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Making a Rental Property Home

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ABSTRACT *English-language literature on the relationship between home and dwelling has largely focused on the benefits of homeownership and (to a lesser extent) social rental in facilitating ontological security. Less consideration has been given to the experiences of private tenants. This paper draws on findings of a study on security of occupancy to discuss the ability of private renters to exercise control over their dwellings in Australia. The paper discusses the limitations of Australian legislation, within its policy, market and cultural context, in enabling private tenants to exercise control over their dwellings, and compares the Australian situation with Germany to demonstrate that alternative approaches that afford more control to private tenants are possible in rental systems dominated by private rental. The paper concludes with a call for a wider debate about the importance of home and the impact of social norms regarding the purpose of different types of tenure on housing policy and thus on the rights and well-being of tenants.*

KEY WORDS: Home, housing tenure, secure occupancy, property condition, private rental

Introduction

The concept of home has received significant attention in the international housing literature, as theorists have discussed the factors that are important to enable people to develop a sense of home in their dwellings. This paper focuses on factors influencing the ability of people living in rental housing to feel at home in their dwellings in Australia. The paper draws upon a study carried out to examine the factors influencing secure occupancy for renting households in the states of New South Wales (NSW) and Victoria in Australia, which also drew upon detailed comparative research into the rental systems of eight other developed countries—Austria, Flanders (Belgium), Germany, Ireland, the Netherlands, New Jersey (United States), Ontario (Canada) and Scotland. The concept of ‘secure occupancy’ as defined in this research refers to:

The nature of occupancy by households of residential dwellings and the extent to which households can make a home and stay there for reasonable periods of time if

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they wish to do so, provided that they meet their tenancy obligations. (Hulse *et al.*, 2011, p. 20)

Hulse & Milligan (this edition) draw upon the findings of this study to explain that interactions between market, legal, policy and cultural factors can have a strong bearing on the strengthening or weakening of security of occupancy in different contexts. The concept of security of occupancy is thus more than simply security of tenure, and recognises the importance not only of legal factors, but also of market, policy and cultural factors in influencing the extent to which people can make a home in their dwellings.

The idea for this paper was sparked by comments made by tenancy workers and advocates interviewed for this larger study. The tenancy workers and advocates spoke about the difficulties faced by many private tenants in having maintenance carried out in their properties (see also CTTT, 2009) and the fact that some private rental tenants do not pursue requests for repairs because they fear their landlords will respond with retaliatory rent increases or terminate their tenancies (Hulse *et al.*, 2011, p. 73). Similar concerns have also been raised in other jurisdictions in Australia (e.g. Milsom, 2006). This situation is indicative of the limited security of occupancy for these households, and the lack of control these tenants have over their living environments. This paper examines the legislative, market, policy and cultural context in which this situation has arisen and its implications for the ability of tenants to feel at home in their dwellings.

The paper compares the situation in Australia with the rental system of Germany. The purpose of this comparison is not to suggest that the policies and legislation in Germany should be transplanted to the Australian situation, but rather to enable a questioning of some of the taken-for-granted assumptions about the nature of renting in Australia through comparison with a different model of rental provision. Germany was chosen for comparison as a high proportion of the German population live in private rental housing, and protections for private tenants in regard to security of occupancy are strong compared with those in Australia.

The first section of the paper explores theoretical relationships between home and housing. The paper then turns to a discussion of the legislative, market and policy frameworks in place in Australia that impact on the ability of tenants to make changes to their properties, and compares these with those in place in Germany. The paper concludes with a call for a wider debate about the importance of home in housing policy. The paper argues that in order to progress this debate, further consideration must be given to the impact that cultural factors, in particular social norms regarding the purpose of different types of tenure, can have on the legal rights and well-being of tenants in different housing policy and housing market contexts and hence on the ability of private rental tenants to make a home and stay there for reasonable periods should they wish to do so.

The Rented Dwelling as Home

There is a rich and extensive academic literature on the concept of home as it relates to housing (e.g. Mallett, 2004; Parsell, 2012; Saunders & Williams, 1988; Somerville, 1997). Although it has been widely recognised that people's understandings of home need not necessarily be associated with a particular dwelling (Easthope, 2004, p. 134), 'home' continues to provide a useful conceptual tool through which to consider people's understandings of, and emotional connections to, their dwellings. As a result, a focus on

the relationship between housing and home has a strong tradition in the research literature (e.g. Clapham, 2010; Giuliani, 1991).

Recently, Clapham (2011) has argued that the academic literature on home as it relates to a particular dwelling has largely taken one of two different tracks. One body of literature has focused on the meaning of the home where the built form of the property (the dwelling) has relevance only in terms of the meaning attached to it by those who live in it, measured through language or discourse. The other body of literature has focused on the use of the house as a physical object. Clapham (2011, p. 360) argues that what is needed is 'a unifying framework that can incorporate both use and meaning elements of home'.

