Tenants Queensland Inc

RESIDENTIAL TENANCY LAW & RESIDENTIAL RENTAL INVESTMENT

Evidence on

Tenancy Law Reform and the Risk of Disinvestment

in

Residential Rental Property

An updated review

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Prepared for Tenants Queensland
by

Dr Patricia Short
School of Social Science
The University of Queensland

Background

In 2009, Tenants Queensland (Tenants Qld) commissioned The University of Queensland (UQ) to undertake a review of legislative, research and policy documents on residential tenancies legislation and changes to tenancy law. Tenants Qld were seeking to examine claims that: a) residential tenancies legislation and changes to tenancy law were impacting levels of residential rental investment; and b) tenancy law reform in Australia had created disinvestment in rental housing. In 2007 the research reviewed a small number of formal studies which sought to examine such issues, either as a central theme or in connection with broader rental housing issues. Ten years on, Tenants Qld have sought to update this review of evidence. As with the earlier (2007) review, this review has sought to identify studies that provide additional or new evidence on the relationship between tenancy law and investment in residential rental housing in Australia.

The review is undertaken in a context where there is widespread acknowledgement and frequently expressed concern about housing affordability, including access to and supply of affordable housing, and security of occupancy in the private rental sector[1] in Australia, especially with respect to the increasingly vulnerability of low-income households (see Hulse et al., 2014; Hulse et al., 2015). Within broad-based strategic agenda addressing key vulnerabilities in housing in Australia (see, for example, National Shelter, 2010; Adamson, 2016; CEDA, 2017; CHOICE and National Shelter, 2017; Queensland Department of Housing and Public Works, 2017; Victoria State Government, 2015-2018), tenancy law reform is mooted as one of a range of interventions that could effectively offer greater protections to tenants through improved security of occupancy and more effective rent regulation, without significant impact on investors (landlords). Calls for tenancy law reform typically draw some unfavourable response from the residential rental industry (landlords; property managers; investment advisors), including claims that increased regulation of rents and improved security of occupancy for tenants will not only disadvantage landlords in securing profitable (or at least viable) returns from their investment, but may also lead to 'disinvestment' or withdrawal of investors from the residential rental housing market[2]. While such expressions of concern may be reasonable in terms of logics of risk in investment markets, there appears to be no evidence that tenancy law reforms (either 'tightening' or 'loosening' regulation) are associated in any significant way with patterns of investment or disinvestment in residential rental housing (Hulse, Parkinson and Martin, 2018).

In what follows, we provide an overview of evidence and analyses of recent trends and patterns of investment in residential rental housing in Australia and consider this in the context of renewed calls for tenancy law reform. We also point to documented patterns of transition and innovation in the private rental sector in Australia and draw some conclusions from the body of literature reviewed.

The report begins with a brief re-statement of conclusions from the 2007 review of documentary material (Seelig, 2007). Key points articulated in the Seelig (2007) report were subsequently elaborated in a peer-reviewed publication (Seelig et al., 2009). Taken together, these two sources have provided the starting point or baseline for the present review.

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[1] Note that this review essentially is limited in scope to literature and research on investment in the 'private rental sector' and within that to 'residential rental' property investment. It does not specifically cover investment relating to 'marginal' rental accommodation such as boarding houses, caravans and caravan parks.

[2] See, for example, *Michael Yardney's Property Update* 'Nanny State Changes to Rental Laws could deplete Rental Housing Stock' at https://propertyupdate.com.au/nanny-state-changes-to-rental-laws-could-deplete-rentalhousing-stock/, accessed 27th September, 2018.

Key points from Seelig 2007 TQ report

Seelig (2007) highlights the paucity of Australian research that attends to the relationship between tenancy legislation and investment in residential rental housing but points to Paris et al (1991) who 'specifically examined the potential for disinvestment in rental housing connected to tenancy law changes' and conclude that:

- the legislative reforms, enacted over the past fifteen years, have not had a discernible economic impact on aggregate landlords' decisions;
- any psychological effects of past reforms appear to have been short lived;
- there was no evidence of net landlord disinvestment;
- recent and proposed legislative changes have not threatened the underlying economic rationale of investment in the sector… (Paris et al., 1991: 1 cited in Seelig, 2007: 2).

Seelig (2007) also points to a later systematic review (Kennedy et al., 1995) which similarly concludes that 'the existence of residential tenancies legislation or legislative reform is of marginal relevance to investment decisions' (p.113). Kennedy et al. list 'security of investment, capital gain and equity growth' as the primary factors influencing investment decisions (p.113). Yates (1996) reiterated the significance of these factors, while also pointing to a distinctive feature of investment in Australia's PRS, that it is integrated with investment in home ownership.

