

Establishing a National Rental Regulation System for Australia:

Making landlord tax concessions work harder for low-income tenant social outcomes

Policy Discussion Paper

September 2024

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Suggested citation:

Dodson, J & Davies, L. (2024) *Establishing a National Rental Regulation System for Australia: Making landlord tax concessions work harder for low-income tenant social outcomes*; Policy Discussion Paper, Centre for Urban Research; Melbourne, RMIT University.

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This paper was prepared with the support of the RMIT Urban Futures Enabling Impact Platform.

The authors acknowledge the valuable comments on the draft report provided by David Hayward, Hal Pawson, David Kelly, Gavin Wood, Chris Martin and Mike Berry.

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Glossary

- AHBA – Australian Housing Bond Aggregator
- ATO – Australian Taxation Office
- CGT – Capital gains tax
- CHO – Community Housing Organisations
- CRA – Commonwealth Rent Assistance
- DHA – Defence Housing Australia
- DSS – Department of Social Security
- FRRR – *Freeze on Rent and Rate Increases Bill 2023*
- GFC – Global Financial Crisis
- HAFF – Housing Affordability Future Fund
- NAHA – National Affordable Housing Agreement
- NASSH – National Agreement on Social Housing and Homelessness
- NG – Negative gearing
- NRAS – National Rental Affordability Scheme
- NRTL – National Rental Tenancy Lease
- NRRS – National Rental Regulation System
- NRTS – National Rental Tenancy Standards
- NRTP – National Rental Tenancy Platform

1 Executive Summary

This policy discussion paper argues that the Commonwealth is underutilising its taxation powers in relation to the welfare of rental housing tenants. This is because of opaque and unaccountable tax concessions to private residential rental investor-landlords.

The paper sets out the case for a national reform of rental tenancy subsidies and regulation that links landlord access to negative gearing and capital gains discounts to improved dwelling quality and tenancy conditions.

Combined, negative gearing, the capital gains tax discount and Commonwealth Rent Assistance comprise more than \$10 billion in annual subsidy to the private rental sector.

The negative gearing and 50 per cent capital gains tax exemption available to investor-landlords for provision of private residential rental dwellings is inefficient in terms of targeting to the most vulnerable tenants and suffers from serious transparency and accountability deficits.

The provision of Commonwealth Rent Assistance (CRA) is associated with improved affordability for recipients but there is little to no transparency about dwelling quality or tenancy conditions for the highly vulnerable tenant groups receiving the assistance. There is no targeting of CRA-supported tenancies to dwellings receiving negative gearing and capital gains tax discounts.

To improve the social performance of negative gearing and capital gains tax this paper proposes the establishment a National Rental Regulation System (NRRS) comprising of the following elements:

1. National residential tenancy standards (NRTS) that exceed state regulation and approximate social housing tenancy conditions
2. Creation of a four-tiered structure for investor-landlord access to private rental dwelling tax subsidies (NG & CGT discount) scaled to the extent of participation in the NRRS and adherence to NRTS
3. Targeting of NRRS properties to Commonwealth Rent Assistance recipients
4. Tax credits for discounted rents for certain NRRS participating dwellings
5. Access to the Australian Housing Bond Aggregator for certain NRRS participating dwellings
6. Instant tax-write-off for dwelling sustainability upgrades for certain NRTS participating dwellings

The structure of the NRRS tiers would provide increasing subsidy and investment returns in proportion to the social purpose of the tier, ranging from affordable housing through to head-leasing of dwellings to Community Housing Organisations.

Most of the elements of the NRRS already exist within Commonwealth policy, regulatory and financing arrangements. The NRRS adapts and integrates these mechanisms into a single system to improve effectiveness.

The implementation of the proposed National Rental Regulation System would be broadly cost-neutral to the Commonwealth, depending on system design and extent and structure of investor-landlord participation.

The implementation of the NRRS can be undertaken using the Commonwealth's existing social security and taxation powers, without the need for substantial additional negotiation and agreement of the states. The main role for the states in the NRRS is in enforcement of rental tenancy leases via rental tenancy legislation plus certification of dwelling sustainability improvements.

The NRRS proposal shows that the Commonwealth can act more decisively in regulating rental housing through taxation than it has previously done so, thus overcoming its perceived constitutional impairment in housing.

2 Introduction

Throughout history sovereign states have levied taxation on their populations to fund defence of the realm and provide for the welfare of their people. This paper argues that the Commonwealth is grossly underutilising its taxation powers in relation to the welfare of rental housing tenants through its lazy provision of concessions to private residential rental investor-landlords. The paper sets out the case for integrative reform of negative gearing (NG) and the 50 per cent capital gains tax (CGT) discount concessions to improve the welfare of Australian renter households, in particular those receiving Commonwealth Rent Assistance (CRA) payments. To do this the paper proposes establishing a National Rental Regulation System (NRRS) that requires investor-landlords to adhere to a set of national rental tenancy standards in return for receiving the negative gearing and capital gains discount tax concessions. We propose a tiered structure of housing tax benefits.

There is currently a vigorous public debate in Australia about conditions in the private rental housing system and the welfare and taxation policy settings that influence these conditions. Within this conversation there is growing concern that the emphasis on investment objectives of investor-landlords have taken undue precedence over the wider social policy objectives of ensuring that all Australians, especially those on modest or low incomes and without large property assets, are able to enjoy safe and secure housing.

Part of the public discussion has focused on the role of two Commonwealth policy instruments, NG and the 50 per cent CGT discount for investments. The former allows investor-landlords to use losses in the operation of rental properties to offset tax liabilities across other income sources. The latter provides investor-landlords who have held a property for more than 12 months to receive a 50 per cent discount on the CGT that would otherwise apply upon sale of the property. These subsidies are assumed to bring forward private rental sector housing supply and thus moderate rents and improve general outcomes for tenants through greater choice of landlord.

Various proposals have been mooted to address the perceived distortions of the negative gearing and capital gains tax concessions, particularly focusing on inequities within the investor-landlord class as well as between investor-landlords and renters, as well as

homeowners^{1,2}. Within the Australian parliament there is a body of opinion which favours the withdrawal of these tax concessions. In contrast there is strong support among some sections of the parliament to retain these tax concessions. To date momentum towards abolition of NG and the CGT concession on investor-landlord private rental sector housing has not built to the point of substantial policy change. The closest political point to reform so far was the Labor Party 2019 election platform which proposed to limit NG to newly built properties however that proposal has not been enacted.

What is missed in the public conversation to date is that the Commonwealth is willing to expend very large sums of funding on the private rental sector through social security payments and tax concessions. The Commonwealth expends \$4.7 billion per year directly on CRA which principally supports vulnerable low-income households with rental costs. The Commonwealth expends a further \$2.4 billion on negative gearing and \$1.5 billion on the capital gains tax discount for investors. Clearly, there is large and ongoing political and policy appetite for around \$8.2 billion in annual expenditure to subsidise private rental sector housing. These subsidies come without any form of outcomes accountability, nor the capacity of landlords who benefit from them to be good landlords. In this paper, we propose to broaden the debate about the abolition or retention of NG and the 50 per cent CGT discount and suggest there is a further major reform opportunity to integrate these incentives in a way that is more effective in achieving socially beneficial housing outcomes for low-income and vulnerable households.

The remainder of this discussion paper sets out a reform program whereby the Commonwealth can integrate its social security and taxation powers to establish a National Rental Regulation System (NRRS) to achieve virtuous policy convergence that improves the efficiency and effectiveness of social security and taxation expenditure for better private rental tenant housing outcomes.

We propose that a national rental regulation system should be established by coordinating the CRA program and the taxation concession programs for residential property investment - NG and the CTG discount - to require greater transparency, performance and integration. Commonwealth powers over social security and taxation can be coordinated and applied to set National Rental Tenancy Standards (NRTS) above those currently set by

¹ Duncan, A.S., Hodgson, H., Minas, J., Ong-Viforj, R. and Seymour, R. (2018) *The income tax treatment of housing assets: an assessment of proposed reform arrangements*, AHURI Final Report No. 295, Australian Housing and Urban Research Institute, Melbourne, <http://www.ahuri.edu.au/research/final-reports/295>, doi: 10.18408/ahuri-8111101;

² Maguire, D and Janda, M (2024) What is negative gearing? Why is it so controversial? (April 2). ABC News Online. <https://www.abc.net.au/news/2024-04-02/what-is-negative-gearing-why-is-it-controversial/103489372>

the states and to reshape financial incentives for landlords to adhere to them. The creation of NRTS would in turn create a strong normative influence on wider national rental policies and practices that would improve conditions for rental tenants overall.

The following discussion sets out the background and context and potential reform options to achieve better private rental sector outcomes for low-income tenants through a strengthened national rental sector regulation regime. The paper begins by discussing the background to current private rental sector problems and challenges. Next the paper reviews CRA in terms of tenant groups and Commonwealth expenditure. Section 3.2 of the paper reviews tax concessions applying to private rental sector properties via negative gearing, including detailed operation of the subsidies involved and the scale of tax expenditure this represents. A similar review of the 50 per cent CTG concession is then offered in Section 3.3.

Section 4 discusses rental tenancy standards in Australia and highlights the need for reform. Section 5 of the paper sets out how CRA, negative gearing and the CGT discount can be adjusted and integrated to create a National Rental Regulation System, incorporating a new set of National Rental Tenancy Standards, and a tiered structure for NG and CGT exemption subsidisation of the sector. The section also discusses existing precursors and corollaries of the measures proposed.

Section 6 assesses how the tiers of National Rental Regulation System could be developed to strengthen the social purpose of private rental sector housing, including environmental performance criteria. This tiered structure would produce a continuum of rental categories ranging from no NG or CGT for investor-landlords operating purely for speculative purposes, through increasing levels of mutual obligation in terms of the social return from Commonwealth contribution to investor-landlord investment returns through the granting of NG and the CGT discount. Section 7 presents potential variations, including the role of digital letting technology. Finally, Section 7 provides some wider discussion of housing within Australia's democratic system.

3 Background

At the time of the 2021 Australian Census of Population and Housing, some 2.5 million households were renting their housing from private landlords or individuals, equating to 27 per cent of households overall. A further 274,500 households, or three per cent of the overall total, rented from state or territory housing authorities, while a further 73,500 households, 0.8 per cent of household overall, rented from community housing providers³. In total, 30.6 per cent of household were renters, equating to 2.9 million households, with private rental housing dominating.

There is currently wide public debate about the private rental housing sector in terms of tenant experiences and housing outcomes. The Productivity Commission has demonstrated that low-income tenants in the private rental housing sector experience a wide range of problems, including affordability, limited choice, and insecure tenancy, which in turn reduces willingness to raise concerns about quality⁴. The Australian Senate recently conducted an inquiry into what it termed the ‘worsening rental crisis’ in Australia, the interim and final reports for which presented extensive evidence as to the poor conditions experienced by private rental sector tenants. Rents were shown to have risen rapidly over recent years, placing affordability stress on tenants including disability and aged pension recipients. Insecurity of tenancy is widespread and a major weakness in rental regulation, with evictions reported to have increased since the COVID-19 pandemic. Dwelling quality was also identified as a serious problem with “powerful evidence that many renters across the country are living in conditions that are unsafe, unhygienic, and causing great discomfort”⁵. The Senate Inquiry heard these circumstances as being detrimental to tenant wellbeing, including mental, emotional and financial health.

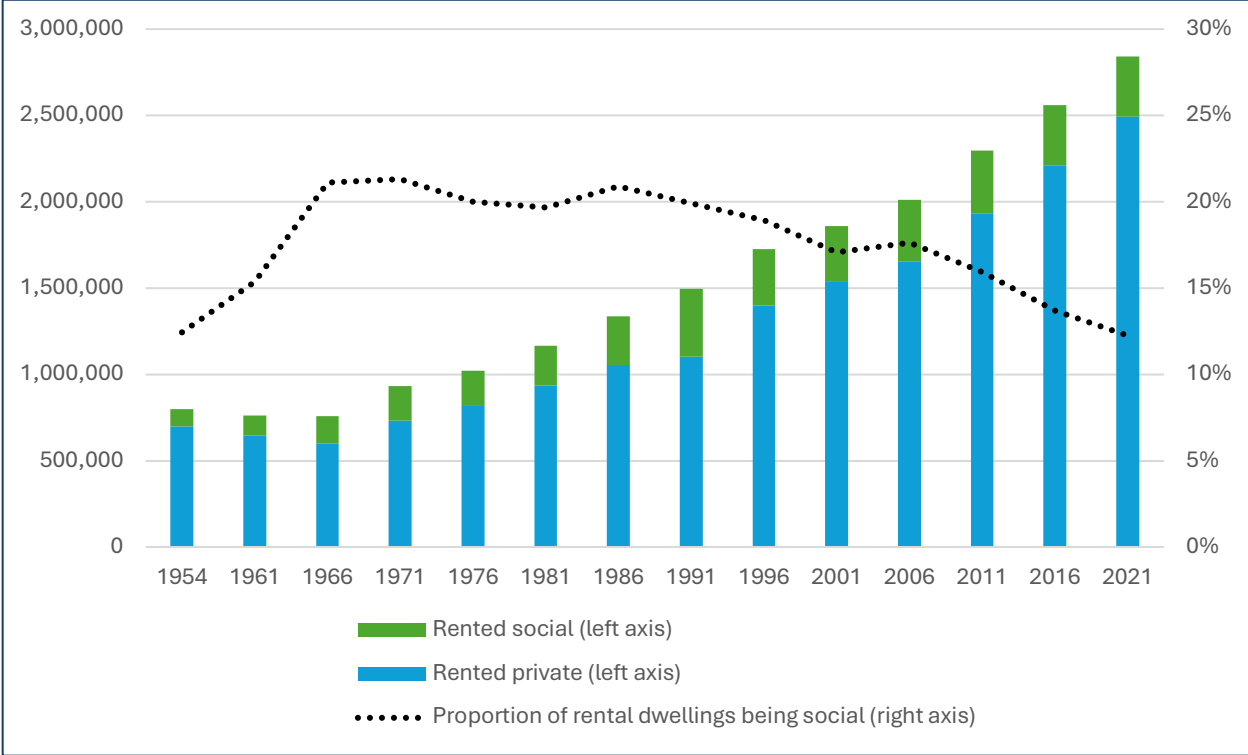
The number of households renting has increased markedly since the 1980s, as shown below (Figure 1). At the same time, there has been little growth in social housing, comprised of community housing operated by the not-for-profit sector and public housing operated by state and territory governments. This means that while the number and proportion of households renting has been increasing, the share of renters living in social

³ Australian Bureau of Statistics (2022) 2021 ‘General Community Profile – Australia’, *Census of Population and Housing*; Canberra, Australian Bureau of Statistics; <https://www.abs.gov.au/census/find-census-data/community-profiles/2021/AUS> <https://www.aihw.gov.au/reports/australias-welfare/home-ownership-and-housing-tenure>

⁴ Productivity Commission (2019) *Vulnerable Private Renters: Evidence and Options*; Research Paper; Canberra, Australian Government.