These arguments reflect a long-standing debate in geography on the embodied nature of human action (Clapham, 2011, p. 363). Indeed, Easthope (2004, p. 136) has argued that the long acknowledged link between one's dwelling place and one's well-being (and identity) among housing researchers can be explained through the concept of 'place'. The rich literature on the concept of place, which gained prominence in the discipline of geography in the 1970s, provides a theoretical basis for addressing the relationship that people have with the external world (Easthope, 2004, p. 129). Places are understood to result from peoples' interpretation, understanding and experience of the physical environment (e.g. Gieryn, 2000; Massey, 1995; Massey & Jess, 1995). Thus, the concept of place provides an alternative position to Cartesian thought, which separates the mind from the body, enabling an examination of the relationship between the mind and the external world through the body. The affective bonds that people develop with different places are an important component of their identity formation as identities are created through the body's interaction with the outside world. As explained by Casey (2001, p. 406), personal identity is no longer seen as 'a matter of sheer self-consciousness but now involves intrinsically an awareness of one's place'.

If we understand our home places through our interactions with the physical world, then it becomes clear that the dwelling—the environment where we spend a large proportion of our time—can have a significant impact on our identity and well-being. In many cases, this is expressed in terms of the dwelling becoming a particularly significant type of place—a 'home' place.

The connection between dwelling condition and identity has been recognised in a number of empirical studies. For example, a study of the effects of a modernisation programme in social housing properties in England found that:

There has been a clear step-change in the way residents feel about their homes, which could be described as a transition from viewing their property simply as a house or to somewhere merely to exist to a place of safety, comfort and relaxation or 'a home'. These sentiments resonate with the concept of the home as a safe haven in which individuals can be themselves and from which they can derive an enhanced sense of emotional security. (Walshaw, 2011, p. 273)

A study on home modifications in Australia found:

Home modifications positively affect the meaning of home by restoring or strengthening home as a place of security, safety, and comfort, by decreasing the demand of the environment and supporting the continuation of habitual personal

routines or rituals through which people are linked to their home and by which identity, self-esteem, and control are reinforced. (Tanner *et al.*, 2008, p. 207)

Other research has found that not only does the condition of the property affect both the use and meaning elements of home, but so too does the ability of tenants to make changes to the dwelling. For example, in an anthropological study of council tenants in North London, Miller (1988) found that some residents combated feelings of stigmatisation (associated with being council tenants) by decorating and remodelling their kitchens, thereby introducing 'commodities [that] were viewed as having much greater potential for identification than items provided by the state' (Miller, 1988, p. 366). However, Miller's (1988) study also demonstrated that the perspectives of tenants about their status as council tenants, and their desires and abilities to make changes to their kitchens differed significantly between groups, especially divided along lines of gender and race. Thus, tenancy is by no means the only factor influencing the desires, and abilities of people to make physical changes to their dwellings.

Indeed, while the physical structure of a dwelling can influence the well-being of its inhabitants, it has also been recognised that 'the physical structure of a house is not necessarily a good guide to the happiness it brings,' as 'individuals may differ in the precise attributes of a house that affect their happiness depending on their identity and lifestyle' (Clapham, 2010, pp. 256 and 257). The key question, according to Clapham (2010, p. 257) is 'how social practices (including the working of market systems and government policy) enable different households to frame a valued identity and lifestyle?'

In considering whether households live in a situation that facilitates the creation of a valued identity and lifestyle, a key concept is that of 'ontological security'. Ontological security has been defined by Giddens (1991, p. 92) as:

The confidence that most human beings have in the continuity of their self identity and the constancy of their social and material environments. Basic to a feeling of ontological security is a sense of the reliability of persons and things.

The term 'ontological security' has been widely discussed by housing researchers, with a person's home being considered as a place from which they can derive a feeling of ontological security (e.g. Dupuis & Thorns, 1998; Saunders, 1990), with resultant benefits for well-being. In the late 1980s, Saunders (1989) argued that home ownership provides the basis for a stronger sense of ontological security than rental housing. This assertion has since been hotly debated in the housing literature (Hiscock *et al.*, 2001).

Also important in regard to the framing of a valued identity and lifestyle is the ability of individuals to influence the quality and attributes of their dwellings. Indeed, many studies in the field of environmental psychology have pointed to the contribution of personalising physical space towards psychological well-being (e.g. Brunia & Hartjes-Gosselink, 2009). However, the importance of dwelling quality for well-being extends beyond the personalisation of physical space. Also important is the ability to feel in control of one's living environment (Clapham, 2010). Indeed, Saunders (1990, p. 361) has argued that the home is where people 'feel in control of the environment, free from surveillance, free to be themselves and at ease'. Similarly, the socio-psychological aspects of the home have been identified as a haven, providing social status, and as a site of autonomy, where autonomy is understood as 'freedom to do what one wants and to

express oneself and the freedom from any need to have one's actions approved by others and from any need to conform to others' expectations of oneself" (Kearns *et al.*, 2000, p. 389). Certainly, the importance of being in control of one's situation in generating feelings of well-being is well recognised, with some psychologists arguing that the feeling of being in control is a universal motivation and a key element of self-esteem (Clapham, 2010, p. 256). Parsell (2012, p. 160) explains:

Control over a space is important to people's understandings of what it means to be at home, because this control over a space also means the ability to exercise a degree of autonomy over their lives.

