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## Private rental housing and security of tenure

by Lenny Roth

### 1. Introduction

Currently there is much debate about housing affordability. Two of our recent publications have examined the need for more affordable rental housing.<sup>1</sup> This e-brief looks at another related issue: security of tenure for the growing number of people who are long-term renters in the private rental market. A 2012 [paper](#) by the Australian Housing and Urban Research Institute (AHURI) stated that the private rental sector:

... has changed from its historical role as a transitional housing sector for households moving into home ownership or social housing to a long-term housing sector for a significant number of Australian households. There is an apparent paradox in policy settings. On one hand, the [sector] is a place to live for an increasing number of householders who require some stability in their housing circumstances so that they and their children have the same opportunities as the rest of the community. On the other hand, it is seen increasingly as an investment opportunity characterised by increasing volatility, such that the sector is more unstable and less likely to provide good housing outcomes.<sup>2</sup>

This e-brief examines security of tenure provisions in residential tenancy laws in NSW, and considers past discussion in NSW of options to increase security of tenure, including noting the different views expressed by stakeholders. Next, it refers to a recent Senate Committee report that discusses the issue. Comparisons are also made with tenancy laws in other States and countries, some of which are undergoing reform.

### 2. Trends in the private rental sector

A 2013 [report](#) by the AHURI outlined long-term trends in the private rental sector (PRS) including:

- in NSW, the proportion of households in the PRS increased from 21.1% in 1981 to 24.0% in 2011;
- in NSW, the proportion of families with dependent children in the PRS increased from 28.3% in 1981 to 41.2% in 2011;

- nationally, the proportion of persons in the PRS aged 25–54 years increased from 40.5% in 1981 to 49.7% in 2011;
- nationally, the proportion of long term renters (10 years or more) in the PRS increased from 27% in 1994 to 33.4% in 2007-08.<sup>3</sup>

The report also examined demographic and other characteristics of long-term renters, based on 2007-08 data. Some national findings included:

- households with dependent children comprised 30.0% of long term private renter households (27.5% of all PRS households);
- households in the lowest 40% of income distribution formed 45.5% of the long-term renter group (35.6% of all PRS households);
- 28.8% of long-term private renter households had *not* moved in the previous 5 years (10.4% of all PRS households).<sup>4</sup>

### 3. What is security of tenure?

Security of tenure is one element of the broader notion of “secure occupancy”. The AHURI defines this as the ability of persons to:

- Participate effectively in rental markets.
- Access and remain in adequate, affordable and appropriate housing with protection of their rights as consumers and citizens.
- Receive financial and non-financial support from governments or other social service agencies if and when necessary to obtain and/or sustain their tenancy.
- Exercise a degree of control over their housing circumstances and be able to make a home, to the extent that they wish to do this.<sup>5</sup>

Security of tenure is the extent to which a tenant who complies with his or her obligations under the tenancy agreement (e.g. payment of rent) can continue to live in the property for as long as he or she wishes. Security of tenure is influenced by several factors including:

- duration of a standard contract
- compulsory renewal clauses
- notice periods and contract termination
- rights to early termination
- effect of the sale of the property on the rental contract.<sup>6</sup>

Weak security of tenure has a number of disadvantages for tenants including living with uncertainty about when the landlord will end the tenancy, the potential difficulty in a competitive market of finding another suitable place to live, and the financial and social costs associated with moving. A 2013 Grattan Institute [paper](#) stated:

Renters want stability and security of tenure for the same reasons owners do. A stable location enables children to stay in the same schools, and households to stay connected with their family, friends and community. In contrast, moving frequently is inconvenient and expensive. It inhibits planning for the future, as does the ongoing threat of having leases terminated or not renewed. Low-income renters are especially vulnerable.<sup>7</sup>

While all renters might like to be secure in their tenure, it is important to note that many renters prefer the flexibility of a short-term tenancy. This allows them to move out more easily if their circumstances change: e.g. if they lose their job, if they get a job in a different location, if they decide to go overseas, or if they do not want to continue living in shared accommodation with another person or persons.