Cognisant of persistent assertions that at least some types of investors are likely to be affected by tightened regulation of rents and tenancy provisions, despite the 'repeated failure to find any strong evidence that rental investment was in any significant way shaped by tenancy law' (Seelig, 2007: 3), Seelig et al. (2009) sought to provide a more nuanced understanding of PRS investor motivations and behaviour. They undertook a wide-ranging survey to examine the motivations, expectations and experiences of residential rental property investors across Australia. Their final report describes a complex of influences on investor motivations and investment decisions. In summary, they write:

> Investors come in and out of the market all the time, driven by a mix or array of financial incentives, situational circumstances, market conditions, personal goals and other influences. They are not driven by economics alone, … When the economics are paramount, investors usually have their eye on the long-term capital growth picture. (p.4)

Focusing more specifically on investors' decisions to sell investment properties, Seelig et al. (2009) describe a variety of influential factors:

> Reasons for selling included a range of personal and financial factors. There were a number of standalone personal factors that influenced investor decisions to sell, including changes in personal circumstances; health reasons; tenancy problems that required a high level of management; and a desire to assist children or provide an early inheritance to children.
>
> Financial drivers for leaving the market included poor returns; the need to alleviate financial pressures and increase income; opportunity to capitalise on market changes and realise capital gain; and in order to invest in alternative and better investment choices such as the share market. (p.64)

Seelig et al. (2009) also noted that for some investors, 'personal and financial factors were intertwined' (p.65) in their influence upon decisions to buy and/or sell. For example, some investors approaching or in retirement were selling to finance their retirement, either through realising cash reserves or through purchasing other (non-property) investments. Taxation laws and policies relating to the treatment of different forms of retirement income evidently influenced some investors (p.69ff) but tenancy law did not appear as a factor of any import.

Seelig et al. (2009) conclude:

> The relationship between investment and tenancy law reform continues to prove weak. Previous research has emphasised that investors simply do not consider tenancy issues when investing for the first time …and in this study it was almost impossible to get investors to engage on tenancy law as an issue, let alone an important factor connected to investment decisions. (p.75)

As will be discussed below, later studies of residential property investor behaviour in Australia (Wood and Ong, 2010, 2013; Parkinson et al., 2018; Yanotti et al., 2018), reiterate the influence of financial and 'life-cycle' factors in shaping predominantly small-scale residential property investment in Australia. Although none specifically investigate the importance of tenancy regulation or tenancy law reform for investor decisions, the weight of financial drivers and taxation policy dynamics in shaping investment patterns indicates that moderate changes to tenancy laws such as those proposed in current debates are unlikely to significantly impact upon investor behaviour or rental housing supply. Further, as Pippen (2009) points out:

> …there are single examples of both universal coverage of residential tenancy legislation (in the ACT) and very limited use of no grounds termination (in Tasmania). …[T]heir existence would seem to indicate that such legislation is not detrimental to housing markets. (p.22)

Moreover, in reporting upon their systematic, international comparative inquiry into the future of the private rental sector in Australia, Hulse, Parkinson and Martin (2018) conclude:

> The view of tenancy regulation as 'red tape' is out of step with the recent experience of most countries in this study[3]. None of the recent growth in the PRS in the countries reviewed appears to have been prompted or unleashed by deregulation. Arguably the UK's reforms of the late 1980s had this effect (Kemp 2015), but lately there has been no comparably significant weakening of tenancy regulation (only Spain has recently liberalised its tenancy laws, apparently without much effect on its small PRS). On the contrary, Ireland and Scotland are examples of successively stronger regulation being implemented as the PRS has grown. The view of tenancy regulation as 'red tape' is out of step with the recent experience of most countries. (p.20)

In what follows, we consider the context and scope of calls for tenancy law reform in Australia, and elaborate on the assessments above with a review of relevant recent research.

Calls for tenancy law reform

Governance of the private rental sector in Australia is 'relatively weak' by international comparisons, especially with respect to security of occupancy and rent regulation (Hulse, Parkinson and Martin, 2018: 24) (see also Hulse, Milligan and Easthope, 2011; Parkinson et al., 2018; Wharton and Cradduck, 2011).

Tenancy law reform appears as a fundamental, albeit not core, aspect of current strategic responses to untenable housing pressures across the nation. In the context of calls for a National Housing Strategy (Adamson, 2016; Gurran et al., 2018) there is a clear focus upon 'security' and 'affordability'

[3] As part of their broad-ranging inquiry into the future of the private rental sector in Australia, Hulse et al. (2018) undertook a comparative analysis among ten countries – Australia, Belgium, Canada, New Zealand, Spain and Sweden, with more detailed analyses of Germany, Ireland, UK and USA (see pp.16ff).

as basic tenets of 'appropriate housing', as there is, at a global level, in the UN Habitat III program (Adamson, 2016: 19). Moreover, in Australia, there is recognition that in the complex 'housing system', governed across multiple Federal and state jurisdictions, different issues lie within the purview of different authorities.

At the Commonwealth level, recommendations for reform of the housing system focus upon financing infrastructure and supply of affordable housing, and taxation incentives to promote investment, and the scope and nature of rent assistance for low-income households (Adamson, 2016). In this vein, the 2017-2018 Commonwealth budget incorporated several housing policy initiatives focused upon financing and managing strategic housing development across Australia. They included a 'comprehensive housing affordability plan; establishment of a National Housing Finance and Investment Corporation (NHFIC) to 'to operate an affordable housing bond aggregator to provide long term, low cost finance for affordable housing providers' across private and community sectors; and a National Housing Infrastructure Facility (NHIF) to 'help local governments fund the high costs of building critical infrastructure such as roads and water networks to support the supply of new housing' (Australian Treasury, 2018). It also announced introduction of a new National Housing and Homeless Agreement with States and Territories geared around improving supply of new housing stock 'particularly for those most in need' (Australian Treasury, 2018).