Ruonavaara (2012) explains that dwellings can be understood as three things simultaneously. First, they are property with a monetary value. Second, they are consumption goods used to satisfy needs. Third, they are homes to which people can feel an attachment. In regard to the dwelling as home, Ruonavaara (2012, p. 186) states:

Residents actively *make* dwellings homes by redesigning, decorating, and changing them according to their values and wishes. As different housing tenures invest residents with different degrees of power over their living space, tenure may also be relevant for homemaking. If one's housing tenure gives little say over the living space, it may not be easy to feel at home in it.

In Anglophone countries, much of the literature on the relationship between the home and the dwelling has focused on the benefits of home ownership in facilitating both ontological security and control over one's dwelling, with positive outcomes for health and well-being (reviewed in Bridge *et al.*, 2003; Dockery *et al.*, 2010; Hulse & Saugeres, 2008). As Blunt & Dowling (2006, p. 93) note:

Tenure divisions between owning and renting also have significant cultural purchase, especially in terms of ownership. Ownership is most closely identified with dominant notions of home '... Those buying a house are presumed to be properly capable of making home, of creating a place that is secure, comfortable and welcoming. It is ownership that makes 'real and possible the control, the security, the status, the family life that people seek through their houses'. (Rakoff, 1977, p. 94)

Some important research has also focused on the ability to make a home in social rental properties (e.g. Kearns *et al.*, 2000; Mee, 2007). However, 'questions are rarely asked about how households make a home in [private] rental accommodation' (Hulse *et al.*, 2011, p. 154, *author's brackets*). This is reflected in the fact that 'in policy and research, as in daily life, we talk about "buying a home" and "renting housing"' (Hulse *et al.*, 2011, p. 141). This raises questions about whether a lack of control over one's dwelling is inherent to private renting, or is 'a reflection of prevailing cultural norms ... about renting being an inferior, and inherently transitory, form of occupancy' (Hulse *et al.*, 2011, p. 25).

In order to address this question, it is necessary to consider the nature of tenure itself. Kemp (1987, p. 4) defines tenures as follows:

Tenures should ... be viewed as bundles, or configurations, of property rights and obligations, the precise mix of which is liable to some important variations, albeit within limits. These configurations are not immutable but vary over time and space.

Ruonavaara (2012) explains that these limits are set by the ‘core rights and duties’ associated with different tenures—that is, those rights and duties that are necessary by way of definition of the tenure. For example, the right to disposition (sale) is unique to ownership (see also Saunders, 1990). However, there are also ‘contingent rights’ associated with different tenures, such as the rights and responsibilities for the management of the property. The right of disposition is unique to ownership (a core right), while rights of use and control can be understood as contingent rights (Ruonavaara, 2012).

A good example that demonstrates that the right to control is a contingent right is Ngai-Ming & Forrest’s (2010, pp. 703 and 704) consideration of the different property rights afforded to different types of property owners. They explain, while ‘the idea of home ownership is closely associated with notions of privacy, freedom, independence and autonomy’, especially in Western contexts, in reality ‘many home owners are in circumstances which require collective agreement and collective action in relation to repairs, maintenance and management.’ Examples include multi-unit and collective housing owners. Indeed, significant differences between different types of homeowners have been recognised in terms of their accommodation, legal rights, material interest, security and social class (Murie, 1991). Thus, the right of control of property is not absolute or ‘natural’, but rather reflects social norms. The implication is that the right of the property owner (landlord) to maintain control over what happens in a property is not intrinsic to property ownership *per se*, but rather reflects the laws, customs and mores of society that influence the policies and legislation that in turn shape the rights of tenants.

Rights of use can be understood as entitlements to use the dwelling and security of tenure, while rights of control include ‘the power to establish rules over how the dwelling is used and the power to make changes to the dwelling’ (Ruonavaara, 2012, p. 188). This paper is concerned with one group of contingent rights—the right to make changes to the dwelling, and considers this within the context of the security of occupancy afforded to tenants.

A comment made by a tenancy advocate interviewed for the project on which this paper is based speaks to these contingent rights. In explaining why they thought tenants had difficulty in having repairs and maintenance carried out in their properties (right to make changes), and why there was a fear of retaliatory rent increases or evictions in Australia (security of occupancy), they said:

A lot of this is a cultural thing. The [real estate] agent’s approach is that the unit is the landlord’s place. The whole culture in Australia is geared to ownership and this defined how we look at rental property and so it is not viewed sufficiently as someone’s home. (Victorian interviewee in Hulse *et al.*, 2011, p. 72)

Case Studies

This paper draws upon information collected as part of a research project on secure occupancy in rental housing (Hulse *et al.*, 2011). The research included an analysis of the provisions for secure occupancy around Australia. This included a review of the market

context, legislation and policy relating to rental housing based on a review of documents including reports and legislation, briefing papers prepared by parliamentary library research services, fact sheets prepared by tenant and landlord organisations and state housing and consumer affairs departments. It also included a more in-depth case-study analysis of the states of NSW and Victoria, including 15 semi-structured interviews with 28 participants (some interviews were held with more than one participant).

