

The National Nine



Principles for Strengthening Renters' Rights



National
Association of
Renters' Organisations



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August 2023

Introduction

The National Association of Renters' Organisations (NARO)

The National Association of Renters' Organisations (NARO) is a federation of State and Territory based Tenants' Unions and Tenant Advice Services across Australia.¹ Our membership comprises Tenants Queensland, the Tenants' Union of New South Wales, the Tenants' Union of Tasmania, Tenants Victoria, Circle Green Legal Centre WA, and the Darwin Community Legal Service.

We are the country's leading voice representing the interests of people who rent their homes in our respective jurisdictions, and are experts in the application of residential tenancy law. Collectively, we resource, co-ordinate or directly provide advice regarding more than 80,000 tenancy issues each year.

This report was chiefly authored and coordinated for NARO by Deb Phippen, Policy and Research Coordinator at ACT Shelter and former executive officer of Tenants' Union ACT. NARO thanks ACT Shelter for the contribution of Deb Phippen's long standing expertise and experience to this report.

Intention of this Report

This brief report provides expert guidance for the national proposal being developed by Housing Ministers for consideration within the National Cabinet to improve our rental housing system and better ensure renters have access to safe, affordable, and secure homes. Our services are community legal centres funded by both levels of government which offer experience and expertise on renting

¹ The National Association of Renters' Organisations (NARO) recently changed its name from the National Association of Tenants' Organisations to better reflect that our ambit is all renters

law and practice, as well as informed comment on renters' experiences across Australian states and territories.

This is the perfect opportunity for governments to directly benefit from the experience of services they resource in relation to issues that have been somewhat outside the usual remit of the Federal Government.

It is expected that Cabinet will be well informed in relation to private rental statistics as well as the detail and governmental/judicial experience of residential tenancy law. This information is necessary but lacks the essential element of an understanding of how these laws impact on the people. This document does not focus on issues already being addressed (including housing supply); it provides brief insight and recommendations based on years of provision of services focussing on renters' direct experience with these laws.

This report is intended to be a concise source of issues, recommendations and resources. NARO is available for further detail and discussion.

Background

As home ownership has become less and less affordable, a growing number of people are renting, with over 8 million Australians now making homes in the rental sector. Around two in five of these households include dependent children, and a growing number of people are long-term renters who will rent through their entire life, including into retirement. Renting is not a temporary step: it is a way of life for many people whose ability to have a decent home is determined by the conditions in the rental sector.

However, the current state of the rental market is characterised by instability, insecurity, and a lack of adequate protections for renters. Market rents are unaffordable with many renters struggling to secure a new rental property in the fiercely competitive private rental market. Most renters continue to face significant insecurity, making it very difficult to assert their rights such as requesting repairs. Many rental homes provided are of a poor standard. In addition, the often substantial increases to rent being experienced by many across the country is placing a tremendous burden on individuals and families. Too many renting households are spending too much of their income on rent, leaving very little for other necessary ever-increasing expenses.

As the Australian Housing and Urban Research Institute (AHURI) recently observed, 'it is increasingly recognised that Australia's private rental sector is not '...fit for purpose' for a changing and expanding role, being grounded in its historical role as a transitional sector where people move on from rental housing to home ownership'.² Housing researchers and advocates frequently/commonly observe Australian tenants are amongst the least secure when compared with tenants in like jurisdictions.³

As is to be expected, these issues have been the focus of the work of our collective services. Over the years, NARO has produced national reports and submissions highlighting common and recurring issues for renters across the country, as well as recommendations for law reform. In 2018, NARO

² Australian Housing and Urban Research Institute (2022) *AHURI submission to the Productivity Commission Review of the National Housing and Homelessness Agreement (NHHA)*, p25.

³ Kath Hulse, Vivienne Milligan and Hazel Easthorpe (2011) *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, (Australian Housing and Urban Research Institute, Final Report No. 170: July 2011).

partnered with National Shelter and Choice to undertake a national study, *DISRUPTED: The consumer experience of renting in Australia*, that revealed widespread fear and discrimination faced by thousands of Australians. It also identified the specific aspects of tenancy law such as no cause eviction that resulted in these experiences, and compared how jurisdictions regulate them.⁴ These reflected the findings of the earlier 2017 joint study, *Unsettled – Life in Australia’s private rental market*.

Disrupted determined that there are three common issues facing renters across the nation:

- poor quality homes and being too afraid to request repairs
- insecure tenancies, and
- struggling with rental affordability and cost of living pressures.

Given the significant fears from Australians about retaliatory ‘no-grounds’ eviction, the report called for a nationwide ban on the practice. The 2018 report noted:

*Banning no-grounds eviction across Australia would provide more secure housing for Australians who rent ... [and] ensure Australians who rent have the security they need to create homes, build lives and raise families.*⁵

There have been numerous reports and articles detailing the same issues for people in the private rental market, including that released by Everybody’s Home on 25 July 2023, where tenants reported:

Renting has provided no long-term security, I never feel like I’m at home because landlords and state law treat me as a guest on their property.

*I want stability but all I’ve had is price rises and abusive landlords that break the law with no repercussions. There is zero clarity for where I’ll live in twelve months let alone past that.*⁶

These studies and experiences are essential to provide a clear picture of personal experiences but lack a detailed comparison and analysis of tenancy law across the country to inform effective law reform. In 2010, NARO undertook a study that provided a comparison of key aspects of tenancy law across each state and territory of Australia, highlighting concerns of national significance expressed by tenant advocates. *A Better Lease on Life – Improving Tenancy Law* was funded by the Federal Government and recommended a coordinated cross-jurisdictional approach to tenancy law reform.⁷ This was an update of the 2003 report – *Leaking Roofs* – that called for national minimum standards to ensure consistency of protections for renters across the country.

We also note that in order to ease pressure on the rental sector, especially for low income renting households, substantial investment in social housing is required from both federal and state governments. Alongside rental reforms, governments should recognise that housing is a complex system with interacting parts. Unaffordable, inadequate housing in the private rental sector puts greater pressure and cost on the social housing and homelessness system. A robust and healthy

⁴ Choice, National Shelter, National Association of Tenants’ Organisations (2018) *DISRUPTED The consumer experience of renting in Australia*, p18
<https://shelter.org.au/site/wp-content/uploads/Disrupted-2018-Report-by-CHOICE-National-Shelter-and-NATO-Web-Version.pdf> accessed 1 August 2023.

⁵ Ibid., p18

⁶ Azize, M. (2023) *Brutal Reality: The Human Cost of Australia’s Housing Crisis*. Everybody’s Home: Melbourne, <https://everybodyshome.com.au/report-reveals-brutal-reality-of-housing-crisis/>, p15

⁷ P Carr, M Tennant, National Association of Tenants’ Organisations, National Shelter (2010) *A Better Lease on life – Improving Australian Tenancy Law*, https://tenantsqld.org.au/wp-content/uploads/2010/07/A_Better_Lease_on_Life_April.pdf, accessed 1 August 2023.

social housing system likewise eases pressure on the private rental sector. High property prices and lax lending practices put pressure on all forms of renting and make it more difficult for owners to meet their obligations.

We note that Australia's stock of social housing has fallen consistently over preceding decades. Public housing has not been supported by governments. Transfers of property and/or management, and availability of lower cost finance to community housing, does not ensure the number and diversity of social housing dwellings increases at a rate sufficient to keep up with demand for genuinely affordable homes. The experience of social housing is inconsistent across the country which diminishes the perceived benefits and social licence of the sector. The expected outcomes for tenants in both public and community housing should be standardised and lifted. Though not the main focus of this report we do recommend governments should aim for investment consistent with meeting a target of a minimum 10% of all housing being public or community housing by 2036.

The Need for Consistency

Background to Australian residential tenancies law

Australian residential tenancies law comprises the common law of tenancy and the residential tenancies legislations of each of the states and territories. Each state or territory has its own Residential Tenancies Act, which is the primary source of law relating to residential tenancies in each jurisdiction. Each of these Acts is a variation on the model of residential tenancies legislation put forward by Adrian Bradbrook in 'Poverty and the Residential Landlord-Tenant Relationship', a special report to the Australian Government's Commission of Inquiry into Poverty (1975). The Bradbrook model distinguished residential tenancies from commercial and other tenancies, and proposed to deal with residential tenancies as consumer contracts rather than interests in land. In particular, it proposed that each of the states and territories should provide for the following:

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

In the decades following Bradbrook's report, each state and territory implemented legislation based on the Bradbrook model. Variation between each state and territory is, however, considerable.⁸ This is demonstrated by the tables included below for each issue.