Rental tenancy issues such as 'security of occupancy' and 'rent regulation', concerns that are at the heart of calls for tenancy law reform, are essentially state (vis-à-vis Commonwealth) matters, and, at the state level, such issues are currently on political agenda. Although the main focus of calls for reform is on "regulating the rights and responsibilities of landlords and tenants in 'mainstream tenancies'" (Hulse, Martin, James and Stone, 2018: 11, 63), state-based housing strategies link tenancy law reform to wider social policy and planning contexts (Hulse, Martin James and Stone, 2018: 64).

Advocates of tenancy law reform have focused attention particularly upon the need to address the vulnerability of tenants to 'no grounds' evictions/notices to leave, the limited protections for tenants against rent increases in increasingly unaffordable private rental markets, as well as urgent protections for victims of domestic violence allowing them to leave a rented property unencumbered by contractual obligations. Pippen (2009) highlights also the need for consistency across the nation on such fundamental housing rights (p.22). Wharton and Crudduck (2011), in their consideration of Queensland tenancy law, go further in advocating the application of 'international law standards for security of tenure, and the right to housing' and recommend, unequivocally, "the adoption of tenancy laws that would only allow eviction on 'legitimate' grounds and recommends that courts and tribunals have the power to extend leases where necessary, in order safeguard the interests of tenants" (p.46).

In responding to such calls for reform, Victoria has led the way with substantial amendments to residential tenancy laws enacted in September 2018[4]. In NSW, a bill which includes proposals to address 'retaliatory' or arbitrary rent increases but falls short of abolishing 'no grounds' or 'no specified reason' evictions, has been introduced to State Parliament by Matt Kean, Minister for Innovation and Better Regulation but has not passed all stages at the time of writing. The Minister has publicly defended not addressing the issue of 'no grounds' terminations, citing a Choice survey that he reported as showing that '95 per cent of people were not concerned about no-grounds

[4] Victoria's landmark reforms enacted in September 2018 were the subject of considerable comment in political forums and conventional mass media, and also in industry media such as the real estate advertising forum, domain.com.au (see <https://www.domain.com.au/news/victorias-rental-reforms-pass-parliament-in-win-fortenants-20180906-h151x2-762361/>).

termination'[5] and referring to potential barriers for 'Mum and Dad investors' wishing to move into their homes (i.e. take vacant possession of their rental property). In 2017, after extensive consultation, Western Australia introduced significant protections in tenancy law for victims of domestic violence. In Tasmania, where tenancy law already requires specific and limited grounds for ending tenancies, albeit, in some instances, with relatively short periods of notice, recent minor amendments have addressed minimum standards for rental properties (Tasmania, Department of Justice, 2017). In Queensland, in line with the framework set out in the Queensland Housing Strategy 2017-2027, processes of community consultation leading into review of a raft of legislation covering tenancies in both the core PRS and other sectors have been announced.

Among other things, including a central commitment to increase the supply of affordable rental properties through both the community sector (or community-managed sector) and the private rental sector, the Queensland Housing Strategy 2017-2027 commits to 'reform and modernise legislation' as an aspect of enhancing safety nets and building 'confidence' among those most in need. Although the policy framework document, released in June, 2017 (Qld, Department of Housing and Public Works, 2017) falls short of specifying areas of legislation reform and modernisation, an update, published by the Qld Department of Housing and Public Works in May, 2018[6], commits to review the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) as part of wider ranging reforms in housing legislation[7] in Queensland. At the time of writing, the Queensland Government had not committed, publicly, to a timetable for review of this specific legislation but, by early October 2018, the Qld Department of Housing and Public Works had announced a series of community consultations 'to discuss the key issues affecting tenants, landlords and property managers'[8]; released an online survey[9] (open until 30 November 2018); and invited written submissions by 30 November 2018 on 'renting in Qld'[10].

Responses from the real estate investment and private rental industry to calls for tenancy law reform have been varied. Some have welcomed proposals for review of legislation, for example where they see clearer regulation as enabling more professionalised, 'streamlined' systems of administration within the industry[11]. The Australian Investors Association website lists 'legislation' as one of several 'advantages' in property investment pointing to the benefits of legal frameworks for negotiation of 'reasonable' rent increases, and related Commonwealth government rental assistance policies[12]. Others, focused more particularly upon the risks associated with high leveraged investments, comment variously upon the financial security provided by continuing leases (on tenanted properties)

[5] Reported at https://www.domain.com.au/news/better-regulation-minister-matt-kean-hits-back-rental-lawcritics-767106/

[6] http://www.hpw.qld.gov.au/SiteCollectionDocuments/HousingLegislationAmendmentActUpdate.pdf accessed 28th September, 2018

[7] Including *Residential Services (Accreditation) Act 2002* (scheduled May-Oct, 2018); *Manufactured Homes (Residential Parks) Act 2003* (scheduled May 2018 to June 2019); *Retirement Villages Act 1999* (scheduled May 2018 to August 2019) (Qld, Housing and Public Works, 2018).

[8] https://www.yoursayhpw.engagementhq.com/events-renting-in-qld, accessed 2nd October, 2018.

[9] https://www.yoursayhpw.engagementhq.com/survey-renting-in-qld

[10] https://www.yoursayhpw.engagementhq.com/submission-renting-in-qld

[11] See, for example commentary on the investment advisory website Ironfish at http://www.ironfish.com.au/?s=tenancy+law, accessed 12th October, 2018. A similar commentary appeared at https://www.domain.com.au/news/buying-for-investment-are-tenanted-properties-the-best-buy-20170515gw4ulg/ in May, 2017, accessed 29th September, 2018.