⁵ Senate (2023) *The worsening rental crisis in Australia – Interim Report*; Community Affairs References Committee, Australian Parliament House; https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Worseningrentalcrisis/Interim_Report

housing has decreased. From the mid-1960s to the mid-1990s one in five rental households occupied social housing dwellings, but by 2021 this has decreased to one in eight, as shown in Figure 1. Thus, as the cohort of renters in Australian society grows, it is increasingly subjected to the problematic conditions within the private rental sector.



Source: ABS Census

Figure 1: Rental dwellings in Australia, number, 1954 to 2021.

Rental affordability has worsened over time and regulatory and policy levers as well as institutional settings are not ideally geared to supporting high quality tenant outcomes, regarding security and certainty of tenure and rental costs.

Some commentators have argued the Commonwealth should take greater responsibility for conditions in the private rental sector. A Private Senators Bill to regulate rents is currently before the Australian Senate. The *Freeze on Rent and Rate Increases Bill 2023* aims to use the *Federal Financial Relations Act 2009* to make financial agreements with the States to establish model tenancy standards, including a control on rents and on no-cause evictions. The second reading of this bill was passed in October 2023.

The FRRRI Bill 2023 relies on Commonwealth negotiations with the states over tenancy regulation. This is because regulation of the private rental sector in Australia is presently undertaken by the states, which operate weakly harmonised tenancy legislation, resulting in a fragmented national rental system. Consequently the Commonwealth must deal with the states to improve tenancy conditions for renters, which limits the extent of rental reform options.

However, the Commonwealth holds two key sets of policy levers over private rental housing sector demand and supply. The main demand influence is via Commonwealth Rent Assistance which is a cash payment to eligible households to reduce rental costs. The second less direct influence is via tax concessions for investors, including the ‘negative gearing’ concession that allows rental operating losses to be counted against other income sources, as well as the 50 per cent tax concession on capital gains enjoyed by rental investors. These two instruments have been identified as having ‘significant influence’ on housing outcomes⁶.

The CRA and the NG and CGT tax concessions are not coordinated; there is no way of knowing whether the landlords who own the dwellings occupied by tenants receiving CRA are also benefiting from NG and will also benefit from the CGT concession when the dwellings are sold. There is no requirement for landlords to make sure that their dwellings meet quality standards, or that they treat tenants reasonably and fairly. While the concessions are assumed to create incentives for investment into private rental sector housing, there is little evidence to show that this is in fact the case, and the transparency and accountability of these subsidies is minimal.

To the extent that the social outcomes of Commonwealth expenditure on supply subsidies to private rental sector investor-landlords can be adequately assured it is through the minimum standards contained in state government rental regulation, which derive from civil law and seek to balance the interests of landlords with those of tenants. In the case of the tax concessions the Commonwealth hands generous benefits to private owners of capital as investor-landlords but receives few if any assurances that this public largesse is balanced by observable and measurable social outcomes.

In addition to these problems, there is a growing concern that the tax benefits gained by investor-landlords unfairly strengthen their market power at the expense of renter households seeking to enter home ownership and who are not able to access such Commonwealth benefits. So not only do investor-landlords reap the gains of tax

⁶ National Housing Supply and Affordability Council (NHSAC) (2024) State of the Housing System; Canberra, Australian Government.

concessions but they face almost no accountability for this benefit. This profound structural bias in the Commonwealth private rental housing sector subsidy regime has led to both NG and the 50 per cent CGT concession being increasingly queried in public conversations. For example, in the 2023 Senate Inquiry into the worsening rental crisis, seventeen submissions were referenced as calling for the curtailment or removal of these two instruments⁷. In contrast just four submissions were identified as supporting the subsidies retention.

In addition to the problems in the rental sector, a growing body of literature has identified weaknesses in national housing policy arising from the lack of an overarching understanding of the range of policy instruments either directly or indirectly affecting the housing system at federal and state level, and the generally poor horizontal and vertical coordination of these instruments^{8,9}. This implies opportunities to strengthen the national housing system through improved Commonwealth policy design.

This paper argues that there is a strong case for integrating Commonwealth Rent Assistance with the negative gearing and investor capital gains tax exemptions into a single unified and coordinated subsidy system. This system, which we term the National Rental Regulation System would set requirements for both tenants and investor-landlords, including national rental tenancy standards that achieve greater quality and tenure security for tenants than are currently provided by state rental regulation. As the scheme utilises the commonwealth's social security and taxation systems it can operate without the complexity of Commonwealth-state relations, except for enforcement of new Commonwealth national rental tenancy standards which would operate through a new Commonwealth rental tenancy lease that is harmonised with the rental tenancy regulation for the state in which the dwelling is located.

The remainder of this paper sets out the case for the National Rental Regulation System and mechanisms for implementation via discussion of the principal existing policy tools operated by, or available to, the Commonwealth government.

⁷ Senate (2023) The worsening rental crisis in Australia - Final report; Community Affairs References Committee; Canberra, Australian Parliament House.

⁸ Dodson, J. et al. (2017) *Housing, multi-level governance and economic productivity*, AHURI Final Report 284, Australian Housing and Urban Research Institute Limited, Melbourne, <http://www.ahuri.edu.au/research/final-reports/284>, doi:10.18408/ahuri-5307501;

⁹ Martin, C., Lawson, J., Milligan, V., Hartley, C., Pawson, H. and Dodson, J. (2023) *Towards an Australian Housing and Homelessness Strategy: understanding national approaches in contemporary policy*, AHURI Final Report No. 401, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/401>, doi: 10.18408/ahuri7127901.

3.1 Commonwealth Rent Assistance

3.1.1 Overview

Commonwealth Rent Assistant (CRA) benefits eligible tenants by reducing rental costs via a non-taxable income supplement. This is payable to recipients of eligible income support payments who rent in the private rental sector or community housing sector (public housing tenants are not eligible for CRA). The CRA payment provides 75 cents for every dollar of rent above a set minimum cost threshold until a set maximum rate is reached. In 2022-23 there were 1.26 million ‘income units’¹⁰ receiving CRA, with the average benefit being \$3,747 per recipient¹¹. As there are 2.57 million private market rental dwellings and community housing dwellings in Australia, roughly one in two rental households is likely to be in receipt of CRA. In contrast, 286,286 households resided within the public housing sector in Australia in June 2023, equivalent to slightly more than 1/10th of the private rental sector. The Commonwealth expended approximately \$4.7 billion on CRA in 2022-23, but this is expected to rise to \$6.3 billion in the forward estimates due to 10 per cent and 15 per cent increases in the 2023 and 2024 budgets respectively.

3.1.2 The effect of CRA on rental housing and rents

Conceptually CRA has two alternative effects on rents and incomes depending on the perspective adopted. First, the payment can be treated as a rental reduction mechanism that reduces nominal rents paid by eligible recipients. Such a mechanism is in this view a kind of supply subsidy, though it is not transmitted through the investor-landlords who are the providers of the private rental dwelling. This effect is relied on when CRA is deemed to reduce the consumer price index for rents¹² and in part lies behind the 2023 and 2024 budget increases to CRA of 10 per cent and 15 per cent respectively as a convenient means of nominally reducing rents to benefit low-income tenants while also influencing inflation calculations downward¹³.

Second, CRA can be treated as a demand subsidy that increases recipient income allowing them to purchase a greater quantity of housing within the private rental sector¹⁴. We do not

¹⁰ Income units include family units, which would mean multiple family members in a single dwelling would be counted as a single income unit.

¹¹ PC ROGS (2024) Housing and homelessness services sector overview, Table GA 7; Canberra, Australian Government. <https://www.pc.gov.au/ongoing/report-on-government-services/2024/housing-and-homelessness/housing>

¹² NHSAC (2024), p.63.

¹³ Chalmers, J. (2024) ‘Cost-of-living relief from persistent inflation’, Ministerial Media Release, Commonwealth Treasury; <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/cost-living-relief-persistent-inflation>; Accessed 26 June, 2024.

¹⁴ NHSAC (2024), p.21.

wish to enter the detailed economic and welfare debate underpinning each these alternative views. In this discussion paper CRA is treated as a demand subsidy that recipients use to increase their spending power, and thus choice of dwellings, in the private rental sector. However, the alternative view that CRA is a deduction from the nominal rent of the dwelling being rented would also align with the arguments we present, as an additional supply subsidy alongside negative gearing and the CGT discount.

3.1.3 CRA recipients

Approximately 1.26 million ‘income units’¹⁰ received CRA in 2022-2023, the year for which the most recent data is available. Among this group around one fifth were in primary receipt of disability pensions, almost one quarter an aged pension while an additional 15 per cent were carer or sole-parent payment recipients (Table 1). Around one fifth were on Jobseeker unemployment benefits. The remainder received a mix of minor payments including youth allowances and partnered parent payments. While unemployment benefit recipients were the modal group, a total of 61.2 per cent of CRA recipients were disability pensioners, aged pensioners, carers or sole parenting payment recipients. More than 14 per cent of CRA recipients are aged 75 or over despite this cohort being less than eight per cent of the population. Among the total households receiving CRA some 87,355 were recorded as Aboriginal or Torres Strait Islanders, equivalent to 7 per cent of total recipients. There are also more than 775,000 dependent children living in households supported by CRA. This equates to 47 per cent of all children living in rental dwellings being eligible for CRA, defined as all rentals except public housing¹⁵. These CRA recipient groups are among the most vulnerable in society yet are dependent not only on private rental sector housing but also Commonwealth financial support to access that housing.

¹⁵ Private rental sector and community housing sector dwellings are eligible for CRA. In 2021 0.8 per cent of Australian households resided in community housing.

Table 1: Commonwealth Rent Assistance recipients, proportion by principal payment type, 2022-23

Payment Type	Number of recipients*	Proportion of Recipients (%)
Disability Support Pension	269209	21.3
Carer Payment	79625	6.3
Age Pension	314709	24.9
Parenting Payment (Single)	109958	8.7
JobSeeker	270472	21.4
Youth Allowance (Student and Apprentice)	40444	3.2
Youth Allowance (Other)	7583	0.6
Austudy	12639	1.0
Parenting Payment (Partnered)	17694	1.4
Other Income Support Payment	3792	0.3
Family Tax Benefit (only)	126389	10.0
Total	1263890	100.0

Source: Productivity Commission ROGS¹⁶. (= figures calculated from proportions of total recipients; real numbers may vary slightly due to rounding)*

3.1.4 Outcomes from Commonwealth Rent Assistance

Rental affordability can be calculated using CRA recipient data. In 2023 the Productivity Commission estimated that 27.7 per cent fewer CRA recipients were experiencing rental stress than if the payment was not available¹⁷. This effect makes CRA an important contributor to poverty reduction for highly vulnerable groups. However, 42.9 per cent of CRA recipients are still experiencing rental stress, while occupying the least secure housing tenure. Further, 16.6 per cent of all recipients are paying over 50 per cent of their income on housing. This increases to 36.6 per cent of households with dependants under 25 years of age paying over 50 per cent of their income on housing.

¹⁶ PC ROGS (2024) Housing and homelessness services sector overview, Table GA 9; Canberra, Australian Government. <https://www.pc.gov.au/ongoing/report-on-government-services/2024/housing-and-homelessness/housing>

¹⁷ PC ROGS (2024) Housing and homelessness services sector overview, Table GA 14; Canberra, Australian Government. <https://www.pc.gov.au/ongoing/report-on-government-services/2024/housing-and-homelessness/housing>

Dwelling quality and tenure security are different outcomes to affordability, however. There is currently no means through which CRA payments can ensure dwelling quality of security of tenancy for recipient households. Moreover, there is presently nil transparency about the dwelling quality or duration and security of tenancy, and broader tenant outcomes that are achieved through CRA expenditure. The need to better target CRA to groups in housing stress has been noted by the National Housing Supply and Affordability Council¹⁸. Yet while the Commonwealth collects information on rents through the social security payments system and obtains tenant residential address data for the properties rented via CRA, there is very negligible transparency about overall tenant outcomes beyond affordability.

The private rental sector is notorious for poor quality dwellings, insecure tenure and wider mistreatment of tenants¹⁹. However, regulation of rental housing is a state responsibility and there is no connection between tenancy regulation at the state level and the Commonwealth social security system. Hence there is little information as to whether the approximately \$6.3 billion in expected annual Commonwealth spending on CRA ensures this highly vulnerable recipient cohort is living in safe housing with secure tenancies. The exception is the group of CRA recipients within the 0.8 per cent of Australian dwellings let by community housing providers. In relation to tenure security, the states do not report what proportion of rental tenancy notices to vacate due to dwelling quality deficits are imposed on CRA recipients, nor do they report notices of eviction for tenants receiving CRA. This lack of knowledge about the quality of housing outcomes procured via CRA seems a peculiar oversight for such a large area of social security expenditure, and contrasts with oversight of other payments, such as JobSeeker, where very high levels of accountability are routinely applied.