Why there is a need for the Commonwealth to be involved

While current discussion and plans for supply measures to increase public and social housing are vital to address the housing crisis, a longer term solution to the hardship people across the country

⁸ Ibid., p21

are enduring right now must be grappled with as quickly as possible. This means addressing the common problems in the private rental market that the majority of renters are experiencing. While residential tenancy legislation is certainly a matter for state and territory governments, the variations noted above have resulted in serious inequities across jurisdictions. As noted by the Darwin Community Legal Service in their 2019 submission:

The Northern Territory currently has a reputation for unscrupulous agents, poor living conditions and excessive rental costs. The government must act to introduce a fair, safe and certain tenancy system, which provides an independent bond board, offers protection for victims of domestic violence and ends no-fault evictions.

Shelter and housing are fundamental human rights. In our affluent nation, housing should be available to all. No Australian should be disadvantaged by the jurisdiction in which they live. The law must embody the honourable expectations of our society.⁹

There is clearly a role for national consistency in relation to ensuring there are protections in place for people in relation to their homes. As noted by CHOICE, on releasing the Disrupted report,

Australians have stronger consumer protections when they buy something from their local supermarket than when they spend tens of thousands of dollars renting a home. We've got families living with mould all over their homes and left waiting weeks for repairs – this simply isn't good enough. Under the Australian Consumer Law, Australians know that if we have a problem with something we buy, then we have the right to a repair, refund, or replacement. But when it comes to getting the most basic of our needs – shelter – Australians live in fear. It's time for consistent and fair laws that guarantee every Australian has a safe, secure and affordable home.¹⁰

With the development of the Australian Consumer Law, Australian governments demonstrated capacity to develop a consistent approach to state and territory legislation. It is not necessary to develop an overarching national law for this essential consumer product but the inequity in residential tenancy law across the country – despite years of reviews, consultations and research – clearly demonstrates the need for a national approach. This was recommended in the 2022 AHURI report *Regulation of residential tenancies and impacts on investment*:

This should be ... a more comprehensive law reform agenda, with a dedicated working group, comprising officers from all jurisdictions (including the Australian Government). Jurisdictions could take the lead on researching, consulting and developing proposals on different topic areas ...¹¹

There is an urgent need for national, state and territory governments to work together to develop a consultative framework and national plan for rental reform, to deliver meaningful outcomes across all jurisdictions. A national framework and plan will establish a shared set of rights and protections for renters and shared ambition for improvement across the rental housing system, while

⁹ Darwin Community Legal Service (2019) *Response to Discussion Paper* August 2019; <https://www.dcls.org.au/wp-content/uploads/2019/09/DCLS-Response-to-Discussion-Paper-Review-of-the-Residential-Tenancies-Act-1999.pdf>, accessed 1 August 2023, p7

¹⁰ Kollmorgen A (2018) *CHOICE report: rental rights in Australia have a long way to go*, Dec 2018 <https://www.choice.com.au/money/property/renting/articles/choice-rental-rights-report-dec-2018>, accessed 1 Aug 2023

¹¹ Martin, C., Hulse, K., Ghasri, M., Ralston, L., Crommelin, L., Goodall, Z., Parkinson, S. and O'Brien Webb, E. (2022) *Regulation of residential tenancies and impacts on investment*, AHURI Final Report No. 391, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/391>, p82


safeguarding against any diminishing rights in any jurisdiction. However, it is important that a national plan should not stop immediate action by states and territories to undertake rental reform.

We note that the current Cabinet process investigating renting law reform does reflect this and we welcome it as a substantial starting point for meaningful reform across the country.

The issues

The issues identified here include those highlighted in the current national discourse, and are expanded to include others that must also be addressed. They have been determined based on the experience of tenancy legal services across the country:

1. [Stability](#) – ending all no cause terminations **Page 8**
2. [Affordability](#) – stabilise rent prices **Page 13**
3. [Liveability](#) – minimum standards for all rental homes, including energy efficiency **Page 18**
4. [Compliance and accountability](#) – accessible and robust frameworks to ensure laws are effective **Page 22**
5. [Management and Security of Tenants’ Money – Rental Bonds](#) – independent rental authorities to hold, safeguard and manage tenants’ money and provide prompt return and a source for resourcing services that benefit renters **Page 26**
6. [Protection of private information and discrimination](#) – transparency and protections in relation to collection and unlawful use of information **Page 28**
7. [Access to advice and advocacy](#) for all renters **Page 31**
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1. Stability: No cause termination

1. Stability – No cause termination

The importance of stability of home cannot be overstated and the impact of losing one's home is significant and far-reaching. This must be the prime consideration when examining all grounds for termination of tenancy and renting agreements. Unlike home owners or purchasers, tenants and other renters can be forced to move from their home for many reasons aside from breaching the terms of their agreements. This in itself creates an ongoing sense of instability; however, at least specific grounds can be challenged if there is concern about their validity. The existence of provisions allowing termination without any justification can be nothing more than a mechanism for retaliation.

Costs: more than financial

Moving house is generally accepted to be one of life's most stressful and costly events – involving finding new appropriate, affordable housing to live in and associated matters such as schools and services, the disruption of life and routines, as well as substantial financial costs. All of this is intensified if it is not due to household decisions or control.

'Eviction, hardship and the housing crisis' considers the broad range of costs faced by a household when they move, in particular, the costs associated with a forced move or eviction ...

The financial costs, and the stress and anxiety associated with moving are substantial, and these are only exacerbated when a household is forced to move (evicted). Of course, the costs of eviction and the impact it has on renters' lives – as well as the costs for governments and communities – are much broader. And longer lasting.¹²

Diminution of Rights

The implications for renters of the existence of no cause evictions in relation to asserting whatever rights they do have are well understood and have been consistently articulated over the last 50 years. In 1976, a Commission of Inquiry into Poverty noted in its recommendations relating to tenancy law:

The landlord certainly should not be permitted to end the tenancy in order to retaliate against a tenant who seeks to enforce his [sic] legal rights. Any other view would render worthless many of the substantive reforms ... since a tenant is hardly likely to insist on the full measure of his legal entitlement if the price of his actions is eviction from the premises.¹³

The most significant impact of no grounds provisions is:

... in its invisible use rather than explicit. A landlord may never actually serve a no grounds notice. They may never even recognise their usage in this way, or the power it gives them. This is partly why some find it so challenging to consider in law reform. The real power of the 'no grounds' notice is its usefulness in keeping tenants from raising issues at all.¹⁴

¹² Mowbray J (2022) *The True Cost of Eviction*, <https://www.tenants.org.au/blog/true-cost-evictio>, accessed 1 August 2023.

¹³ Australia. Commission of Inquiry into Poverty and Sackville, Ronald. *Law and poverty in Australia* Canberra: Govt. Printer, 1976. Web. 28 July 2023 <http://nla.gov.au/nla.obj-1928657120>, accessed 1 August 2023, p80

¹⁴ *Ibid.*, pp80-81.

This impact exists regardless of the length of notice, as demonstrated by the ongoing detrimental ramifications of the 26-week no cause provision in the ACT introduced in their Act in 1997. Despite the long notice period, the no cause provision was consistently applied following tenants being successful in asserting their rights through ACAT, and used successfully as a threat during tenancies. This led to the no cause provision being removed entirely in April this year:

The removal of a lessor's ability to terminate a tenancy without grounds is intended to give tenants confidence and assurance that their tenancy can only come to an end for a legitimate reason, rather than at the unfettered discretion of a lessor. With this significant improvement in a tenant's rental security, a tenant can assert their rights, such as requesting repairs and maintenance, under a residential tenancy agreement, without fear that this may lead to their eviction.¹⁵

The other no cause provision

The impact of any termination without a valid and substantiated reason provides the perfect opportunity for retaliation and therefore, as noted by Tenants' Queensland:

... [end of fixed term] equates to eviction with no reason. It undermines the security and stability of renting households, and their ability to enforce the rights they have for fear of an eviction at the end of their fixed term agreement. The power imbalance experienced by renters will continue as long as this ground for eviction remains in ... tenancy laws¹⁶

These experiences are reported in all other jurisdictions. There is no fair justification for terminating merely because a fixed term tenancy agreement has ended. Fair and legitimate grounds must exist and be contestable. Removing no cause provisions while retaining end of fixed term is effectively meaningless.

