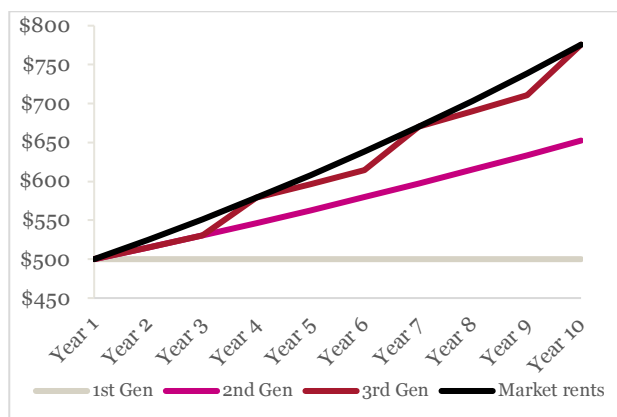


Figure 7: Comparison of first, second and third generation rent regulation outcomes for rental property beginning at \$500pw.

### 2.2.1 FIXED PERCENTAGE CAPS

The simplest mechanism for limiting rent increases defines the maximum percentage by which a landlord can increase a tenant’s rent within a given time period, typically per annum. Figures range from 3% (e.g. Scotland; Spain; St Paul, Minnesota) to 6% (Cyprus). In some jurisdictions this figure is reviewed and updated annually by relevant authorities.

Some jurisdictions that had previously limited rents to changes in a CPI or other index (see Section 2.2.2) have recently introduced fixed caps in response to high levels of inflation. For instance, in 2023 Denmark introduced a temporary 4% cap on rent increases for dwellings not regulated by the stricter operating cost framework (see Section 2.2.4). A new measure is being prepared for introduction in 2024. Spain similarly introduced a fixed percentage cap, which will be 3% in 2024.

Such rent caps can have a degree of flexibility to suit the circumstances of an individual landlord, property or tenant. For instance, while Scotland’s rent cap is set at 3% per annum, increases of up to 6% are permitted to account for increases in a landlord’s operating costs (see section 3.4). In St Paul, where there is also a 3% general cap on rent increases, landlords can be permitted to increase rents by up to 8% for increased operating expenses and up to 15% with approval from the statutory authority (see Section 2.5; Section 3.5). In Paterson, New Jersey, a stricter rent cap is in place for households headed by individuals over the age of 65. In such cases rent increases are capped at 3.5% per annum, rather than 5%.

The German framework is somewhat unique among rent regulations that limit rent increases to a fixed percentage, insofar as the *Mietpreisbremse*, or ‘rent brake’, limits rent increases to a maximum of 20% over three years (or 15% in some municipalities). For new tenancies, rents are capped at the higher of (i) 110% of the rent for a comparable dwelling within the same area (set out in a regional rent index, *Mietspiegel*) or (ii) the rent charged to the previous tenant.

### 2.2.2 CAPS BASED ON INDEXES

The most common method of limiting rent increases is through a cap linked to changes in an index measuring inflation or the cost of living. CPI is the most popular, though other indexes are not uncommon. It should be noted that CPI composition varies around the world; the goods and services included, and their weighting, varies significantly. For example, unlike Australia, the CPI in the US includes imputed rents for owner occupier households, meaning that rent inflation has a much more significant effect on the index. It is not within the scope of this report to examine

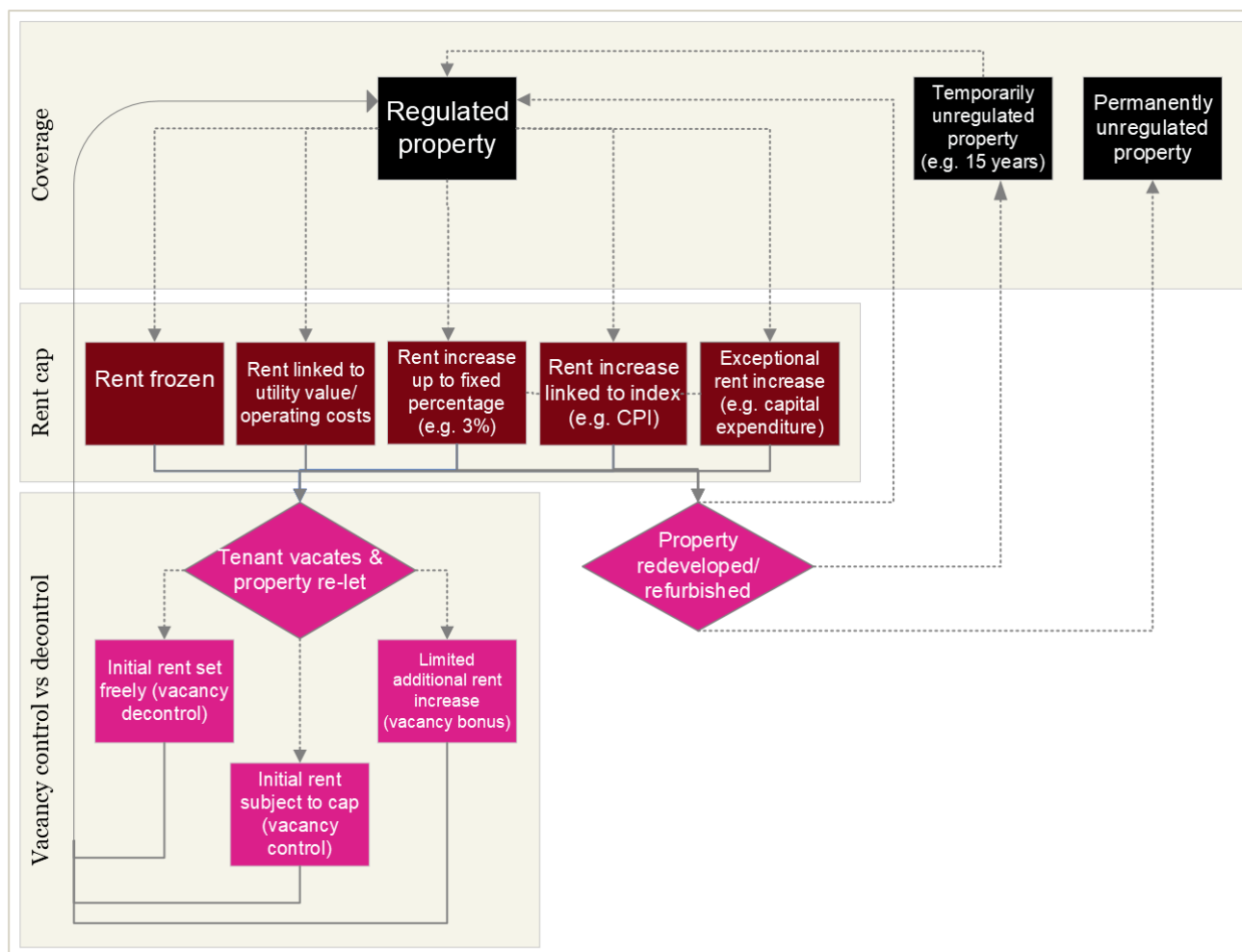


Figure 8: Rent regulation pathways

these differences. Here we focus on the method for calculating change in the index and the proportion of this change that is used to determine the limit on rent increases.

There are two main methods for calculating change in a CPI or other index over a period of time. The first, commonly used in the United States and Canada, is to calculate the percentage change in *average* CPI from one year to the next. This is expressed mathematically as  $100 \times (A - B) / B$ , where  $A$  is the average CPI over each of the twelve months of the previous year, and  $B$  is the average CPI over each of the twelve months prior. The result is used to set the rent cap over the next twelve months (either 100% of this figure or a portion of it, as outlined below). Authorities designate the point in time at which this figure is to be calculated, such as end of financial year or end of calendar year. Alternatively, the percentage change in an index between the latest index figures and the figures from 12 months prior (or date of last rent increase) can be used to determine the rent increase permissible at that moment in time. This is the method used in the ACT and some European nations.

While CPI or equivalent is the most commonly used index, rent caps vary with respect to their

proportion of change in CPI. Some jurisdictions limit rent increases to 100% of the change in CPI (Italy; Norway), while some allow an additional percentage increase above CPI inflation. The latter was the case in British Columbia, where rent increases were limited to 2% *plus* the annual average change in CPI, before being brought below inflation more recently. Others limit rent increases to 100% of the change in CPI so long as this figure remains within a certain band. For example, Manitoba limits rent increases to 100% of the change in the 12-month average CPI unless this value is outside of the Bank of Canada's target range. If it exceeds the target range, then rent increases are capped at the maximum of the target range; if it falls short, then the maximum rent increase is the minimum target of that range. This mechanism is designed to both limit excessive rent increases and limit inflation due to rising rents (see Section 2.2.3).

Some jurisdictions impose rent caps that are less than the 100% of the change in CPI. Ordinances in both San Francisco and Oakland limit rent increases to 60% of the change in Bay Area CPI, and Oakland also has a 3% ceiling. Switzerland's rent regulations cap rents at a maximum of 40% of the upward change in CPI since the last rent increase, as well as allowing rent increases of 3%



for every one-quarter basis point increase in benchmark interest rate, up to the reference interest rate of 5% (although some leases specify annual rent increases of 100% of the change in CPI).

There are several other indexes used to calculate permissible rent increases. The ACT rent cap is 110% of the change in the rent component of the CPI for Canberra. It therefore allows rent increases over and above the rate at which rents have risen in the past twelve months. This mechanism is unusual in utilising *only* the rent component of CPI and allowing rent increases greater than 100% of index growth (see Section 3.1). In contrast, Portugal's rent cap is calculated annually based on changes in CPI *excluding* housing costs. This raises the crucial question of whether changing housing costs, and particularly rents, should be included in any rent cap calculation. The use of CPI or any other index incorporating rents – particularly the ACT model, which is based exclusively on rents – arguably follows a circular logic whereby rising rents justify rising rents. As Goetz et al. (2021) suggest, alternative indexes that exclude housing costs should be explored.

A range of other indexes are used around the world, in conjunction with or instead of CPI. Rental contracts in Finland can specify rent increases in relation to either CPI or the Cost of Living Index. Belgium's rent cap is based on the 'health index', which is similar to their CPI but excludes tobacco, alcohol, diesel and petrol. France's index of reference rents accounts for costs specific to housing: it is based on a combination of CPI, an index of maintenance and renovation costs, and an index of construction costs. The rent cap in the District of Columbia is based on the CPI for Urban Wage Earners and Clerical Workers – a group more likely to be renting their home. In Argentina, rent increases have been limited to an index that incorporates inflation and salaries in equal proportion. Finally, in Brazil, rental contracts can specify increases according to the 'General Price Index – Market', which includes the price of goods before the retail level and has therefore recently resulted in higher increases than would have been permitted according to CPI alone.

### 2.2.3 COMBINED INDEX AND FIXED PERCENTAGE CAPS

Rent caps linked to CPI risk permitting large rent increases when inflation is high, and which in turn fuel further inflation. This is prevented in many jurisdictions through a fixed percentage ceiling, above which an index-linked cap cannot rise. Rising inflation over 2022 and 2023 has made this approach more common. For instance, France introduced a 3.5% rent cap for 2022 and 2023 to prevent higher increases under their reference

rent system. Rents in Ireland's Rent Pressure Zones (RPZs) are limited to the lesser of the 12-month change in inflation or 2% (see Section 2.4.2; Section 3.2). Oregon added a 10% ceiling in 2023, amending the law that previously permitted rent increases equal to the 12-month change in average CPI plus 7% (see Section 3.3). The District of Columbia also amended their ordinance to lower the ceiling on their rent cap from 10% to 6%, though it will return to 10% in 2024. Portugal's rent cap ceiling is set at 2%, which is in line with the European Central Bank's inflation target. These are just some of numerous examples that combine the two approaches discussed so far to respond more effectively to changing economic conditions.