3.1.5 CRA expenditure

CRA comprise a large annual allocation to the private rental sector. The Commonwealth expects to spend \$31.8 billion on CRA over the five years from 2023–24²⁰. However final spending depends on the total number of eligible recipients of the CRA payment, which can vary, especially via due to fluctuating Jobseeker numbers, as well as on changes in private rental sector rents. Nonetheless the value of this expected CRA expenditure over the forward estimates is more than three times the \$10 billion allocated to the Housing Affordability Future Fund (HAFF), which is the main new housing intervention of the present

¹⁸ NHSAC (2024), p.107.

¹⁹ Productivity Commission (2019) *Vulnerable Private Renters: Evidence and Options*, Commission Research Paper, Canberra.

²⁰ Australian Government (2024) Budget Paper 1, p.36; Canberra, Australian Government.

parliamentary term. And while the HAFF is worth \$10 billion, only HAFF investment annual income earnings, estimated around \$500m annually, will be spent on social housing procurement. That annual spend makes the value of the HAFF equivalent to around 1/60th of the value of CRA over the five years from its establishment. This is an even lower share than that 1/10th equivalent of CRA currently expended on public housing operations by the Commonwealth through the National Agreement on Social Housing and Homelessness (NASHH).

3.1.6 Improving CRA performance

Recipients of CRA are among the lowest income of all tenant groups and most have additional social vulnerabilities. While a small proportion of CRA recipients reside in community housing, in the main despite their vulnerability the majority of CRA tenants are left to fend among the harsh vagaries of the private rental sector. From a social policy perspective, given the social vulnerability of most households who receive CRA, this large item of Commonwealth expenditure should, in addition to improving affordability, also ensure good tenancy outcomes in terms of dwelling quality and security of tenancy. Improving dwelling quality and tenure security could involve going beyond the uneven mix of minimum quality standards operated by the states and their inconsistent set of tenure security conditions. Commonwealth policy should aim to leverage a wider and better set of tenant outcomes for its CRA expenditure than simply a nominal reduction in rents producing mathematical improvements to affordability for recipients. Every dollar of CRA payment should be made to work as hard as possible to deliver good tenant outcomes, not just be absorbed into the balance sheets of investor-landlords renting dwellings that meet only minimum quality and tenancy standards. Given the lack of information about current tenant outcomes there is also a need for improved transparency as to the housing outcomes for CRA recipients beyond affordability measures.

There are many CRA tenants residing in properties for which their investor-landlord receives negative gearing and CGT discount (discussed below). Yet there is presently no coordination between the Commonwealth social security system which administers CRA and the taxation system which administers NG and CGT discounts to ensure that CRA-supported tenants are supplied housing by the tax expenditure-subsidised investor-landlords receiving negative gearing and CGT discount tax concessions. The investor-landlord subsidy implicit in the NG concession and CGT discount is not transparently targeted to the socially vulnerable private rental sector tenants receiving CRA who have among the weakest ability to purchase rental housing. By failing to coordinate across its three key elements of private rental sector intervention – CRA, NG and the CGT discount –

Commonwealth policy is foregoing a major opportunity to leverage how these subsidies operate to improve outcomes for vulnerable tenants.

There are opportunities to improve the performance of CRA to achieve better tenant outcomes in the private rental sector by adjusting how NG and the CGT discount operate to generate incentives for landlords to preference CRA recipients in their letting allocation while also ensuring the dwellings offered are of high quality with high security of tenancy, and limitations on landlord intrusion. This is discussed in further detail below.

3.2 Negative gearing

Negative gearing is the popular term used to describe tax arrangements whereby investors in residential rental properties can deduct ‘negative cash flows – defined as the excess of interest payments over earnings net of depreciation and other non-interest expenses – from their other taxable income, such as wages or salary’²¹. Tax losses on private residential rental properties can arise where rents are insufficient to cover the costs of maintaining the dwelling, paying local and state fees and levies, insurance and other operational costs of providing the dwelling for rent. In addition, the interest cost of loans, or ‘gearing’, used to purchase the dwelling can also be used to generate an income loss. Because the property is a loss-making investment it is deemed to be ‘negatively geared’.

3.2.1 The rationale for negative gearing

Negative gearing is justified by many in the taxation sector on the basis that interest payments are a legitimate cost in making an investment to generate either a capital gain or income stream, and that the availability of negative gearing to investor-landlords in turn positions residential property on a par with similar arrangements for other asset classes purchased with loans, such as shares or businesses. While that may be a reasonable theoretical assessment in practice relatively few investors take out loans to purchase shares and those that do are likely to be both sophisticated and sufficiently capitalised to accept the risks of negative asset valuations. Moreover, a share portfolio can be assembled incrementally with very low levels of capital, whereas residential property typically requires a large singular capital investment, often necessitating a loan, thus making the relative disparities in tax advantage in accessing credit between investor-landlords and first-time owner-occupiers quite stark. Lastly, while investors being able to claim costs of providing a rental dwelling, such as maintenance, local and state fees and levies and insurance, it is unusual for costs which exceed income to be claimed. Most

²¹ Fane, G. and Richardson, M. (2004) Negative Gearing Redux; *Agenda*, 11(3), pp.211-222; (p.211).

comparable jurisdictions simply allow costs to negate rental incomes, as is the case in the USA²². Australia is unusual in allowing rental operational costs to negate rental income, and for that deficit to negate other personal income.

3.2.2 The fiscal impact of negative gearing

In 2021-22, which is the most recent tax year for which data is available, some 3.26 million rental schedules²³ were lodged by taxpayers declaring rental income²⁴. Of these, 1.34 million, or 41 per cent were negatively geared. These negatively geared investors declared gross rental income of \$16.7 billion, an average of \$12,419 for each rental schedule, and claimed deductions of \$23.6 billion, an average of \$17,028, for a total loss of \$6.9 billion, or \$4,973 per negatively geared rental schedule. Interest on the loan used to purchase investment rental property is the single largest tax deduction enjoyed by negatively geared investors, with 1.29 million claims for property loan interest deductions totalling \$10.2 billion, accounting for 43 per cent of all deductions and averaging \$7,931 per rental schedule. Positively geared investors also claimed \$5.5 billion in interest, or 27 per cent of all deductions. Overall, property investors claimed \$15.8 billion in interest payments, or 36 per cent of all deductions. With the overall assumed rate of 36.4 per cent tax return, these claims led to tax expenditure of \$5.5 billion per in 2021-22.

3.2.3 What do investor-landlords claim through negative gearing?

A breakdown of income and deductions from the 2021-22 year is shown below (Table 2). In addition, the Treasury *2023-24 Tax Expenditures and Insights Statement* reveals tax expenditure from negative gearing as 34.6 per cent of the tax losses claimed by investor-landlords²⁵. Under this assumption, the average negatively geared rental schedule would receive an average of tax refund of \$1,721 from rental loses, costing the tax system \$2.39 billion. Notably, this means that total tax benefits from negative gearing amount to an average of 13.8 per cent of total national reported rental income.

²² 26 U.S. Code § 163 ‘the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year’

<https://www.law.cornell.edu/uscode/text/26/163>

²³ Note that data is not available at the individual property level. As more than one rental schedule can be lodged for one property (e.g., two people joint owning a property would both lodge a schedule) and one individual can lodge more than one schedule (e.g., for each property they have an interest in).

²⁴ ATO (2024) Tax Statistics 2021-22 – Individuals - Table 26 <https://data.gov.au/data/dataset/taxation-statistics-2021-22/resource/87ddb16c-16eb-4650-9b63-9afa1b096f79>

²⁵ Treasury (2024) Tax expenditures and insights statement; Canberra, Australian Government. <https://treasury.gov.au/sites/default/files/2024-01/p2024-489823-teis.pdf>

Table 2: Itemised income and deductions for negatively geared investors, 2021-22

Item	Number	Aggregate total	Average (\$) per rental schedule
Rental Income	1,342,101	\$16,539,972,386	\$12,324
Other Rental Income	324,025	\$179,479,581	\$554
Gross rent	1,346,281	\$16,719,452,538	\$12,419
Land tax	338,919	\$683,037,125	\$2,015
Council Rates	1,316,129	\$1,558,981,233	\$1,185
Body Corporate Fees	538,214	\$1,442,677,540	\$2,680
Repairs and maintenance	1,087,352	\$1,668,485,365	\$1,534
Capital allowances (depreciation on plant)	957,303	\$1,505,164,094	\$1,572
Capital works deductions (special building write-off)	845,041	\$2,594,449,102	\$3,070
Insurance	1,110,196	\$801,565,673	\$722
Water charges	1,183,102	\$676,913,192	\$572
Gardening/lawn moving expenses	238,742	\$139,071,611	\$583
Pest Control	185,249	\$46,106,624	\$249
Property management costs		\$11,116,451,559	
Borrowing Expenses	284,800	\$127,042,568	\$446
Interest on loan(s)	1,288,572	\$10,219,866,263	\$7,931
Loan costs		\$10,346,908,831	
Property Agent fees/commission	1,064,678	\$1,259,253,126	\$1,183
Advertising for Tenants	259,902	\$73,250,342	\$282
Cleaning Expenses	239,583	\$161,052,598	\$672
Sundry rental expenses	795,492	\$592,484,402	\$745
Stationery, telephone and postage	246,759	\$22,574,513	\$91
Travel expenses	10,923	\$4,628,345	\$424
Legal Fees	45,774	\$39,452,858	\$862
Tenancy management costs		\$2,152,696,184	
Total expenses	1,386,937	\$23,616,181,378	\$17,028
Net rental income	1,386,938	-\$6,896,725,768	-\$4,973

Source: ATO (2024)²⁴

3.2.4 Transparency and accountability of negative gearing as a supply subsidy

If the public largesse contributed through the negative gearing tax concession is serving a social purpose in the supply of rental housing, then from the perspective of transparent and accountable public policy it would be helpful to know the magnitude and quality of social benefit occurring through the negative gearing arrangements, beyond simply a renter being housed. However, that level of detail is not available via public sources. There are reports that residential investment property loans target large houses but that these

are not representative of modest, sustainable, high quality, affordable housing²⁶. Consequently, while it is possible to make some assumptions and model on aggregate the extent of housing supply brought forward through negative gearing it is not possible to know in detail what social outcomes are achieved. The partial exception to this deficit is in the case of Commonwealth Rent Assistance for which affordability outcomes, but not quality outcomes, can be calculated. There are few other areas of social policy where \$1,721 is conceded to a recipient for a purported social purpose but which brings no accountability or transparency responsibilities.

What is noteworthy about Commonwealth tax expenditures on negative gearing tax concessions granted to investor-landlords is the size of the concession and the extent of fiscal provision by government. While rental operational costs are reasonable expenses in provision of a dwelling, the \$10.6 billion in interest cost deductions seems less justifiable given it involves Commonwealth assistance to leverage an asset in which the Commonwealth derives no stake.

While the distributional questions this raises are important, we take this level of government preparedness to deliver large tax offsets to investor-landlords as providing a gross indicator of a political consensus that private rental sector housing should be supported by government subsidy. For some observers this is an unjust allocation of Commonwealth largesse to large-asset holding investor-landlords. However, it is possible to also view such fiscal largesse as a potentially valuable social intervention but which is presently grossly ineffectively managed. That in turn suggests options to reform negative gearing to improve its social performance. Later in this report we set out a systematic approach to reform that retains the high fiscal outlay of negative gearing as a Commonwealth tax concession but makes it work harder as a subsidy instrument to achieve a demonstrable social purpose, in combination with the capital gains tax discount.

3.3 The Capital Gains Tax discount

Capitals gains on investments, including investment properties, have been taxed in Australia since 1985²⁷. When initially introduced, the Consumer Price Index (CPI) adjusted

²⁶ Yanotti, M. B., & Wright, D. (2023). Residential property in Australia: Mismatched investment and rental demand. *Housing Studies*, 38(6), 1110–1131. <https://doi.org/10.1080/02673037.2021.1929858>

²⁷ Hanegbi, R. (2002), 'Negative Gearing: Future Directions', *Deakin Law Review*, vol. 7, no. 2, pp. 349-365. Blunden, H. (2016), 'Discourses around negative gearing of investment properties in Australia', *Housing Studies*, vol. 31, no. 3, pp. 340-357.

Montani, D. (2017), 'Negative gearing: separating fact from fiction', *Taxation in Australia*, vol. 51, no. 8, pp. 432-435.

gain realised from the sale of an asset was liable for tax, as part of the individual’s income tax. However, in 1999 following the Ralph review of business taxation, the CPI adjustment method was replaced with a 50 per cent tax applied to capital gain. This means that an investor is liable to pay tax on half of the capital gain they realise upon sale of an investment property.

3.3.1 The fiscal impact of the capital gains tax discount

In 2023 the Parliamentary Budget Office released calculations that showed in 2023-24 there would be \$1.46 billion in revenue forgone from the CGT discount compared to an inflation adjusted base case (Table 3)²⁸. This revenue not taken is estimated to average \$10,200 per each investment property that is sold in 2023-24. Further, in 2024, the PBO released calculations estimating that in 2023-24 the CGT discount results in \$5.22 billion of revenue forgone compared to if all gains were taxed at the full rate, that is if there was no discount or indexation²⁹.