It can be achieved

The ACT has successfully established itself as a jurisdiction with just cause terminations only. Despite the expected outcry from real estate and landlord interests, there has not been a mass exodus of landlords from the Territory. The experience has confirmed the findings of AHURI that tenancy law reform has little to no impact on the private rental sector.¹⁷ It is reasonable to assume that much of the knee jerk response to tenancy law reform is grounded in a lack of understanding of tenancy law and the extensive existing termination provisions.

It is of note that in the United Kingdom, the conservative government recently announced its intention to to abolish no cause evictions, determining that such provisions:

... cause tenants to feel insecure, unable to plan for the future or call where they live a home. Many tenants are reluctant to challenge poor standards because they worry that their landlord will evict them rather than deal with their complaints. After eviction, tenants cannot always find suitable

¹⁵ ACT Government (2022) Explanatory Statement, Residential Tenancies Legislation Amendment Bill 2022 (ACT) 58, https://www.legislation.act.gov.au/b/db_66953/, accessed 1 August 2023.

¹⁶ Tenants' Queensland (2023) *Submission to the Queensland Government on the Stage Two Rental Reform consultation paper*, <https://tenantsqld.org.au/wp-content/uploads/2023/06/Submission-Stage-Two-Rental-Reforms-May-23.pdf>, accessed 1 August 2023.

¹⁷ AHURI (2022) *Improving tenancy laws hasn't stopped rental investment*, <https://www.ahuri.edu.au/analysis/news/improving-tenancy-laws-hasnt-stopped-rental-investment>, accessed 1 Aug 2023.

*housing nearby, interrupting their employment and children’s education. Unexpected moves are expensive, meaning tenants have less money available for a deposit when buying a home or to put towards other essentials such as food or heating.*¹⁸

Hardship

An associated element relating to terminations, especially where a tenant is not at fault is the financial hardship that they can unexpectedly face. Tenant advocates have noted this can be addressed by requiring the landlord to cover the cost of moving.¹⁹

How each State/Territory sits

| | |
|------------|---|
| ACT | On 1 April 2023, no cause termination was removed from the RTA 1997. Additional grounds were introduced for public and community housing providers. Existing grounds were retained. ACT never provided for termination by lessor at the end of a fixed term agreement. |
| NSW | Without grounds during periodic agreements- 90 days’ notice. Without grounds at end of fixed term – 30 days’ notice. The NSW Government is currently consulting on removing ‘no grounds’ evictions from the <i>Residential Tenancies Act 2010</i> and introducing new no fault evictions. |
| NT | Without grounds during periodic agreements – 42 days’ notice. Without grounds at end of fixed term – 14 days’ notice. |
| Qld | Without ground was removed from tenancy laws in 2022. However, ‘End of a Fixed Term’ was created, effectively reinstating it for fixed term agreements – 2 months’ notice. |
| SA | Without grounds – 90 days’ notice. Without grounds at end of fixed term – no notice required. 17 July the SA Government announced the intention to remove no cause evictions with a Bill expected later in the year. ²⁰ |
| Tas | RTA has not included without grounds provision. Without grounds at end of fixed term – 42 days’ notice. . |
| Vic | Without grounds was removed from the RTA in March 2021 . Without grounds at end of fixed term – 60-90 days |
| WA | Without grounds – 60 days’ notice. Without grounds at end of fixed term – 30 days’ notice |

Table 1. Stability comparison

¹⁸ *A new deal for renting: government response*, Updated 16 June 2022 <https://www.gov.uk/government/consultations/a-new-deal-for-renting-resetting-the-balance-of-rights-and-responsibilities-between-landlords-and-tenants/outcome/a-new-deal-for-renting-government-response> as quoted by Tenants’ Union of Tasmania submission to the 2023 Select Committee on the Cost of Living, <https://tutas.org.au/wp-content/uploads/2023/05/CostofLiving190523.pdf>, accessed 1 August 2023.

¹⁹ Tenants’ Union NSW (2022) *Eviction, Hardship, And The Housing Crisis*, 2022 <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>, accessed 1 August 2023, pp60-62

²⁰ Government of SA (2023) Consumer and Business Services Media Release, *No cause’ evictions to be banned in South Australia*, <https://www.cbs.sa.gov.au/news/no-cause-evictions-to-be-banned-in-south-australia#:~:text=Tenants%20will%20no%20onger%20be,proposed%20by%20the%20State%20Government>, accessed 1 August 2023.

Recommendation:

Stability and security for people who rent their homes

Without better protections against no cause evictions, including at the end of fixed-term leases, renters cannot assert other rights without fear of reprisal. We recommend the prioritising of reforms to ensure landlords must provide renters with a valid reason for terminating a tenancy to provide better protection against arbitrary and unfair evictions. This includes removing the end of a fixed term as a ground, as recently implemented in the Australian Capital Territory (ACT).

2. Affordability



2. Affordability

Key issues for all governments are affordability and sustaining people's homes, be that owning, purchasing or renting. As the cost of living increases are being borne by the whole population, it is essential to ensure that surging costs for renters in existing tenancy agreements do not push them into further hardship and ultimately losing their homes. People desperate for homes take on tenancies that they can barely afford because there is no other choice and may then face further increases, in some cases after 6 months. The impact of this is well documented and reported, even noted by financial brokers:

It is clear that tenants are still grappling with unsustainable rent increases. Rental hikes are outpacing wages, leaving no realistic prospect of renting or buying for many individuals.²¹

Also noted by the Reserve bank of Australia:

Access to appropriate and affordable rental accommodation is an important issue for [renter] households and the economy more broadly, as it has implications for patterns of consumption and savings and, most importantly, renters' overall wellbeing.²²

The data

According to ABS 2020 data over half renters on lower incomes were in housing stress.²³ The May 2023 Corelogic report looking at imputed rents found that renters on medium incomes are handing over nearly one-third of their income for a new lease as rents continue to rise. The situation is much bleaker for lower-income households, with those on low incomes paying 51.6 percent of their income.²⁴ It is these rent levels that are used to justify rent increases for sitting tenants already struggling with their costs. That said there is little to no reason for landlords to need to justify increases because there is little regulation of them across the country, with no consideration of the sometimes devastating impact of them.

The failure of the rental housing system – with tight supply and little to no regulation of rents – has resulted in a current situation in which market rents for residential properties are not generally in line with what the community considers 'fair market value'. 'Fair market value' is generally considered to be a price both parties are willing to enter into, where both are acting in their own best interests and are free of undue pressure.

²¹ Savvy (2023) *Rental Crisis: Low-Income Households Need 117% of Income to Pay Rent*, <https://www.savvy.com.au/media-releases/rental-crisis-low-income-households-need-117-of-income-to-pay-rent/>, accessed 1 August 2023.

²² Agarwal N, J Bishop and I Day (2023), *Renters, Rent Inflation and Renter Stress*, RBA Bulletin, March 2023, <https://www.rba.gov.au/publications/bulletin/2023/mar/renters-rent-inflation-and-renter-stress.html>, accessed 3/8/2023

²³ Australian Bureau of Statistics (2022) *Housing Occupancy and Costs 2019-2020 Financial Year*, <https://www.abs.gov.au/statistics/people/housing/housing-occupancy-and-costs/2019-20>, accessed 3 August 2023

²⁴ ANZ Corelogic (2023) *Housing Affordability report*, May 2023 <https://www.corelogic.com.au/news-research/reports/housing-affordability>, p2

Issues relating to rent increases

The main issues relating to rent increases are:

- Excessive amounts – all jurisdictions except the ACT do not provide any limits or even guides as to what is an excessive increase. This leaves the way open for landlords to propose any amount without any consideration of how sustainable this is for their tenants. Tenancy services report consistently seeing extraordinary rises – up to 30% or even doubling. Tenants Queensland reports increases of over three times the rate of inflation – an average of \$104 per week.²⁵ There are also reports of agents encouraging landlords to increase rents by 20%.
- Unsustainable frequency of unlimited increases creating hardship for tenants already struggling to pay existing rent.
- Unrealistic review mechanisms – in all jurisdictions but the ACT the only option for a tenant faced with an unaffordable increase is to attempt to negotiate with the landlord or their agent, or make an application to the relevant tribunal or court for a review of the increase. Neither of these options are realistic.