Interviewees were selected on the basis of their knowledge of, and expertise in, various aspects of secure occupancy in rental housing drawn from work with consumer organisations such as tenants' unions and resident groups, industry groups such as real estate institutes and property owners associations, government organisations, or landlord/tenant mediation and dispute resolution. The research also included a comparative analysis with the rental systems in eight jurisdictions in North America and Europe. International researchers provided expert reports in the rental systems of these comparative jurisdictions.

The interest in Australia in secure occupancy as a public policy issue has arisen as a result of a recognition of the increasing reliance placed on private renting as the main housing option for lower-income households because of the scarcity of social housing relative to demand (Hulse *et al.*, 2011, p. 161). The demand for social housing relative to supply is so great that access to social housing in Australia—especially in the major cities—is increasingly limited to housing lower-income households with urgent and/or complex needs. Lower-income households (with incomes in the lowest 40 per cent of all household incomes) comprise about 45 per cent of all households in the rental sector and 6 in 10 lower-income households—over one million households—rent from private landlords (Hulse *et al.*, 2011, p. 180).

Legislative Provisions

The forms of legislation that have a direct bearing on secure occupancy for households who rent their housing include legislation pertaining to discrimination, consumer protection, privacy, domestic violence, subsidised housing, planning and building, taxation and residential tenancies and landlord–tenant relations (Hulse *et al.*, 2011, pp. 104 and 105). This section of the paper focuses only on residential tenancies and landlord–tenant relations. The focus is on legislation that affects security of occupancy (residential tenancies) and the power tenants have to make changes to a dwelling (landlord–tenant relations).

Forms and terms of leases. In Australia, private rental tenancies are for a fixed term. Most renting households occupy their properties in the first instance on a 6- or 12-month fixed-term lease, followed by a periodic (month by month) tenancy (Hulse *et al.*, 2011, p. 181). Interestingly, this practice appears to reflect prevailing social and institutional norms rather than limits imposed by the legislation as the law in different states and territories does not prohibit fixed-term tenancies of longer duration. For example in Victoria, there is a limit of 5 years for fixed-term tenancies in private rental properties (Hulse *et al.*, 2011, p. 46). In comparison, in Germany, standard leases are for an indefinite period in most instances. Exceptions include properties that are holiday homes, or scheduled for demolition (Hulse *et al.*, 2011, p. 126, 129).

Termination grounds and procedures. In Australia, households can terminate their periodic tenancies with quite short notice periods if they choose to, as can their landlords. Landlords can terminate for a variety of stated reasons, including the tenant's breach of their tenancy agreement (such as rental arrears) or a requirement by the landlord for the property (e.g. for their own personal use or for sale). Termination without grounds is also allowed, provided a longer notice to vacate is provided, ranging from 42 days in the Northern Territory to 26 weeks in the Australian Capital Territory (Hulse *et al.*, 2011, p. 132).

While the ability to terminate a lease easily may be beneficial for some tenants, the ability of landlords to terminate tenancies on short notice if they want the property back, or to terminate with no grounds, can have a significant impact on secure occupancy. Even if termination does not *actually* happen, the fact that it *can* happen so easily can have an impact, as noted by an interviewee in our Australian case studies:

Security of occupancy is not necessarily about losing tenancies. There is also an idea in the back of all private renters' minds that they can be given two months' notice and (they) will have to move. So ... it's a state of mind. (NSW interviewee in Hulse *et al.*, 2011, p. 68)

In our Australian case studies, several interviewees (not only those working with tenant organisations) argued that no-grounds termination in particular has become a *de facto* power of landlords over tenants and that this provision can be used as a retaliatory eviction measure to remove tenants that are trying to exercise their rights, including their right to have maintenance and repairs undertaken in their properties. Furthermore, while tenants have the right to appeal evictions that they consider retaliatory, the onus falls on the tenant to prove their case:

Retaliatory eviction is increasing as supply shortages help promote their [*sic*] use. (NSW interviewee in Hulse *et al.*, 2011, p. 68)

In comparison, in Germany, an evidenced reason must be given by the landlord for the termination of a lease. The reasons that can be given for terminating a tenancy are limited. In many cases, landlords are also required to re-house tenants whose tenancy has been terminated, particularly if the termination was beyond the tenant's control (Hulse *et al.*, 2011, p. 128, 130). Of course, tenants in Germany may also be put under pressure by their landlords for various reasons, making it is difficult for them to stay in their properties in practice. However, the existence of no-grounds termination arguably makes insecurity of tenure a more acute threat for Australian private rental tenants.

Allowable rent increases. In Australia, private sector rents are set at market levels both at entry and during a tenancy, and typically two rental increases are allowed per year, although this varies across jurisdictions, and there is no limit to rent increases in NSW (Hulse *et al.*, 2011, p. 122).

In Germany, private market rents also apply, but rent increases are more heavily regulated. In unsubsidised private dwellings, rent increases in Germany are typically allowed every 12–15 months, and must be based in the rents of three similar dwellings or a database of local reference rents and rents may not increase more than 20 per cent over

3 years (Hulse *et al.*, 2011, p. 215). In the subsidised sector in Germany, including those dwellings that have been built with the aid of ‘bricks and mortar’ subsidies, private landlords negotiate ‘cost-price’ rent levels and allocation rules with the municipality in return for subsidies. Usually, rents are based on the cost of construction, the subsidy scheme and other running costs, including a ‘normal profit’ (Haffner, 2010).