#### Box 2: Frequency of rent increases

*The vast majority of regimes permit rent increases every 12 months, with a small number limiting rent increases to every 24 months. Ireland is the most notable example of the latter, where declaration of a RPZ means that sitting tenants are protected from a rent increase for 24 months, while landlords elsewhere can raise rents every 12 months.*

### 2.2.4 OPERATING COST & UTILITY VALUE CAPS

Some longstanding rent regulation regimes limit rent increases according to the qualities of a dwelling (i.e. utility value) and/or changes in a landlord's operating costs and level of investment. Such regulations were introduced in Austria in the mid-20<sup>th</sup> century. They rely on a complex rent-setting system based on dwelling quality as well as operating costs and value-added tax for properties completed before 1945 or 1953, depending on the type of unit. These rent regulations were introduced to prevent for-profit landlords – who comprise a much smaller proportion of the rental sector than non-profit landlords – from reaping the benefits of state-funded upgrades. Utility value systems also exist in the Netherlands and Sweden, though the latter also involves bargaining between tenant and landlord associations (see Section 2.2.5). Like Austria, these nations have unitary housing systems in which there are minimal differences between the rights and benefits of private and social housing.

New York City's rent control laws are among the most well-known, where units built before 1947 have a *Maximum Base Rent* based on operating costs and increases up to this maximum rent are capped at the lesser of 7.5% per annum or the average of the past five increases permitted by the City's Rent Guidelines Board (see Section 2.2.5). Several other municipalities within New York (including Nassau, Westchester, Rockwell and Ulster) apply a variation of this law. Further measures include regulations in Denmark limiting rents to costs plus improvements since time of construction; measures in Luxembourg capping

rents in relation to construction costs plus land value and capital expenditure; and a system in Poland capping rents at 3% of the restoration value of a dwelling. Quebec has a weaker system that requires landlords to justify rent increases to a tribunal based on operating expenses and capital expenditure in the event that a proposed increase is contested by a tenant.

### 2.2.5 DELIBERATION & BARGAINING

Some jurisdictions have established bodies responsible for determining appropriate rent increases. In New York, dwellings completed between 1947 and 1973 are subject to 'rent stabilisation', with rent increases for leases of one and two years set out by the Rent Guidelines Board. The nine-member board contains two tenant representatives, two owner representatives, and five representatives from the general public, and votes annually on the level of the rent cap. The Swedish utility value system, or *Bruksvärdessystem*, established in 1968, enables bargaining between property owner associations and tenant associations. If negotiations break down, the Rent and Tenancy Tribunal will determine the rent according to set guidelines. Canada's Prince Edward Island follows a more centralised approach, with various factors taken into consideration when the rent cap is determined, though the maximum is 3%.

## 2.3 VACANCY CONTROL VS. DECONTROL

While the cap on rent increases is fundamental, it alone does not define rent regulation. Another crucial point of difference is whether the cap applies between tenancies or whether a landlord may charge a new tenant more than the previous tenant. The former is known as *vacancy control* and the latter *vacancy decontrol*. Another way of conceptualising this is *tenancy controls* versus *property controls*; a rent cap applies either to a tenancy, with rent increases limited for its duration, or to a property, with rent increases limited to the cap irrespective of tenancy change. The latter approach is taken in Sweden, Ireland, France, the Netherlands, and Luxembourg, in segments of the Danish and Austrian PRSs, in several municipalities in New Jersey, and in Prince Edward Island.

Several jurisdictions enable partial decontrol upon vacancy, or what is sometimes referred to as a 'vacancy bonus'. In Spain, rents for new tenancies are based on reference rents for similar dwellings within the same area, while in Germany rents may be up to 10% higher than the area's reference rents. In New York, the more strictly regulated units (built pre-1947) become subject to the

forementioned stabilisation regime, while owners of stabilised units (built between 1947 and 1973) can charge an additional one- or two-year guideline increase to new tenants. St Paul and the District of Columbia both allow vacancy bonuses, the former 8% plus any change in CPI and the latter 110% of the rent cap where the previous tenancy was up to 10 years and 120% where the previous tenancy was more than 10 years. These bonuses only apply in the case of a lawful evictions and 'no grounds' evictions are unlawful.

Temporary decontrol is the most common approach. This is where rents can be set freely at the commencement of a tenancy and rent increases during the tenancy are capped. This is the case with many European and North American rent regulation regimes. Some notable exceptions include: succession rights, which allow a deceased tenant's family member to take over the lease if they had been living in the property (e.g. New York; San Jose); restrictions on rent increases if a tenancy is terminated after fewer than twelve months (e.g. Montgomery County); and restrictions on vacancy rent increases in apartment buildings containing a minimum number of units (e.g. Manitoba, where rent for a dwelling in a complex of more than three units must be set at a similar level to other units in that building).

There has been some recent movement towards vacancy control where there was previously vacancy decontrol (e.g. New York City), but the majority of jurisdictions allow rents to be set at market rates between tenancies. Importantly, tenants in the vast majority of jurisdictions examined in this report have stronger tenure security, including protection from 'no grounds' eviction, compared to tenants in NSW (see Section 4.1.2).

There are a few examples where dwellings are permanently decontrolled upon vacancy, meaning that rents can be set freely both between and within future tenancies. This is the case in several US jurisdictions where major renovations permit landlords to move properties from the regulated to the unregulated PRS (see Section 2.4.3). This has incentivised the removal of some regulated rental housing (e.g. Diamond et al. 2019). A variation on this policy was in place until recently in New York City, where properties were decontrolled once rents exceeded a certain threshold. Known as 'luxury decontrol', this provision was removed through 2019 amendments.

Whether rent regulation includes vacancy control or allows vacancy decontrol depends, in conjunction with the choice of rent cap, on whether the main priority is the security of tenure or if stabilising rents is considered equally important. If regulation is driven primarily by the

former, then the issue of rents rising between tenancies is of lesser importance. If regulation is driven by both objectives, then vacancy control or partial decontrol should be considered. Such objectives also determine how much of the PRS is covered by rent regulation, as discussed in the next section.

### *Box 3: Approaches to vacancies*

*Vacancy control: the rent cap applies from one tenancy to the next. A new tenant's rent must be the same as the previous tenant's, notwithstanding the standard rent increase permitted for that time period.*

*Vacancy decontrol: the rent cap does not apply from one tenancy to the next. The rent at the beginning of a new tenancy is negotiated freely between tenant and landlord, with increases capped during the period of the tenancy.*

*Vacancy bonus/partial decontrol: the landlord may charge an additional but not unlimited amount on the commencement of a new tenancy, with rent increases capped during the period of the tenancy.*

## 2.4 PRIVATE RENTAL SECTOR COVERAGE

The third key dimension of rent regulation concerns which rental properties are regulated and which are exempt. While many rent regulations apply to all private rental properties in a given jurisdiction, many others allow temporary or permanent exemptions for newly constructed dwellings, or based on other dwelling characteristics such as quality and type of structure (e.g. detached dwellings). There are also a small number of jurisdictions where rents are regulated only in areas with severe housing pressures.

### 2.4.1 SECTOR-WIDE COVERAGE

Rent regulations that apply to the entire PRS are more common in Europe, including Scotland, Norway, Sweden, France and Spain. This is also true of the ACT regime. These jurisdictions treat new dwellings as vacant units, with rents set freely where there is vacancy decontrol or in line with reference rents where there is vacancy control. While we have described these regulations as sector-wide, some regulations exempt non-standard tenancy agreements, such as those used for student housing, hotels offering long-term accommodation, and residential parks.

Some jurisdictions have recently introduced new laws to bring previously unregulated properties under regulation. For example, Denmark's 2022 law introduced a rent cap of 4% for dwellings built since 1990, which were not covered by the previous operating cost model. This cap applies for 2023 and 2024 and will be succeeded by a new

index from 2025. Similarly, Newark introduced a new ordinance in 2023 that capped rent increases at 5% per annum, covering properties not subject to the original 1966 ordinance that applies only to units older than thirty years or fully amortized (see Section 2.4.3).

### 2.4.2 GEOGRAPHICAL TARGETING

In some jurisdictions, rent regulation is only applied when an area meets a specific threshold of housing affordability pressures. New York State and Germany both require municipalities to declare a housing crisis or emergency before regulations can be triggered. In the former, municipalities must establish that the vacancy rate is below 5%. In the latter, an *Angespannter Wohnungsmarkt* or 'tense housing situation' is deemed to be met when (i) rents have increased significantly higher than rents nationally; (ii) rental stress is higher than the national level; (iii) population growth is deemed to be faster than the capacity for new construction; and/or (iv) vacancy rates are low and demand is high. These regulations apply to large cities including Berlin, Hamburg and Munich. Spain's rent regulations contain provisions to incentivise rent reductions via tax offsets in municipalities where average rental costs are greater than 30% of average household income or rents have risen at least 3% above inflation over the previous five years. Finally, geographically-targeted regulations are found in Ireland, with an electorate declared a RPZ when rent inflation has been at least 7% per annum for a minimum of four out of the previous six quarters and when rents are above a benchmark level (see Section 3.2).

### 2.4.3 NEW STOCK EXEMPTIONS

Where rent regulation does not apply to the entire PRS, it is most likely because new and recently built dwellings are exempt. Some exemptions apply based on the permit date (e.g. Austria; District of Columbia) while others are based on the date of completion and certification for occupancy (e.g. Ontario; New York; Germany). This exemption may be permanent or temporary. Permanent exemptions exist in many municipalities throughout the US; for instance, the California municipalities of San Francisco, Los Angeles and Oakland exempt dwellings constructed since 1979, 1978 and 1983, respectively. This includes substantially renovated dwellings, which are treated as new. In contrast, the 2019 California state law, which applied to otherwise unregulated rental dwellings, establishes an exemption of fifteen years from the date of first occupancy. This means that, at the time of writing, dwellings occupied before 2006 are covered by the state's rent cap of the lesser of 10% or 5% plus the 12-month change in statewide CPI. Fifteen-year exemptions are also in place in Oregon and Montgomery County. Some ordinances also exempt rental properties for the



lesser of a fixed number of years or amortization (repayment) of the original construction loan (e.g. Paterson; Newark).

Exemptions for new construction are the subject of heated debate and contested policy reform. For instance, St Paul amended its rent regulation ordinance in 2023 to exempt new dwellings for 20 years, having only introduced the measure in 2021 (see Section 3.5). Similar extensions to exemptions have been introduced in Ontario (which has permanently exempted new dwellings since 2018) and Manitoba (which extended an original 5-year exemption to 15 years in 2001 and then to 20 years in 2005). While exempting new rental dwellings is presented as a way to avoid reduced construction activity, permanent or long-term exemptions exacerbate price differentials between older and newer stock and thus incentivise landlords to dispose of regulated stock prematurely, and incentivise tenants to remain in properties that they might have otherwise exited.

#### 2.4.4 SMALL BUILDING EXEMPTIONS

Another common feature of US rent regulation is exemptions for small buildings, including detached dwellings, duplexes, and buildings containing a small number of attached units. The threshold for the latter varies from a minimum of two (e.g. Paterson) to a minimum of five (e.g. Jersey City; District of Columbia). Some also exclude condominiums (i.e. strata schemes). These exemptions do not translate well to NSW or Australia, where a larger proportion of rental properties are detached dwellings and most privately rented apartments are found in strata schemes.