Other issues relating to rent increases:

- Existing review provisions consider market rents but not personal or financial circumstances of tenants, with no guidance as to what a fair increase is. Under the current system, rents are being set at a price that renters are 'willing to pay', that is – they accept the rent increase and may not move out – but this is only because they feel forced to. They are facing undue pressure given the current housing crisis.
- Currently, the list of factors across jurisdictions that may be taken into account in considering if an increase is 'excessive' includes, as the first concern listed, the market level of rent for comparable properties. In most cases this is taken as the primary consideration by the tribunal or court when determining whether an increase is excessive. Other factors must be considered equally with, or even above, market rent when determining whether a rent increase is excessive.
- There is no possibility of review if a new tenancy agreement is signed rather than tenants remaining in a periodic tenancy– this applies across all jurisdictions except Queensland where tenants can challenge a rent increase on a subsequent fixed term using the 'significant change' sections. However, the tenant has to sign the agreement with the higher amount and then undertake a months long process through dispute resolution and the Tribunal to find out if the rent increase will stand.
- Ensure rent increases within a fixed-term agreement are also transparent, reviewable and not excessive.
- No data on the size of rent increases (aside from figures from advice services) to accurately determine the true nature of the problem and guide policy development (see Issue 9 – [Data to Inform Policy](#)).

²⁵ Tenants' Queensland (2022) *Paper to the Queensland Housing Summit*, October 2022, <https://tenantsqld.org.au/wp-content/uploads/2023/05/Tenants-Queensland-Housing-Summit-paper.pdf>, accessed 1 August 2023, pp3-4

Options

There has been significant reference to, and discussion of, the provisions in the ACT. Since 1997, the ACT RTA has included a definition of ‘excessive’ rent increase, using a formula linked to the CPI for ACT rental properties (to yield ‘the prescribed amount’). This formula has been consistently used as a guide for landlords and tenants when determining and trying to negotiate increases. There has also been some limited success for the few tenants to ever challenge increases through the Tribunal. In November 2019, a requirement was introduced for the landlord to seek ACAT approval of any rental increases above the prescribed amount, if the tenant does not agree to the proposed amount. This switched the onus from tenants to formally challenge an increase to landlords to justify an excessive increase. These provisions have operated successfully in the ACT and there has been no impact on the rental market.

To improve the data available on rent increases, the 2023 NSW consultation paper ‘Improving NSW rental laws’ proposes a survey of rent increases. Voluntary surveys are unlikely to receive sufficient response rates to be useful. In some jurisdictions in Australia bonds can be ‘topped up’ in response to a rent increase, providing those jurisdictions with a ready-made data set of rent increase information. In all jurisdictions, updating the bond record with details of rent increases as a condition of a valid increase, especially with online systems, may be a cost-effective method, as well as avoiding some rent increase disputes centred on the service of notices. The Australian Bureau of Statistics has recently entered into an agreement with property platform MRE for a data set that covers approximately 32% of rented properties in Australia, and local data may be able to be made available.²⁶

In terms of other options, AHURI produced a resource to inform discussion. The AHURI Brief, *Understanding what is a ‘rent freeze’, a ‘rent cap’ or ‘rent control’*, provides a useful overview of what those options might mean, some of the research into their outcomes and how these might be enacted in Australia.²⁷ It should be noted that AHURI focusses on a very limited range of examples and does not consider the full range of practice across the OECD.

Market impact

Much has been made of the possibility that protecting existing tenants from rent increases will have a negative impact on the market and affect supply. This is not proven. As noted by Chris Martin in a recent *Law Society of NSW Journal* article:

[Opponents] of rent regulation] would say any sort of rent regulation discourages the supply of rental housing to the market, pushing the market prices of rental housing up. I don’t agree with that. If you’re regulating the increases in existing tenancy rents, that’s perfectly consistent with the market for new tenancies. Sending a price signal to bring on more supply. So provided you’re not also trying to regulate the amount or level of rent for new tenancies commencing, I don’t think that supply argument stands right now.²⁸

²⁶ Australian Bureau of Statistics (2023) New insights into the rental market 24 April 2023

<https://www.abs.gov.au/statistics/detailed-methodology-information/information-papers/new-insights-rental-market> accessed 11 August 2023

²⁷ AHURI (2023) *Understanding what is a ‘rent freeze’, a ‘rent cap’ or ‘rent control’*, 27 June 2023

<https://www.ahuri.edu.au/analysis/brief/understanding-what-rent-freeze-rent-cap-or-rent-control>, accessed 1 Aug 2023.

²⁸ Silva (2023) Can rent caps work in NSW?, *Law Society of NSW Journal* <https://lsj.com.au/articles/can-rent-caps-work-in-nsw/>, accessed 1 August 2023.

The benefit of a more stabilised approach to rent increases within the market also helps reset the expectations of investors and tenants within the sector, by normalising increases to be chiefly associated with improvements in service or housing quality rather than the desperation a consumer may feel to avoid homelessness.

How each State/Territory sits

| | |
|------------|---|
| ACT | 8 weeks notice of increase. Limited to once after each 12 months unless a new TA. Limits on frequency apply provided the identity of at least 1 of the tenants who occupy the premises remains the same as at the time of the last increase. The definition of excessive rental increase uses a formula linked to the CPI for ACT rental properties (110%). There is a requirement for the landlord to seek ACAT approval of any rental increases above the prescribed amount, if the tenant does not agree to a proposed increase. |
| NSW | 60 days' notice. Limit of 1 x 12 months in a periodic tenancy. No limit on frequency for those on fixed terms under two years if included at commencement, or between lease types. No definition of excessive. Onus on tenant to challenge. |
| NT | 30 days' notice. Limited 1 x 6 months, unless otherwise provided for in tenancy agreement. No definition of excessive. Onus on tenant to challenge |
| Qld | 2 months' notice. Limited to 1 x 12 months. Onus on tenant to challenge. |
| SA | 60 days' notice. Limited to 1 x 6 months. Onus on tenant to challenge. |
| Tas | 60 days' notice. Limited to 1 x 12 months. Onus of tenant to challenge. |
| Vic | 60 days' notice. In June 2019 the limit changed from 1 x 6 months to 12 months. Onus on tenant to challenge. |
| WA | 60 days' notice. Limited to 1 x 6 months. Onus on tenant to challenge at Magistrates Court. The government has proposed changes to limit increases to once every 12 months. |

Table 2. Rent increase comparison

For a more detailed overview with issues, see Kwan and Aidone (2022).²⁹

Recommendation:

Stronger protections and fair limits on rent increases

Reforms are urgently needed to stabilise rent prices. Setting fair limits and stronger protections against excessive rent increases is a crucial, timely intervention that can help address the housing insecurity and financial stress the increased unaffordability of rents is creating.

²⁹ SBS News (2023) *Rents are on the rise. What are your rights if your landlord wants to increase yours?* <https://www.sbs.com.au/news/article/rents-are-on-the-rise-what-are-your-rights-if-your-landlord-wants-to-increase-yours/4xfmha319>, accessed 1 August 2023.

3. Liveability:

Minimum standards,
including energy
efficiency



3. Liveability

All Australians have the right to live in a safe, secure and healthy home. Unfortunately as already noted by Choice, there are stronger consumer protections and standards for goods from the local shops than for a renter's home. While tenancy regulations across all jurisdictions require properties to be provided and maintained in a habitable state, the detail and level of regulation varies considerably. This disparity has very serious consequences for thousands of tenants paying significant rents to live in homes that are unsafe, insecure, unhealthy and inefficient. and suffer the consequences to their comfort, health, and finances.

The reality of the conditions of homes

Tenant advocates and support services across the country can readily report on the prevalence of issues with poor standards of rental properties. The 2018 DISRUPTED: report determined that 51% of people who rent are living in a home that is currently in need of repairs and almost 7 in 10 (68%) Australians who rent are concerned that a request for repairs could mean a rent rise. While nearly half (44%) are concerned that a request for repairs could result in an eviction. This fear of negative repercussions creates significant stress for people, deterring them from asking for repairs or requesting improvements to their home.³⁰ This demonstrates two major issues that exist despite existing regulation:

- The poor condition of tenanted properties where tenants are paying full rent, and
- The poor condition of vacant properties on the market where issues during the tenancy have not been identified, or addressed if identified.

The generic provisions in most jurisdictions requiring only being 'habitable', 'reasonable', 'safe' are not sufficient to give clarity for renters or landlords. Landlords have no price signal, incentive, or requirement to raise the standard of their properties. The only way to effectively address the lack of incentives and clear directions is to require properties to meet mandatory standards. Standards must be comprehensive and enforceable.