### 4. Tenancy laws in NSW

#### 4.1 Current provisions

In NSW, most private sector tenancies are regulated by the [Residential Tenancies Act 2010 \(NSW\)](#).<sup>8</sup> The Act does not set a minimum term for fixed term tenancies. The landlord and tenant can agree on any length of fixed term but tenancies are commonly for a fixed term of 6 or 12 months, after which the tenancy can continue indefinitely until ended by either party. The circumstances in which a landlord can terminate a tenancy are regulated by the Act, as outlined in the table below.<sup>9</sup>

#### When landlord can terminate a tenancy

When	Grounds for terminating
During fixed term	<p>The landlord can issue a notice to terminate a tenancy if the tenant has breached the tenancy agreement. The notice must give the tenant 14 days to vacate. If the tenant does not vacate, the landlord must seek a termination order from the tribunal. The tribunal may make such an order if satisfied that the breach is, in the circumstances of the case, sufficient to justify termination. In the case of non-payment of rent, the tribunal generally cannot make a termination order if at the time of the hearing the tenant has paid all rent owing or has entered into, and complied with, a repayment plan agreed with the landlord. The exception to this is if the tenant has frequently failed to pay the rent on time.</p> <p>The landlord can also apply to the Tribunal for a termination order on the grounds of undue hardship.</p> <p>A fixed term tenancy can also terminate if a mortgagee becomes entitled to possession of the premises. The tenant must be given 30 days notice to vacate.</p>
End of fixed term or during periodic tenancy	<p>During the fixed term, the landlord can without specifying any grounds give the tenant notice that the tenancy will terminate on or after the end of the term. The landlord must give the tenant at least 30 days notice to vacate.</p> <p>If neither the landlord nor tenant issues a notice to terminate prior to the end of the fixed term, the tenancy may continue as a periodic tenancy, or the parties may enter into a new fixed term agreement.</p> <p>During a periodic tenancy, either party can terminate the tenancy without specifying any grounds. The landlord must give the tenant at least 90 days notice to vacate (30 days if the landlord is selling the premises). The only exception to this is if the tenant has been in continual</p>

possession of the premises for 20 years. In this case, the landlord must apply to the tribunal for a termination order. The tribunal can make such an order if satisfied that it is appropriate to do so in the circumstances of the case. The order must allow at least 90 days to vacate.

Note that a tenant can apply to the tribunal to declare that a termination notice has no effect if the landlord was motivated to give the notice because the tenant had taken action to enforce a right.<sup>10</sup>

#### 4.2 The 2010 reforms

The 2010 Act introduced two main reforms to address the short term nature of tenancy agreements. First, it provided that a fixed term agreement of 20 years or more may exclude or vary terms that the Act would otherwise require to be included in the agreement: e.g. the landlord's obligation to carry out repairs to the premises.<sup>11</sup> Certain terms set out in the Act cannot not be excluded or modified: e.g. the terms outlining the grounds on which a tenancy can be terminated. These provisions aimed to provide greater flexibility for leases of 20 years or more so as to encourage their use. The second main reform was to provide greater protection to tenants who have been in continual possession of the same premises for 20 years or more. As noted in the above table, a landlord wanting to end such a tenancy must apply to the tribunal for a termination order.<sup>12</sup>

The 2010 package of reforms had a long history. In 2005, the NSW Office of Fair Trading released an [options paper](#) and in 2007 it published a [discussion paper](#). In a section on long term leases, the discussion paper discussed two possible measures.<sup>13</sup> The first of these was to give greater flexibility to long term leases exceeding 10 years (by allowing provisions in the Act to be varied) and the second was to introduce a requirement for a minimum fixed term. The paper concluded that the first option "deserves further examination, but in a wider context". It noted that there was little support for the second option, on the basis that it would limit flexibility. The paper noted views expressed in submissions including:

- A number of agents and landlords expressed philosophical opposition to the concept of long term leases, claiming that tenants prefer the flexibility of short-term leases; and that landlords and agents are often reluctant to offer long term leases to new tenants for fear of being locked into a 'bad' relationship; and because rents could fall behind market levels over time;
- Some believed that long-term leases should be more a consideration once the initial fixed term period had passed without incident. One suggestion was to give tenants a statutory option to renew an agreement, for a period up to twice as long as the previous fixed term, which a landlord could not unreasonably refuse;
- Landlords said that that the existing provision that rent cannot be increased during a fixed term unless the amount of each increase or method of calculation is set out in the lease itself was a strong disincentive against long-term leases. One suggestion to overcome this was to allow annual rent reviews and give tenants similar rights of notice and the ability to challenge excessive increases.