#### 2.4.5 EXEMPTIONS FOR HIGHER QUALITY DWELLINGS

There are some jurisdictions that use rent regulation to drive improvements to housing quality, and hence exempt dwellings that are deemed to meet a sufficient standard. The clearest examples of this are the Belgian regions of Brussels, Flanders and Wallonia, where an energy efficiency rating system has dictated permissible rent increases since October 2022. Landlords who lease dwellings that score the lowest ratings, F or G, cannot increase rents in the first 12-month period. Those that score an E can increase rents by a rate equal to 50% of the rate of inflation, and those that score A to D can increase rents 100% of this rate (except in Wallonia, where D-rated dwellings can increase rents by 75% of the rate of inflation). Similar exemptions are found in Ireland, where upgrades achieving energy performance of seven ratings or higher can be grounds for a rent increase up to market rates, and in France, where a property vacant for at least eighteen months and with a high energy rating can also be leased for market rent. The system in

the Netherlands follows a similar logic but in a more complex manner, involving a points-based system of rent-setting that was expanded to incorporate higher-quality dwellings in 2023. Rents are regulated for dwellings that score fewer than 186 points (previously 143), and those that meet or exceed this threshold are unregulated. Notably, this system doesn't differentiate between social and private rental housing, though it mainly covers the country's substantial social rental sector.

#### Box 4: Implementation and enforcement

*Most jurisdictions have a statutory authority responsible for overseeing rent regulation. Their responsibilities can include establishing the rent cap level, reviewing applications for exceptions, resolving disputes, and monitoring and enforcement. Some also require landlords to register their rental property with the authority before they can lawfully increase rent (e.g. Jersey City). The tendency is to place responsibility for compliance on landlords rather than tenants. There are two general exceptions to this. First, in both the ACT and Quebec, the onus is on tenants to contest rent increases that are above the cap if they deem them to be unfair, upon which an administrative tribunal will review each party's evidence and determine the appropriate rent. Second, in nations including Finland, Argentina and Brazil, rent increases are set out in tenancy agreements rather than by a statutory authority. In these jurisdictions it is common practice to link rent increases to a cost-of-living or inflation index, but other types of rent increases can be set out in rental contracts.*

*In the majority of cases where this information could be ascertained, limits on rent increases came into effect with the passing of a law or ordinance. One exception to this is the most recent Danish law, applying to rental properties that were previously unregulated, which backdates its 4% rent cap to invalidate higher rent increases in the months leading up to the law's introduction. California's state-wide rent control laws similarly set base rents according to rent levels in the March prior to their implementation in January 2020.*

## 2.5 SPECIAL EXCEPTIONS

Most rent regulation frameworks contain provisions that allow owners of regulated dwellings to raise rents above the cap in exceptional circumstances. These circumstances include major capital expenditure (i.e. substantial renovation, refurbishment and upgrades), increased operating costs, and maintaining a fair return on investment. The ease with which a landlord can charge an above-cap rent increase, and the size of the increase permitted in these exceptional circumstances, varies greatly from one jurisdiction to the next. Some of this variation is explored below. Finally, one further avenue for exceptional rent increases is on-agreement between a landlord and tenant. Such self-

explanatory provisions are present in jurisdictions including the ACT, New York, and the District of Columbia.

### **2.5.1 CAPITAL EXPENDITURE**

Most rent regulations allow landlords to recoup some or all of the capital expenditure above a certain threshold of value and/or scope of works. Such exceptions are in place so that rent regulations don't discourage landlords from foregoing necessary renovations and upgrades, and indeed to encourage them to maintain or improve a property by allowing them to recoup costs over time. The threshold for such works is typically higher than basic repairs and maintenance; in general, the works must constitute a significant material improvement in the standard of the property. For example, Ireland allows rent increases to market rates in circumstances where upgrades have increased floor space by at least 25% and where energy performance has been improved by at least seven ratings (see Section 3.2). Spain similarly allows higher rent increases when improvements result in a 30% saving in non-renewable energy consumption. Similar measures are in place in France, as discussed in section 2.4.5. In such cases, higher rents are partially offset by reduced energy costs.

While some jurisdictions allow unlimited rent increases in cases of major upgrades between tenancies, others specify the size of the rent increase. Portugal permits rent increases of up to 15% where certified refurbishment or restoration has been undertaken. Poland's rent regulations allow rent increases up to 10% of the landlord's costs, and, similarly, Switzerland allows rent to be increased in proportion to a landlord's investment. Such provisions are also commonplace in the US, often setting out a method for passing through costs over a specified time period. In New York City, for example, major capital expenditure on buildings can be passed on via rent increases over a 12- to 12.5-year period but must constitute no more than 2% of the total rent. Capital expenditure on individual units, up to a value of \$15,000, can be passed on via rent increases over 14 to 15 years, though a landlord is limited to three such exceptions in any 15-year period. One quarter of these works are inspected annually to protect against fraudulent rent increases. Other municipalities specify similar parameters for higher rent increases in the case of major capital works. In the District of Columbia, for example, whole-building improvements can be passed on over eight years and unit-level improvements can be passed on over 64 months, but rents are capped at 125% of their previous level.

In each of the cases outlined above, rent increases above the level of the rent cap must be approved

by a statutory authority before they can be passed on to tenants. One exception to this rule is the ACT. Here, a landlord may notify a tenant of a higher-than-usual rent increase and only if a tenant disputes this increase will the ACT Civil and Administrative Tribunal take into account the landlord's capital expenditure in determining the appropriate rent.

### **2.5.2 OPERATING COSTS & FAIR RETURN ON INVESTMENT**

Many rent regulations also allow landlords to charge higher rent increases when they have experienced increased operating costs, such as taxes, utility charges, mortgage rates and management fees. Some jurisdictions specify the extent of the rent increase permitted in such circumstances, while others use discretion to determine an appropriate rent increase in the circumstances. Scotland exemplifies the former approach, permitting rent increases of up to 6% when landlords have incurred increased operating costs over the past six months. The rent increase (which would otherwise be limited to 3%) can cover no more than 50% of the increase in costs (see Section 3.4).

Exceptional rent increases to cover increased operating costs are intended to allow landlords to maintain a return on investment. Some regulations also contain explicit provisions for maintaining a landlord's return on investment, including St Paul and San Francisco. Others permit higher increases in cases of landlord hardship. For example, landlords in the District of Columbia can submit a hardship application for a higher rent increase of up to 5% when a rental property is generating a loss.

These exceptions are difficult to translate to the NSW and Australian PRS, where yields are lower and investor purchases are more strongly motivated by capital gains. Many rental properties do not generate a positive rental yield even in the current regime of unlimited rent increases, though, as illustrated over 2022-23, many landlords readily pass on costs in the form of rent increases when they are able. Such implications for rent regulation design in NSW are discussed further in Section 4.1.1.

### **2.5.3 BANKABLE RENT INCREASES**

Most jurisdictions do not appear to allow landlords to 'bank' rent increases over time and thus pass on multiple rent increases at once. However, some do allow limited banking. Montgomery County, for example, allows landlords to bank up to five rent increases, while Portugal allows landlords to bank up to three. The ACT effectively allows banking because landlords can increase rents by 110% of the change in the rent component of the CPI for Canberra since the

last rent increase. Where banking is permitted, some landlords may hold rents steady when the rental market cannot bear the full extent of rent increases permitted under the cap before charging larger rent increases when the market can bear a price above the amount set by the cap. This issue is discussed further in Chapter 3.

local housing market conditions, housing and planning policies, and political contexts combine to shape the particular dimensions of rent regulation. To illustrate this further, the next chapter more closely examines five recent rent regulation regimes.

## 2.6 SUMMARY

As summarised in Figure 8, there is considerable variation across jurisdictions that regulate rents and hence various options to consider in devising an approach in NSW. This variation extends across the four key dimensions surveyed in this chapter, making it difficult to generalise about the objectives and outcomes of rent regulation. However, we can distil three broad, overlapping objectives:

- 1. Regulations for sector-wide rent stabilisation** cover the entire PRS and tend to apply between tenancies as well as within tenancies (i.e. vacancy control or bonus). The rent cap prevents large rent increases, either through a fixed percentage cap or ceiling on an index-linked cap. Exceptional increases are permitted but tightly regulated.
- 2. Regulations for security of tenure** restrict rent increases within tenancies across the entire PRS so that security of tenure is not undermined by rising costs. However, rents between tenancies are set freely (i.e. vacancy decontrol) and landlords are more readily granted exceptional increases to ensure that a property remains in the PRS.
- 3. Regulations for lower-income housing affordability** place limits on rent increases for parts of the PRS more likely to house lower-income renters, while leaving the remainder unregulated. This typically takes the form of excluding higher quality dwellings, whether based on a direct measure of quality or de facto measure such as construction date. This approach may involve vacancy control or decontrol. In addition to targeting regulation to lower-income households, this approach can also incentivise upgrades to lower-quality housing stock. While exempting new dwellings is intended to guard against a potential reduction in new construction, long-term effects can include premature withdrawal of dwellings from the regulated sector.

While these three objectives cover the general tendency of most rent regulations, in practice,

### 3. Case studies

This chapter summarises five rent regulation regimes, covering their key characteristics, rationales, implementation process and early indications of performance. Key details are summarised in Table 1. The five cases – ACT, Ireland, Oregon, Scotland and St Paul, Minnesota – were selected as jurisdictions that introduced rent regulations in the past decade, where there was no recent history of rent regulation, and spanning the three objectives discussed in Chapter 2. All but Ireland’s rent regulations were introduced in the past five years, with Ireland’s 2016 regulations updated in 2021. The St Paul and Scotland regulations have also been amended since they were introduced, in 2021 and 2022 respectively. The details presented here are therefore subject to further change. Other jurisdictions have introduced new regulations in the past decade, including Denmark, Belgium, Germany, California and Newark; however, these added to existing regimes. As such, the five cases provide more relevant insight into the potential for rent regulation in NSW.

The second half of this chapter presents a series of rent regulation scenarios for Sydney and NSW. We compare rent inflation over the past fifteen years with rent increases permitted under the four rent caps utilised across the five case studies. We also discuss the extent of PRS coverage according to the three case studies which target regulations geographically and exempt new and recently built dwellings.

#### 3.1 AUSTRALIAN CAPITAL TERRITORY

The ACT introduced a range of tenancy reforms in 2019, including a prescribed formula for rent increases for all formal private residential tenancies: 110% of the rent component of the CPI for Canberra every twelve months or since last rent increase for sitting tenants, with rents set freely between tenancies. Rent regulation in the ACT is predominantly a security of tenure measure. It allows rent increases to exceed the rate of rent inflation, but not excessively so. If rents have risen by 5% over a twelve-month period since a tenancy began or since last rent increase, then a landlord may raise rents by 5.5%.

Previously, a formula prescribed rent increases of 120% of rent inflation but the onus was placed on tenants to contest excessive rent increases through the ACT Civil and Administrative Tribunal. In addition to lowering the cap on rent increases, the 2019 reforms placed the onus on landlords to seek approval for rent increases above the prescribed amount when a tenant has

refused it (Pippen 2023). In determining the fair rent, the Tribunal considers the timing and amount of the last rent increase, landlord operating costs and capital expenditure, the state of repair of the property, and comparable rental rates.

If a tenant accepts a rent increase above the prescribed amount, then no approval is required. As such, while certainly improving tenants’ rights, the 2019 reforms didn’t address the fundamental power imbalance between tenant and landlord and the potential for retaliatory action by the latter (Pippen 2023).

The regulations allow banking in that, if a landlord has not increased the rent for more than twelve months, they may charge an increase equal to 110% of the change in the rent component of CPI between the month of the last rent increase (or tenancy commencement) and the latest month. This could hypothetically lead to some large rent increases that undermine security of tenure.