[12] See 'Residential property' at http://www.investors.asn.au/education/property/residential-property/, accessed 14th October, 2018

vs the possibility of unfavourable terms in leases; the additional constraints imposed on the liquidity of property investments by longer-term leases; the pros and cons of marketing a property for sale when it is tenanted (presentation, arranging inspections, etc)[13]. Scant if any attention is paid to legislative environments (which currently vary across the states and territories of Australia) and expressions of concern about tenancy law reforms affecting investment in the residential rental sector, such as that noted above (p.1), are rare. Commentators and advisors on residential property investment in Australia routinely focus their attention on key investment parameters such as vacancy rates, potential for capital growth, rental yields and property values.

Market context of PRS investment and disinvestment/disposal of property

We turn now to consider what factors appear to drive investment and disinvestment in the private rental sector in Australia, and to assess, on the basis of available evidence and research, whether changes in tenancy laws and regulations are likely to affect levels and patterns of investment in rental housing in Australia. We present, below, a brief profile of PRS property investment in Australia, including a summary of distinctive features of the Australia PRS as an investment market. Reference is made, also, to recent studies of investor characteristics, motivations and behaviour.

Hulse, Parkinson and Martin (2018: 3) point out some key features of the Australian private rental sector that distinguish it from international comparators. First, it is more integrated with the owner-occupier market, with residential housing stock (especially detached dwellings) passing back and forth between rental and owner-occupied segments of the market; second, the PRS in Australia is 'debt-driven', with a comparatively high level of housing-related household debt related to ownership of residential rental property and thus is highly susceptible to changes in the financial system (irrespective of housing and housing-related policy); third, real estate agents (as professional property managers) play a prominent role in managing property in the PRS in Australia with relatively few investors directly engaged as landlords in managing rental properties; finally, as noted above, it has comparatively weak laws governing security of occupancy and/or regulating rent.

Broad-based trends together with more detailed analyses of investor behaviour continue to demonstrate that investor engagement with the PRS is essentially financial; and that the relationship between landlord and tenant, from the landlord's perspective, is not geared around housing provision but rather the maintenance (and sustainability) of financial investments (Hulse and Reynolds, 2018; Hulse, Martin, James and Stone, 2018; Parkinson et al, 2018); Hulse, Parkinson and Martin, 2018).

PRS investment market trends and investor profiles

CoreLogic (2016) provides a useful recent profile of property investments and investors in Australia. Their report consolidates analytics based upon a range of data sources, including housing finance data routinely collected by the Australian Bureau of Statistics (ABS) and other Commonwealth authorities (Australian Taxation Office) and relevant corporations such as the Australian Securities Exchange, and from State and Territory government sources such as land and property authorities. Corelogic (2016) presents a profile of the Australian property investor that highlights the following:

- Investment is heavily concentrated in the unit (apartment) sector with investor owners making up almost half of attached dwelling owners (p.6; see also p.12 for breakdown of dwelling types

[13] See, for example, 'Selling a property with tenants' at https://www.finder.com.au/selling-a-property-withtenants, published in July, 2018, accessed 12th October, 2018.

by state; and p.16 for proportion of investor owned dwellings by selected localities, including Gold Coast and Brisbane, where there is a greater concentration than elsewhere of detached housing investment);

- Investment is generally ‘skewed towards’ the lower value end of the market (reflecting the concentration of investment in units/apartments in cities vis-à-vis investment in detached housing in lower cost localities);
- Property investment is mostly concentrated within inner city unit markets, especially around what CoreLogic refers to as ‘captured rental markets’ (p.18) such as office precincts, educational institutions and essential services such as hospitals; in regional areas, investment is concentrated in mining and resources related areas and tourism locales such as Gold Coast;
- Over recent years, growth in rental income has been ‘relatively soft’ but most property investors derive (or expect to derive) strong capital gains from sales of properties;
- Lower mortgage rates in recent years have offset the impacts of low rent returns; as mortgage rates rise investors will face higher ‘holding costs’[14] which may lead to pressure to sell property and potentially to invest elsewhere (that is, disinvest in the residential rental property);
- Housing finance data shows that investors have constituted, over some time, close to 50% of new mortgage demand (at times, in some states, more than 50%);
- Middle income ($60,000 - $80,000 p.a.) investors and younger investors (25-29 years) are most likely to claim a net rental loss and utilise negative gearing to manage their investments for longer-term capital gain; older investors (50+ years) are more likely to hold substantial equity (and therefore not claim rental losses).

These trends are reiterated in Hulse, Martin James and Stone (2018); Parkinson et al. (2018); and Hulse, Parkinson and Martin (2018) who highlight both growth[15] and change in the PRS in Australia, especially over the past decade or so. Hulse et al. (2014) map some of the complexities of supply in the PRS, with special reference to the supply of affordable housing for lower income households and note stronger growth in higher rent properties (and a loss of lower rent properties) in the 2006-2011 intercensal period, with very low income households (the lowest quintile) facing substantial shortages in supply in both metropolitan and non-metropolitan regions. Summarising key changes over a ten-year period (2006-2016), Hulse, Martin, James and Stone, (2018: 1) note the following:

- The Australian private rental sector (PRS) increased by 38 per cent over 10 years (2006–16), more than twice the rate of household growth;
- 2.1 million Australian households lived in the private rental sector (PRS) in 2016, or 26 per cent of all households[16];

[14] This term refers to the margin between gross yields from all rental property investments held by the investor (total rental income) and the costs of holding their investments, referred to elsewhere in this report, and by others (e.g. Wood and Ong, 2013) as ‘user costs’.