Energy Efficiency

A critical element of these standards must be energy efficiency. In 2022 a collaboration of over 100 organisations (Healthy Homes for Renters) produced an outline of key characteristics that should be present in the National Framework for Minimum Energy Efficiency Rental Requirements being produced by federal, state and territory governments as part of the Trajectory for Low Energy Buildings.

As noted in the *Healthy Homes for Renters* report -

³⁰ Choice, National Shelter, National Association of Tenants' Organisations (2018) *DISRUPTED The consumer experience of renting in Australia*, <https://shelter.org.au/site/wp-content/uploads/Disrupted-2018-Report-by-CHOICE-National-Shelter-and-NATO-Web-Version.pdf> accessed 1 August 2023, p7

The introduction of minimum rental standards is a significant reform that has the potential to realise immense benefits for our community: cutting emissions, lowering the cost of living, improving public health and helping to reduce poverty and inequality. The sooner we can achieve these benefits, the better... As jurisdictions begin implementing standards, planning for the long-term and establishing effective systems will lead to greater efficacy and impact, helping to secure diverse benefits for generations of renters to come.³¹

Modifications for accessibility standards

Jurisdictions vary regarding the ability for tenants to make modifications to their home. In general, disability-related modifications depend on being granted permission by the landlord, but states vary how ‘reasonable’ the owner must be in response to a request. In Victoria, modifications for health and safety or certain modifications required by a relevant practitioner can be refused where ‘reasonable’ to do so³². This means the same barriers to successful outcomes in other areas of renting persist – the tenant may have to move into a property that does not meet their needs and, even at their own expense, not be able to ensure it is a safe and healthy environment without legal dispute. This puts both their current and future housing at risk.

How each State/Territory sits

| | |
|------------|---|
| ACT | <p>Premises must be habitable at commencement and maintained.</p> <p>From 2020 minimum standards for rental properties can be set by the Government. 1 April 2023, introduced the first minimum energy efficiency standard for ceiling insulation.</p> <p>Categories of modifications by tenants – general and special (including minor and those for safety, security, disability, energy efficiency or telecommunications access). For special modifications a landlord needs approval from the Tribunal to refuse consent.</p> |
| NSW | <p>Landlord to provide and maintain premises in a state of reasonable repair having regard to age, rent and prospective life of premises. Premises must be fit for habitation. RTA Act provides seven minimum standards to clarify ‘fit for habitation’, not including energy efficiency standards.</p> <p>A limited range of minor modifications may be requested and may not be unreasonably refused but beyond shower-heads and taps disability or other mobility-related modifications are not included.</p> |
| NT | <p>Landlord to provide and maintain premises in a state of reasonable repair, habitable and meeting all health and safety requirements. No minimum standards to assess habitability of premises. .</p> |

³¹ Healthy Homes for Renters (2022) *Community Sector Blueprint: National Framework for Minimum Energy Efficiency Rental Requirements*, <https://www.healthyhomes.org.au/news/community-sector-blueprint#:~:text=The%20Blueprint%20takes%20a%20principles,be%20released%20in%20early%202023.,> accessed 30 July 2023, p10

³² Consumer Affairs Victoria (2023) *‘Renters making changes to the property’*, <https://www.consumer.vic.gov.au/housing/renting/repairs-alterations-safety-and-pets/renters-making-changes-to-the-property>, accessed 11 August 2023

| | |
|------------|---|
| Qld | Landlord to provide and maintain premises in a state of good repair, fit to live in and not in breach of laws about health or safety. From 1 September 2023. Minimum Standards will commence for new tenancies and for all tenancies from 1 September 2024. Standards are minimal and do not include energy efficiency. |
| SA | Landlord to provide premises in a state of reasonable repair and cleanliness and maintain in reasonable state of repair. Minimum housing standards ³³ and a register under the Housing Improvement Act administered by the Housing Safety Authority sets maximum weekly rent that can be charged. ³⁴ Offences and issue housing improvement notice for substandard premises. |
| Tas | Landlord to maintain premises in condition as at commencement, except for fair wear and tear. Minimum standards in place (weatherproof, clean, in good repair, bathroom, toilet, cooking facilities, electricity, heating, ventilation). All modifications only with landlord's consent. |
| Vic | Landlord to provide and maintain premises in good repair and in a reasonably fit and suitable condition. They must also comply with safety-related repairs and maintenance requirements. From March 2021 basic minimum standards . ³⁵ |
| WA | Landlords to provide and maintain premises in a state of reasonable repair and cleanliness. Landlords must comply with all requirements under other laws regarding buildings, health and safety (ie <i>Building Act 2011 (WA)</i>). Generally, the right of the tenant to make modifications to the premises will depend on terms of the agreement, with special provisions applying for modifications to affix furniture to walls to protect children or people with disabilities and for modifications necessary to prevent commission of FDV. |

Table 3. Rental standards comparison. For a more detailed overview³⁶

Recommendation: Safe and healthy homes for renters

Renters have a right to live in a safe, accessible and healthy home that meets a clearly articulated basic minimum standard. This must include basic energy efficiency standards to reduce the energy required to heat or cool a home, and ensure access to an affordable energy supply. Renters must also have the right to modify their home where necessary to ensure it is accessible and able to meet their needs.

³³ Housing Safety Authority (2022) Minimum housing standards, <https://www.housingsafetyauthority.sa.gov.au/minimum-housing-standards>, accessed 1 August 2023

³⁴ Housing Safety Authority (2022) Substandard property register, <https://www.housingsafetyauthority.sa.gov.au/resources/substandard-property-register>, accessed 1 August 2023

³⁵ Tenants Victoria (2022) Minimum Standards, <https://tenantsvic.org.au/advice/starting-your-tenancy/minimum-standards/>, accessed 1 August 2023

³⁶ Rentcover (2023) *Your guide to minimum standards for rental properties in Australia*, <https://www.rentcover.com.au/info-centre/minimum-standards-rental-properties-australia>, March 2023, accessed 25/7/23



4. Compliance and accountability

4. Compliance and accountability

Laws are only successful if they are complied with. As well as ensuring there is knowledge of them, this requires governments to ensure there is genuine accountability and enforcement. The Australian Consumer Law national guide to enforcement and compliance is clear that to be effective, compliance measures must be supported by a range of escalating enforcement options that can be used if a trader (landlord) fails to comply or when there is a serious contravention of the law. It notes that regulators have a range of enforcement remedies available to them to ensure to:

- stop unlawful conduct
- rectify the harm caused by the unlawful conduct
- ensure future compliance with the law and deter offending conduct by individual businesses and within industries
- encourage the effective use of compliance systems
- when warranted, punish the wrongdoer with penalties, including financial penalties.

ACL regulators choose the most appropriate enforcement tools to achieve these outcomes in a timely and proportionate manner.³⁷ It is reasonable to assume that a similar regime and remedies apply to rental transactions.

Issues

At the most basic level the current enforcement paradigm across the country for residential rental laws relies on renters to enforce the laws – despite having less power and being vulnerable to retaliation through eviction or rent increases. Where there are provisions, inconsistency across jurisdictions results in significant inequities. Much more needs to be done to address this:

- Penalties – Where a renter does wish to assert their rights and address a breach of those rights there are few options in relation to redress, it is mostly an order to rectify a breach and possibly compensation for losses, or primarily to leave the agreement without penalty. It should not be considered an equitable outcome that if a tenant breaches the agreement, they lose their home, whereas if the landlord breaches the agreement, the tenant loses their home. While some penalties for breaches of tenancy laws do exist they are generally few and rarely applied. Landlords and real estate agents are aware of this and there is no disincentive for them to breach provisions and no real accountability.
- Systemic issues and practices – The fact that many landlords own more than one property and real estate agents manage numerous properties means that their management practices and decisions will apply to more than one household. There are few mechanisms across jurisdictions that identify and address widespread issues that reflect the potential for greater detriment across many households.
- Management decisions – In relation to tenancy management there are few mechanisms for tenants to challenge unfair practices. Public Housing Authorities management

³⁷ ACL (2019) *Compliance and enforcement: How Regulators Enforce the Australian Consumer Law*, January 2019, https://consumer.gov.au/sites/consumer/files/2019/01/ACL_Compliance_and_enforcement_guide.pdf, accessed 7/8/2023

decisions and practices are regulated through Housing Assistance Acts and public housing tenants are able to appeal decisions related to their housing. There is no similar regulation applying to community housing providers. Real estate agents are regulated by Agents Acts and associated codes of conduct, although these include little to no consideration of tenants. There is no regulation of landlords.