The ACT approach is unique in that, while others use indexes that are influenced by rent inflation, the rent cap here is based exclusively on a measure of rent inflation. This arguably follows a circular logic whereby rent increases are justified by rising rents rather than, for example, landlord costs. Nonetheless, it appears to be effective at its intended purpose as – as ACT Chief Minister Andrew Barr has put it – ‘a safeguard, effectively, against the most egregious forms of rental increase’ (Johnston 2023). Some initial signs suggest that it has slowed rent inflation to a rate lower than other Australian capital cities (Levinson 2023). Importantly, this reform was followed in 2023 by reforms that further enhanced security of tenure by ending ‘no grounds’ terminations, as well as efforts to increase housing supply, including social housing.

Tables 2 and 3 and Figures 9, 13 and 17 apply an ACT-style rent cap to a median Sydney rental over various time periods. Of course, if such regulations were in place during these time periods, then rent inflation and hence the rent cap would have been different. Nevertheless, the figures provide an indication of how the rent cap tracks against rent inflation.

#### 3.2 IRELAND

The Irish economy suffered a severe downturn in the wake of the Global Financial Crisis and residential construction activity dropped significantly. Housing affordability worsened as the economy recovered over the 2010s, particularly during 2014 to 2016 (O’Toole 2023). This prompted the introduction of rent regulations through the *Housing and Residential*

Table 1: Case study comparison table

	Rent cap	Vacancy	Coverage	Exceptions
ACT	110% of annual rent inflation (CPI Rents – Canberra)	Decontrol	Full PRS	Landlords may propose a higher rent increase to tenants. If a tenant refuses, a landlord must apply to the ACT Civil and Administrative Tribunal to adjudicate.
Ireland	Lesser of 2% or annual inflation (HICP)	Control	Full PRS in designated RPZs	Initial rent set freely for properties entering PRS for first time or meeting criteria for substantial renovations & upgrades.
Oregon	Lesser of 10% or 7% plus annual inflation (CPI)	Decontrol	Private rental properties older than 15 years	Exemption for housing stock within first 15 years since completion/first occupancy.
Scotland	3%	Decontrol	Full PRS besides student accommodation and some historic regulated tenancies	Higher rent increase for increased operating costs, with approval from Rent Service Scotland, up to 6% (but no more than 50% of increased costs).
St Paul	3% (with up 8% for self-certified reduced return on investment)	Bonus: 8% plus annual inflation (CPI)	Private rental properties older than 20 years	Rent increases up to 8% (self-certified) or 15% (on approval) to maintain landlord's return on investment (including for major capital expenditure). Full exemption for housing stock within first 20 years since completion/first occupancy.

### *Tenancies Act 2016 and Rebuilding Ireland Rental Sector Strategy.*

The regulations allow the government to declare a local electorate a RPZ when it has experienced excessive rent inflation. Rents in RPZs were initially capped at 4% but in 2021, in response to higher than anticipated rent increases and inflation, this was revised to the lesser of 2% or annual change in inflation according to the Harmonised Index of Consumer Prices (HICP). At the time of writing, the maximum rent increase on a regulated rental property within a RPZ is 2%. This can be levelled annually except on sitting tenants at the time of RPZ declaration, who are protected from a rent increase for an initial 24 months and then every 12 months thereafter. The regulations apply between tenancies as well as within them (i.e. vacancy control). Rent regulation was complimented by lengthening standard residential tenancy contracts and outlawing 'no grounds' evictions after the first six months of a tenancy.

The regulations aim to stabilise rents throughout the PRS in designated areas. An electorate is declared a RPZ if (i) local rent inflation has exceeded 7% per annum in at least four out of the past six quarters *and* (ii) average rents are above the relevant standardized average. The regulations were revised in 2019 to finesse the latter, responding to the disproportionate effect of

Dublin's rental market on average rents nationally. In Dublin, RPZ designation requires standardized average rents exceeding the National Standardised Average Rent; in the Greater Dublin Area, standardised average rent must exceed the non-Dublin Standardised Average Rent; and in the rest of Ireland, standardized average rent must exceed the Rest of Country Standardised Average Rent (O'Toole 2023). O'Toole (2023) reports that 78 out of 166 areas have been declared RPZs, including all major urban areas. The designation lasts for three years before it is reassessed.

There are several exemptions to rent regulation within RPZs that allow landlords to increase rents to market rate, following notification of the Residential Tenancies Board. Properties that do not have a rental history or have not been leased in the past two years can be rented for market rates upon commencement of a new tenancy, with increases limited thereafter. Rents for new dwellings as well as those newly entering the rental sector are therefore set freely in the first instance. As a result, while O'Toole (2023) finds that the regulations have effectively suppressed rents across the PRS by 2 to 5%, annual rent inflation for new tenancies has remained above 4%. Recently there have been reports of landlords electing to leave properties vacant for two years in order to charge higher rents, though these rely on



anecdotal evidence (Neylon 2022). Reforms to the short-term rental sector forcing property owners to acquire permits for more than 90 days of short-term letting per year would seem to prevent the loss of long-term rental dwellings to this sector (Centre for Equitable Housing 2023).

Landlords may also increase rents to market rates when a rental property has been substantially renovated and upgraded, either during a tenancy or (more likely) between tenancies. These upgrades must either (i) increase floorspace by at least 25% or (ii) increase energy performance by at least seven ratings according to EU Building Energy Ratings. If not, they must result in no less than three of the following improvements: (i) a permanently altered internal layout; (ii) accessibility upgrades for people with a disability, within the meaning of the *Disability Act 2005*; (iii) a permanent increase in the number of rooms; (iv) energy rating improvements of at least three ratings for dwellings that meet a standard of D1 or lower; or (v) energy rating improvements of at least two ratings for dwellings that meet a standard of C3 or higher. O'Toole (2023) suggests that such upgrades have been rare due to the substantial capital expenditure required.

Tables 2 and 3 and Figures 10, 14 and 18 illustrate the effect that this approach may have had in Sydney on a median tenancy commencing at different points in time. Given the approach also involves vacancy control, these data illustrate the effect on a median rental property irrespective of tenancy turnover (notwithstanding any potential exemptions). Section 3.6 also discusses regions of NSW that would qualify as RPZs based on available data.

### 3.3 OREGON

Oregon implemented state-wide rent regulation in 2019 – the first of its kind in the US, where municipal ordinances are the norm. The state experienced a severe housing crisis both prior to and during the COVID-19 pandemic, ranking among the lowest for low-income housing affordability and among the highest for increases in homelessness (Portland Housing Bureau 2022). *Senate Bill 608* introduced a cap on rent increases of 7% plus the 12-month change in CPI from September to August. These regulations were initially intended to cap rent increases at the lesser of 8% or 3% plus the rate of inflation; however, landlord opposition and lobbying weakened the proposal. The regulations allowed rents to be set freely between tenancies (i.e. vacancy decontrol), with 'no grounds' evictions illegal for both fixed-term and 'month to month' tenancies. New and recently built dwellings are exempt for 15 years from the date of first lease. As in many other US jurisdictions, private landlords providing government-subsidised sub-market

rents are also exempt. The rent cap was thus reported to effect around half a million households (Bungalow 2022).

In June 2023, the state legislature passed *Senate Bill 611*, which applied a 10% ceiling to the inflation-linked rent cap. Before the passing of this bill, landlords were permitted to raise rents in 2022 by 14.6% due to high inflation. Subsequent rent increases have been limited to 10%. 2023 also saw the passing of *House Bills 2001* and *5019*, which order larger cities to permit duplexes on all residential lots, and townhouses and terraces on more than half of residential lots, as well as investing \$200m in homelessness prevention (Cohen 2023; Drake 2023).

Oregon's rent regulations are some one of the most permissive by US and international standards, allowing very substantial rent increases even when inflation is low and exempting a significant proportion of the PRS. As illustrated in Figures 12, 16 and 20, permissible rent increases under this regime would far exceed those under the other four case studies. Current market conditions, with high demand and lagging supply, mean that rent inflation is likely to remain high and rent increases charged at or close to the maximum (Portland Housing Bureau 2022). As such, it is hard to see the regulations having a significant impact on housing affordability. A 10% maximum rent increase may enhance security of tenure for some households by preventing extreme rent increases but is arguably insufficient, given it far exceeds the rate of wages growth (ibid.).

### 3.4 SCOTLAND

The *Cost of Living (Protection of Tenants) (Scotland) Act* was passed in 2022 in response to the severe cost of living crisis caused by rising inflation, including rising rents (Social Research 2022). It introduced a temporary rent freeze for sitting tenants, which was subsequently extended in the form of a 3% cap on rent increases. This is also a temporary measure, but the Scottish Government has indicated it intends to implement permanent rent regulations by 2025. These measures have not been finalised at the time of writing.

There is some relevant pre-history to Scotland's rent freeze and rent cap. Legislation passed in 2017 introduced the Scottish Private Rented Tenancy, which, among other changes, outlawed evictions without grounds and limited rent increases to once annually. The legislation also empowered the government to declare RPZs, where rent increases would be capped at 1% plus the annual change in CPI and an additional discretionary percentage. Unlike Ireland, however, no RPZs have been declared; according

to Robertson & Young (2018), this is because local authorities – who must apply to have their area designated an RPZ – have been as yet unable to meet the burden of proof due to the lack of adequate PRS data and the time and capacity required to establish their own evidence base. Nevertheless, rent regulation was on the agenda with these reforms. There are also a small and diminishing number of ‘regulated tenancies’ that commenced prior to the UK’s *Housing Act* of 1988, which are subject to stricter rent regulation.

Scotland’s rent regulations allow exceptional rent increases of up to 6% upon application to Rent Service Scotland. The circumstances in which a landlord can apply for a higher rent increase include increased mortgage interest rates, insurance premiums, and service charges. The rent increase must cover no more than 50% of the landlord’s increased costs. The regulations also exempt student accommodation and other non-standard tenancy agreements such as lodger agreements.

The current framework in Scotland allows landlords to set rents freely between tenancies and on commencement of a lease in a new property (i.e. vacancy decontrol). As such, while improving security of tenure for sitting tenants, the regulations have allowed rent inflation for new tenancies to remain high. Some contend that landlords are increasing rents for new tenancies above the rate that they would were they not limited to 3% annual rent increases within tenancies (Booth 2023); however, landlords would be expected to maximise rents at the commencement of a new lease irrespective of limits on future rent increases. There does appear to be a loophole in the regulation regarding sharehouses, where one co-tenant moves out and the remaining resident(s) are required to sign a new tenancy for which a landlord may charge market rent (Mnyanda 2023). These issues have prompted calls from some tenant advocates for vacancy control (Wright 2023).

The temporary rent freeze and cap, and uncertainty regarding rent increases permitted in the future, have allegedly prompted some build-to-rent developers to place projects on hold. This is partly counteracted by Scotland’s relatively ambitious social and affordable housing targets. Scotland’s social housing sector is already larger than its PRS, at around one quarter of all homes, and is expected to increase by an additional 110,000 affordable homes by 2032 (with at least 70% of this number being social housing) (Riding 2023).

Scotland’s approach to rent regulation emphasises security of tenure and modest rent stabilisation,

softened by vacancy decontrol. The possible effect of a 3% rent cap on rent increases for a median Sydney rental property are illustrated in Tables 1 and 2 and Figures 11, 15 and 19.

### 3.5 ST PAUL, MINNESOTA

A rent regulation ordinance was introduced in St Paul in 2022, following a successful campaign by community coalition Housing Equity Now Saint Paul. Their petition led to a November 2021 ballot at which a majority of St Paul voters approved strict rent regulation in line with the coalition’s demands: a 3% rent cap on all private rental properties, both within and between tenancies (i.e. vacancy control). Yet it also was also very permissive of exceptional rent increases above the 3% cap: landlords could self-certify rent increases of up to 8% if they incurred increased costs, in order to maintain a ‘reasonable return on investment’, with tenants able to appeal these increases and compliance ensured through occasional auditing. Rent increases of up to 15% could be granted on application, to ensure returns when landlords had undertaken more substantial expenditure.