[15] Recent data on housing finance (ABS, 2018a; ABS, 2018b) suggest some slowing of growth in terms of financial commitments for both owner-occupied and investment properties measured in terms of both the number of dwellings purchased with finance and the total value of dwelling financial commitments, with the fall in commitments for dwelling finance more pronounced in the investment sector. Dwelling commitments in the owner-occupied sector fell by 0.2% in the twelve months to August 2018, and by 1.2% in the investment sector in the same period.

[16] Sourcing data from ABS Census of Population and Housing (2006, 2016), the authors calculated that the number of private renter households in Australia increased by 37.5% over the ten-year period 2006-2016 (HMJ&S, 2017, p.8).

- Debt-financed investment in PRS dwellings has increased with a 42 per cent increase in the volume of lending to investors over 10 years (2006–16), with lending for investment at times exceeding lending for owner occupation,
- 1.135 million Australian households were investor landlords in 2013–14, 72 per cent owning one property, with some increase in multi-property landlords,
- PRS properties under management by real estate agents increased nationally from 68 to 75 per cent from 2006–16, with differences between cities—Sydney (81%); Melbourne (79%) and Perth (66%).

Hulse, Parkinson and Martin (2018) further highlight that these patterns of growth and pressures in the PRS are not simply 'more of the same'. They draw attention to key transitions in the PRS in Australia that have implications not only for supply (of more diverse forms) of housing but also for management of and access to rental housing in Australia - increasing 'financialisation' of residential property investment, including increases in debt-financing of residential investments; and increasing uptake of digital technologies to access investment data and manage investments, including through an increasingly professionalised and diversifying property management industry. They also point to 'fragmentation' in the PRS which includes new, 'niche markets' (for example student housing and supported accommodation), and a growing informal rental sector (supported by use of digital platforms/networks).

Within these shifting parameters of the PRS in Australia, and mindful of the diverse investment strategies and pathways among residential property investors (Seelig et al., 2009; Parkinson et al., 2018; Hulse, Parkinson and Martin, 2018), it is pertinent to review the documented determinants of investor behaviour in Australia.

Drivers or determinants of acquisition, retention or disposal of residential property investments

In possibly the only similar Australian survey of investors since Seelig et al (2009), Parkinson et al (2018: 81) explore the motivations and strategies of residential rental property investors. Reflecting the distinctive integration of owner-occupier and residential investment markets in Australia (*cf.* Hulse, Parkinson and Martin, 2018: 3 *passim*), the most common investment strategy, reported by 60% of property investors interviewed by Parkinson et al (2018), was to rent a property for six months or more and then live in it. Nearly a quarter of respondents reported owning a rental property while renting another for residence or living with family. Nearly half indicated that they intended to keep their property for long-term rental (for the foreseeable future), while approximately a third said they intended to sell their rental property within a year or two. Another 22% planned to move into their rental property themselves within a year or two, and 10% planned to demolish the rented dwelling within a year or two (p.68-9). Parkinson et al (2018) argue that these findings indicate that, one way or another, a high proportion of rental housing stock is likely to turnover within relatively short periods of time. Elsewhere (p.70), they express concern that increasing commodification of rental properties has led to more tenants being exposed to insecurities arising from more frequent turnover of properties – notices to leave or rent increases.

However, the picture is a little unclear. The results presented by Parkinson et al (2018) may also suggest that, allowing for the possibility that a substantial proportion of properties that investors intend to sell within one to two years remain as rental housing stock, as much as three quarters of the rental stock owned by the landlords interviewed could remain in the PRS for the longer term. More information about the 'flow' of housing stock from owner-occupied to rental stock and vice versa would assist in making a clearer assessment of the implications of shorter-term investment, and the churning of investors, noted by Seeling et al (2009) and Wood and Ong (2010).

In another study, Wood and Ong (2013: 3243), offer a focused analysis of Australian landlords' motivations to retain investment rental property (or exit the residential property investment market). Using the Household Income and Labour Dynamics in Australia (HILDA) panel data set, they investigate the influence of a range of demographic, 'human capital' (education and employment), attitudinal and financial factors upon landlords' retention of rental property investments. Their analysis highlights the significance for investment decisions of financial factors (mortgage costs, rental income and other factors affecting 'user-cost'[17]; expected capital gain) and the relevance of 'fiscal and monetary policy settings' (interest rates and taxation policies, in relation to negative gearing). Reiterating Seelig's et al (2009) findings, and others (Kohler and Rossiter, 2005; Parkinson et al., 2018), they point to the importance of age and/or life stage as factors shaping investors 'attachment' to their rental investments, with retirement evident a trigger for small-scale investors to 'rearrange their asset portfolio' (p.3247). Consistent with Wood's and Ong's (2010) earlier speculation that investors churn in and out of rental property investments to strategically maximise taxation benefits, they (Wood and Ong, 2013) also highlight their finding that 'leveraged' landlords whose investments are negatively geared and more susceptible to financial shocks are more likely to relinquish their investments within shorter time frames. Wood and Ong (2013) warn that the use of tax measures favouring leveraged investors to promote (consistent) supply of rental housing may be counterproductive.