Table 3: Budget financial implications of selected tax concessions and exemptions, 2023-24³⁰

Revenue category of concession	
Revenue forgone from property tax deductions	\$37.5 billion
Revenue forgone from CGT discount (compared to inflation adjusted cost base)	\$1.46 billion
Total properties claiming property tax deductions	2,715,600
Revenue forgone from property tax deductions per property	\$13,810
Total properties claiming CGT discounts	145,100
Revenue forgone from CGT discount (compared to inflation adjusted cost base) per property	\$10,200
Total tax revenue forgone from property tax deductions and CGT discount	\$38.96 billion
Average cost of build for new dwellings – excluding land costs	\$380,200
Ratio of revenue forgone to average cost of new builds	102,500

Source: Parliamentary Budget Office (2024)

²⁸ Parliamentary Budget Office (PBO) (2023) Implied budget cost of supporting rentals through investors’ tax breaks; Canberra, Parliament of Australia.

²⁹ Parliamentary Budget Office (PBO) (2024) Cost of Negative Gearing and Capital Gains Tax Discount; Canberra, Parliament of Australia.

³⁰ Parliamentary Budget Office (2024) Implied budget cost of supporting rentals through investors’ tax breaks; Canberra, Australian Parliament House; <https://www.pbo.gov.au/publications-and-data/publications/costings/implied-budget-cost-supporting-rentals-through-investors-tax-breaks>

3.3.2 The capital gains tax discount as a housing supply subsidy

By discounting landlord operating and capital costs from full exposure to tax liabilities, the negative gearing and CGT discount concessions are assumed to improve private rental housing supply and thus benefit tenants through greater volumes of properties available in the private rental sector. However, because these instruments are disproportionately accessed by wealthier households they are argued to exacerbate wealth inequality in Australia. Furthermore, there is also an argument that the change from CPI adjusted CGT to a flat discount of 50 per cent in combination with negative gearing acts to disproportionately encourage speculative investment in housing²⁷. This has potential to distort the housing market by decreasing serviceable gross rental yield in the short-term due to asset prices rising faster than underlying demand for residential services. This effect can be observed in rent price growth data, which declined in Australia's major cities over the period from late-2008 to mid-2020. In contrast residential property prices increased by over 50 per cent. Fiscal policy appears to influence these patterns over the short term, such that low annual rental yields on rising asset values are partly compensated by negative gearing through tax offsetting of rental losses, while over the long term low yields are compensated via access to an increased share of the capital gain²⁷. From the perspective of equity in housing policy it is not easy to justify the advantageous property investment structuring provided by the NG and CGT regimes.

3.3.3 Transparency and accountability of capital gains discount as a supply subsidy

As with negative gearing, the CGT discount suffers from very low transparency of effectiveness and outcomes in terms of a housing supply subsidy. We know almost nothing about allocative efficiency such that the private sector rental dwellings that receive the greatest CGT discount subsidy are targeted to the most vulnerable tenants, particularly CRA recipients. Data and knowledge deficits include information on which tenants are housed in CGT discount favoured dwellings, the quality of those dwellings, and the security of tenancy, whether in terms of duration of lease or of the conditions governing eviction. Reform is needed to improve this transparency.

Notwithstanding the weaknesses of the administration of the CGT discount, we do know the fiscal cost of the CGT discount is very large. As with the large fiscal scale of negative gearing, the size of this CGD discount largesse can be viewed as signalling a high level of Commonwealth preparedness to support the private rental sector. That is a potentially socially beneficial level of fiscal support for private sector rental housing if the problems of allocative efficiency can be rectified. Reform is needed, but that reform should focus not on abolishing the CGT discount for private rental sector housing, but to improve how it

works to achieve much better tenancy outcomes for vulnerable low-income renters, particularly CRA recipients. A reform program for the CGT discount, which brings it into a new integrated National Rental Regulation System is detailed below.

4 Australian rental tenancy standards

Private rental sector tenancy regulation in Australia has evolved out of ancient common law arrangements inherited from the United Kingdom, which treated residential tenancies as matter of land lease. Disputes between tenants and landlords were in most jurisdictions adjudicated by courts which placed a high burden on tenants in navigating the judicial system. Beginning in the late-1970s with the South Australian Residential Tenancies Act 1978 a new model was adopted, combining codified minimum standards for residential tenancies, with stipulations as to the rights and responsibilities of landlords and tenants, the conditions in residential leases, and new institutional arrangements with which to manage security bonds and adjudicate disputes, typically via dedicated tribunals. Most Australian jurisdictions have largely followed the South Australian model.

A consequence of private rental sector tenancies being governed by state statute is that Australia does not operate uniform national private rental tenancy standards. The regulation of private rental tenancies is delegated to the states according to the Australian Constitution. Although there has been some convergence in recent years, private rental sector tenancy regulations vary across state jurisdictions, including in terms of:

- Pre-letting information requirements and fees
- Minimum duration of tenancies
- Minimum notice of requirement to vacate
- Grounds for eviction
- Conditions of tenant occupancy of the dwelling
- Frequency and extent of rent changes
- Dispute resolution mechanisms
- Treatment of rental bonds
- Use of private rental tenancy databases

The Commonwealth has recently made an agreement with the states to develop greater uniformity in private rental sector tenancy standards, via the 'Better Deal for Renters' including:

- nationally consistent grounds for eviction
- provision to appeal against retaliatory landlord action
- limit rent increases to no more than once per year
- banning of rent bidding
- family violence no-penalty tenancy ending
- limits on lease break fees

- prescribed rental applications and privacy
- minimum standards for rental properties

While these measures are a step towards national consistency their application with each state is likely to vary. And while they are urgently needed, they represent a minimum set of standards, not a maximal statement that places tenants in a much stronger position in relation to dwelling quality and tenancy conditions. It is a regrettable indictment of Australian rental sector regulation that banning rent bidding, providing a stovetop in good working order³¹ or offering hot and cold running water in a rental dwelling are viewed as significant steps forward. Submissions to the 2023 rental crisis Senate inquiry described such measures as ‘the absolute base level’ and ‘the bare minimum for existence’³¹. Such submissions included proposals for minimum standards that improved:

- security and safety
- climate resilience
- exposure to vermin, damp and mould
- adequate ventilation
- access to natural light
- window coverings
- working essential appliances

In addition to their inadequacy as minimum conditions, the proposed ‘Better Deal for Renters’ standards do not differentiate between vulnerable tenants and more affluent tenants. It is an oversight that despite the \$6.3 billion spent by the Commonwealth annually on 1.26 million CRA recipients, most of whom are in vulnerable social categories, that it is not a requirement of revised tenancy legislation under the Better Deal for Renters that these groups are not given additional quality and tenure security assurances. Thus, Commonwealth rental tenancy assistance policy continues to expose vulnerable tenants to minimal state rental tenancy standards, rather than providing them with additional protective conditions, such as those that would apply if they were housed in the community or public housing sectors. For example, there is no reason why a CRA recipient tenant should not automatically receive tenancy conditions similar to those within the community and public sectors. While the *Better Deal for Renters* is a modest step forward, there remains great opportunity to use Commonwealth power to achieve even stronger national rental tenancy standards and greater equity in tenancy conditions across private rental, community and public housing tenures.

³¹ Australian Senate (2023) *The worsening rental crisis in Australia – Final Report*; Community Affairs References Committee; Canberra, Commonwealth of Australia; p.139-142.

4.1 The need for national rental reform

The large scale of both negative gearing and the capital gains tax discount expenditure and the absence of transparency of the performance of letting arrangements implies a serious risk that these policies are either inefficient or ineffective. From a fiscal policy perspective, the scale of this tax expenditure should attract greater regulatory attention to ensure that the desired housing outcomes from the expenditure are realised and that the Commonwealth resources foregone in providing these concessions are not misallocated. As far as we can determine the non-rent outcomes from CRA, such as dwelling quality or conditions of tenancy, have never been evaluated or audited, nor has such evaluation been done for negative gearing or the 50 per cent capital gains tax discount.

Australia's social security system is known for its strict targeting of welfare payments, including of CRA. Yet when it comes to the provision of fiscal support to private rental sector investor-landlords such ostensible virtues are mysteriously discarded. From a policy and fiscal efficiency perspective it is appropriate that the expenditure on negative gearing and the CGT discount should be as equally highly targeted as CRA to the least well-off renters. Negative gearing and CGT targeting would include all CRA recipients but especially the 771,000 CRA recipients receiving disability and aged pensions plus carers and sole-parent payment recipients, as well as the 775,000 children residing in CRA households. There is therefore a strong case for coordinating both CRA, negative gearing and CGT to achieve better outcomes from this fiscal tax expenditure.

Beyond CRA we suggest that all low-income renters should benefit from the tax expenditure on NG and CGT discounts beyond the assumed, but largely unverified, additional dwelling supply these schemes generate. Although there is an argument that high-value properties purchased by investor-landlords for letting to middle- and high-income tenants influences the aggregate supply of dwellings in the private rental sector through indirect private rental sector filtering dynamics it is difficult to justify Commonwealth taxation expenditure that serves housing to higher income tenant tiers in the first instance. And there is good evidence that the private housing sector does not filter housing effectively in general³², nor are investor-landlords efficient and effective allocators of affordable rental tenancies to low-income tenants, or specifically CRA recipients³³.

³² Nygaard, C., van den Nouwelant, R., Glackin, S., Martin, C. and Sisson, A. (2022) Filtering as a source of low-income housing in Australia: conceptualisation and testing, AHURI Final Report No. 387, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/387>, doi: 10.18408/ahuri5124401.

³³ Hulse, K., Reynolds, M., Nygaard, C., Parkinson, S., and Yates, J. (2019) The supply of affordable private rental housing in Australian cities: short-term and longer-term changes, AHURI Final Report No. 323,

Thus, in addition to the case for targeting NG and CGT discounted dwellings to CRA recipients there is a similarly strong case for national rental policy reform to improve the social targeting and effectiveness of NG and the CGT discount as generalised private rental sector subsidies. In practice this would involve influencing how these subsidy instruments operate so that they incentives and shape investor-landlord letting practices in a way that favours the most vulnerable tenants while ensuring they enjoy socially beneficial tenancy conditions, such as high dwelling quality and long tenure security. The following section sets out how social security and taxation policy can be reformed to achieve this through the creation of a national rental regulation system.

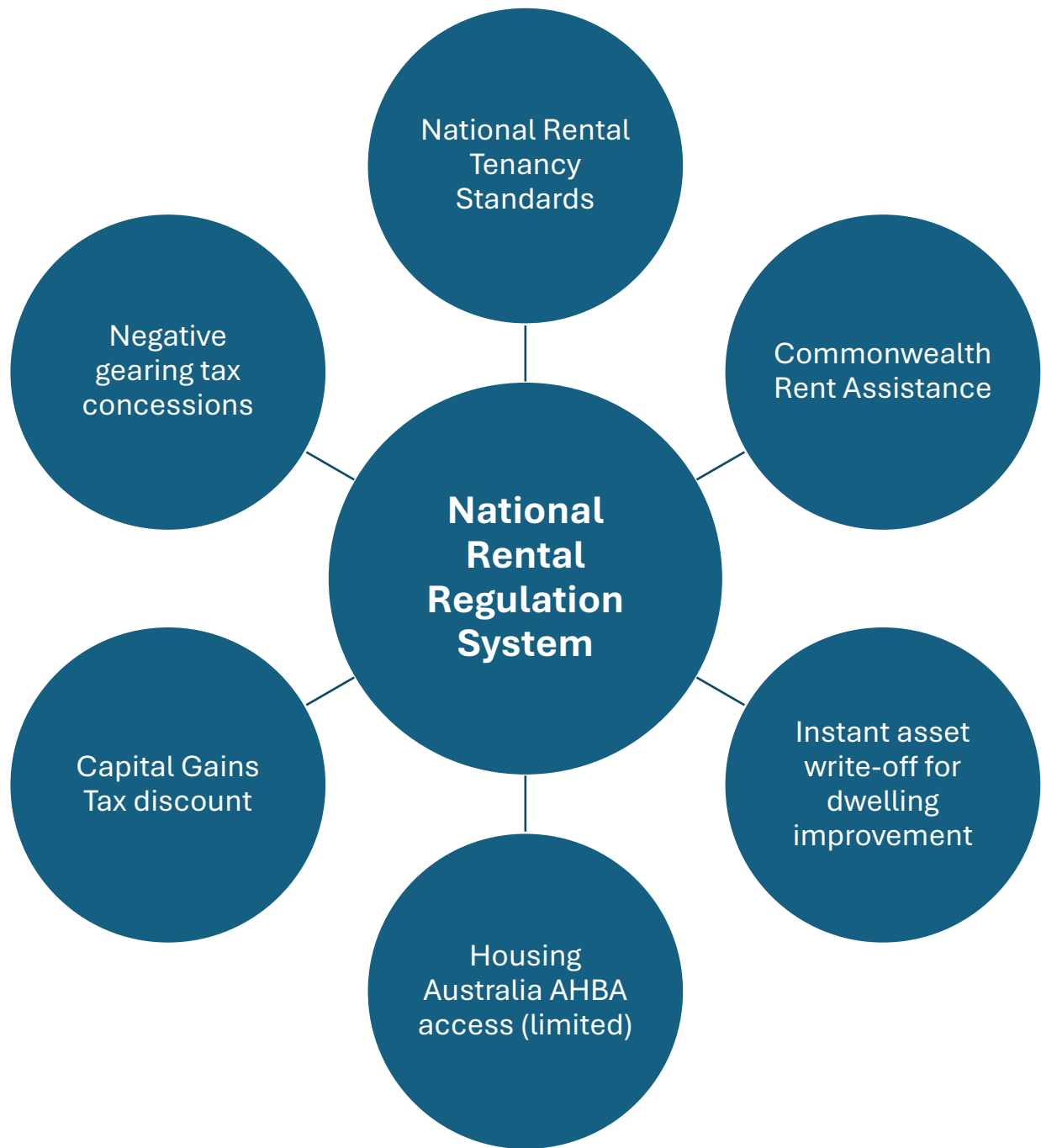
5 Creating a National Rental Regulation System by integrating social security and taxation instruments

The remainder of this paper sets out a social reform model for CRA, NG and CGT discounts so that they are coordinated to deliver the greatest social benefit to the least well-off renters. By coordinating these subsidy instruments accompanied by the establishment and application of 'national rental tenancy standards' (NRTS) that impose minimum housing quality and tenancy standards on rental dwellings, the Commonwealth can create a 'national rental regulation system' (NRRS) that improves the social return from its total CRA, NG and CGT discount expenditures, in terms of tenant tenancy security and quality outcomes.