This original ordinance was swiftly and significantly watered-down following pressure from landlords and developers, with the city council voting in 2022 on changes effective in 2023. These changes provided a 20-year exemption for new dwellings that was also backdated for recently built dwellings and thus exempts approximately one third of the PRS (Melo 2023). The new ordinance also introduced a ‘vacancy bonus’ that allowed landlords to increase rents between tenancies by as much as 8% plus the annual change in CPI. At the time of writing, this amounted to a 15% rent increase.

A working paper by Ahern and Giacoletti (2022) found St Paul’s original ordinance responsible for a 6-7% decline in real estate values relative to the level they might have been otherwise; real estate values appreciated in St Paul but not at the rate they did in the unaffected suburbs outside of the city. The authors characterise this as a negative impact, though this is a debatable interpretation in the context of housing affordability pressures. Their second key finding is that this ‘value loss’ is greater in tracts where there is a lower discrepancy between landlords’ and renters’ incomes as opposed to those where there is a higher discrepancy. This is the dubious basis for their argument that rent regulation benefits higher-income households more than lower-income households<sup>1</sup>.

<sup>1</sup> This is based on a misunderstanding of rent regulation objectives as wealth redistribution, a conceptual confusion between income and wealth, and a mischaracterisation of rent

itself – which is in essence a relation of upward wealth redistribution from renters to owners and upon which rent regulation has a moderating effect.

The City's rapid rollback of rent regulation has been met with community criticism. It is not unlikely that the regulations will be updated again in the near future. The original ordinance seems to have been written off before enough time had passed to allow any rational judgement of its effects, with amendments converting an affordability measure into security of tenure measure but one that exempts a substantial proportion of tenancies. As such, one of the lessons from St Paul, like other jurisdictions, is that later amendments can contradict the original objectives of rent regulation and undermine their efficacy.

### 3.6 RENT REGULATION SCENARIOS IN SYDNEY AND NSW

This section compares rent increases permitted under the five case study regimes with rent inflation trends over the past fifteen years. Specifically, we compare rent inflation measured in CPI Rents for Sydney with rent increases hypothetically permitted under four rent caps:

- Cap 1: 110% of CPI Rents (ACT model);
- Cap 2: the lesser of 2% or CPI inflation (Ireland model);
- Cap 3: 3% (Scotland & St Paul model); and
- Cap 4: the lesser of 10% or 7% plus CPI inflation (Oregon model).

These scenarios estimate the rent that could be charged for a tenancy sustained over each time series, or for a property if regulations included vacancy control. They serve an illustrative purpose; they do not model median rents over time. In each scenario, the initial rent is equal to the median rent for a new tenancy during the baseline period, according to Rent Reports based on quarterly rental bond lodgements published by the NSW DCJ.

This approach requires four key assumptions:

- That the rental property is subject to the regulations rather than exempt;
- That the tenancy in each scenario has been sustained throughout the time period (or, alternatively, that the rent cap applies between tenancies);
- That the landlord in each scenario has not sought to charge any exceptional rent increases and has complied with the regulations; and
- That CPI rent inflation will not have changed as a result of regulation (and hence also rent caps linked to changes in CPI are unchanged). Where rent

regulation limited rent increases to levels below those observed in the CPI, this is of course false. Yet as the figures below illustrate, the hypothetical regulations would have permitted the general level of rent increase observed in the CPI for much of the time period analysed.

There are also some notable data limitations. ABS CPI data are published for Australia and capital cities, but not for states or regions. While the national rent series has incorporated regional rental properties since July 2022 and now utilises a sample of approximately 600,000 private rental properties nationally (Hanmer & Marquardt 2023), data for states and regions have not yet been made available. As such, our analysis is limited to rent inflation in Sydney. Analysis of the new dataset by Hanmer and Marquardt (2023) indicates that regional rent inflation was higher than capital city rent inflation throughout 2018 to 2023 – inflation that was not captured in national CPI data prior to July 2022. Furthermore, prior to July 2022, the sample of rental properties was significantly smaller and included a proportional number of social rental dwellings, for which rents are set generally as a proportion of a tenant's income. The shortcomings of existing PRS data are discussed further in Section 4.1.4.

Tables 2 and 3 compare actual rent inflation in Sydney with rent increases permitted under the four caps, for a median price tenancy commencing in the September quarter of 2021 and 2022 respectively. They show that the tenant commencing a lease at the beginning of FY2022-23 would have received a lower rent increase after their first year if either Cap 2 or Cap 3 were in place (with Cap 2's 2% ceiling coming into effect). Over the year, these caps would have saved the tenant \$1,976 and \$1,716, respectively. The tenant in the unregulated scenario pays in 49 weeks what the tenants in Cap 2 and Cap 3 scenarios pay in 52 weeks. Cap 1, being linked to rent inflation, would have permitted a slightly higher rent increase than the general level of rent increases. Cap 4 would also have permitted a higher rent increase, with the 10% rent cap ceiling coming into effect.

Table 2 tracks rent increases permitted for a median price tenancy commencing at the beginning of FY2021-22. The more subdued level of rent inflation in Sydney during FY2021-22 means that the general level of rent increases were below the amount that would be permitted by all caps. In this period, the rent caps would have prevented the more excessive rent increases but permitted most. The rent increases permitted by Caps 2 and 3 fall below the level of rent inflation in 2023-24 but Cap 4 remains significantly higher.

FY2022-23 was a period of high rent inflation compared to previous years. Figures 9 to 12

*Table 2: Rent cap scenarios for median Sydney tenancy commencing 2022-23 (Source: ABS; NSW DCJ; authors' calculations)*

	Initial rent	Rent increase 2023-24	Tenant net saving 2023-24
CPI Rents - Sydney	\$580pw	\$50pw	-
Cap 1: 110% CPI Rents		\$53pw (max.)	-
Cap 2: Lesser of 2% or CPI inflation		\$12pw (max.)	+\$1,976
Cap 3: 3%		\$17pw (max.)	+\$1,716
Cap 4: Lesser of 10% or CPI inflation plus 7%		\$58pw (max.)	-

present a contrasting image, illustrating the maximum rent that a tenant could be charged each year following commencement of a median price lease in the September quarter of 2018. For each cap, actual rent inflation is below maximum rent, due to rent deflation between March 2019 and March 2022. In the case of Cap 1, rent deflation effectively leads to a rent cap of 0% (i.e. the regulations do not compel landlords to reduce rents in line with rent deflation), hence the discrepancy that emerges in FY2019-20. These data suggest that the effect of each rent cap from 2018 to 2023 would have been to prevent some excessive increases but that rents would otherwise have followed the trend observed in CPI figures and landlord returns would have been largely unaffected.

For a median tenancy commencing with FY2013-14, only Cap 2 would have prevented rent increases in line with the level of rent inflation tracked by the CPI. By 2020, even the rent increases permitted under this cap exceed rent inflation observed in the CPI data. All other caps would have consistently allowed landlords to increase rents at the general level that were able to in an unregulated market (see Figures 13-16).

The effects of the rent regulations for a tenancy commencing in FY2008-09 are more significant (see Figures 17-20). The period 2007-08 to 2011-12 saw higher rent inflation than the subsequent period. As a result, Caps 2 and 3 can be expected to have reduced rent for such a tenancy, though only until around 2020 for the latter. Cap 1 continues to systematically permit increases slightly above rent inflation while Cap 4 allows rent increases well above the observed level of rent inflation, such that the y-axis for Figure 20 has been altered.

*Table 3: Rent cap scenarios for median Sydney tenancy commencing 2021-22 (Source: ABS; NSW DCJ; authors' calculations)*

	Initial rent	Rent increase 2022-23	Rent increase 2023-24	Tenant net saving 2023-24
CPI Rents - Sydney	\$500pw	\$8pw	\$44pw	-
Cap 1: 110% CPI Rents		\$9pw (max.)	\$48 (max.)	-
Cap 2: Lesser of 2% or CPI inflation		\$10pw (max.)	\$10pw (max.)	+\$1,976
Cap 3: 3%		\$15pw (max.)	\$15pw (max.)	+\$1,716
Cap 4: Lesser of 10% or CPI inflation plus 7%		\$50pw (max.)	\$55pw (max.)	-

A tenancy of 10 to 15 years would be rare in Sydney and NSW, so the protections provided by Caps 2 and 3 in these scenarios would apply to a relatively small number of long-term tenants unless vacancy control was enforced. While these caps may have incentivised some tenants to remain in a rental property, it is highly likely that a landlord will have sought to sell the property during this 15-year period even in the absence of rent regulations. High turnover of rental properties is a distinctive feature of the Australian PRS (Martin et al. 2022) and one that rent regulation would not prevent. The implications of this are discussed further in Section 4.1.1.

These Figures also illustrate the significance of provisions for or against banking rent increases (see Section 2.5.3). Were the hypothetical landlord in Figure 10 allowed to bank the increases permitted by Cap 2 between 2019-20 and 2022-23 (while the rents were trending downward) they would then be permitted to charge an 8.2% increase in 2023-24 when the rental market tightened. Similarly, if the hypothetical landlord in Figure 11 held rents steady during the same period, they would be permitted to charge a 9% increase in 2023-24. The ACT model effectively permits banking by allowing landlords to charge a rent increase equal to 110% of the change in CPI rents since rents were last increased. By allowing large and sudden rent increases, unlimited banking can undermine security of tenure.

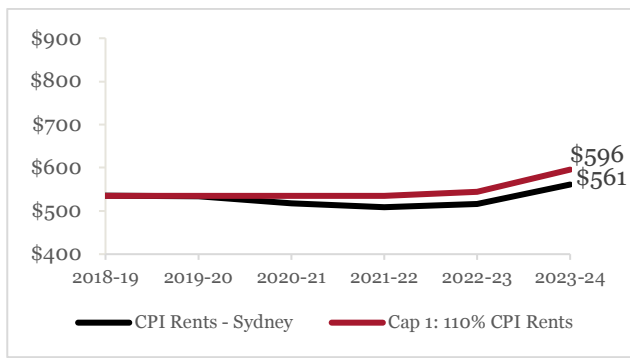


Figure 9: Cap 1 (ACT model) scenario for median Sydney tenancy commencing 2018-19 (Source: ABS; NSW DCJ; authors' calculations)

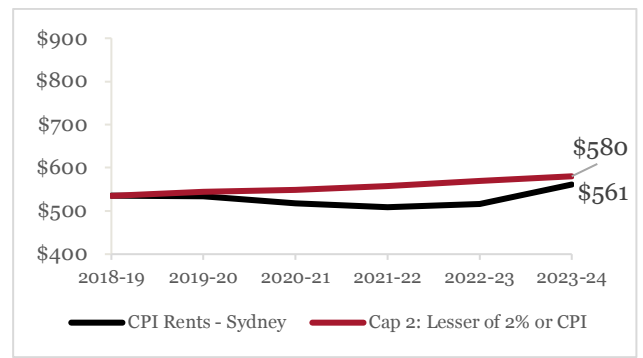


Figure 10: Cap 2 (Ireland model) scenario for median Sydney tenancy commencing 2018-19 (Source: ABS; NSW DCJ; authors' calculations)

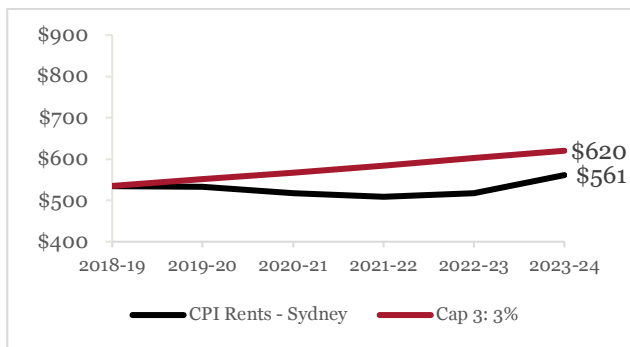


Figure 11: Cap 3 (Scotland model) scenario for median Sydney tenancy commencing 2018-19 (Source: ABS; NSW DCJ; authors' calculations)