By contrast, these same authors point out that the longer a landlord holds their property, the less likely they are to relinquish it (Wood and Ong, 2013: p.3253). Their analysis identifies a substantial proportion (more than 40%) of landlords who 'stay the course' and retain their investments for 5 years or more. Such 'equity oriented' landlords, they argue, can be seen as a 'source of secure accommodation' in the private rental sector (p.3253). While this analysis cannot shed light directly on the likely effects of changes in tenancy laws/regulation, the predominance of financial factors and the insignificance of 'attitudes to risk' in shaping landlords' decisions to retain or relinquish their investments suggests that modest changes in tenancy law are unlikely to significantly affect supply of medium to long term rental housing stock.

Similarly, in a longitudinal analysis of the determining factors for accessing finance for the purchase of investment as opposed to owner-occupied properties, Yanotti et al. (2018), explore the effects of residential property investors' characteristics, motivations and behaviour on affordable rental housing supply (see also Yanotti, 2017). While Wood and Ong (2010, 2013) study the determinants of retaining residential property, Yanotti et al. (2018) investigate the determinants of 'entry to the residential property investment market via financing choices' (p.7). Using primarily a proprietary data set of mortgage applications processed by a major bank with national coverage for the period between January 2003 to May 2009, Yanotti et al. (2018) focus attention on residential property investors whose investment decisions, they reason, have direct impacts on housing affordability for renters (p.3).

They investigate who invests in housing assets, where the investment is directed, and what type of dwelling is being purchased for investment purposes. They paint a picture of residential property investors (who apply for mortgaged finance) as typically middle-aged men who are most likely to be

[17] Wood and Ong (2013) explain that 'user cost' in property investment focuses attention on the 'hurdle rate' that rental income must achieve to make the capital costs of investment (mortgage debt, rates and government charges, maintenance costs, tax on rental income, body corporate fees, etc) worthwhile.

self-employed, small business proprietors or employed on relatively high incomes; well-informed and likely to already be in receipt of rental income at the time of applying for finance and also more likely than owner-occupiers to also invest in shares. Typically, investors are most likely to invest in existing properties but more likely than owner-occupiers to buy new-builds, and more likely to invest in nonmetropolitan areas where housing stock is most affordable than big metropolitan cities, with some concentration of purchases in Queensland[18]. Yanotti et al. (2018) conclude that their analysis confirms others in profiling a PRS heavily reliant upon small-scale investors to maintain and extend the supply of affordable rental properties in Australia (p.4).

Yanotti et al. (2018) highlight (as do Hulse, Parkinson and Martin, 2018) the significance of mortgage finance as 'a very important element of residential investment and housing supply' (Yanotti et al. 2018: 5) and point to the implications of expansion of rental property investment to affordable[19] nonmetropolitan areas. On the one hand, they argue, (leveraged) investment in residential property in regional and rural localities could support regional economic and social development; on the other, renting such properties in regional and rural areas may entail locational disadvantages for tenants (in addition to the risks for tenants entailed in shorter-term, 'purposive' investment strategies that may be driving investment to 'affordable' regional and rural localities). Yanotti et al. (2018) note the need to balance these two outcomes in strategic housing policy (p.20), though it is worth noting in this context, the conclusion drawn by Hulse et al. (2015) that even where housing costs are less in nonmetropolitan areas, after adjustment for income, it is likely not affordable and often not available for households in the two lowest income quintiles (see also Hulse et al. 2014). Elsewhere, Hulse and Reynolds (2017) link the persistence of suburban (and by extension, regional) socio-economic disadvantage to increasing financialisation and, what they term 'investification' of housing markets – a 'process by which disproportionately high levels of household investor purchases in (lower-cost) disadvantaged suburbs contribute to higher prices and rents and to the persistence of socio-economic disadvantage' (p.1667).

Taking a broader perspective, Hulse, Parkinson and Martin (2018) point to emerging trends in financing and provisioning in the private rental sector that signal changing challenges and opportunities for supply of and access to affordable rental housing in Australia. They point to:

- evidence of more 'strategic' investment behaviour among a more diverse range of small-scale landlords (Hulse, Parkinson and Martin, 2018: 29) into the future; more landlords who are more strategic, 'purposive' investors, vis-à-vis what Hulse, Parkinson and Martin (2018: 27 passim) dub 'incidental landlords', more informed of the market via the use of digital technologies, and increasingly served by a growing number of professionals and organisations operating as 'intermediaries' (Hulse, Parkinson and Martin, 2018: 9) in the field of PRS operations;
- the 'normalisation of borrowing' against equity held in residential property as a wealth accumulation strategy (and the related expansion of debt-financing products);

[18] Evidence of this relative concentration of investment in Queensland is derived from the RBA Financial Stability Report for October 2017 (Yanotti et al., 2018: 17).

[19] Yanotti et al. (2018) posit that investment in residential rental property in regional and rural areas which is likely to be driven in part by resource developments (for example, mining) and tourism (*cf* CoreLogic, 2016) may be influenced by the relatively lower cost of properties in non-metropolitan areas by comparison with high cost inner-city localities in Sydney and Melbourne, especially.