Housing condition, repairs and improvements. In Australia, the quality of rental properties is considered good overall, but there are problems in some of the lower-rent private rental properties (VCOSS, 2010). Landlords in Australia are required to provide and maintain rental properties in a reasonable state of repair, and in all jurisdictions, provisions are made for tenants to carry out emergency maintenance. Permitted limits for emergency maintenance vary in different jurisdictions (e.g. 2 weeks rent, \$1000, ‘reasonable costs’; Hulse *et al.*, 2011). However, beyond emergency repairs, there are significant limitations on the ability of tenants to have maintenance undertaken once they are in a property. Indeed, concern was raised in the case studies about the challenges faced by tenants on lower incomes who needed or wanted repairs to be undertaken, but could not afford a rent increase, as landlords will often increase the rent when asked to undertake maintenance or improvements:

Even for the smallest renovation the landlord wants to recoup the cost. (Victorian interviewee in Hulse *et al.*, 2011, p. 73)

Tenants also have little control over improvements they may wish to make to their properties by themselves. In NSW and Victoria, tenants in the private rental sector can only make alterations, or add or remove a fixture at the sole discretion of the landlord. For example, in NSW, a tenant needs the landlord’s written permission to make minor changes to their property at their own cost, but landlords are not able to ‘unreasonably’ refuse their request. However, landlords can refuse the tenant permission to make changes to the property that are not minor, such as painting the property, making structural changes or doing something that would be difficult to remove, whether or not it is reasonable to do so (NSW Fair Trading, 2010; NSW Residential Tenancies Act, 2010, Part 3, Division 6, Section 66) (see also Hulse *et al.*, 2011, p. 72).

In Germany, the quality of rental housing is considered good overall, particularly in the former West Germany (Hulse *et al.*, 2011, p. 143). Where there are problems in the property, such as dampness, noise or malfunctioning appliances and the tenant reports this to the landlord, if the landlord does not act on these problems then the tenant is allowed to pay less rent, provided they can prove both that there are deficiencies, and that they have been reported (Deutscher Mieterbund, 2010a). Tenants can also leave a dwelling without handing in notice if the dwelling is unfit for occupation (Haffner, 2010). The onus then falls on the landlord to either prove that there is no large deficiency or that the tenant knew about it before entering into the lease (Haffner, 2010).

Where a dwelling is modernised, the landlord can increase the rent by 11 per cent, provided utility increases and environmental savings (e.g. costs of electricity) eventuate. If the landlord does not do any modernisation, then the tenant can modernise the property themselves. They first have to draw up a modernisation agreement with the landlord, which outlines how the costs of depreciated investments can be recouped by the tenant upon moving out (Hulse *et al.*, 2011, p. 149). Hence there are different ways of trading rent

levels and maintenance tasks between tenants and landlords in Germany (Hulse *et al.*, 2011, p. 149). This differs quite significantly to the Australian context, where such tasks are always the responsibility of landlords, and tenants are often unable to take responsibility for such tasks.

Interestingly, in Germany, tenants pay a 'second rent' which includes costs for street cleaning, waste collection, water and sewerage, land taxes, insurance and maintenance. In Australia, these costs are usually paid by the landlord. This significant difference in responsibility for the costs of maintaining a property suggests that tenants in Germany are expected to have a longer-term stake in appropriately servicing and maintaining their rental property than those in Australia.

However, while it appears that German tenants have a greater ability to effect maintenance and upgrades to their rental properties than Australian tenants, personalisation of rental dwellings in Germany, as in Australia, has caused some contention. It was only relatively recently in Germany that a court case found that making holes in the wall to hang pictures is considered normal usage of a dwelling and does not require the permission of a landlord (Deutscher Mieterbund, 2010b; Haffner, 2010). Hence even in a country that affords significant rights to private tenants regarding security of occupancy and the right to undertake maintenance and repairs, the right to personalise a dwelling remains contested.

Summary. In summary, the German rental system offers most tenants unlimited tenure subject to proven breaches of a lease agreement, disallowing no-grounds termination and adopting strong consumer protection measures such as long notice periods and requirements for landlords to locate alternate housing for tenants. The amount and frequency of rent increases are also strictly controlled. In comparison, in Australia, most tenants rent their housing on short-term and periodic leases, and can have their tenancies terminated by landlords with relatively short notice periods, and with no grounds. Frequent rent increases are also allowed subject to market conditions.

In Germany, private tenants have a greater degree of both responsibility for, and control over, repairs and maintenance undertaken in their dwellings than tenants in Australia. In Australia, tenants have little control over changes to their dwelling, and the extent to which maintenance and improvements are carried out largely depends on the relationship between the individual tenant and their landlord (or their landlord's agent). Although landlords are required to keep properties in a good state of repair, there is evidence that some tenants do not report maintenance issues for fear of retaliatory rent increases or evictions.