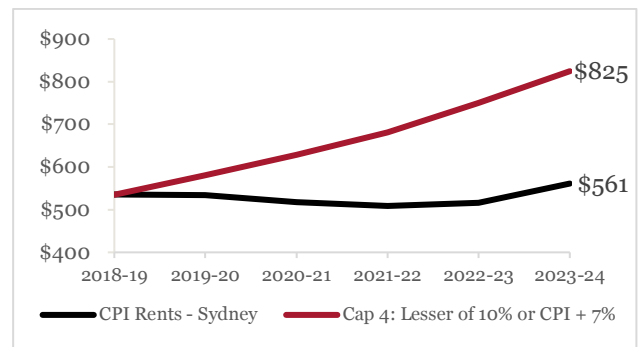


Figure 12: Cap 4 (Oregon model) scenario for median Sydney tenancy commencing 2018-19 (Source: ABS; NSW DCJ; authors' calculations)

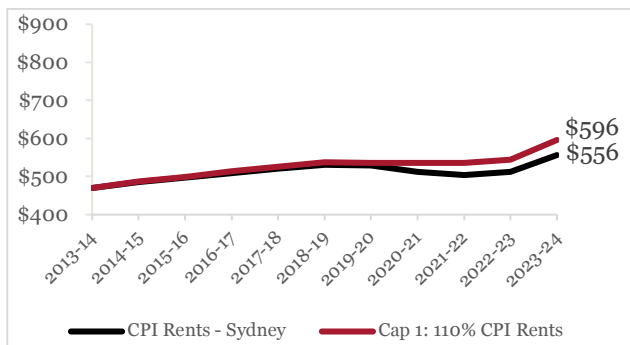


Figure 13: Cap 1 (ACT model) scenario for median Sydney tenancy commencing 2013-14 (Source: ABS; NSW DCJ; authors' calculations)

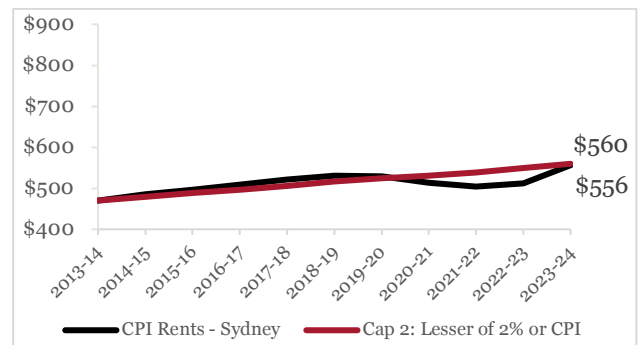


Figure 14: Cap 2 (Ireland model) scenario for median Sydney tenancy commencing 2013-14 (Source: ABS; NSW DCJ; authors' calculations)

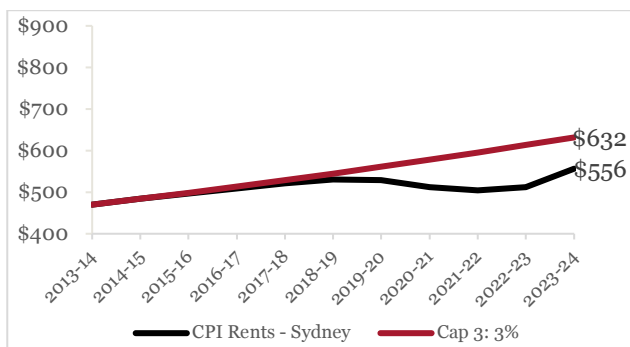


Figure 15: Cap 3 (Scotland model) scenario for median Sydney tenancy commencing 2013-14 (Source: ABS; NSW DCJ; authors' calculations)

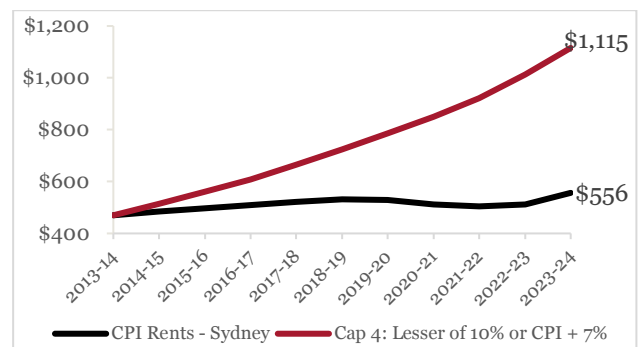


Figure 16: Cap 4 (Oregon model) scenario for median Sydney tenancy commencing 2013-14 (Source: ABS; NSW DCJ; authors' calculations)

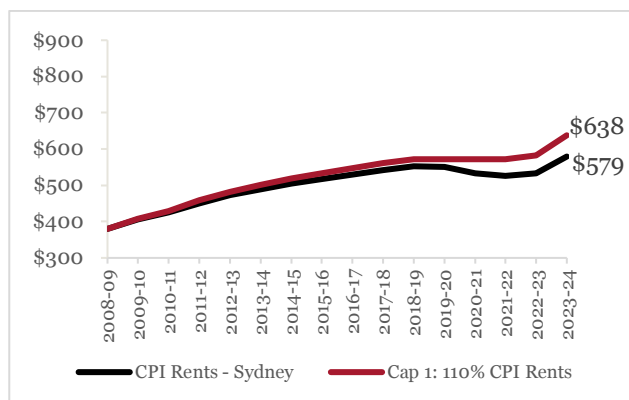


Figure 17: Cap 1 (ACT model) scenario for median Sydney tenancy commencing 2008-09 (Source: ABS; NSW DCJ; authors' calculations)

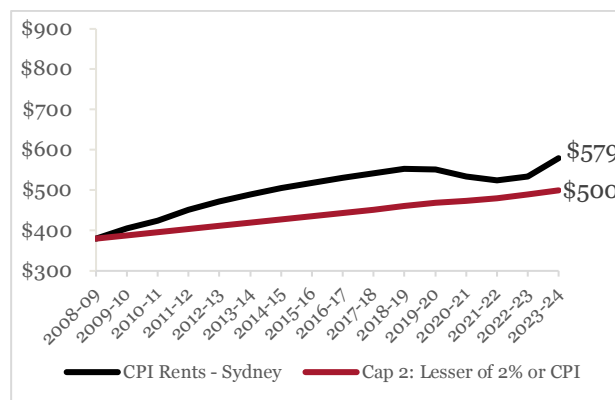


Figure 18: Cap 2 (Ireland model) scenario for median Sydney tenancy commencing 2008-09 (Source: ABS; NSW DCJ; authors' calculations)

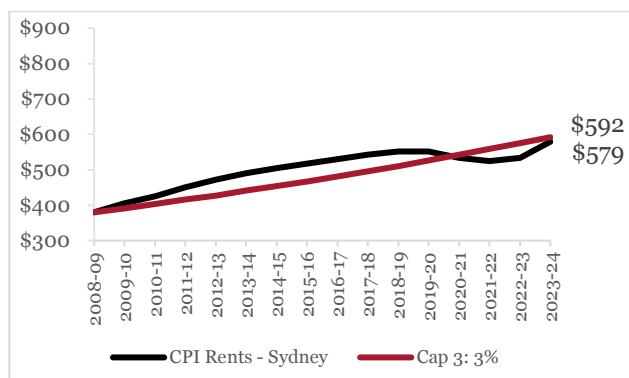


Figure 19: Cap 3 (Scotland model) scenario for median Sydney tenancy commencing 2008-09 (Source: ABS; NSW DCJ; authors' calculations)

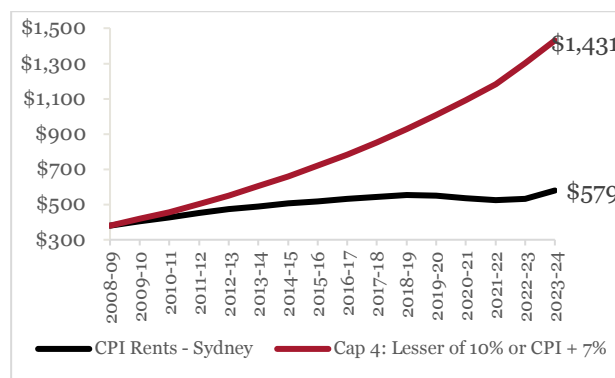


Figure 20: Cap 4 (Oregon model) scenario for median Sydney tenancy commencing 2008-09 (Source: ABS; NSW DCJ; authors' calculations)

Some further comparisons of the four caps are provided in Figures 21 to 25, extending Hanmer & Marquardt's (2023) analysis of rent increases for sitting tenants among the ABS national sample of private rental dwellings. Figure 21 shows the proportion of tenancies that received a rent increase of various amounts from one month to the next, illustrating the increasing frequency and size of rent increases since 2021. Figures 22 to 25 illustrate possible scenarios for this sample of sitting tenants under Caps 1-4, with Cap 1 based on monthly CPI Rents for Australia and Caps 2 and 4 based on the monthly all item CPI for Australia. These figures assume no exceptional rent increases, which is of course highly unlikely, but nevertheless offer useful comparisons. Few landlords would have been affected by any of the four caps until 2021, after which time Caps 1-3 would have highly effective. Cap 1 differs in that a period of rent deflation from June 2020 to August 2021 effectively lowered the rent cap to 0% unless an exceptional rent increase was sought. Cap 4, in contrast, simply converts increases above 10% to increases of 10%. Cap 1 would have affected approximately 64% of rent increases, Cap 2 ~72% of rent increases, Cap 3 ~41% of rent increases, and Cap 4 ~19% of rent increases. However, these figures mask significant geographic variation; it is

highly likely that Cap 1 would have permitted a greater proportion of the rent increases in the sample if it were linked to regional rent inflation rather than national rent inflation.

The St Paul and Oregon approaches exempt new and recently built dwellings from regulation for periods of 20 years and 15 years respectively. Publicly available data do not allow us to precisely estimate the number of rental dwellings or proportion of the NSW PRS that this would include. The ABS estimates a stock of just over 3.3 million dwellings in NSW at the end of FY2021-22 and ABS Building Activity data suggest 859,485 dwellings were completed by the private sector in the 20 years to that point. If we assume that the proportion of these dwellings rented privately is equal to the proportion for the entire housing system in NSW per 2021 ABS Census, then approximately 238,000 rental units would be exempt on the basis of a 20-year exemption (30% of the total PRS) and approximately 185,000 rental units would be exempt on the basis of a 15-year exemption (23% of the total PRS).