In simple description, to access negative gearing and the capital gains tax discount under the NRRS investor-landlords would be required to register with the NRRS and select from a set of three tiers comprising packages of requirements in relation to dwelling quality and tenancy, including national rental tenancy standards. In combination with this change CRA recipients would receive additional payments if they rent from an investor-landlord who is registered as an NRRS provider. The provision and allocation of housing within this scheme would continue to operate principally through market allocations and conventional lease agreements but would incorporate structured incentive packages for investor-landlords to provide affordable, safe and secure housing to CRA recipients and for those recipients to seek out NRRS investor-landlords in their search for rental accommodation.

The creation of a National Rental Regulation System would rest on four main elements based on CRA, NG, CGT discount and national rental standards with two further finance and tax components (Source: Authors

Figure 2).



Source: Authors

Figure 2: Components of a National Rental Regulation System

5.1 Element 1: Establishing National Rental Tenancy Standards and a National Rental Tenancy Lease

5.1.1 National Rental Tenancy Standards

The central element of the NRRS is the establishment by the Commonwealth of National Rental Tenancy Standards (NRTS) that provide for a uniformly high level of minimum quality, safety and security standards for private rental sector tenants. Because it specifically targets highly vulnerable groups the provisions of the NRTS would aim to go well above the minimum legislative requirements for general rental tenancies currently operating at the state level, including commitments under the *Better Deal for Renters*. Such national standards would aim to bring CRA recipient tenants in properties funded by NG and the CGT discount closer to the quality and security of rental tenancies let through the public and social housing rental sectors.

5.1.2 Proposed national tenancy standards

We propose the following national rental tenancy standards as for consideration under the NRRS:

- Mandatory 5-year minimum lease period with automatic rollover to further five-year period
- Highly restricted ability of investor-landlords to terminate leases <5 years
- Tenant zero notice period for break of lease
- Lease and tenancy conditions not affected by sale of property
- Landlord property inspections limited to no more than once per tenancy period
- Rent increases limited to once per tenancy period with maximum of 10 per cent
- Automatic bond release upon ending of tenancy subject to strict exceptions including damage excess minimums
- Strict limitations on use of digital rental letting platforms
- Tenant-led breach notification and enforcement mechanisms
- Rights for tenants to have pets

5.1.3 Proposed national dwelling standards

- High minimum dwelling quality standards to at least 7* Nationwide Energy Rating Scheme including and covering zero mould and damp, airtightness and ventilation, heating and cooling, insulation, phaseout of gas appliances, with strong independent enforcement mechanisms

- High tenant discretion in use, fit-out and enjoyment of dwelling, including pets, children, decoration
- Mandatory landlord response times for maintenance and repairs with penalties for non-compliance
- Tenants able to compel replacement of appliances after depreciation below 20 per cent of original value

The final version of such NRTS would be devised in consultation with tenant and welfare recipient representative organisations, as well as relevant special representative groups representing the main recipient categories of CRA, such as advocacy groups for aged persons advocates, persons with disabilities, carers, sole parents and the unemployed.

The purpose in setting the NRTS would be to provide a uniform set of residential tenancy lease requirements for private rental sector investor-landlords accessing NG and CGT discount subsidies (see below for discussion of these two instruments). Because this policy reform aims to construct a social objective around rental dwellings receiving these subsidies the conditions of tenancy must go beyond the minimum provisions set out in state rental tenancy legislation. The Commonwealth is responsible for social security income support payments and thus has a responsibility ensure that the residential tenancy leases to which recipients of these payments are subjected are aligned with the social objectives of the welfare system. Establishing national rental tenancy standards also means the Commonwealth does not have to rely on the complex and laborious task of state rental tenancy legislation harmonisation to achieve its social objectives for the private rental housing sector. Thus, a large step forward on national-scale reform of the private rental sector can be achieved through adjustment of social security and taxation settings, not through exhausting negotiations with the states.

We note that the Commonwealth and the states have agreed to the ‘Better Deal for Renters’ statement³⁴. This statement contains some positive steps forward, such as limiting rent increases, banning rent bidding, provision for breaking of leases where the tenant has experienced family violence. However, this statement does not provide a uniform code of rental tenancy regulations, rather it offers a set of general expectations with little time for implementation. Moreover, it operates national regulations negotiated by the Commonwealth but implemented through state regimes. This is a very indirect mechanism compared to the Commonwealth social security and taxation powers which do not require state collaboration to implement. Hence while the *Better Deal for Renters* is

³⁴ Albanese, A. (2023) ‘Meeting of National Cabinet—Working together to deliver better housing outcomes’, *Media Release*, 16 August, Attachment2. <https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>

an improvement on the existing fragmented and inadequate state regimes, it remains a weak mechanism of enforcement of rental standards.

5.1.4 A national residential rental tenancy lease

The national rental tenancy standards would be codified in a National Rental Tenancy Lease (NRTL). This would be an attachment appended to a standard residential tenancy lease for the state in which the tenant resides or would be available as a template designed to the specifications of the relevant state (see Defence Housing Leases below). All states' residential tenancy acts provide for variations or additional conditions to be included in residential tenancy agreements as long as these do not reduce the rights of tenants. Given the intention to use the NRTLs to improve tenant conditions, we expect that the creation of a standard NRTL would not conflict with state residential tenancy legislation. In preparing the NRTL the Commonwealth would need to undertake a legal appraisal of the specific requirements applicable in each state to ensure the validity and enforceability of the NRTL. All NRTLs would be required to be lodged with the Department of Social Security where the tenant is a CRA recipient, or with the ATO where the tenant is not a CRA recipient, and the investor-landlord receives NG or the CGT discount.

5.1.5 Comparison to commercial and Defence Housing Australia leasing

While the proposed national rental tenancy standards appear to be a far departure from the status quo, some of their elements are not unusual within commercial leasing. Commercial leases allow for options for renewal, which may be exercised by the tenant, the number of options, and duration, are stipulated as part of the leasing process. The method for rent increases should also be stated in the lease, and is then binding, allowing the tenant to dispute rent increases which are not undertaken via the proscribed method. Leases also sit with the property, not the landlord, meaning that upon sale, the lease continues to be enforceable with the new landlord. This indicates a willingness to offer tenants much stronger protections and security within the Australian landlord cohort, but also that these protections are reserved for commercial leases, rather than being common within residential tenancy settings. Conditions of lease duration and rent setting for commercial leasing in Victoria are set out in Box 1.

Defence Housing Australia (DHA) offers housing to defence personnel and their families. Its operating model includes two main components: stock owned by DHA and stock leased from investors. DHA offers an interesting model for the NRTLs as they lease dwellings in all Australian states from residential property investors with long leases and rent review mechanisms built into the lease. DHA has eight lease templates, compatible with residential rental tenancy legislation in all states and territories. Further, the DHA model is

in effect a head-leasing arrangement, which provides a template for head-leasing arrangements to social housing providers. The DHA model and leases are discussed in Box 2.

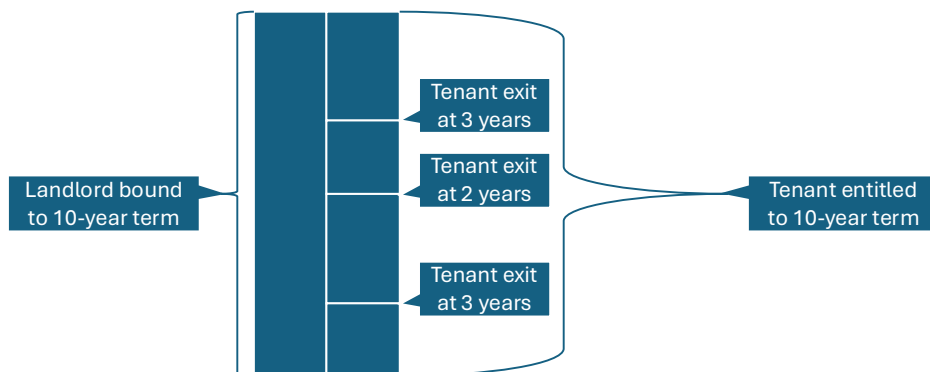
Box 1: Case study of commercial leases in Victoria

Commercial leases in Victoria – A case study of tenant security and certainty

In Victoria leases for ‘premises used for supplying commercial services to other businesses are covered by’¹ *Retail Leases Act (RLA) 2003*. As with the proposed NRTS, this Act incorporates the ability for leases to stipulate:

- Length of between 5 and 15 years, including options for renewal²
- Mechanisms for rent reviews³

Leases must be a minimum of five years, either as a single term or with options, with exceptions requiring permission from the Victorian Small Business Commission⁴. A lease can also include multiple options, which are exercisable by the tenant. The RLA is also binding on landlords for the full length of the lease, and for any or all options the tenant wishes to exercise. This structure gives the tenant flexibility and certainty, and is conceptualized below:



The *Retail Leases Act 2003*, Part 5, section 35, stipulates conditions of rent reviews. The section states that: ‘the lease must state

- (a) when the reviews are to take place; and
- (b) the basis or formula on which the reviews are to be made’

Landlords are required to give notice of rents proposed under rent reviews. If tenants disagree with the proposed rent, they may initiate a dispute process with the VSBC who appoint an independent valuer to make a determination⁵. This ensures that the tenant is only paying the rent they should. Further, prior to exercising a renewal option, a tenant may seek an early rent review, to see what rent they would be liable to before committing to the extension⁶.

¹ VSBC (2024) *What are retail premises?* <https://www.vsbcc.vic.gov.au/your-rights-and-responsibilities/entering-into-a-retail-lease/what-are-retail-premises/>

² Retail Leases Act 2003 (Vic), Part 4

³ Retail Leases Act 2003 (Vic), Part 5

⁴ VSBC (2024) *Five-year waiver certificates*, <https://www.vsbcc.vic.gov.au/your-rights-and-responsibilities/five-year-waiver-certificates/>

⁵ VSBC (2024) *Rent review disputes*, <https://www.vsbcc.vic.gov.au/your-rights-and-responsibilities/rent-review-disputes/>

⁶ VSBC (2024) *Options and renewals for retail leases*, <https://www.vsbcc.vic.gov.au/your-rights-and-responsibilities/options-and-renewals-for-retail-leases/>

Box 2: Case study - Defence Housing Australia

Defence Housing Australia – A case study of federally harmonised tenancy standards

Defence Housing Australia was established by the Commonwealth *Defence Housing Australia Act 1987* with the stated purpose:

- ‘to provide adequate and suitable housing for, and housing-related services to:
- (a) members of the Defence Force and their families; and
 - (b) officers and employees of the Department and their families; and
 - (c) persons contracted to provide goods or services to the Defence Force, and their families; and
 - (d) persons contracted to provide goods or services to the Department, and their families;’

As of 2023, DHA has a portfolio of 16,929 dwellings across Australia¹. However, only a small portion of these is owned by DHA, with 12,042 dwellings leased from investors. The lease model used by DHA is a departure from most residential leases in Australia in offer security and stability over the long-term.

Leases with DHA are long-term, being 3, 6, 9, or 12 years². All leases also contain an option for DHA to extend by up to 3 years². If the investor sells during the lease period, the agreement with DHA (including the option for extension) remains in place³.

Rent review and increase mechanisms are included in the lease. These stipulate that DHA pays the investor market rent⁴ (minus a service fee DHA use to cover property maintenance⁵). This payment is irrespective of if the dwelling is tenanted, guaranteeing income for the investor. DHA then charge rent to the resident (a member of the Australian Defence Force) to recoup this cost⁴. Members of the Australian Defence Force are paid a separate rent allowance from the Department of Defence⁶.

DHA leases from investors in all states and territories, and as such has developed customised leases, compliant with state and territory residential tenancy acts, which include the above requirements⁷. This means that DHA leases are harmonised across Australia in terms of outcomes, an important consideration for a proposed NRTS.

DHA’s operating model also provides a template to NRRS Tier 3, which would have investors head-lease properties to a social housing provider.

¹ DHA (2022) *Annual Report 2021-2022* <https://www.dha.gov.au/docs/default-source/annual-reports/dha-annual-report-2021-22.pdf>

² DHA (2024) *Long-term lease* <https://www.dha.gov.au/investing/why-invest-with-dha/long-term-lease-agreements>

³ DHA (2024) *Selling a property while leased* <https://www.dha.gov.au/investing/how-to-invest/buy-mid-lease/selling-a-property-while-leased>

⁴ DHA (2024) *Guaranteed rent* <https://www.dha.gov.au/investing/why-invest-with-dha/guaranteed-rent>

⁵ DHA (2024) *Service fee* <https://www.dha.gov.au/investing/why-invest-with-dha/service-fee>

⁶ Department of Defence (2024) *Rent allowance* <https://pay-conditions.defence.gov.au/rent-allowance>

⁷ DHA (2024) *DHA lease agreement edition 7* <https://www.dha.gov.au/investing/why-invest-with-dha/dha-lease-agreement-edition-7>

5.2 Elements 2 and 3: Requiring Investor-landlords receiving NG and CGT to adhere to NRTS and NRRS Tiers

5.2.1 Aligning tax concessions with national rental tenancy standards

The second and third components of the NRRS would be to require investor-landlords who are in receipt of negative gearing and CGT discount concessions for a property to ensure both the property and the leasing arrangements meet NRTS requirements. This would be a voluntary opt-in arrangement, whereby investors wishing to access the tax advantages of negative gearing and CGT discounts would agree to ‘mutual obligation’ of adherence to the NRTS requirements. Participation in the NRRS would be graduated and packaged among a set of ‘tiers’, with landlords who adopt additional bundles of NRRS measures, such as longer leases and discounted rent, eligible to greater levels of benefit from the tax system. Any investor who did not wish to conform to the NRRS requirements would be free to do so. However, access to the advantages of negative gearing and CGT discounts would be broadly proportionate to the extent to which and investor-landlord agrees to the bundle of conditions for the NRRS tier they select.