- There was a mixed response to the option of allowing certain exemptions from the Act in respect of long-term leases: e.g. responsibility for day-to-day maintenance, liability for council and water rates, restrictions on tenant improvements. Some saw this as being attractive to long-term and institutional investors. Many tenant groups opposed this idea.
- Tenant and housing advocacy groups supported moves to develop more secure forms of private rental housing. However, they believed that long-term leases should be encouraged by supply side strategies, rather than by reducing the rights of tenants.
- A number of submissions said that the notion of leases of 10 years was not compatible with the current rental culture and that encouragement should be given to more feasible and practical periods, such as 2, 3 and 5 years.
- Some submissions supported long-term leases provided there were ways for the tenant to end them if their circumstances changed and they were not tied to set rental increases which were not in line with the general market.
- One option put forward was that tenants be given different rights in certain areas of the law once they had been renting the same property for a long period of time (e.g. 5 or 10 years), irrespective of the length of the fixed term agreement they originally signed. For example, longer notice periods could apply or such tenants could be given greater protection against 'no grounds' evictions.

In an earlier section of the discussion paper on "no grounds evictions", it was noted that there were a small number of submissions which argued that landlords should only be able to terminate a tenancy for 'just cause' rather than being able to terminate without grounds.<sup>14</sup> This was not advanced in the options paper and the discussion paper concluded:

The review does not find sufficient justification for NSW to become the first State to introduce 'just cause' only evictions. To do so would have serious implications on the rental housing market. In any event, trying to list all valid reasons would be a difficult or impossible task. Landlords should retain the ability to issue notice without stating a reason. However, there needs to be a greater deterrent against the issuing of notices without grounds, when the landlord really wants to end the tenancy because the tenant has allegedly breached the agreement. This is a matter of natural justice, and tenants should have the right to defend themselves against any claims being made.<sup>15</sup>

The discussion paper did not set out any specific proposals to provide "a greater deterrent" against this practice. Instead, it proposed expanding the grounds upon which the landlord could end a tenancy with a shorter notice period (the only existing ground was if the premises had been sold).<sup>16</sup> The expanded grounds would include reasons such as the need to move into the property themselves or an intention to do major renovations. This proposal was not ultimately adopted in the 2010 Act.

The 2010 Act has now been in operation for five years and is therefore due for review by the Minister for Innovation and Better Regulation.<sup>17</sup>

### 4.3 Election policies

The Coalition and Labor did not outline any reforms to tenancy laws in their 2015 NSW election policies. The Greens [said](#) that they would introduce a bill to increase protections for tenants including abolishing no grounds evictions.<sup>18</sup> Jenny Leong noted that “long-term renting is becoming the new normal” and said that “most landlords do the right thing, but it’s not good enough that dodgy landlords can kick tenants out without giving a reason”.

## 5. Tenancy laws in other States

### 5.1 Overview

Residential tenancy laws in other States are very similar to NSW in respect of security of tenure. Some States have longer notice periods when terminating a tenancy. For example, in Queensland a landlord wanting to terminate the tenancy at the end of a fixed term must give the tenant at least 2 months notice (compared to 30 days in NSW); and in Victoria, a landlord wanting to terminate a periodic tenancy must give at least 120 days notice (compared to 90 days in NSW) except in certain circumstances where only 60 days notice is required, e.g. if the premises are to be occupied by the landlord or his or her family.<sup>19</sup>

### 5.2 Review in Victoria

The Victorian Government is currently conducting a [review](#) of residential tenancy laws and is considering reforms in relation to longer-term leases. A [media release](#) announcing the review stated (in part):

The Labor Government will focus on key issues including the viability of longer-term leases of five to ten years and protections for people who are older, living with disabilities and who live in caravan and residential parks.

A consultation paper, released today, incorporates recent data showing how the rental market has changed over the last 20 years, with more tenants considered to be long-term renters and more people renting indefinitely.<sup>20</sup>

The [consultation paper](#) did not outline any proposals in relation to longer-term leases. On 25 June 2015, [ABC News](#) reported:

Consumer Affairs Minister Jane Garrett said she would investigate whether five or 10-year leases were fair for landlords, while offering better protection for low-income earners, the elderly and those with disabilities.

"For people now for whom renting now is a medium to long-term option, they're often being faced with being kicked out of their houses every 12 months to two years," Ms Garrett said.