On the basis of this legislative review, it appears that private rental tenants in Germany are afforded significantly more security in their tenancies than those in Australia. They are also afforded more rights in regard to making changes to the dwelling, but there are limits to these rights, with personalisation of private rental dwellings also limited in Germany.

The Market and Policy Context

Security of occupancy, however, is more than security of tenure, and it is important to consider the different market, policy and cultural contexts in which the different

legislation in Australia and Germany was written. This section of the paper concentrates on the market and policy contexts of the two countries.

Of note, the size and structure of the rental market in Australia and Germany differs (see [Table 1](#)). Germany has a large proportion of households in rental housing (60 per cent) compared with Australia (30 per cent). However, in both Germany and Australia, the private rental system dominates the rental market.

In Australia, private rental dwellings are almost entirely owned by small-scale private landlords. In Germany, many households also rent from small-scale private landlords. However, many others rent from larger landlords that are more likely to own properties that were purpose built for rental, and are more likely to retain those properties for rental purposes in the longer term (Hulse *et al.*, 2011, p. 92). This has significant implications as small-scale investment is often associated with individual dwellings moving into and out of the rental sector, as investors' needs for the dwelling change (Hulse *et al.*, 2011, p. 93). For example, a study by Wood & Ong (2010) on factors shaping the decisions of landlords in Australia found that:

One in four investors exit [sell their property] within a year. For the tenant that places a high value on a secure residential address, there appears to be a worryingly high probability (25 per cent) that they will need to search for alternative housing opportunities within 12 months.

As one interviewee explained:

In Australia, the significant number of 'mum and dad' landlords militates against secure occupancy. For example, compared to professional investors who are holding a property portfolio for a long-term, mum and dad investors require flexibility and want vacant possession when selling a property (to sell into the first home buyer market), rather than allowing the tenant to continue on with the property after it has been sold to a new owner. [This is] underpinned by the rules for receipt of the First Home Owners Grant: buyers getting this grant are required to live in the property for six months. (NSW interviewee in Hulse *et al.*, 2011, p. 66)

While there are differences in the housing markets of the two countries, there are also many similarities. In Germany, the majority of households rent and 93 per cent of them rent privately owned housing, much of which is owned by small-scale private investors (see [Table 2](#)). Germany also has an income and corporate tax regime with a depreciation allowance that is favourable to rental investments (Haffner, 2010), just as Australia offers

Table 1. Type and scale of ownership of rental housing by jurisdiction as a percentage of all occupied housing

	Percentage of rented housing	Ownership in the private rental sector (%)	Ownership in the social housing sector (%)
Australia	30	25	6
Germany	60	53	7

Note: Figures are rounded to the nearest percentage point.

Source: Hulse *et al.* (2011, p. 91).

Table 2. Type and scale of ownership of private rental housing by jurisdiction as a percentage of all occupied housing

	From small scale private landlords	From private housing companies	From housing cooperatives	From other private landlords
Australia	25%	—	—	—
Germany	37%	10%	5%	1%

Note: Figures are rounded to the nearest percentage point.

Source: Hulse *et al.* (2011, p. 91).

partial capital gains tax exemptions and allowances for deduction of losses against taxable income (negative gearing) for private rental properties. Yet despite these similarities, the German rental sector is able to afford more security of occupancy to tenants, as well as more control over repairs, maintenance and improvements to their dwellings than the Australian rental sector (Hulse *et al.*, 2011, p. 141).

These differences may be partly explained by the different housing policy approaches in the two countries. In Germany, the private sector drives the entire rental sector in terms of the application of policy (Hulse *et al.*, 2011, p. 187). Investment in new rental property construction and investment in existing rental stock have received advantageous tax treatment which has been posited as one of the reasons for the high proportion of rented property in the country, along with rent regulations that enable adequate profits to flow to landlords, and acceptance of private rental housing among tenants as a result of strong residential tenancies law (Kirchner, 2007, p. 96).

In comparison, in Australia, policy relating to private rental is primarily designed to influence the private rental market by increasing effective demand through means-tested, government-provided rent assistance and encouraging investment through tax incentives for investor owners (Hulse *et al.*, 2011, p. 181). With the exception of a recent initiative to encourage the supply of affordable housing (the 2008 National Rental Affordability Scheme), no outcomes are required in return for government subsidies and tax concessions in the private sector in terms of security of occupancy or rent levels (Hulse *et al.*, 2011, p. 181).

Despite this, there are still problems with housing supply in Australia and access to rental housing is difficult in many areas, especially for low-income households, who have become increasingly reliant on the private rental sector as a result of the concurrent reduction in social housing provision, with social housing now making up only a small percentage of all occupied housing (Table 3). The result is that increasing numbers of lower-income households must compete with higher-income households for private rental housing (Wulff *et al.*, 2009, p. 2011).

The Australian rental system is dominated by a lightly regulated private rental sector with limited provisions for secure occupancy that is structurally separated from a small and strongly regulated social housing sector that historically has provided for much greater security of occupancy (Hulse *et al.*, 2011, pp. 182 and 183), although this situation is changing (Fitzpatrick and Pawson, this volume).