- Professional standards – As noted in the TUNSW blog considering this issue:

Usually the businesses required to hold a licence or register are required to ensure appropriate training and customer risk management is undertaken – except housing providers. Which is strange given that a poorly managed property can be both costly and unhealthy. As more and more people recognise how important our homes are, it really matters that the standard of both the home itself and the professional standard of the person providing it are meeting community needs.³⁸

Options

- Effective penalties for breaches
- Public statements may be used to prevent or reduce consumer detriment by alerting consumers to alleged misconduct. It establishes a more flexible and responsive tool to support timely intervention against conduct which may contravene the ACL, e.g. of [Rental non-compliance register – Consumer Affairs Victoria](#).³⁹
- Landlord registration – There are no Australian examples, but Scotland, Wales and Northern Ireland, and many English councils, have implemented registration for many years, with plans for an English national scheme in development.⁴⁰
- Social housing appeals – public and community housing tenants should have the same appeals rights in relation to policy decisions that impact their tenancy. In general, if community housing were recognised as delivering a service on behalf of the government, this would give access to administrative appeals and human rights processes, with the government department being the relevant party.

How each State/Territory sits

| | |
|------------|--|
| ACT | Few penalties. Compensation for loss (economic and non economic where demonstrated); Rent abatement within tenancy |
| NSW | Compensation for loss (economic and non economic where demonstrated); Rent abatement within tenancy |

³⁸ Patterson Ross L (2021) *Getting your LL plates*, This Renting Life: Tenants' Union blog, <https://www.tenants.org.au/blog/getting-your-ll-plates>, accessed 1 August 2023

³⁹ ACL (2019) *Compliance and enforcement: How Regulators Enforce the Australian Consumer Law*, January 2019, https://consumer.gov.au/sites/consumer/files/2019/01/ACL_Compliance_and_enforcement_guide.pdf, accessed 7 August 2023, p11

⁴⁰ Patterson Ross L (2021) *Getting your LL plates*, This Renting Life: Tenants' Union blog, <https://www.tenants.org.au/blog/getting-your-ll-plates>, accessed 1 August 2023; Shelter (2023) *Why a landlord register is good for tenants and landlords*, <https://blog.shelter.org.uk/2023/03/why-a-landlord-register-is-good-for-tenants-and-landlords/> accessed 11 August 2023

| | |
|------------|---|
| NT | Few penalties and a lack of transparency regarding enforcement of penalty provisions by Consumer Affairs. Compensation for loss (economic and non economic where demonstrated); rent abatement within tenancy. Inevitable issues of compliance and accountability with bond provisions due to lack of independent bond authority. |
| Qld | The Authority can issue fines and prosecute for contravention of offence provisions but few occur. Education is the most common enforcement response.. Renters can seek compensation for economic loss and rent reduction for loss of amenity. |
| SA | Penalties for a range of breaches including those regarding – information; discrimination against tenants with children; rent or bond; keeping records;; interference with quiet enjoyment; causing serious damage; falsely stating ground for termination; repossession of premises; tenancy databases; rooming house agreements; agreements inconsistent with the Act. No information on how these are applied. |
| Tas | The Residential Tenancy Commissioner can issue fines for breach offences but few occur. Education is the most common enforcement response. There is no provision in the RTA to provide for compensation for economic loss or rent reduction for loss of amenity. Compensation is only available through a Magistrates Court civil claim. |
| Vic | Compensation for renters – Tenants Victoria Complaints about rental providers and agents – Tenants Victoria |
| WA | Some provisions, such as illegal lockouts, apply penalties capable of prosecution. Other provisions, such as repair obligations, rely on the tenant to enforce through compensation claims or seeking performance orders. |

Table 4. Compliance and accountability comparison

Recommendation:

Better enforcement, oversight, and accountability so that compliance is the norm

Government agencies should be better resourced to respond to and support tenant self-advocacy, while also pro-actively enforcing rental laws and applying penalties to deter noncompliance. Mechanisms that provide greater transparency, accountability and data to our renting systems should be considered including:

- Active regulators with visible consequences for non-compliance;
- Property standard checks
- Introduction of landlord registration (or licensing) schemes that should be considered.



**5. Management and
Security of Tenants'
Money – Rental Bonds**

5. Management and Security of Tenants' Money – Rental Bonds

It is simple, bonds are tenants' money held as security deposits. It is imperative that bonds do not price tenants and other renters out of appropriate homes and that these funds are securely held in such a manner that they can be promptly returned to tenants in order not to place them in financial hardship as they move between homes.

All jurisdictions place a cap on the amount of bond taken from tenants – the equivalent of four weeks' rent. However, in five States the amount increases or is unlimited when weekly rent is over a prescribed amount.

In all jurisdictions except the Northern Territory all bonds must be lodged centrally with a government body or authority. Jurisdictions vary in regard to allowing bond increases when the rent is increased. Only New South Wales returns some interest back to tenants on a bond return.