- a growing number of corporate landlords (albeit who will remain a small proportion of the sector overall) operating substantial property portfolios under new business models (for example, provision of student accommodation) centred on rental yields (p.26).

The emerging trends mapped out by Hulse, Parkinson and Martin (2018) (see also Hulse, Martin, James and Stone, 2018; Martin, Hulse and Pawson, 2018) are not necessarily inimical to tighter regulation of security of occupancy and rents. More secure tenancies and regulated (and affordable) rents may well be perceived as providing security (albeit in different forms) to both tenants and landlords. Small-scale landlords whose investment is long-term (and centred on capital gain) may well see benefit from assurance of longer-term tenancies[20]; even those investors with tightly balanced, high leveraged investments may perceive benefits to be derived from stronger tenancy laws geared around improved security of tenure and regulated rental income (calculable risks), in managing 'user costs'.

This time of transition in the PRS may well be opportune for tenancy reform. New investors, new developers, focused on the full range of investment parameters and operating in an increasingly professionalised environment, may well accept tighter regulation as a positive element of the investment environment. Regulation offers a framework of calculable 'risk'. And some new players in niche markets geared around rental income will likely behave as others overseas and accept firmer regulation as part of the investment environment.

Conclusion

Very little research has focused specifically upon the impacts of tenancy regulation on the performance of private rental markets or, more specifically, on rental property investor behaviour in Australia or elsewhere. Those who have considered this question conclude that neither tightening nor easing of tenancy regulation has any significant impact on investor behaviour or overall patterns of expansion in the PRS.

This review of research and systematic assessments of investment in the PRS in Australia, including analyses of the factors shaping investor behaviour, points overwhelmingly to financial parameters as the principal drivers of residential property investment. The workings of increasingly segmented housing markets (differentiated geographically and in terms of different types and prices of housing stock) and the engagement of a more diverse range of players (increasing numbers of 'high leveraged' investors vis-a-vis high-equity investors; new corporate investors in niche markets) have led to changes in supply of rental housing and significant adjustments in the way the PRS operates in Australia.

Martin et al (2018) provide a suitable framework for consideration of the place of tenancy law reform in this changing environment. They focus upon four interrelated dimensions of the PRS – financing; provision; access; management (see Figure 3, p.14). Their analytic framework reminds us to consider the impacts of tenancy law reform (essentially centred on regulating processes and relationships in the 'management' of rental property) within the broader context of institutional change in other dimensions of the PRS, and within even broader frameworks of housing and fiscal policy, rather than

[20] Parkinson et al (2018), like Seelig et al. (2009) provide some insight on the range of investor attitudes to longer-term tenancies and provision of 'below-market' rents as strategies for provision of housing to lower-income households. They document a range of more and less favourable attitudes towards incentives (e.g. tax incentives) and/or mechanisms (e.g. direction of CRA to landlords; management and risk-bearing by community agencies via head-leasing arrangements) for offering 'reduced' rents (i.e. lower than market rents for location) to lower-income/vulnerable tenants. They focus upon the possibility of 'aligning' suitable landlords with different market and social housing initiatives to enable more effective provision of affordable housing.

focus too narrowly on the impacts of reform on only two, albeit central players – the 'landlord' and the 'tenant'[21].

Improvements in tenancy laws across Australia are justified in terms of securing basic housing rights and social justice in housing (Adamson, 2016; Pippen, 2009; Wharton and Crudduck, 2011). It is important, in these terms, to get the balance right in tenancy law to ensure reasonable security of occupancy (and rental income) and appropriate flexibilities in rent setting, termination provisions, and the use of dwellings. The institutions of the PRS will undoubtedly adjust around sound legal frameworks. As noted above, the context of transition and innovation (driven by financial imperatives and sophisticated technologies) may even be opportune for altering the settings in tenancy law to ensure a fair balance of rights between tenants and landlords.

However, as Hulse et al (2015) and Hulse, Parkinson and Martin (2018) warn, institutional adjustments in the core PRS and newly emergent markets will not necessarily improve housing access, availability or affordability for the most vulnerable households. Highly vulnerable tenants and those in peripheral markets may be further marginalised in an increasingly formalised, professionalised and digitised PRS. Housing supply, access and affordability involve much broader challenges than tenancy law reform, now and in the future.

[21] For an interesting comment on the use (and narrow meaning) of these terms in the context of cultural change and institutional complexity in the PRS, see Hulse, Martin, James and Stone (2017), p.17.

References

Adamson, D. (2016) *Towards a National Housing Strategy,* Compass Housing Services, Hamilton, NSW.

Australian Bureau of Statistics (ABS), 2018a, *Housing Finance, Australia, July 2018*, 5609.0 at http://www.abs.gov.au/AUSSTATS/abs@.nsf/second+level+view?ReadForm&prodno=5609.0&viewtitle=Housing%20Finance,%20Australia~July%202018~Latest~07/09/2018&&tabname=Past%20Future%20Issues&prodno=5609.0&issue=July%202018&num=&view=&, accessed 17th September, 2018

Australian Bureau of Statistics (ABS), 2018b, *Housing Finance, Australia, August 2018*, 5609.0 at http://www.abs.gov.au/AUSSTATS/abs@.nsf/second+level+view?ReadForm&prodno=5609.0&viewtitle=Housing%20Finance,%20Australia~July%202018~Latest~07/09/2018&&tabname=Past%20Future%20Issues&prodno=5609.0&issue=July%202018&num=&view=&, accessed 12th October, 2018

Australian Treasury (2018) 'Housing Policy' at https://treasury.gov.au/housing-policy/, accessed 10th October, 2018

CEDA, the Committee for Economic Development Australia (2017) *Housing Australia*, Melbourne, Vic.