"This creates a lot of uncertainty and distress and we want to make sure that for people who need to rent for longer periods, that they are able to have some certainty around their housing options.

"There's complexity around this obviously. How do you get rent increases? What does happen if somebody needs to unexpectedly move or the property owner needs to sell?

"That's why we're having such a detailed consultation, because we want to get the balance right."<sup>21</sup>

Issues papers are due to be released in late 2015 or early 2016.

### 6. Senate Committee report

In May 2015, a Senate Standing Committee on Economics published a [report](#) on housing affordability, which considered a range of issues including affordability and security of tenure in the private rental market.<sup>22</sup> In relation to security of tenure, one recommendation was:

Given that renting will be the only form of housing for many Australians, one of the key challenges for government is to change the traditional view of renting as a short-term transitional phase. The committee recommends that the Australian Government in collaboration with the states and territories, through the recommended ministerial council on housing and homelessness within COAG, start the urgent process of turning around this acceptance of short-term insecure tenure as normal. As a first step, the committee recommends that the proposed ministerial council consider tenancy regulations in the various jurisdictions with a view to delivering greater security for long-term renters.<sup>23</sup>

The Committee also recommended that the Commonwealth Government together with the States and Territories:

... investigate national minimum standards that would set specific minimum standards including security of tenure, stability and fairness of rent prices, a new efficiency and comfort standard, safety and security of the home, and better protection for groups in marginal housing;<sup>24</sup>

In a dissenting report, Government Senators did not support setting up a ministerial council on housing and homelessness, as this was seen as being inconsistent with the Government's red tape reduction agenda.<sup>25</sup> They also did not support the recommendation to investigate national minimum standards, regarding this as a State and Territory issue.<sup>26</sup>

### 7. Tenancy laws in other countries

#### 7.1 AHURI report

A 2011 AHURI [report](#) compared provisions for "secure occupancy" in Australia and "similarly developed countries" including: Austria, New Jersey (United States), Flanders (Belgium), Ontario (Canada), Germany, Scotland, Ireland and the Netherlands.<sup>27</sup> The report made this observation about the structure and scale of private rental systems in these countries:

In large rental sectors such as Germany, the Netherlands and Austria where between 60, 43 and 39 per cent of households across all income levels and life stages are renters respectively, renting has strong historical and cultural underpinnings and can be perceived as being on a par with owning one's own home. In such countries, cultural norms, institutional settings and legal provisions for rental housing are well developed and tend to favour long-term renting and to include strong consumer protection measures. Rental systems in these countries are described in the literature as examples of unitary rental markets because they tend to manifest more uniform policy and regulatory approaches to their rental housing sub-sectors that support strong

social outcomes, including secure occupancy. The other countries in this study, including Australia, can be described broadly as having dual rental systems. Typically these are smaller systems (ranging from 34% of households in Scotland to 21% of households in Ireland) where renting is not the cultural norm and is often constructed in policy and/or public discourse as inferior to home ownership.<sup>28</sup>

The report also examined investment in the rental sector, finding:

Whilst there is a share of institutional or syndicated investment in private rental housing in some jurisdictions (most notably Austria, Germany, New Jersey, the Netherlands and Ontario), the predominant pattern across all jurisdictions is one of small-scale investment by individual investors.<sup>29</sup>

In relation to “tenancy terms and security of tenure”, the report concluded that the jurisdictions fell into three different groups:

- Those with a well-established philosophy that promotes secure occupancy by: offering most tenants unlimited tenure (subject to proven breaches of a lease agreement by the tenant that are grounds for termination action by the landlord); not allowing arbitrary (no grounds) terminations by landlords; and adopting other strong consumer protection measures, such as requirements on landlords to locate alternative housing and having lengthy notice periods. Austria, Germany and the Netherlands fall into this group.
- Those that encourage longer-term leasing through law, policy and/or practice and in most, but not all, cases also prescribe grounds for terminations by landlords of private as well as social tenancies. These jurisdictions include Flanders, Ireland, New Jersey and Ontario.
- Those that offer the least certain security of tenure and leasing options for private tenants in law and/or practice and have laws that allow for terminations without grounds by private landlords, namely Australia and Scotland.<sup>30</sup>

The report added that “most of the jurisdictions have been able to maintain medium to large rental sectors, while offering stronger provisions for secure occupancy than Australia”. Brief case studies are presented below for some of these and other jurisdictions, namely: New Zealand, England, Scotland, Canada (selected provinces), and Germany.