5.2.2 Tax credits for discounted rents

In addition to access to the benefits of NG and CGT discount for participating investor-landlords, the NRRS would also allow ‘positively geared’ investors to participate, and whether or not they are renting to CRA recipients. This would be achieved via a new tax credit granted where investor-landlords provide rent discounts at set proportion below fair market rates, such as five per cent. This concession would be administered through the same mechanisms which would govern NG and CGT discount tax credits proposed above. An investor-landlord would self-assess the fair market rate applying for their dwelling based on characteristics and location, with reference to an independent source of information, such as rental price reports prepared by state agencies. The investor-landlord would then rent the property to an NRRS tenant according to NRTS requirements at a discount of five per cent below the fair market rate. The difference in annualised income between the fair market rent and the rent charged to the tenant would be calculated and a tax credit issued.

5.2.3 Administration of the NRRS

The NRRS could be given greater force through the Department of Social Services (DSS), who currently administer the National Rental Affordability Scheme and are the parent organisation of Services Australia, which administers the social system, including CRA. Landlords seeking participation in the NRRS would apply through DSS, agreeing to all

relevant terms and conditions. Leases would be registered with DSS once signed with the tenant, with DSS to check for compliance with all NRTS requirements. DSS would also perform a matching process with the tenant, to validate if they are currently receiving CRA (or eligible to). Following these checks, the lease would be deposited with DSS with a tax credit certificate issued to the landlord and enhanced CRA payments issued to the tenant if applicable (see below).

Box 3: Case study of the National Rental Affordability Scheme

National Rental Affordability Scheme – A case study of contingent tax credits

The National Rental Affordability Scheme (NRAS) was established in 2008¹ with a dual function of providing a supply of affordable housing and supporting the construction sector in the aftermath of the Global Financial Crisis.

Dwellings in NRAS attracted a set annual payment known as an incentive².

Investor-landlords who developed new housing stock were eligible to apply to join the NRAS so long as they met the following conditions²:

- rent charged is at least 20 per cent below the market value rent at all times
- tenant demographic assessments are completed
- market rent valuations are lodged within the required timeframe
- rent increases meet state and territory legislative requirements
- Statement of Compliance lodged within the required timeframe
- assessment of vacancy days has been completed
- compliance with state, territory and local government planning and building laws.’

There are two key elements of NRAS which are pertinent to the NRRS. Firstly, the scheme included eligibility requirements for investors (to charge rent at a set ratio of market rent) and for tenants (to meet income requirements) with compliance overseen by the Commonwealth Department of Social Services (DSS). Secondly, incentives to private investors took the form of a refundable tax offset credit² issued by the Housing Secretary.

The NRAS provides a template which the NRRS could follow. The scheme demonstrates the capability of the DSS to administer and enforce compliance with a tenancy system, and demonstrates its capability to issue tax offset credits. A similar system could be used to give tax credits to landlords participating the NRRS to allow access to NG, CGT discounts and other credits such as rent discount credits for positively geared investors and instant/quick write-offs for dwelling efficiency improvements.

¹ DSS (2024) *About the National Rental Affordability Scheme (NRAS)* <https://www.dss.gov.au/housing-support-programs-services-housing-national-rental-affordability-scheme/about-the-national-rental-affordability-scheme-nras>

² DSS (2024) *Management and compliance of NRAS dwellings* <https://www.dss.gov.au/housing-support-programs-services-housing-national-rental-affordability-scheme/management-and-compliance-of-nras-dwellings>

Box 4: Case study of CGT: Existing differential capital gains tax concessions for affordable housing

Existing differential capital gains tax concessions for affordable housing

Differential preferable treatment of capital gains for investors into affordable rental housing that meets safe and secure tenancy requirements is already a feature of the Australian taxation system. This differential taxation occurs via the availability of an additional 10 per cent capital gains discount where private rental sector investment properties meet conditions including:

- the property is rented as affordable housing for at least 3 years¹.
- the property is managed by a registered Community Housing Provider

Annual ‘affordable housing certificates’ are issued by the managing CHP to the investor-landlord that can then be used to calculate tax liabilities. The affordable housing certificates set out the following details:

- the number of days the property was used to provide affordable housing during the income year
- state that the property met the residential premises and property management conditions for affordable housing.

Similar arrangements applied under the National Rental Affordability Scheme (NRAS) whereby concession payments for NRAS housing provider participants were also made through the taxation system.

¹ Treasury (2024), p.153. Australian Tax Office (2024) ‘CGT discount for affordable housing’, Canberra, Australian Government; Webpage, Accessed 1 July 2024: <https://www.ato.gov.au/individuals-and-families/investments-and-assets/capital-gains-tax/property-and-capital-gains-tax/cgt-discount-for-affordable-housing#Youraffordablehousingcertificates>

5.3 Element 4: Supporting vulnerable tenants by linking CRA with the NRTS

The final component of our proposal is that Commonwealth Rent Assistance should be adjusted to include two tiers of payment for properties let or not let according to National Rental Tenancy Standards requirements. Properties meeting NRTS requirements would be eligible for a higher rate of CRA than non-performing properties. We suggest a differential of 10 per centage points such that CRA would cover 85 per cent of rents rather than the 75 per cent covered by standard CRA. This differential CRA setting would provide tenants with a financial incentive and greater market power to seek properties that are within the NRTS compared to non-participating properties. While this creates differential CRA rates for effectively equivalent tenant need, those tenants who do not rent from NRTS compliant landlords would not be financially worse off than under current CRA arrangements.

Participation in the NRRS would provide benefit to CRA recipients, both financial and in terms of quality and tenure security, but non-participation would not incur a penalty other than the foregone opportunity to obtain a higher CRA rate.

In addition to differential CRA, the rates of benefit to investor-landlords would also be differential, so that a higher rate of negative gearing and CGT is obtained through letting to a CRA recipient tenant while a lower rate of negative gearing and CGT would apply for properties let to non-CRA recipient tenants. These differential tiers would create a financial incentive for landlords to prefer CRA recipient tenants over non-CRA tenants. A conceptual overview of these arrangements is discussed below.

5.4 Element 5: Access to Australian Housing Bond Aggregator finance for private investor-landlords supplying NRTS compliant dwellings and tenancies

Since 2018 the Commonwealth has supplied finance to providers of affordable and social housing via the Australian Housing Bond Aggregator (AHBA). The AHBA aggregates housing finance through the issue of bonds to the private capital market and aggregates that finance for lending to Community Housing Organisations (CHO) for the construction of affordable and social housing. This instrument fills an important gap between the borrowing needs of CHOs to expand affordable and social housing supply, and the reluctance of traditional private credit providers to lend to a non-profit sector with modest revenue streams. By the end of financial year 2023 Housing Australia had lent a cumulative total of \$3.4 billion to CHOs since 2018.

Access to AHBA loans is currently limited to CHO. However, there is no policy coordination reason that this credit access could not be expanded to a wider range of providers, such as investor-landlords where the cost and conditions of tenancy are similar to those provided by the CHO sector, namely NRTS standards.

Access to the AHBA could be provided to the private rental market sector by changing the eligibility criteria for the AHBA to allow access to finance by NRRS-registered investor-landlords. Those receiving AHBA finance would be required to achieve NRRS certification that the dwelling quality and the conditions of tenancy meet NRTS requirements. Further lending requirements may need to be considered.

5.5 Element 6: Instant write-off for dwelling comfort, energy and sustainability upgrades

Australian private residential rental homes are widely recognised to have poorer energy efficiency than those under owner-occupation. This is partly explained by a ‘split incentive’, whereby the landlord bears the costs of efficiency upgrades, but the tenant receives the benefits of lowered energy bills³⁵. Landlords are also of the belief that any increases in rent would not cover the cost of efficiency improvements³⁵. When refits do occur, they are more likely to be within the higher cost segments of the rental market³⁵, rather than within lower cost segments. Because energy efficiency upgrades are a capital cost to landlords, subsidies and financial supports are typically needed to provide upgrade incentives³⁵. However, these subsidies then flow to landlords as property owners and generally to higher value rental properties, rather than benefiting the least well-off tenants. Remedying these issues at the national scale is further complicated by the differing state jurisdictional arrangements for dwelling upgrades and subsidies.

5.5.1 Instant write-off for efficiency upgrades

Many costs property investors incur for upgrading and maintaining their property must be depreciated over time³⁶. Some maintenance costs, such as repairs can be claimed in the same year, but replacement items and upgrades are generally depreciated over time³⁷. The time of depreciation varies depending on the item.

Tax implications are a consideration in landlord upgrade decisions and can act as either an incentive or a disincentive to upgrade rental dwellings. The long depreciation time of energy efficiency improvements means that landlords must carry the financial costs, which could include loans, for longer periods of time. Instant asset write-offs were introduced following the GFC³⁸ to stimulate the economy and were increased during the

³⁵ Lang, M, Lane, R, Zhao, K, and Raven R (2022) 'Energy efficiency in the private rental sector in Victoria, Australia: When and why do small-scale private landlords retrofit?', *Energy Research & Social Science*, vol. 88, <https://www.sciencedirect.com/science/article/pii/S2214629622000408>

³⁶ ATO (2024) *Rental expenses you can claim now*, <https://www.ato.gov.au/individuals-and-families/investments-and-assets/residential-rental-properties/rental-expenses-to-claim/rental-expenses-you-can-claim-now>

³⁷ ATO (2024) *Rental expenses you claim over several years*, <https://www.ato.gov.au/individuals-and-families/investments-and-assets/residential-rental-properties/rental-expenses-to-claim/rental-expenses-you-claim-over-several-years>

³⁸ Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4709

COVID-19 pandemic³⁹. These instant write-offs allowed business to invest in plant or equipment below a threshold and claim the full amount in the first year of use, rather than over a depreciation schedule, which encourages investment^{Error! Bookmark not defined.}.

We propose that under the NRRS instant tax write-off provisions are devised to support capital upgrades of private rental residential properties. Under the proposed arrangements a set of national dwelling performance standards (NDPS) would be established either directly by the Commonwealth or by aggregating state minimum standards. Where a dwelling undergoes capital upgrade to perform to NBPS requirements the relevant state auditing authority, or delegate, would issue a tax certificate for all or part of the upgrade work. This tax certificate would then be used by the investor-landlord for an 'instant asset write-off' within the relevant tax year. Investor-landlords in NRTS Tiers 1 to 3 would be eligible for this option.

The advantage of allowing an instant asset write-off equivalent arrangement for residential rental dwelling environmental performance upgrades is the quick payback to investor-landlords via a single full depreciation event. In this regard it would operate as a special case of 'environmental' negative gearing. Where a NRRS participating investor-landlords undertakes energy efficiency improvements that increase the rating of the dwelling by at least one star under the Residential Efficiency Scorecard⁴⁰, they would be eligible for an accelerated write-off.

A list of capital works which could result in energy efficiency improvements and current depreciation periods is given below, noting that capital works are depreciated over 25/40 years⁴¹:

- Electrical upgrades – capital works
- Solar panels (including batteries, inverters, and regulators) – 20 years
- Hard wired lighting fittings – capital works
- Ceiling fans – 5 years
- Electric heater – 15 years (ducting, piping, venting and wiring are capital works)
- Split system air conditioning, up to 20kW – 10 years (ducting, piping and vents are capital works)
- Insulation – capital works

³⁹ ATO (2024) Instant asset write-off for eligible small businesses <https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/depreciation-and-capital-expenses-and-allowances/simpler-depreciation-for-small-business/instant-asset-write-off>

⁴⁰ Residential Efficiency Scorecard <https://www.homescorecard.gov.au/>

⁴¹ ATO (2024) Residential rental property items, <https://www.ato.gov.au/forms-and-instructions/rental-properties-2024/residential-rental-property-assets/residential-rental-property-items>

- Window blinds – 10 years
- Window curtains – 6 years
- Cook tops – 12 years
- Ovens – 12 years
- Stoves – 12 years
- Rangehoods – 12 years
- Solar hot water – 15 years (piping is capital works)
- Electric hot water – 12 years (piping is capital works)
- Rainwater tank, steel – 25 years
- Rainwater tank, polyethylene – 15 years

6 A tiered national rental regulation system structure

We propose a multi-tiered national rent regulation scheme that combines the six elements described above, as depicted below (Figure 3). This scheme has three tiers, complemented by private market rental, community housing and social housing, forming a spectrum of six rental options, ranging from full-market exposure with little or no government subsidy, to non-commodified community and public rental housing with higher government subsidy. The three middle tiers within the NRRS, which are private residential rental sector dwellings rented under national rental regulation system arrangements are discussed in more detail below.