Table 3. Type and scale of ownership of social rental housing by jurisdiction as a percentage of all occupied housing

	From state housing authorities, government	From community/affordable housing providers	Municipal housing companies
Australia	5%	1%	–
Germany	<2%	–	5%

Note: Figures are rounded to the nearest percentage point. Since the abolition of non-profit tax status for landlords in the former West Germany in 1990, Germany officially only has private landlords. Even municipal housing companies are private companies with shares owned by municipalities (Haffner, 2010). However, local and other levels of government and municipal housing companies still own some rental housing, reflected in these figures.

Source: Hulse *et al.* (2011, p. 91).

Discussion

Despite the similarities between the two countries in terms of rental ownership, the rental system in Germany provides tenants with more security of occupancy, and more opportunities for (and responsibilities regarding) making adaptations to their home, than the Australian rental system does for Australian tenants. Given the importance of security of occupancy, and the right to make changes to the dwelling for the ability of tenants to make a dwelling a home, this disparity is significant.

The disparity appears to be at least partly explained by the different policy approaches taken in the two countries to the rental sector. The differences in these policies relate to the respective approach taken to the contingent rights associated with private rental when compared with ownership. In Australia, owners (landlords) have a greater share of contingent rights of use and control than tenants, while, in Germany, legislation places more of the contingent rights of use and control in the hands of tenants.

These differences might be explained if we consider tenancies to be, at least in part, socially constructed. In other words, the contingent rights associated with different tenures can be seen to be ‘produced and reproduced by social actions and understandings’ and ‘follow from historically and geographically contingent institutional, economic and political arrangements as well as the cultural and ideological perceptions concerning housing’ (Ruonavaara, 2012, p. 186).

In Germany, policies have been created on the basis of the notion of tenure neutrality. This is reflected in the fact that any occupier, whether an owner-occupier or a tenant, can apply for housing allowances, while any housing investor, whether an owner-occupier or a landlord, can apply for bricks and mortar subsidies in the form of low-cost loans or interest subsidies (Haffner, 2010). Rental in Germany is thus seen as a long-term residential option and efforts are made at a government level to ensure that neither rental nor ownership is given normative priority. Indeed, the rental sector in Germany has been recognised for providing security of tenure comparable to the owner-occupied sector in other countries (Behring & Helbrecht, 2002; Tegeder & Helbrecht, 2007 in Haffner, 2010).

In comparison, private rental in Australia has been understood as a short-term option for households who (it is expected) will eventually move into home-ownership. This normative preference for homeownership is reflected in government policies assisting home-ownership among Australian residents, such as first home owner grants and taxation

benefits, which are highly valued by Australian residents (Beer & Faulkner, 2009, p. 11). A similar 'normalising discourse of owner occupation' has also been observed in the British context (Gurney, 1999), where owning one's own home is seen as the 'proper' thing to do, and a reflection of having achieved a desirable social status.

As a result, in Australia, the private rental market is structured around easy access and exit options for both investors and tenants. The convention of selling dwellings with vacant possession is one example of the former, and short notice periods provide an example of the latter (Hulse *et al.*, 2011). This system can assist investors in managing their financial risks and returns and assist tenants to move easily. However, the policy focus on promoting investment in the private rental sector, without requiring anything in return from investors in terms of outcomes for renters, has resulted in a system that prioritises the needs of property owners over those of renters.

In parallel, social rental, managed under a separate policy regime, has been seen as a long-term tenure choice for people on low-incomes in Australia. However, the capacity of the social rental sector has been significantly reduced. As a result, many low- and medium-income households are living in private rental in Australia long term. In fact, one-third of private tenants in Australia are long-term renters, although not necessarily in the same dwelling (Hulse *et al.*, 2011, p. 182). As such, there is a disjuncture between the societal assumptions influencing government policies and legislation regarding rental, and the lived reality of many Australians. The housing policies and legislation in place at the time of writing do not reflect this reality in terms of providing secure occupancy, or the ability of tenants to control their living environments.

Despite the strong promotion of investment in the private rental market, there is still an under-supply of affordable rental properties in Australia (National Housing Supply Council, 2011). Coupled with the reduction in provision of social rental dwellings, this constrained supply compounds problems of insecurity of tenure for private rental tenants, especially those on lower-incomes, who have to compete for rental dwellings. As a result, tenants are in a poor market position because if they have to leave a rental property, it can be very difficult to find somewhere else to rent (Hulse *et al.*, 2011, p. 182). The fear of losing a rental property, once obtained, can result in tenants not choosing to exercise those rights they do have, such as the right to ask for essential repairs to be undertaken in their property, for fear of retaliatory rent increases or evictions, as those actions are not prohibited under existing tenancies legislation.

While the challenges facing renters in regard to their ability to feel at home in their rental properties are affected by the nature of the housing market, and in particular the undersupply of rental dwellings (especially affordable rental dwellings), they are further exacerbated by residential tenancies legislation and policy settings that prioritise the needs of owners to mobilise their assets over the needs of tenants for secure occupancy. Reporting on a comparative analysis of nine countries, Hulse and Milligan (this volume) indicate that this was the case regardless of ownership patterns, investment scale or rental market segmentation:

Regardless of other factors, Germany, the Netherlands and Austria indicated cultural norms that supported security for tenants whilst Anglophone countries and Flanders manifested cultural norms that supported security for tenants in social housing but offered landlord flexibility in the private rental system.