### 7.2 New Zealand

Leases are commonly for a fixed term of 6 to 12 months but the tenant and landlord can agree to a longer term.<sup>31</sup> The residential tenancy laws contain similar provisions to Australia in relation to termination.<sup>32</sup> During the fixed term, the landlord can only terminate the tenancy if the tenant has breached the terms of the tenancy (e.g. non-payment of rent), or on the grounds of severe hardship. At the end of the fixed term or during a periodic tenancy, the landlord must give at least 90 days’ written notice to end the tenancy, but can give less notice (42 days) in certain circumstances, e.g. if the landlord is going to live in the property.

In a 2014 [discussion paper](#) on housing affordability, the New Zealand Institute of Economic Research suggested that there were several policy options that justified further investigation and assessment including making renting a better substitute for home ownership.<sup>33</sup> It commented that “there



are good examples of more balanced tenure and tenants' rights in the UK, Germany and Switzerland that support renting as a normal alternative". In the lead up to the 2014 election, the Labour Party [said](#) that it would "work with landlord and tenant representative groups to investigate options for increasing security of tenure in the private sector and ensure a better balance of rights between tenants and landlords".<sup>34</sup>

### 7.3 England

A 2013 House of Commons Committee [report](#) looked at the private rented sector in the context of its steady growth over a period of 15 years.<sup>35</sup> The report considered a number of issues including security of tenure. The Committee outlined the current types of tenancy as follows:

The Housing Act 1988 introduced two forms of tenancy: assured and assured shorthold tenancies. The Housing Act 1996 made the assured shorthold tenancy the default, and today it accounts for the vast majority of tenancies. It has become the norm, and it gives landlords an automatic right of possession without having to give any grounds once the fixed term has expired. In this case, a landlord must give two months notice in writing (a "section 21 notice"). Under assured tenancies, which are now far less common, the landlord does not have an automatic right to repossess the property when the tenancy comes to an end.<sup>36</sup>

It also noted that "renters in England typically have short contracts of only 6 or 12 months, resulting in uncertainty for renters and high levels of churn in the sector."<sup>37</sup> In respect of "longer tenancies", the Committee concluded:

The demographics within the private rented sector are changing. No longer can it be seen as a tenure mainly for those looking for short-term, flexible forms of housing. While some renters still require flexibility, there is also an increasing number, including families with children, looking for longer-term security. The market, therefore, needs to be flexible, and to offer people the type of housing they need. The flexibility of assured shorthold tenancies should be better exploited, and the option of using assured tenancies should also be considered where these meet the needs of landlords and tenants. That we are beginning to see some institutions and housing associations offering longer tenancies under the current law suggests that we do not need legislative changes to achieve them. Rather, we need to change the culture, and to find ways to overcome the barriers to longer tenancies being offered.<sup>38</sup>

The Committee recommended that the Government convene a working party to examine proposals "to speed up the process of evicting during a tenancy tenants who do not pay rent promptly or fail to meet other contractual obligations"; as this "would encourage landlords to make properties available on longer tenancies".<sup>39</sup> The Committee also recommended that "the Government include in the code of conduct for letting agents a requirement both to make tenants aware of the full range of tenancy options available, and, where appropriate, to broker discussions about tenancy length between landlords and tenants".<sup>40</sup>

The Coalition Government responded by developing a [model tenancy agreement](#), which is "particularly focussed on supporting tenants who want to negotiate a longer fixed term period at the start of the tenancy". Under the model agreement, for tenancies of two years or longer, the tenant is

permitted to break the tenancy with three months notice at any time after the first three months. The landlord has a one-off break clause at six months by giving the tenant 2 months notice. The landlord can also break the tenancy early if the landlord wishes to sell the property.

Labour's 2015 [election policy](#) included changing the law to make three-year tenancies "the norm".<sup>41</sup> Labor explained:

The default tenancy would be three years. These would start with a six month probation period. Tenants would be able to terminate contracts with at least one month notice as they can now while landlords would be able to terminate contracts with two months' notice only if they can have good reason – not simply to put rents up. There would also be provision for new tenants like students or business people on temporary contracts to request shorter-term tenancies subject to the landlord's agreement.<sup>42</sup>

### 7.4 Scotland

Scotland's tenancy laws are very similar to those in England. The Scottish Government has recently proposed legislative reforms.<sup>43</sup> A key reform in relation to security of tenure is to remove the landlord's no-fault ground for repossession, meaning that a landlord can no longer ask a tenant to leave simply because the fixed term has ended. The landlord will need to rely on one of the proposed eleven grounds including (for example): the landlord selling the home, the landlord or a family member wanting to move into the property, refurbishment, and breach of the tenancy agreement.