CHOICE and National Shelter (2017) *Unsettled: life in Australia's private rental market,* Choice, National Shelter and NATO (National Association of Tenant Organisations).

CoreLogic (2016) *Profile of the Australian Residential Property Investor,* CoreLogic Australia.

Gurran, N., S. Rowley, V. Milligan, B. Randolph, P. Phibbs, C. Gilbert, A. James, L. Troy, R. van den Nouwelant (2018) *Inquiry into increasing affordable housing supply: evidence-based principles and strategies for Australian policy and practice*, Final Report 300, AHURI, Melb.

Hulse, K., C. Martin, A. James and W. Stone (2018) *Private rental in transition: institutional change, technology and innovation in Australia,* Inquiry into the future of the private rental sector, Final Report 296, AHURI, Melb.

Hulse, K., V. Milligan and H. Easthope (2011) *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, Final Report 170, AHURI, Melb.

Hulse, K. and M. Reynolds (2018) 'Investification: financialisation of housing markets and persistence of suburban socio-economic disadvantage', *Urban Studies,* 58 (8): 1655-71.

Hulse, K., M. Reynolds and J. Yates (2014) *Changes in the supply of affordable housing in the private rental sector for low income households, 2006-11,* Final Report 235, AHURI, Melb.

Hulse, K., M. Reynolds, W. Stone and J. Yates (2015) *Supply shortages and affordability outcomes in the private rental sector: short and long-term trends*, Final Report 241, AHURI, Melb.

Hulse, K., S. Parkinson and C. Martin (2018) *Inquiry into the future of the private rental sector*, Final Inquiry Report, AHURI, Melb.

Kennedy, R., P. See and P. Sutherland (1995) 'Minimum Legislative Standards for Residential Tenancies in Australia', Commonwealth Department of Housing and Regional Development, Canberra.

Kohler, M. and A. Rossiter (2005) *Property Owners in Australia: a snapshot,* Research Discussion Paper 2005-03, Economic Research Department, Reserve Bank Australia.

Martin, C., K. Hulse and H. Pawson (2018) *The changing institutions of private rental housing: an international review,* AHURI Inquiry 'The future of the private rental sector', AHURI, Melb.

National Shelter (2010) *A Better Lease on Life – improving tenancy law.* A National Shelter report prepared by its member organisation the National Association of Tenant Organisations (NATO) and Penny Carr and Maria Tennant, Adelaide.

Paris, C., W. Randolph, and P. Weeks (1991) 'Impacts on Investment Market Changes Following Changes to Landlord and Tenant and Associated Legislation', paper for the National Housing Strategy, Canberra.

Parkinson, S., A. James and E. Liu (2018) *Navigating a changing private rental sector: opportunities and challenges for low-income renters,* AHURI Inquiry 'The future of the private rental sector', AHURI, Melb.

Pippen, D. (2009) 'Security of Tenure: tenancy law reform', *Australian Law Reform Commission (ALRC) Reform Issue*, 94: 20-23

Queensland, Department of Housing and Public Works (2017) *Queensland Housing Strategy 20172027,* http://www.hpw.qld.gov.au/housingstrategy/Documents/QldHousingStrategy.pdf, accessed 22nd August, 2018.

Seelig, T. (2007) *Residential tenancy law and rental investment: a review of claims about rental law reform and disinvestment. Report prepared for the Tenants' Union of Queensland.*

Seelig, T., A. Thompson, T. Burke, S. Pinnegar, S. McNelis and A. Morris (2009) *Understanding what motives households to become and remain investors in the private rental market,* Final Report 130, AHURI, Melb.

Tasmania, Department of Justice (2017) *The Rental Guide: a guide for property owners, property managers, tenants and tenant advocates in Tasmania,* Consumer Building and Occupational Services.

Victoria State Government, 2015-2018, *Fairer Safer Housing*, various publications, Department of Justice and Regulation, https://engage.vic.gov.au/fairersaferhousing, accessed 12th October, 2018.

Wharton, N and L.M. Cradduck (2011) 'A Comparison of Secure Tenure in Queensland and in Western Europe', *Monash University Law Review,* 37 (2): 16-46.

Wood, G. and R. Ong (2010) *Factors shaping the decision to become a landlord and retain rental investments,* Final Report 142, AHURI, Melb.

Wood, G. and R. Ong (2013) 'When and Why do Landlords Retain Property Investments?', *Urban Studies,* 50 (16): 3243-61.

Yanotti, M (2017) 'Three charts on: who is the typical investor in the Australian property market?', *The conversation,* August 1, at https://theconversation.com/three-charts-on-who-is-the-typicalinvestor-in-the-australian-property-market-81319, accessed 17th September, 2018.

Yanotti, M., M. Dungey and D. Wright (2018) 'Who? Where? What? Residential Property Investment in Australia', Discussion Paper, School of Business and Economics, University of Tasmania.

Yates, J. 1996, 'A Reassessment of the Private Rental Market', *Housing Studies*, vol. 11, no. 1.