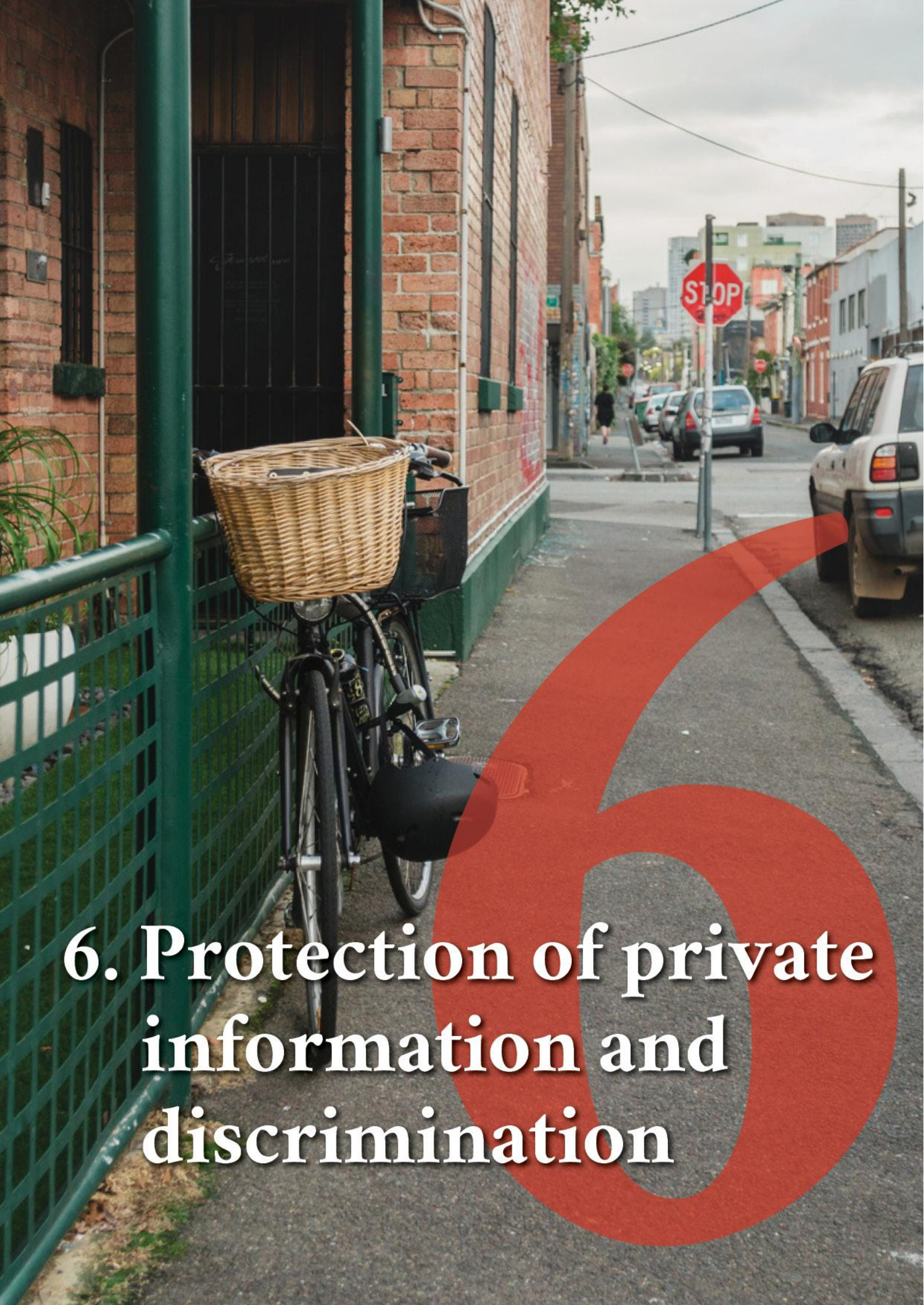
How each State/Territory sits

| | |
|------------|--|
| ACT | If any bond is collected the maximum bond is 4 weeks' rent. |
| NSW | Maximum bond – 4 weeks' rent Bond required to be lodged with Rental Bond Board, bond cannot be increased Either party can make an initial request for bond refund, the other party must then apply to the Tribunal in event of a dispute. Pet bonds prohibited. |
| NT | Maximum bond – 4 weeks' rent Bond can be increased if rent is increased. Bond held on trust by the landlord or agent. No independent bond authority. Agents/landlords often try to keep the bond or significant portions of it. Renters either accept, attempt to negotiate the amount to be returned or seek reimbursement through the Northern Territory Civil and Administrative Tribunal. |
| Qld | Maximum bond – 4 weeks' rent. If rent is more than \$700 pw, there is no limit. Bond can be increased if rent is increased. |
| SA | Maximum bond – 4 weeks' rent. Up to 6 weeks' rent if weekly rent is more than \$800. Bonds cannot be increased unless at least two years have passed since lodging or the last increase. |
| Tas | Maximum bond – 4 weeks' rent |
| Vic | Maximum bond is one month's rent. If rent is more than \$900 there is no limit |
| WA | Bond can be 4 x rent amount + prescribed amount of \$260 for a pet bond.No limit on bond where rent exceeds \$1200/wk. |

Table 5. Bonds comparison

Recommendation:

All bonds are lodged with an independent authority and interest earned is used for the benefit of tenants.



6. Protection of private information and discrimination

6. Protection of private information and discrimination

The collection and use of tenants' private information begins with the application process and continues throughout the tenancy and beyond. While some basic information and documentation is justified to make informed decisions about applicants, there are little to no limits on what can be asked and what happens to that information. This presents many serious and largely unaddressed issues for all renters.

Issues

Applicants for rental properties are required to provide a vast amount of personal information, much of which is not necessary for determining if they can afford and look after a property and abide by tenancy obligations. A recent survey by Tenants' Union NSW documented that this included passports, proof of marital status, visa status, car registration, social media accounts, medical records, bank statements and employment contracts⁴¹. This leaves applicants susceptible to discrimination. Compounding these issues for successful tenants as well as unsuccessful applicants is that this information is held by landlords and agents with no controls relating to how it is protected and how long it is held as well as what can be done with it. In addition to landlords and agents, rental apps (often required or used by agents) are a not so new third and unregulated party in the renter data collection arena. As noted in the 2022 AHURI brief:

*Large data breaches recently in Australia have been caused by cyber hacking of data, but the legal collection and use of data, particularly rental data, from people is of concern too. Not only can tenants' personal data be hacked and/or leaked, it can also be used to manipulate them, or even to discriminate against them.*⁴²

The brief refers to a range of issues and challenges for addressing them as well as highlighting specific mechanisms such as rental apps.⁴³ These issues are expanded on in research on discrimination in the private rental sector that examined policy law and practice, noting:

*Alongside the growth in renting is a rapid increase in digital real estate technologies that have profoundly reshaped how tenants, landlords and agents navigate the [private rental sector]. These digital technologies, whether apps, automated management systems or online housing markets, are at risk of reproducing existing and creating new housing inequalities.*⁴⁴

⁴¹ Mowbray, J *Privacy, data and discrimination in renting*, This Renting Life: Tenants' Union blog 24 March 2023, <https://www.tenants.org.au/blog/privacy-renting>, accessed 11 August 2023

⁴² AHURI, *Why Australia needs to do more to protect tenants' data*, Dec 2022, <https://www.ahuri.edu.au/analysis/brief/why-australia-needs-do-more-protect-tenants-data>, accessed 24 July 2023

⁴³ [Stephanie Convery](https://www.theguardian.com/australia-news/2022/nov/17/imperfect-match-australian-renters-in-the-dark-over-use-of-data-by-tech-company-snug), Imperfect match: Australian renters in the dark over use of data by tech company Snug <https://www.theguardian.com/australia-news/2022/nov/17/imperfect-match-australian-renters-in-the-dark-over-use-of-data-by-tech-company-snug>, accessed 11 August 2023

⁴⁴ Maalsen, S., Wolfson, P., Rogers, D., Nelson, J. and Buckle, C. (2021) *Understanding discrimination effects in private rental housing*, AHURI Final Report No. 363, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/363>

Options

The only jurisdiction to have taken some steps to address these issues is Victoria where there are some restrictions that state a short list of what cannot be asked in applications, and some direction of the use of personal information with a reference to discrimination. These have been determined to be of limited value in terms of the aims.

It is imperative that tenancy regulation addresses these issues.

How each State/Territory sits

| | |
|------------|--|
| ACT | No restrictions on what private information can be required as part of applications, or how it can be used under tenancy laws. |
| NSW | No restrictions. Non-binding guidance to privacy issued by Fair Trading NSW. |
| NT | No restrictions. |
| Qld | No restrictions. |
| SA | No restrictions. |
| Tas | No restrictions |
| Vic | Limited restriction of questions on the application form, and limited direction regarding acceptable uses of personal information. RTA includes explicit restriction of unlawful discrimination but does not otherwise include mechanisms to prevent discrimination. |
| WA | Offences within the Act to refuse persons on grounds they will have children residing at the premises (s56) or to refuse persons on FDV related grounds (s56A). No express restrictions on information that may be taken in the application process. |

Table 6. Private information and discrimination comparison

Recommendation:

protect collection and use of private information

Reforms to provide greater transparency and protections in relation to privacy, and unlawful discrimination at application stage.



**7. Access to advice
and advocacy**

7. Access to (free) support/advice and advocacy for renters

It is vital renters across Australia have access to high quality tenancy advocacy advice and assistance. Tenancy Advice and Advocacy Services have demonstrated they are effective at sustaining tenancies, reducing evictions directly into homelessness, and reducing debts.

Funding of these services varies across jurisdictions. In some states, consumers fund the advice/advocacy services through the interest received on bonds held in trust. In others, funding is sourced from general revenue. States and territories may also fund community legal centres to be specialist providers to complement or instead of other dedicated services. This funding contributes to ensuring high quality legal support is a feature of the tenants advice and advocacy services but contributes a minority of funding.

Resourcing of services across Australia has not kept pace with the growth in the number of residential tenancies and the growth in the number of disadvantaged households in the rental market whose tenancies are especially precarious. The Tenants' Union of NSW found in that state that funding has fallen from the equivalent of 20 minutes of support per bond held in 2008 to just 12 minutes in 2023⁴⁵. Tenants Victoria reported to a recent Victorian inquiry:

However, in the social and economic context of more people renting their homes and for longer with rental costs escalating, our service faces a daily dilemma: we can only answer 20% of phone calls to our advice lines. Demand from renters remains intense – and too often unmet – because of resource constraints. It is all too common for community legal centres, including Tenants Victoria, to be at capacity and unable to accept referrals, or that renters they help may wait weeks for assistance.⁴⁶

There is also very limited resourcing provided to housing advocates with experience and expertise in residential tenancy systems to take part in consultation and conversations and ensure renters' voices are heard, in particular at the national level.