A 2015 [consultation paper](#) noted that 81% of respondents supported this reform but it was opposed by most industry bodies, landlord, letting-agent and legal respondents.<sup>44</sup> The paper stated (in part):

Among those who agreed with our proposal, some felt it was important to consider the extent to which the PRS now provides long-term housing for many households, including those with children. They suggested that longer-term tenancies would be better for families, allowing them to put down roots and contribute towards developing stable, balanced communities. There was also a widely held view that if a landlord can end a tenancy without giving a reason, some tenants will feel unable or reluctant to assert their rights.

Those who disagreed with our proposal thought removing the 'no-fault' ground would damage the health of the PRS market and undermine the potential for investment in it. They argued that investors needed confidence they could regain possession of their property, and that the 'no-fault' ground provided this. Losing the ground would make it more difficult for them to manage their business efficiently and at a reasonable cost. They felt it could lead some landlords to be more selective in the tenants they were willing to accept.

*Way forward:* Having considered all the consultation responses, we remain committed to removing the 'no-fault' ground. Improving security for tenants is a key aim for the proposed new tenancy system. In a professionally managed sector, tenants should only be asked to leave their homes for a good reason. We want tenants to feel secure in their homes and be able to assert their rights without feeling that this may lead to them being asked to leave for no other reason.<sup>45</sup>

### 7.5 Canada

The provinces regulate residential tenancies. This section focuses on the three most populous provinces: Ontario, Quebec and British Columbia.<sup>46</sup> In Ontario, most leases are for a fixed term of 12 months. A landlord cannot terminate a tenancy during the fixed term unless the tenant has breached the tenancy (e.g. not paying rent). At the end of the fixed term or during a periodic tenancy after the fixed term, the landlord can only terminate the tenancy for specified reasons, not simply because the fixed term has ended. The reasons include: the landlord or a family member wishing to move into the property; the landlord planning to do major renovations; and the landlord selling the property and the purchaser wishing to move into it. The position is similar in the other two provinces except that in British Columbia a tenancy can be terminated at the end of a fixed term if the lease specifies that the tenant will vacate at that time.

### 7.6 Germany

A 2012 [paper](#) provided this overview:

Tenancies are still generally signed for an indefinite period of time, security of tenure remains high and the landlord's right to evict a tenant continues to be restricted. Contracts can only be terminated if the tenant has generated at least three months' worth of arrears or is causing a nuisance, or if the landlord needs to reclaim the property to house themselves or a relative. The fact that the rent is below market or that the landlord wants to obtain a better yield are not allowable grounds for the termination of a rental contract... Since 2001, the notice period for landlords has been linked to the duration of tenancy, but restricted to a maximum of nine months. The notice period for tenants is three months. If a landlord decides to sell the dwelling, the sitting tenant has the right of first refusal.<sup>47</sup>

## 8. Conclusion

In Australia and some other countries, there has been a decline in housing affordability which is changing the private rental market from a transitional sector to a long term housing sector for many. This is bringing into focus the issue of security of tenure. Two key elements of security of tenure for renters are the length of the fixed term of the tenancy and the circumstances in which the landlord can terminate the tenancy at the end of the fixed term or during a periodic tenancy after the fixed term.

In NSW, tenancies are usually for a fixed term of 6 to 12 months but the *Residential Tenancies Act 2010* allows for the landlord and the tenant to agree to a longer fixed term. At the end of the fixed term or during a periodic tenancy after the fixed term, a landlord can terminate the tenancy without stating any grounds, provided the landlord gives the tenant the statutory period of notice to vacate. A previous review of tenancy laws heard very different views from stakeholders on what, if any, measures should be adopted in relation to security of tenure. The 2010 Act gave greater protection to tenants who have been in continual possession of premises for 20 years or more. The 2010 Act is now due for review.