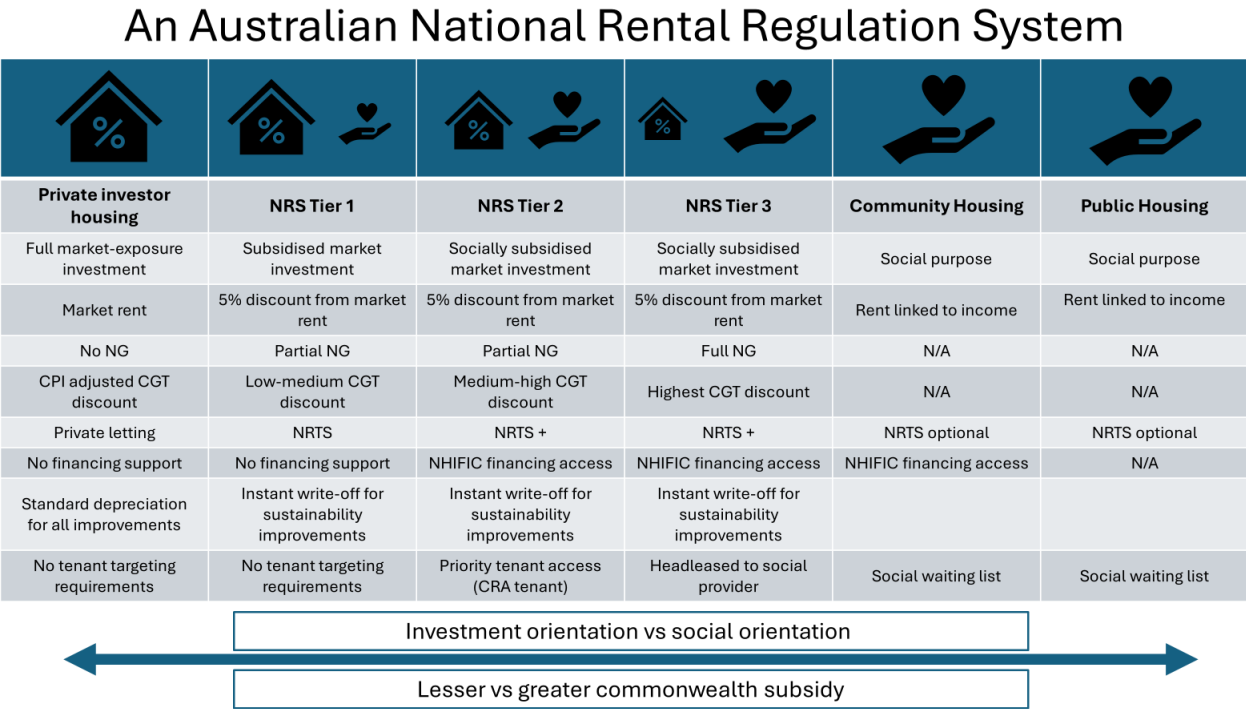


Figure 3: NRRS Investment and Social Provision Tiers

6.1 Private Investor Housing

Private investor housing is supplied by investor-landlords within the private rental market with limited Commonwealth support. Within this category, investor-landlords cannot negatively gear their property investment by counting rental losses against other income sources. Properties operating under this category are only entitled to a CGT discount equivalent to the consumer price index.

In this NRRS segment Investor-landlords face no requirements to let tenancies to CRA recipient households nor to align with the National Rental Tenancy Standards. Rental tenancies would remain regulated by state government legislation. This sector is the most market-exposed housing sector allowing investor-landlords to enjoy unimpeded speculation on rents and capital gains, and to let tenancies subject to state legislation, with almost Commonwealth assistance or intervention. However, in return for this freedom investor-landlords receive no significant Commonwealth tax benefit.

6.2 NRRS Tier 1 – Affordable private rental

The NRRS Tier 1 provides good quality, secure and affordable private residential rental sector housing. The social purpose of this tier is to create market affordable housing for all tenants, using the taxation system as an incentive mechanism.

Investor-landlords who adopt the NRTS receive partial negative gearing and Tier 1 capital gains tax discounts. These would be provided in the form of NRRS Tax Credit Certificates issued by the Department of Social Security. Similar tax certificate arrangements already operate via the NRAS scheme.

Landlords are free to select any tenant they wish for the dwelling, subject to any legislative restraints on discrimination. Leases and dwellings let under this Tier would be required to adhere to the NRTS tenancy and dwelling quality standards.

To incentivise earlier energy efficiency improvements, landlords participating in NRRS Tier 1 could be permitted to write-off dwelling energy and sustainability improvements over a shorter period than a standard depreciation schedule (see section below for comparisons). This would accelerate dwelling upgrades benefiting tenants as well as supporting national energy efficiency and transition objectives.

6.3 NRRS Tier 2 – Benefit private rental

The NRRS Tier 2 provides good quality, secure and affordable housing, targeted to CRA recipients. The social purpose of this tier is to create a market affordable housing scheme for tenants in the lowest income segments especially those with high social vulnerability. The tier has incentives for both parties, to encourage matching of NRRS Tier 2 landlords and CRA tenants.

Investor-landlords who adopt the NRTS and house a tenant who is receiving CRA at the commencement of the lease receive full negative gearing and Tier 2 capital gains tax discounts. These would be provided in the form of NRRS Tax Credit Certificates issued by

the Department of Social Security (DSS) providing credit for the duration of tenancy as calculated from the CRA recipient tenant social security record. Similar tax certificate arrangements already operate via the NRAS scheme.

Investor-landlords are free to undertake their own tenant selection processes, however the tenant must demonstrate they are in receipt of CRA, and the tenancy is registered through Services Australia.

To incentivise energy efficiency improvements, investor-landlords participating in Tier 2 could be permitted to write-off sustainability improvements over a shorter period than a standard depreciation schedule, including the option for instant write offs (see above). Investor-landlords would also have access to loans through Housing Australia to finance these improvements.

Tenants receiving CRA who are housed in NRRS Tier 2 dwellings would get a higher CRA rate, such as a further 10 per centage points of allowance. This provides the incentive and financial capacity to seek out investor-landlords offering NRRS 2 dwellings.

6.4 NRRS Tier 3 – Compassionate private rental

NRRS Tier 3 provides a mechanism for head-leasing of affordable private market housing to social housing providers. The intent of this tier is to create a low-market investment options to augment the needs of the social housing system. NRRS Tier 3 corelates to the existing Defence Housing Australia model but is targeted to CRA recipients and other vulnerable households, rather than defence personnel.

Landlords who participate in NRTS Tier 3 and let the dwelling to a Commonwealth-recognised Community Housing Organisations (CHO) or public housing authority receive full negative gearing and the highest CGT discount.

Selection of tenants and allocation to properties would be at the discretion of the head-leasing CHP with investor-landlords having no role in the letting process. However, investor-landlords would receive guaranteed rent for the full term of the lease (inclusive of options for lease extension). Investor-landlords would also receive a guarantee that the property was handed back in the same or better condition as at the start of the lease.

To incentivise energy efficiency and environmental performance improvements, investor-landlords participating in Tier 3 could be permitted to write-off expenditure on such improvements over a shorter period than a standard depreciation schedule, including the option for instant write offs (see above).

Within Tier 3, investor-landlords could also have access to Australian Housing Bond Aggregator (ABHA) to finance purchase of dwellings and capital improvements. This would provide a source of securitised credit that is otherwise not available to investor-landlords through typical loan provider. Currently CHO can access loan guarantees to fund construction of affordable housing. First homeowners are also able to access partial loan guarantees of 15 per cent⁴² via Housing Australia. Given the social mutual obligation of NRRS Tier 3 it is reasonable that this lending support be granted to investor-landlords. The ABHA lends finance to CHO at between 0.61 per cent to 1.0 per cent above its own borrowing cost. As of August 2024, the cost of AHBA borrowing was 4.61 per cent over 10 years⁴³. With a median margin of around 0.825 per cent the potential cost to an investor-landlord borrowing to fund a NRRS property would be around 5.44 per cent, in contrast to commercial lending for property investment of between 6 per cent and 7 per cent⁴⁴.

We note that the review of the National Housing Finance and Investment Corporation (NHFIC) in 2021 recommended expansion of loan eligibility beyond the CHO sector⁴⁵. While this did not recommend that private rental investor-landlords be eligible for concessionary NHFIC loans, the conditions of NRRS Tier 3 letting approaches not-for-profit housing provision in terms of the social outcomes for tenants, thus it is justifiable to offer concessionary loans to private investor-landlords.

6.5 Differentiation between NRRS tiers

The Tiers would likely not need to be highly differentiated, but sufficient to compensate landlords for their perceived additional liability due to housing a Services Australia income receiving tenant. A few percentage points of differential taxation applied to appreciating properties at the median national house price of approximately \$959,300 in mid-2024 would translate into potentially large figures in terms of negative gearing or capital gains advantages within investment portfolio calculations for landlords.

It is proposed that the settings shown below (Table 4) would form the basis of the NRRS. Participants in the NRRS would be required to provide the dwelling at a discounted rent, of 5 per cent market value.

⁴² National Housing Finance and Investment Corporation (2021) First Home Loan Deposit Scheme Fact Sheet 2021-2022, Housing Australia, Australian Government; housingaustralia.gov.au/sites/default/files/2022-10/first-home-loan-deposit-scheme-fact-sheet-19-june-2021.pdf

⁴³ Housing Australia (2024) Affordable Housing Bond Aggregator – Market update; 1 August; Sydney, Australian Government; housingaustralia.gov.au/sites/default/files/2023-12/Monthly_AHBA_market_update.pdf

⁴⁴ Sale, J. and Rinella, N. (2024) *Compare Investment Home Loan Rates*; Canstar; website: <https://www.canstar.com.au/home-loans/compare/property-investments>

⁴⁵ Treasury (2021) *Statutory Review of the Operation of the National Housing Finance and Investment Corporation Act 2018 – Final Report*; Canberra, Australian Government. (p. 74)

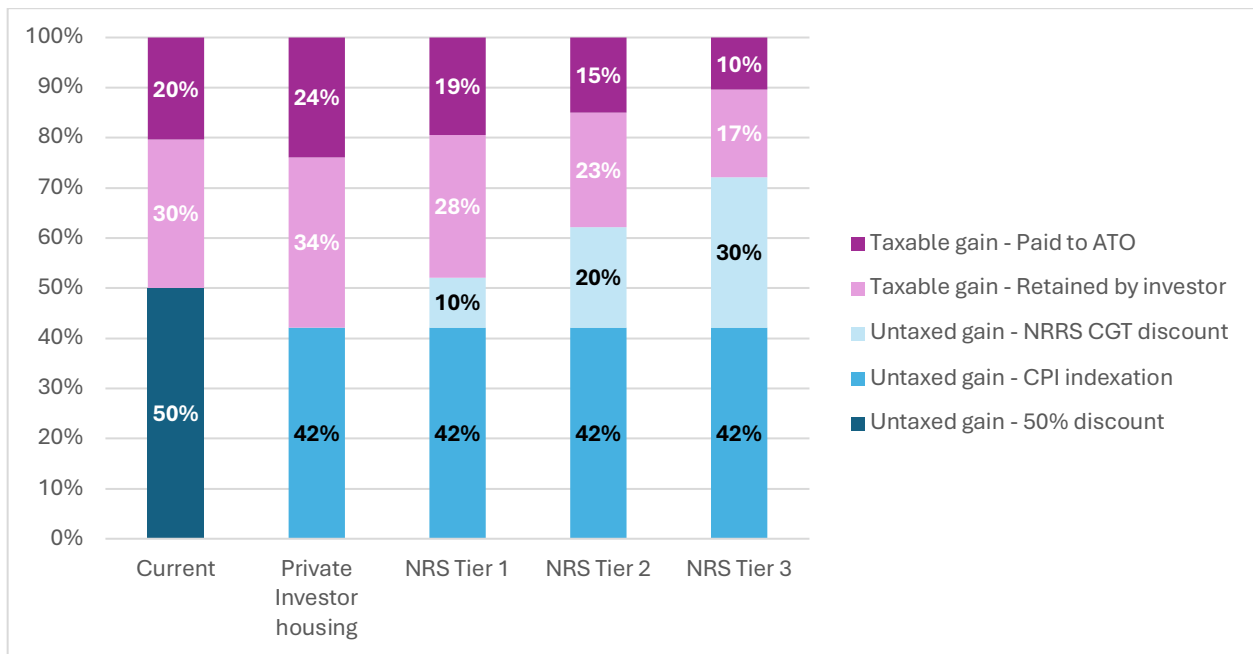
They would then receive favourable tax treatment through NG and CGT concessions. A further component of the NRRS reform is also changing from a flat CGT discount to a CPI method, whereby the real gain would be taxed in full for properties not enrolled in the scheme. Participants in the NRRS would get an additional discount, between 10 and 30 per cent, of the gain. An example of what percentage of gain would be taxable, and how much tax could be liable, is shown below (Source: Authors calculations

Figure 4).

Table 4: Indicative NRRS settings

NRRS Tier	Private Market	NRRS Tier 1	NRRS Tier 3	NRRS Tier 3
Rent discount	None	5% of market value	5% of market value	5% of market value
Negative gearing	None (losses can only equal income)	Partial (75%)	Full (100%)	Full (100%)
CGT discount (%)	CPI adjusted purchase price	CPI adjusted purchase price plus 10%	CPI adjusted purchase price plus 20%	CPI adjusted purchase price plus 30%

Source: Authors



Source: Authors calculations

Figure 4: Distribution of capital gain and tax impost by NRRS Tier

Note: Assumptions for this estimate are shown in Section 6.10.

The discussion here has focused on three differential Tiers but there is no conceptual reason that further differentiation could be applied to favour tenant groups who may be disproportionately disadvantaged in the private rental sector. For example, First Nations CRA recipients experience high rates of rental stress⁴⁶ thus could be supported by further NG and CGT discounting for landlords.

6.6 Savings provisions

Savings provisions are proposed which would provide certainty for investors and maximise benefits to tenants. If an investor-landlord participated in Tier 2, housing a tenant receiving CRA, and that tenant subsequently stops receiving CRA, for example, due to an increased income, the tenancy would remain in Tier 2. The investor-landlord should continue to receive the taxation treatment for which they were originally entitled to. Conversely, if an investor-landlord participated in Tier 1, housing a tenant who was not receiving CRA, and that tenant subsequently started receiving CRA, for example, due to unemployment or changed employment status, the tenancy would be upgraded to Tier 2. This would provide the tenant with additional CRA supports, and the investor-landlord with the taxation benefits for which they would be entitled if the lease was newly established.