How each State/Territory sits

| | |
|------------|--|
| ACT | No longer a specialist tenancy advice and advocacy organisation. One general Tenancy Advice Service through Legal Aid (funded by bond interest), Housing Law advice service for through Canberra Community law for public and community housing as well as other renters not tenants |
| NSW | The Tenants Advice and Advocacy Program provides tenants advice and advocacy including representation throughout the state. The Program |

⁴⁵ Tenants' Union of NSW (2023) 'Tenants' Advice and Advocacy Program Funding' <https://www.tenants.org.au/reports/briefing-paper-tenants-advice-and-advocacy-program-funding-needs> accessed 11 August 2023

⁴⁶ Tenants Victoria (2023), *Submission to the Inquiry into the Rental and Housing Affordability Crisis in Victoria*, <https://tenantsvic.org.au/articles/files/submissions/Leg-Council-Legal-Social-Issues-Committee-Inquiry-Rental-Affordability-July-2023.pdf>, accessed 11 August 2023, p9

| | |
|------------|---|
| | <p>consists of 19 direct services, 15 generalist and 4 Aboriginal run and focussed services, that each cover the state in parallel. There are also two resource services providing training, legal support, and systemic advocacy supports to the network.</p> <p>The TAAP assisted 40,000 renters in the last 12 months.</p> |
| NT | <p>The Tenants' Advice Service provides advice, assistance and representation to tenants (private and public), caravan park residents, boarders and lodgers, and those residing in other accommodation across the NT. It is the only specialist tenancy service in the NT and does not receive any Commonwealth funding.</p> |
| Qld | <p>The Qld Statewide Tenant Advice and Referral Service (QSTARS) provides tenancy advisory services throughout the state. These services are independent from government, provided through 15 outlets across the state as well as a phone based intake and advice HUB which is the first point of contact.</p> |
| SA | <p>RentRight SA provides information advice and support across the state</p> |
| Tas | <p>Tenants' Union of Tasmania provides information, advice and representation to residential tenants across Tasmania. Also offers community legal education and training in issues relating to residential tenancy.</p> |
| Vic | <p>Tenants Victoria provides information, legal representation and advice, financial counselling, and outreach to individuals renters. Also training and secondary consultations for community workers who assist renters.</p> <p>In the past financial year, Tenants Victoria's intake and legal team responded to over 10,000 tenancy matters.</p> |
| WA | <p>Tenancy advice and education services are provided by community legal centres across the state, with 7 community legal centres in the Perth metropolitan area and 8 centres in regional or remote areas providing tenancy advocacy services.</p> <p>Circle Green runs a statewide telephone advice service, with some capacity to provide ongoing assistance to highly vulnerable clients or in matters of public interest. Circle Green also runs a community support worker telephone line to provide assistance to tenant advocates and support workers in other community centres.</p> |

Table 7. Advice and advocacy comparison

Recommendation:

Access to free advice, assistance and advocacy

Expand tenant advice, advocacy & support services to help sustain tenancies. This applies especially to areas of: tenant representation at court/tribunal hearings; better integration with social support services and specialist services or advocates for indigenous renters, and more promotion of renting rights using a community development model which enables early intervention to sustain tenancies. Services should be resourced to engage in law reform processes, including at the national level.



8. Universality of protections for all renters

8. Universality of protections for all people renting their homes

Each jurisdiction’s legislation sets out the types of tenures covered including mainstream tenancies e.g. tenancy agreements for units, flats, detached houses etc., and social housing tenancies (with the exception of specified provisions). Coverage anomalies exist between jurisdictions. Across the country an array of mainly marginal renters remain without any enforceable tenancy rights. The lack of coverage, or the application of limited rights, is considered problematic and often affects those with limited incomes and housing options, the most vulnerable and disadvantaged people in our communities.

A Better Lease on Life provides principles that must be included in statutory schemes of enforceable agreements for all renters not covered by residential tenancies legislation.⁴⁷

How each State/Territory sits

| | |
|------------|---|
| ACT | Residential Tenancies Act 1997 covers all renters, most sections apply only to tenants. Standard terms only apply to tenants. All other renters (with a few exceptions) are covered by basic occupancy principles. |
| NSW | Housing Act 2001 covers certain aspects of eligibility and access, rental rebates, etc in relation to social housing tenants. The RTA only covers tenants. Some boarders are provided basic protections (occupancy principles) if they are living in a registrable boarding house (coverage under the <i>Boarding House Act 2012</i>). Other boarders and lodgers, and residents in share house accommodation without a written agreement with their head tenant are not covered by any tenancy law. Renters in Residential Land Lease Communities are covered by the RTA. Homeowners (own their homes, rent their site) are covered by the Residential Land Lease Communities Act 2013 . |
| NT | Residential Tenancies Act 1999 only covers tenants. The RTA has limited coverage for boarders and lodgers and contains a wide exclusion clause for those residing in accommodation provided for ‘charitable purposes’. |
| Qld | Residential Tenancies and Rooming Accommodation Act 2008 applies to renting from a lessor, agent or rooming accommodation provider, social housing from the government, or a community organisation. Different rules may apply depending on the type of accommodation. Bonds taken from boarders and lodgers are covered. Those renting a room, with the provider living onsite, with less than four rooms for rent, are not covered. |
| SA | Residential Tenancies Act 1995 doesn’t apply to accommodation in an |

⁴⁷ P Carr, M Tennant, National Association of Tenants’ Organisations, National Shelter, (2010) *A Better Lease on Life – Improving Australian Tenancy Law*, p5

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| | educational institution, college, hospital or nursing home; or a boarder/lodger agreement (other than a rooming house agreement) |
| Tas | Residential Tenancy Act 1997 , does not apply to – some boarding premises, where the owner lives on the premises and rents out less than 3 boarding rooms – most sub-leases (except dwellings approved under the National Rental Affordability Scheme) – most accommodation that is part of an education institution (except dwellings approved under the National Rental Affordability Scheme) – residential care premises (found under the Aged Care Act 1997) – residential contracts within the meaning of the Retirement Villages Act 2004 – crisis and homeless accommodation where the lease agreement is for 3 months or less |
| Vic | The Residential Tenancies Act 1997 is the main law that regulates renting in Victoria. Reforms to the Act were passed in 2018 and more than 130 changes that strengthen renters rights were implemented on 29 March 2021. The reforms apply to all renters in Victoria, including private rentals, caravan and residential parks, and rooming houses. |
| WA | The Residential Parks (Long-stay Tenants) Act 2006 applies to long-stay tenants residing primarily in residential parks. Boarders and lodgers are a special group of home-dwellers in terms of the law. As they are not tenants, they are not covered by the <i>Residential Tenancies Act 1987</i> but instead have rights under common law provisions. Boarders and lodgers . As a result, the rights of boarders and lodgers are often unclear and difficult to enforce. |

Table 8. Universality of protection comparison

Recommendation:

Achieving appropriate tenancy law coverage of all renters

Provide coverage of marginal groups including boarders and lodgers and renters in caravans and caravan parks. States and Territories must implement statutory schemes of enforceable agreements for all renters not covered by residential tenancies legislation.



**9. Using data to
inform policy**

9. Using data to inform policy

Private rental policy areas suffer from misalignment across funding, governance, and implementation. One of the biggest problems for policy debate on this issue is the lack of authoritative data upon which decision makers and analysts can draw. Access to the same data sources is a first step toward solutions.

Consistent official data is limited to that collected by the ABS. The other source is bond authorities however the information is limited to details of the number of bonds held and the amount. Bond authorities are a perfect resource with access to most tenants (and landlords). All states already publish variations of data created from the rich data set provided from bond lodgements, but ACT does not publish the data publicly and the NT does not have a bond authority with which to create it.⁴⁸ These practices can be improved to include data gathered from the return of bonds as in New South Wales and Western Australia, and monthly updates to ensure timely usage.

A mandatory ‘bond exit survey’ at the point of application for the release of bond at the end of a tenancy could be limited to a few simple questions aimed at discovering the legal basis for the tenancy ending and the weekly rent at the end of the tenancy. This would create an authoritative data set that can be relied on for policy analysis.

End of tenancy surveys have been conducted by NSW Fair Trading with a pilot in 2019/2020 and the current survey that commenced 2 August 2021.⁴⁹ Data is published in a de-identified open manner, allowing for research by academia and the community.

Recommendation:

Develop data structures to inform policy development.

All states and territories to develop and implement data collection practices that can be used to review progress. Implementing a bond exit survey in each state and territory to measure the reasons tenancies end, and the length and rent changes within a tenancy.

Data should generally be released, with appropriate deidentification, on an open data basis to allow researchers and community to study and offer solutions.

⁴⁸ New South Wales: <https://www.fairtrading.nsw.gov.au/about-fair-trading/rental-bond-data>

Queensland: <https://www.rta.qld.gov.au/about-us/corporate-information/open-data>

Victoria: <https://discover.data.vic.gov.au/dataset/rental-report-quarterly-data-tables>

South Australia: <https://data.sa.gov.au/data/dataset/private-rent-report>

Tasmania: <https://data.gov.au/data/organization/department-of-justice-tasmania>

Western Australia: <https://housing-data-exchange.ahdap.org/dataset/west-australia-rental-bonds-data-2023-current>

ACT: no public data

⁴⁹ NSW Fair Trading (2023) *End of Tenancy Survey*,

<https://www.fairtrading.nsw.gov.au/housing-and-property/end-of-tenancy-survey>, accessed 11 August 2023