A final scenario is the geography of rent regulations following the Irish RPZ approach. There is no publicly available data that enables us to track rent inflation for all tenancies at a



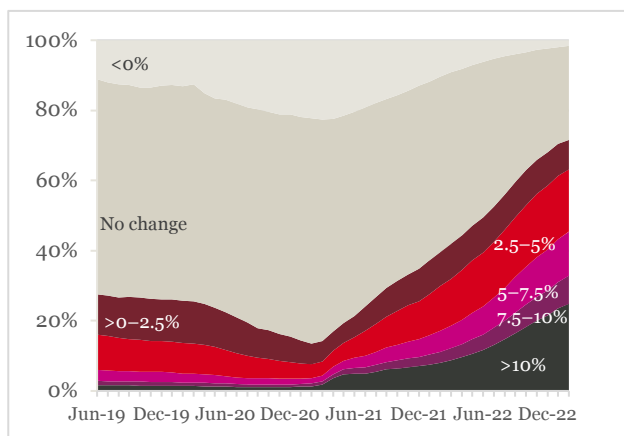


Figure 21: Rent increases for national sample of sitting tenants (Source: Hanmer & Marquardt 2023)

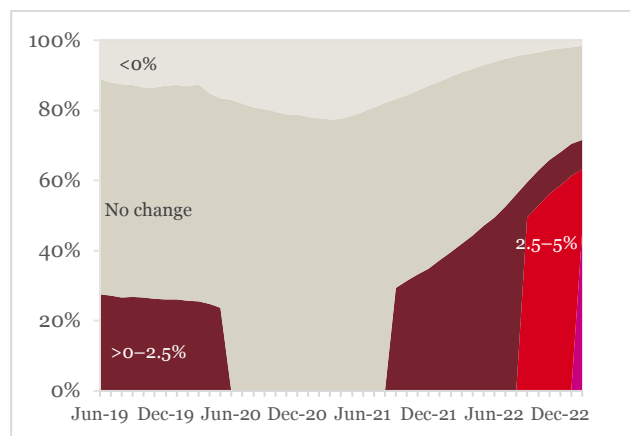


Figure 22: Rent increases for national sample of sitting tenants under Cap 1 (Source: Hanmer & Marquardt 2023; authors' calculations)

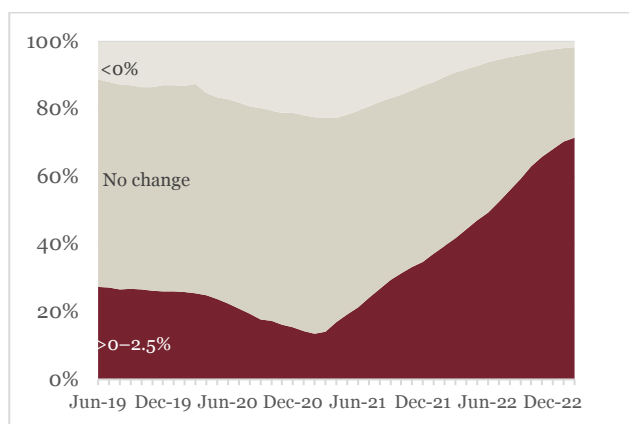


Figure 23: Rent increases for national sample of sitting tenants under Cap 2 (Source: Hanmer & Marquardt 2023; authors' calculations)

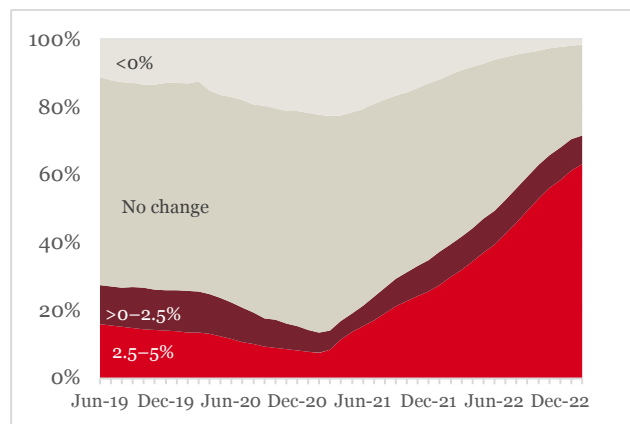


Figure 24: Rent increases for national sample of sitting tenants under Cap 3 (Source: Hanmer & Marquardt 2023; authors' calculations)

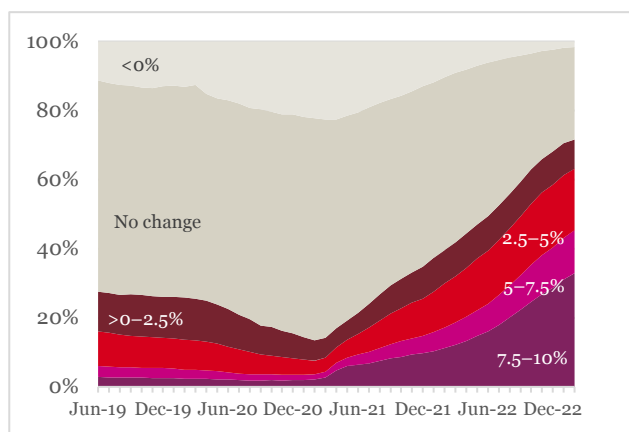


Figure 25: Rent increases for national sample of sitting tenants under Cap 4 (Source: Hanmer & Marquardt 2023; authors' calculations)

regional level, though rental bond lodgement data allows us to track median rents for new tenancies across all NSW postcodes and LGAs (see Section 4.1.4). According to these data, 75 out of 128 LGAs in NSW have experienced rent inflation above 7% in at least four out of the last six quarters. This includes all LGAs in Sydney besides Hunters Hill and Northern Beaches, and 44 out of 95 LGAs in

regional NSW. Notably, in the six quarters prior, only one LGA in Greater Sydney would have qualified (Camden). LGAs including the Blue Mountains, Ballina, Central Coast, Coffs Harbour, Kiama, Lismore and Shoalhaven would have qualified based on annual rent inflation from the September quarter 2020 to December quarter 2021, but not based on the March quarter 2022 to June quarter 2023. This changing geography of rent inflation is supported by Hanmer & Marquardt's (2023) analysis of rents in the ABS's recently acquired national sample (see also Pawson et al. 2021).

In sum,

- An Ireland-style rent cap (lesser of 2% or rate of inflation) would have led to a \$1,976 saving for a median Sydney tenant beginning their lease in FY2022-23. A Scotland-style rent cap (3%) would have led to a \$1,716 saving.
- An Oregon-style rent cap (lesser of 10% or 7% plus the rate of inflation) would have permitted rent increases well above the

rate of rent inflation during 2022-23. So too an ACT-style rent cap (110% of the rate of rent inflation over the past 12 months).

- In the five years prior to FY2022-23, each of these rent caps would have permitted rent increases in line with the rate of rent inflation in Sydney while preventing excessive rent increases (though the 10% rent increase permitted by the Oregon-style cap is arguably excessive).
- For a median Sydney tenancy commencing with FY2013-14, only an Ireland-style cap would have kept rents below the observed rate of rent inflation. For a median Sydney tenancy commencing with FY2008-09, both Ireland and Scotland style rent caps would have prevented rent increases in line with the level of rent inflation, though only until 2020 for the latter. Given the scarcity of long-term tenancies in NSW, this protection would have applied in relatively few cases unless rent regulation included vacancy control.
- These scenarios also demonstrate the significance of banking. Allowing landlords to bank rent increases of 2-3% over successive years, and then charge a larger rent increase when the market can bear it, would undermine the enhanced security of tenure provided by rent regulation.

surface to be a relatively strict cap is in fact a fairly permissive regime, and one that exempts a substantial portion of the PRS.

Our analysis of various scenarios in Sydney highlights the difference between rent regulations that aim to moderate rent growth in general versus those that aim to prevent only the sharpest rent increases. Caps 2 and 3, based on the Ireland and Scotland regulations, exemplify the former, restraining overall rent inflation from rising too sharply but permitting the general level of rent inflation seen over the last decade. Caps 1 and 4, based on the ACT and Oregon regulations, exemplify the latter, though Cap 4 would seem to fail to meet even this more limited aim. If rent inflation continues to trend upwards, then the ability of the ACT-style cap to prevent destabilising rent increases is also undermined.

### 3.7 SUMMARY

The five case studies provide further illustration of the diverse design and objectives of rent regulation. Regulations like Ireland's can significantly constrain rent inflation while regulations the ACT's and Oregon's permit substantial rent increases and act mainly as security of tenure measures by preventing the most excessive rent increases (though the rent increases that are permitted under these frameworks would undermine many tenancies). The Scotland case balances moderating rents fairly strictly *within* tenancies while allowing market pricing *between* tenancies, maintaining security of tenure for sitting tenants but failing to prevent general rent inflation caused by new tenancy agreements. All cases illustrate the need to update rent regulations in response to initial outcomes and as new circumstances emerge. And the St Paul case illustrates how the contentious politics of rent regulation can lead to frameworks with confused objectives: what appears on the



## 4. Further considerations and conclusions for rent regulation in NSW

This final chapter discusses important characteristics of the NSW PRS to consider in future rent regulation research and design. The PRS in NSW is different to most of the jurisdictions examined so far in some important ways that may influence rent regulation outcomes. No regime can be transferred directly from one jurisdiction to another: rent regulation must be sensitive to the particular characteristics of local housing markets and wider policy, planning and taxation context. While some differences, such as inferior protections against eviction, would undermine rent regulation, others, such as investment driven by capital gains rather than rental yields, arguably reduce the potential negative effects of rent regulation.

The chapter concludes with a series of recommendations. We recommend the implementation of rent regulations within tenancies through either a fixed percentage cap or inflation-linked cap limited by a maximum percentage. Further research should guide the appropriate cap – including appropriate indexes – and provisions for exceptions. We recommend that regulations cover the entire PRS rather than allowing exemptions for new and recently completed dwellings, based on the particular characteristics of the NSW PRS and experience of jurisdictions where such exemptions have been in place. We also recommend further research to consider vacancy control or vacancy bonuses. Finally, we recommend improvements to data collection that would be essential for any system of rent regulation and would be valuable regardless.

### 4.1 CONSIDERATIONS FOR RENT REGULATION IN NSW

The PRS in NSW differs from many of the aforementioned jurisdictions in some crucial ways. It stands in contrast to the sectors in the US, Canada and much of Europe, where there are higher incidences of corporate landlords who tend to hold rental properties for longer, own and operate entire rental complexes, and make investment decisions based on rental yields. The PRS in NSW and Australia generally is dominated by small-holding landlords rather than institutional investors and does not face competition from a substantial social rental sector, unlike some European states (Wood & Ong

2010; Hulse et al. 2020; Hulse et al. 2011). Qualitative research by Seelig et al. (2009) suggests that capital gains are a more significant driver of investment than rental yields, though there are also several non-financial drivers of investment property ownership (see also Wood & Ong 2010; Martin et al. 2022). They find that landlords ‘generally appeared to accept the possibility that positive returns were not going to be made until a number of years down the track from the initial time of investment, and that, in most cases, costs were in practice going to outweigh returns at the commencement at least’ (2009: 34). This is supported by ATO statistics which suggest that loss-making landlords have consistently outnumbered those earning positive returns since the early 1990s (Martin et al. 2022).

The pursuit of capital gains also drives a higher level of turnover in the PRS. Martin et al. (2022) find that most rental properties exit the system within five years. More than one-quarter of tenancy terminations are due to a property exiting the PRS and, accordingly, nearly one-third of new rental agreements are for properties that are new to the PRS (ibid.). This level of turnover might mitigate an orthodox economist’s concerns regarding mobility effects, given landlords will evict tenants when they intend to sell, though as we discussed in the introduction, the validity of this criticism is debatable.

As a result of these investment and ownership characteristics, the owner-occupied and private rental sectors in NSW and Australia are more highly integrated than many jurisdictions abroad (Martin et al. 2018). In other words, it is common for properties to trade between owner-occupied and private rental, and the PRS, while more concentrated in attached dwellings, is broadly representative of the housing stock at large. The build-to-rent sector in Australia is small and, while growing, likely to remain so for the foreseeable future – particularly in NSW (Pawson et al. 2019), meaning there are few apartment complexes devoted entirely to private rental like there are in Europe and North America. Most rented apartments appear in strata schemes with multiple owners, some of them landlords and some of them owner-occupiers.