Current Concerns and Considerations

The private rental systems in both Australia and Germany have experienced divergent changes in recent years in terms of the proportion of the housing market they compose. The percentage of households who rent has declined in Germany. This decrease can be explained by an increase in home ownership due to increasing numbers of people on higher incomes choosing to purchase a property and low interest rates that allowed more households to buy (Hulse *et al.*, 2011, p. 83).

In comparison, Australia has seen an increase in people renting private rental properties since 1981 (Hulse *et al.*, 2012, p. 11). Hulse *et al.* (2012, pp. 13 and 14) explain that three groups have had a particular impact on the increasing demand for private rental housing in Australia—lower-income households, permanent and temporary migrants and international students.

Despite differences in the size and growth of the private rental sector, both Australia and Germany have seen an increasing proportion of lower income and vulnerable households renting in the private sector in recent years. However, in Germany, longstanding laws are in place that afford strong formal rights to secure tenancy for all tenants, and rents across most of the rental sector are regulated. This has meant that tenants are relatively well protected and have good access to affordable and appropriate rental housing when compared with Australian private rental tenants (Hulse *et al.*, 2011, p. 160).

This paper has argued that an important reason for this disparity between the two countries has been the influence of societal norms around the value and role of rental as opposed to home ownership in Australia and resulting assumptions about the nature of (private) rental as a short-term housing option, which have influenced the creation of housing policies and legislation in Australia. In comparison, in Germany, rental has been understood as a long-term housing option, and this has been reflected in policies and legislation that afford a greater degree of secure occupancy and provide tenants with greater control over their dwellings in both private and social rental.

However, there has been recent discussion in Germany about introducing legislation and policy changes that would see a reduction in the power that tenants hold in comparison with property owners. For example, at the time of writing, a range of legislative amendments are currently under discussion in Germany that would make it easier for landlords to deal with tenancy issues, such as having shorter notice periods for eviction (Hulse *et al.*, 2011, p. 162). According to Haffner (2010), the proposed changes are aimed at adjusting the balance between the economic interests of landlords and the needs and rights of tenants in favour of landlords.

Conclusion

Clapham (2010) argues that housing policies need to become more concerned with the meaning and individual experience of housing. This paper has argued that the ability of tenants to personalise their rental property and make it a home is affected by their security of occupancy and their power to make changes to their dwelling. In Australia, insufficient attention has been given to the impact of a lack of control over one's dwelling on the well-being of renters among legislators and policy makers.

The challenges faced by Australian private rental tenants as a result of limited security of occupancy and limited opportunities for making changes to their dwellings—manifest

in the most extreme cases in retaliatory rent increases and evictions in response to requests for repairs—are not inevitable outcomes of the private rental system. This is evidenced by the fact that private rental tenants in Germany—a country whose housing market is dominated by private rental housing—have much more control over their occupancy and many more opportunities for effecting changes on their properties than Australian tenants. The rights to use and control of properties are contingent rights, the nature of which is influenced by societal norms about the appropriate role of different tenures within the housing system.

The solution to the problems faced by private rental tenants in Australia is not simply to problematise those tenants as a group who need additional support. According to Clapham (2010), the adoption of such discourses of status in housing policy can have a significant impact on people's identity, if the negative stigma associated with their particular tenure impacts on their own identities. Instead, what is needed is a broader societal shift regarding the nature and purpose of rental housing in Australia. The *Secure Occupancy in Rental Housing* report (Hulse *et al.*, 2011, pp. 193 and 194) identified three important areas that require further discussion in Australia to support such a shift:

- (1) An open and honest debate about the fact that long-term renting is a reality for increasing numbers of lower-income households, and the consequences in regard to health and well-being, family functioning, social participation and economic engagement of these households if there is no change to current policy and legal settings.
- (2) A discussion of ways of enabling further investment in, and management of, rental housing as a long-term investment that can generate reliable revenue for investors and lower management costs associated with turnover, vacancies and re-letting.
- (3) Thinking through some of the consequences of rental housing as a home environment for almost a third of Australian households, including promotion of good practice in measures that enable people who rent to live their lives and make a home—including effective repairs and making home improvements more readily when needed.

This paper has focused on the impact of societal norms around renting on legislation and policy relating to rental housing within particular market contexts, and the subsequent impact on the ability of renters to make a home. The demonstrated shortcomings of the Australian private rental system and recent proposed changes in Germany aimed at reducing the control tenants have over their properties suggests that there is an urgent need for a wider debate about the importance of home in housing policy that takes into account the importance for residents of having both security of occupancy and the ability to make changes to their dwellings. Hulse and Milligan's conceptualisation of security of occupancy (this volume) provides a useful tool in this regard. In order to progress this wider debate, further consideration needs to be given to the impact that cultural factors—particularly social norms regarding the purpose of different types of tenure—can have on the ability of tenants to make a home and stay there for reasonable periods in different legislative, housing policy and housing market contexts.

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