Other States have similar laws but Victoria is currently examining the viability of longer leases. New Zealand, England and Scotland also have similar levels of protection. In England, a model tenancy agreement has

recently been developed to encourage long-term leases. The Scottish Government is currently proposing to remove the landlord's no-fault ground for ending a tenancy. In Canada, the three main provinces do not generally allow for no-fault terminations. In Germany, leases are typically indefinite and landlords have very limited grounds for terminating a lease.

- <sup>1</sup> See A Haylen, [Affordable rental housing: the problem and its causes](#), e-brief 13/2015; and [Affordable rental housing: current policies and options](#), Briefing paper 11/2015
- <sup>2</sup> K Hulse, T Burke, L Ralston and W Stone, [The Australian private rental sector: changes and challenges](#), Australian Housing and Urban Research Institute, Positioning Paper No. 149, July 2012,
- <sup>3</sup> W Stone, T Burke, K Hulse and L Ralston, [Long-term private rental in a changing Australian private rental sector](#), Australian Housing and Urban Research Institute, Final Report No. 209, July 2013, p9, 14, 16, 25
- <sup>4</sup> W Stone et al, note 3, p29, 34
- <sup>5</sup> K Hulse, V Milligan and H Easthope, [Secure occupancy in rental housing: conceptual foundations and comparative perspectives](#), Australian Housing and Urban Research Institute, Final Report No. 170, July 2011, p3
- <sup>6</sup> K Hulse et al, note 2, p30-32
- <sup>7</sup> J-F Kelly, [Renovating Housing Policy](#), Grattan Institute, October 2013, p19
- <sup>8</sup> See also the [Residential Parks Act 1998 \(NSW\)](#) and [Boarding Houses Act 2012 \(NSW\)](#)
- <sup>9</sup> See *Residential Tenancies Act 2010 (NSW)*, Part 5 Division 2
- <sup>10</sup> *Residential Tenancies Act 2010 (NSW)*, s 115
- <sup>11</sup> *Residential Tenancies Act 2010 (NSW)*, s 20
- <sup>12</sup> *Residential Tenancies Act 2010 (NSW)*, s 94
- <sup>13</sup> NSW Office of Fair Trading, [Residential Tenancy Reform: A New Direction](#), September 2007, p25
- <sup>14</sup> NSW Office of Fair Trading, note 13, p23
- <sup>15</sup> NSW Office of Fair Trading, note 13, p24
- <sup>16</sup> NSW Office of Fair Trading, note 13, p25
- <sup>17</sup> *Residential Tenancies Act 2010 (NSW)*, s 227
- <sup>18</sup> Greens NSW, [Greens launch renters rights initiative](#), *Media Release*, 5 February 2015
- <sup>19</sup> *Residential Tenancies and Rooming Accommodation Act 2008 (QLD)*, s 329; and *Residential Tenancies Act 1997 (VIC)*, s 255-263
- <sup>20</sup> Minister for Consumer Affairs, Gaming and Liquor Regulation, [Review of the Residential Tenancies Act 1997](#), *Media Release*, 24 June 2015
- <sup>21</sup> ABC News, [Long-term residential leases of up to 10 years being considered by Victorian Government](#), 25 June 2015
- <sup>22</sup> The Senate Economics References Committee, [Out of reach? The Australian housing affordability challenge](#), May 2015, p215ff
- <sup>23</sup> The Senate Economics References Committee, note 22, p228 (Rec 18)
- <sup>24</sup> The Senate Economics References Committee, note 22, p229 (Rec 20)
- <sup>25</sup> The Senate Economics References Committee, note 22, p421
- <sup>26</sup> The Senate Economics References Committee, note 22, p422
- <sup>27</sup> K Hulse, V Milligan and H Easthope, note 7. See also C Whitehead et al, [The Private Rented Sector in the New Century: A Comparative Approach](#), Cambridge Centre for Housing and Planning Research and LSE London, September 2012; and T Crook and P Kemp, *Private Rental Housing: Comparative Perspectives*, Edward Elgar, 2014
- <sup>28</sup> K Hulse, V Milligan and H Easthope, [Secure occupancy in rental housing: conceptual foundations and comparative perspectives](#), Australian Housing and Urban Research Institute, Final Report No. 170, July 2011, p5-6
- <sup>29</sup> K Hulse, V Milligan and H Easthope, note 28, p6
- <sup>30</sup> K Hulse, V Milligan and H Easthope, note 28, p8
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