#### 4.1.1 INVESTMENT & DISINVESTMENT

The greater significance of capital gains compared to rental yields, and the high level of property turnover, suggests that NSW landlords are less likely to bring forward decisions to sell their investment properties if their ability to raise rents is limited. Rather, landlords would remain likely retain an investment property until it has generated a sufficient capital gain. Research by Martin et al. (2022) on PRS investment and disinvestment in the wake of tenancy reforms in

NSW and Victoria supports this argument. While these reforms did not include rent regulation, they were claimed to have an impact on rental yields. Importantly, ‘negative gearing’ enables loss-making landlords – the majority – to deduct losses from their taxable income, and many do so accordingly (ibid.). This tax setting assists the higher proportion of Australian landlords with variable rate mortgages compared to their international counterparts.

Furthermore, the event of a landlord selling their investment property due to rent regulation is not necessarily a negative outcome. Frequent sale of investment properties is already a feature of the PRS in NSW (Martin et al. 2020) and does not decrease housing supply. In a highly integrated system like that in NSW, the vast majority of properties will be sold to either (i) another investor and leased, (ii) a first home buyer exiting the PRS, or (iii) an owner-occupier who will in turn sell their property to (i), (ii) or (iii). All scenarios have a zero-sum effect on the availability of rental housing. It is also worth noting that the exit of landlords who cannot or will not tolerate limits on rent increases will be seen by many as a positive outcome for the PRS on the whole.

In a small but not insignificant number of cases, regulation may prompt a landlord to shift a rental property into the short-term rental sector. The uneven geography of the sector means that this scenario would be more common in some areas than others, and particularly problematic in coastal and other high-amenity locations (Gurran & Phibbs 2017). Such a scenario can be mitigated through regulation of the short-term rental sector, as some NSW local governments have recently proposed.

Exemptions for new dwellings has in some jurisdictions incentivised redevelopment or conversion to condominiums. Condo-conversion is largely irrelevant to NSW, given most privately rented apartments already exist in strata schemes. The redevelopment of entire apartment complexes is far less likely to occur in NSW where there are very few landlords who own entire apartment complexes and strata redevelopment requires the approval of 75% of owners. Yet it is possible that, under regulations that exempt new and substantially renovated dwellings, some landlords might redevelop or refurbish properties in order to move them from the regulated to unregulated sectors. The former may lead to an increase in housing supply, though it could also be undertaken as a ‘knockdown-rebuild’, with one single detached home replaced with another. Such renovations would also replace relatively cheaper housing with more expensive housing, raising implications for affordability (Nygaard et al. 2022). As such, exemptions for new housing stock

are just as unwise in NSW as in other jurisdictions.

Concerns regarding the impact of rent regulation on new construction are valid. The composition of PRS investment in NSW and Australia suggests, however, that there may be fewer risks here than in places where corporate landlords play a more significant role. Construction in NSW is overwhelmingly ‘build to sell’, so rent regulations that limit the long-term profitability of rental housing may have less impact on the investment decisions of property developers than in jurisdictions where ‘build to rent’ operators are more numerous. If initial rents for new dwellings are set freely or in relation to a reference rent (i.e. vacancy decontrol or a vacancy bonus), then investor demand is also unlikely to be significantly impacted. Contrary to some commentators’ views, but consistent with the approach of many governments overseas, such rent regulations can complement reforms aimed at increasing housing supply such as those being pursued by the NSW and Commonwealth Governments. As discussed in the introduction to this report, efforts to increase housing supply alone will not have an adequate impact on rents, so these efforts should be considered in conjunction with other measures that ensure quality, affordability, and secure tenure.

#### 4.1.2 SECURE OCCUPANCY

Private renters in Australia have weaker security of tenure than those in most comparable jurisdictions, including most if not all of those examined for this report (see Hulse et al. 2011; Martin et al. 2018). This is particularly due to laws permitting ‘no grounds’ evictions, as well as shorter standard tenancies. A functional system of rent regulation requires stronger protections for tenants, particularly outlawing ‘no grounds’ evictions for both fixed-term and periodic agreements. Rent regulation can enhance security of tenure but it cannot do so without this reform.

Rent regulation does not substitute for social housing. Like increasing housing supply, it will not reduce the rents of low-income households to the housing affordability threshold in an acceptable timeframe. Indeed, rent regulation is complimented by investment in social housing, particularly in unitary housing systems in which the social rental sector competes with the PRS and thus drives higher standards (Hulse et al. 2011). While NSW currently has a significant social housing shortfall, a long-term policy objective should be that social and affordable housing provides an alternative to the PRS for lower-income households. Social housing construction can also mitigate against any potential supply effects of rent regulation and cyclical private sector construction trends.

### 4.1.3 GEOGRAPHIC SCALE

Responsibility for regulating the PRS in Australia lies with state governments. This is also true in some of the jurisdictions examined in this report – notably in Canada, where British Columbia, Ontario, Manitoba, Prince Edward Island, Nova Scotia and Quebec oversee province-wide rent regulations. Others devolve rent regulation to the municipal level, notably in the US (recent state laws in Oregon and California notwithstanding) where municipalities typically encompass entire cities (though there are several large metropolitan regions that span multiple municipalities). Some national and state governments respond to geographic variation with triggers that determine whether regulations come into effect, such as a threshold for housing stress or rent inflation. Key questions for policymakers therefore include the appropriate geographic scale for applying rent regulation (i.e. whether it should be enacted state-wide or allow for regional variation) and whether it should come into effect or be ratcheted up when certain criteria are met. Further research is required on this issue, taking account of regional housing market dynamics, issues such as seasonal workforces and tourism, and the local effects of large infrastructure projects such as Metro lines.

### 4.1.4 DATA REQUIREMENTS

The introduction of rent regulation in NSW would require significant expansion and improvement of existing data collection. At the time of writing, publicly available NSW PRS data includes:

- **CPI data**, published by the ABS, which reports rent inflation for Australia and capital cities including Sydney, based on a sample of several hundred thousand private rental properties;
- **Rental bond lodgement data**, published by NSW Fair Trading, which reports the rent level for every tenancy for which a new rental bond has been lodged as well as rental dwelling postcode, bedrooms and type (flat, house, terrace, other, unknown);
- **Rental bond refund data**, published by NSW Fair Trading, which reports the date of rental bond refund, the proportions refunded to the agent and tenant, tenancy length, dwelling postcode, bedrooms and dwelling type;
- **Rental bond holdings data**, published by NSW Fair Trading, which reports the total number of active tenancies (measured by rental bonds) per postcode;
- **Rent Reports** published by NSW DCJ based on rental bond lodgements, which reports the first quartile, median and third quartile agreed rents for a range of geographies (postcode, LGA, GMR, inner-middle-outer rings of Sydney); and

- **Advertised rents** reported by real estate listings companies Domain and Realestate.com.au, and by property research companies such as CoreLogic.

These datasets provide useful insights. Rental bond entries and exits show turnover in the PRS and are a good proxy for investment and disinvestment. Bond lodgement data also provide a good indication of the costs faced by tenants in the market for a new rental dwelling. However, none of these datasets track rents *within* tenancies across NSW. All bar CPI data report on rents at the time of advertisement or tenancy agreement. CPI data tracks rents within tenancies but, at the time of writing, only capital city rent inflation is published.

Monitoring the outcomes of rent regulation and ensuring compliance across the state would require comprehensive rent data that accounts for rent increases within tenancies. Release of state- and regional-level rental trends based on the ABS's recently acquired national sample would be a positive development.

A significant reform alongside rent regulation would be a system of registering every rent increase with NSW Fair Trading. Data relating to habitability standards would also assist with tracking landlord disinvestment in the form of foregone maintenance, and would be essential if any rent regulation were to differentiate between higher and lower standard properties (e.g. regarding energy efficiency). These would be worthy initiatives regardless of any policy action on rent regulation.

## 4.2 CONCLUSIONS AND RECOMMENDATIONS

As this report has shown, rent regulation is an increasingly commonplace but varied housing policy around the world. This complexity means that these policy interventions need to be understood in the context of the structure and operation of local housing markets and wider policy systems. Rent regulations vary with respect to rent caps, treatment of vacancies (control, decontrol, bonus), PRS coverage, and provisions for exceptional rent increases. Each of these dimensions is crucial to the operation of rent regulation within any given jurisdiction, interacting with local housing market and policy contexts to produce particular outcomes.

Across the rent regulation regimes in the 25 nations and multiple sub-national jurisdictions examined in this report, we observe three main objectives: stabilising rents across PRS, enhancing security of tenure, and improving affordability for lower-income households. Any given framework



seeks to do at least one of these things, to varying degrees of success – as the case studies and scenarios in Chapter 3 attest.

The resurgence of rent regulation in the past five to ten years has extended to several jurisdictions where, like NSW, there was little or no recent history. They range from relatively strict to extremely permissive, highlighting some of the challenges that rent regulation can face during its first years and the need to adapt to changing circumstances. In applying these rent regulation scenarios using available data for Sydney, we illustrated their varied outcomes. Stricter caps like Ireland's and Scotland's would have provided significant protection against the steep rent increases observed over the past 12-24 months. Yet their effect in the five to ten years prior would have been more moderate. Softer restrictions like Oregon's and the ACT's would have had the modest effect of preventing some excessive rent increases but permitting increases in line with rent inflation.

These recent examples include several innovations, among them Ireland's RPZs and the ACT's rent cap linked to local rent inflation. There is scope for NSW to innovate further, taking account of the particular characteristics of the PRS in this state. To this end, we make the following recommendations:

#### 4.2.1 RECOMMENDATIONS

- **End no grounds evictions for both fixed term and continuing tenancies.** The security of tenure and predictable rent increases provided by rent regulation would be undermined without these reforms.
  - **Regulate rents within tenancies through either (i) a fixed percentage cap or (ii) an inflation-linked cap limited by a maximum percentage.** Further research should guide the choice of cap and provisions for exceptions. This should include investigating indexes that exclude housing costs to avoid the circular logic of rising rents justifying rising rents.
  - Such rent regulations should **cover the entire PRS rather than exempting new and/or recently completed dwellings.** While these exemptions have been seen as a way to minimise impacts on construction activity, they incentivise landlords to prematurely redevelop or refurbish existing rental stock in order to shift it into the unregulated sector. Any impacts on new construction activity can be mitigated by allowing initial rents for new dwellings to be set freely or against
- reference rents, along with wider planning and tax reform.
  - Rent regulations should **cover all forms private rental accommodation**, including student housing, boarding houses, co-living, and sharehouses (excluding non-rent charges such as utilities). If a new tenancy agreement is required following a change in sharehouse composition, or a student's return for the semester, a loophole is opened for a higher rent increase. This should be avoided.
  - Rent regulations should **limit the ability of landlords to bank rent increases** (i.e. save up multiple years' rent increases and charge them at once), as this practice undermines the enhanced security of tenure provided by capping rent increases within tenancies.
  - Further research should **consider the impacts of incorporating vacancy control or vacancy bonuses** into rent regulations in NSW. As we have illustrated, these provisions would dampen rent inflation more effectively. While vacancy control may have an impact on new construction, regulations may allow the rent for new dwellings to be set freely for the first lease, as is the case in Ireland. Furthermore, such arguments are weaker in the context of a PRS driven more by capital gains than rental yields, and where landlords are able to deduct losses against taxable income.
  - The need for **differentiation across regional submarkets** is another area for further research. This includes the appropriateness of standard rent regulations throughout NSW versus geographically targeted regulations such as those in Ireland.
  - **Improved data collection is essential** for monitoring and enforcing rent regulation. Whether rent regulations are introduced or not, NSW should comprehensively track rents within tenancies by requiring landlords or property managers to lodge a notice of rent increase with NSW Fair Trading. To ensure compliance, prior notification of NSW Fair Trading should be a condition of valid rent increase. Such data would enable much wider evaluation of PRS performance, beyond monitoring and enforcing rent regulations.

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