6.7 Dwelling rental price eligibility limits

To avoid subsidising housing for those not in need, we propose limiting inclusion to the NRRS to only dwellings affordable to the middle-, low- and lowest-income quintile households. Based on the 2022 third quintile gross income of \$145,384⁴⁷, this would be \$43,615 in rent annually, or \$839 weekly (using the ABS definition of affordability being 30 per cent of gross income⁴⁸). Based on the 2021 Census, this would exclude around 7 per cent of all private rental dwellings in Australia. A more nuanced approach could set rent limits by bedroom count, aligned to household incomes. The Victorian Government follows a similar method, with definitions of affordable housing being based on household incomes, in Metro and non-metro area⁴⁹. These arrangements would likely impose

⁴⁶ NHSAC (2024), p.135.

⁴⁷ ABS (2022) *Australian National Accounts: Distribution of Household Income, Consumption and Wealth*, <https://www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-distribution-household-income-consumption-and-wealth/latest-release>

⁴⁸ ABS (2022) *Housing occupancy and cost*, <https://www.abs.gov.au/statistics/people/housing/housing-occupancy-and-costs/2019-20>

⁴⁹ Department of Transport and Planning (2024) *Housing*. <https://www.planning.vic.gov.au/guides-and-resources/strategies-and-initiatives/housing#heading-10>

administrative and compliance costs on both tenants and landlords. Tenants in receipt of CRA would need to demonstrate they are occupying an NRRS dwelling to receive the higher CRA rate. This could be via a simple declaration or via a further form of independent certification provided by the landlord that the dwelling meets NRRS requirements. This could be provided to the tenant at the time of lease agreement.

6.8 Compliance enforcement of National Rental Tenancy Standards

The enforcement of rental tenancy regulation at the state level is undertaken through dedicated state agencies and tribunals. A compliance and enforcement mechanism would be required for NRTS leases. This could be achieved through a range of mechanisms. We suggest two parallel options here: 1) linked social security and taxation systems, and 2) state and territory tenancy regulation enforcement mechanisms.

6.8.1.1 Enforcement via Department of Social Security and Australian Taxation Office systems

The Department of Social Security and ATO operate a range of electronic data matching and compliance mechanisms. Compliance of landlords with the NRTS standards could be verified by electronic data matching of property information across the Social Security and ATO systems. This would allow the ATO to verify through Social Security data whether a property for which a landlord claims Tier 2 tax concessions was rented by a CRA recipient for the period claimed⁵⁰. This arrangement already exists in part for the National Rental Affordability Scheme, with the Department of Social Services ensuring participant landlord compliance with NRAS and issuing a tax credit to the landlord for the NRAS subsidy which is then honoured by the ATO.

The costs to the CRA-recipient tenant of this compliance mechanism are likely to be minimal as the reporting is only required at the commencement of a tenancy, unless the landlord seeks to alter the lease arrangements, or the property falls below quality standards. In either of these latter situations the tenant could alert Centrelink to the landlord breach. The period for which the dwelling remains non-compliant with the NRTS would then be deducted from the period for which a CGT discount tax certificate could be claimed. Further matching could occur with ATO data. As CRA tenants are already required to report conditions of their rental tenancy, such as rent paid, to Centrelink the Social Security system is already designed with elements of the compliance and enforcement

⁵⁰ Such matching may have wider benefit to taxation enforcement through the validation of landlord investor claims about the duration of tenancy for which negative gearing is claimed.

capability needed for the NRTS. Thus, additional CRA compliance components are unlikely to be a minor burden.

A further benefit of using social security and taxation office mechanism for NRTS enforcement is that breaches of NRTS conditions would fall under Commonwealth social security and taxation legislative enforcement mechanisms and punishments which have far greater scope that is typically the case with state and territory rental regulation. Failure to operate a tenancy according to the NRTS under the NRRS arrangements, or to falsely report these arrangements could potentially become a social security fraud offence.

A further mechanism to validate and enforce landlord compliance with the NRTS is the Administrative Appeals Tribunal. This agency is responsible for reviewing administrative decisions undertaken by Commonwealth agencies. In the context of the NRTS the AAT could be the authority of appeal where a landlord is deemed by DSS or the ATO to have breached the NRTS in relation to a tenancy.

6.8.1.2 Enforcement via state and territory residential tenancy regulation frameworks

State rental tenancy regulation frameworks typically include a regulatory agency and a juridical tribunal to which tenants or landlords can bring complaints. State regulatory frameworks can be used as an alternative to Commonwealth validation and enforcement procedures to ensure compliance of landlords with the NRTS. For most states and territories, the rental regulations set the minimum conditions below which a tenant cannot be disadvantaged. They typically have no benefit limits whereby investor-landlords and tenants can agree to conditions that improve upon the state minimum standards, hence the higher requirements of the Commonwealth NRTS would be specified in NRTS compliant leases. These NRTS leases would then be enforced by the state and territory regimes through their routine tenancy regulation mechanisms, including juridical tribunals.

Commonwealth enforcement of tenancy agreements through state and territory legislative arrangements already occurs for Defence Housing Australia tenancies (see Box 2 above). The DHA tenancies are head-leased by the Commonwealth through DHA but let to tenants via leases that are concordant with the specific rental regulations in the states or territories where the residential property is located. There are presently eight alternative leases offered by DHA that meet the requirements of the relevant state or territory rental tenancy legislation.

While we do not specifically propose it in the NRRS model we have presented above the Commonwealth could use its taxation powers to impose punitive tax sanctions on investor-landlords who are found by a state tenancy tribunal to be in breach of tenancy regulations. Such sanctions could include disallowance of negative gearing concessions

for NRRS investor-landlords, or a higher penalty rate of CGT taxation than the 3 per cent applying to investor-landlords in the unsubsidised private rental sector, for example an additional 1 per cent penalty.

6.8.1.3 Validation of NRTS quality standards

Landlords would need to verify their rental properties meet the NRTS tenancy and dwelling quality requirements to obtain the NG and CGT concession. This verification could be done through independent certification assessors or through similar verification mechanisms operating in other areas of taxation reporting by individuals. To claim the current NG concession, for example, landlords are required to verify that the property was available to rent for the period for which the concession is claimed. The requirement to verify that a property was rented to a CRA recipient and that the dwelling and tenancy met NRRS requirements could operate in a similar way. The current taxation system is replete with special schemes requiring declarations about income and asset arrangements, thus a dedicated mechanism for NRRS would not be extraordinary.

6.9 Coverage of the national residential rental tenancy stock

Because not all tenancies across the country would be captured by the NRRS arrangements this system would not initially operate as a universal national rental regulatory system. However, the preferencing of approximately 1.26 million CRA recipients by NRTS-compliant landlords and the wider normative effects of the NRTS within the private rental sector would mean that the NRTS would over time come to approximate a universal rental regulatory system. Properties may move into and out of the NRTS framework, but while they are within this system tenant outcomes would be improved, and the incentives to remain in the system would be strong compared to unsubsidised investment in the non-NRTS private market. The financial incentives for CRA recipients to seek NRTS certified properties and for landlords to offer them, would establish a new minimum quality and security floor at the lower-rent segment of the rental market. Non-CRA recipient tenants could begin to demand NRRS standards as part of their tenancy agreements, while landlords may find it simpler to bring their properties and tenancy offerings up to NRTS level and maintain these consistently across multiple tenancies whether they are CRA recipients or not. Non-CRA recipient tenants would likely begin to demand NRRS conditions even if they were not able to directly enforce these on landlords through the social security and taxation regulations.

6.10 Investment and financial implications of the NRRS tiers

To demonstrate how the NRRS could work we have developed a set of scenarios (see below). These compare the three Tiers of the NRRS with the private market settings and the current settings. We simulate tax liabilities from annual rental dwelling operation, and tax liabilities from realising the of the property upon sale.

All scenarios have the following common assumptions:

- The property was purchased in March 2019 at the mean Australian property price⁵¹ of \$646,000
- The property was sold in March 2024 at the average mean Australian property price of \$959,300
- The property has a market rent value of \$29,000 per annum (~\$560 per week, the median rent in Melbourne, and rental yield of ~3%)
- There are \$40,000 in costs claimed against the property by the investor-landlord (which is ~137% of income, the ratio observed by negatively geared investors, as shown in Table 2)
- The investor-landlord has a personal income of \$80,000 per annum (exclusive of any investment property costs).

In addition to these starting positions the assumptions used for each investor type are shown below (Table 4). This comparison assumes that all participants in the NRRS provide a rent discount of 5 per cent, and we assume minimum five years lease terms. However, we note that this is illustrative, and actual settings could vary. A complete shift from a flat discount has also been assumed, with all investors being taxed only on the real gain (the gain above CPI), with NRRS participant investors accessing CGT discounts. To illustrate the change from current conditions, a reference case, with full negative gearing and 50 per cent CGT discount is also included.

6.10.1 Negative gearing scenarios for NRRS tiers

A comparison of outcomes across the proposed investment spectrum is shown below (Table 5). Under the assumptions outlined above, it is estimated that negative gearing provides \$3,000 in financial benefits to the investor-landlord under current settings. Under the proposed NRRS, investors who did not participate in the NRRS would not receive this benefit, as they are not providing any enhanced social benefit. Investors who do participate in the NRRS obtain increasing benefit commensurate to the mutual obligation they meet.

⁵¹ ABS (2024) *Total Value of Dwellings*, <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/total-value-dwellings/mar-quarter-2024>

This creates a differential, whereby an investor in Tier 1 is \$1,351 per year better off (\$26 per week) for providing a rent discount of \$1,450 annually (\$28 per week). Tier 2 and 3 investors are \$2,285 per year better off (\$44 per week) for providing the same rent discount to either a CRA recipient or a social housing provider. This creates stepped incentives, where the greater the benefit the investor providers, the greater the benefit they receive.

Table 5: Comparison of operating costs and tax position for NRRS tiers.

	Current	Private Market	NRRS Tier 1	NRRS Tier 2	NRRS Tier 3
Market rent	\$29,000	\$29,000	\$29,000	\$29,000	\$29,000
Discounted rent	\$0	\$0	\$1,450	\$1,450	\$1,450
Taxable income	\$29,000	\$29,000	\$27,550	\$27,550	\$27,550
Total Expenses	\$40,000	\$40,000	\$40,000	\$40,000	\$40,000
Claimable expenses	\$40,000	\$29,000	\$36,888	\$40,000	\$40,000
‘Negative geared’ deduction	\$11,000	\$0	\$9,338	\$12,450	\$12,450
Negatively geared tax benefit	\$3,300	\$0	\$2,801	\$3,735	\$3,735
Tax benefit above discounted rent	\$3,300	\$0	\$1,351	\$2,285	\$2,285
Carried annual position	-\$7,700	-\$11,000	-\$9,649	-\$8,715	-\$8,715
Change from Current	\$0	-\$3,300	-\$1,949	-\$1,015	-\$1,015
Change from Private Market	\$3,300	\$0	\$1,351	\$2,285	\$2,285

Source: Authors calculations

6.10.2 Capital gains tax discount scenarios for NRRS tiers

As the NRRS would alter capital gains tax arrangements, a similar comparison to that for negative gearing as presented in 6.9.1 is necessary for when the investor sells and realises their asset’s value. A comparison of how capital gains flow is shown below (Table 6). These examples use a five-year holding period, aligned to the proposed length of a NRTS compliant lease. The additional discounts provided along the spectrum or NRRS Tiers is reflected in increasing gains retained by the investor.

It is in the combination of both operating and capital gains that a fuller investment comparison can be made. A final net position, with the investor selling their property after

a five-year holding period, is shown in Table 7. This reveals the combined effects of these incentives. A Tier 1 investor would receive tax benefits of \$20,862 over the five years (\$80 per week); Tier 2 \$39,635 (\$152 per week); and Tier 3 \$51,924 (\$199 per week).

Table 6: Comparison of capital gains and tax position for NRRS tiers.

	Current	Private Market	NRRS Tier 1	NRRS Tier 2	NRRS Tier 3
Purchase price	\$646,000	\$646,000	\$646,000	\$646,000	\$646,000
Sale price	\$959,300	\$959,300	\$959,300	\$959,300	\$959,300
Inflation adjusted purchase price	\$777,918	\$777,918	\$777,918	\$777,918	\$777,918
Realised gain	\$313,300	\$313,300	\$313,300	\$313,300	\$313,300
Taxed gain	\$156,650	\$181,382	\$150,052	\$118,722	\$87,392
Tax paid (from gain)	\$57,843	\$68,972	\$54,874	\$40,775	\$28,485
Retained gain	\$255,458	\$244,328	\$258,426	\$272,525	\$284,815
Change from Current	\$0	-\$11,130	\$2,969	\$17,067	\$29,357
Change from Private Market	\$11,130	\$0	\$14,099	\$28,197	\$40,487

Source: Authors calculations

Table 7: Combined operating (negative geared) and capital gains scenarios for NRRS tiers

	Current	Private Market	NRRS Tier 1	NRRS Tier 2	NRRS Tier 3
Carried position	-\$38,542	-\$55,060	-\$48,297	-\$43,623	-\$43,623
Retained CG gain	\$255,458	\$244,328	\$258,426	\$272,525	\$284,815
Net position	\$216,915	\$189,268	\$210,130	\$228,902	\$241,192
Change from Current	\$0	-\$27,648	-\$6,786	\$11,987	\$24,277
Change from Private Market	\$27,648	\$0	\$20,862	\$39,635	\$51,924

Source: Authors calculations

6.10.3 Tax scenarios for positively geared investors

The most recent taxation statistics reveal that around 41 per cent of taxpayers lodging a rental schedule are negative geared. The comparisons above are applicable to those investors, but not the 59 per cent of investors who are positively geared, that is they do not

record a net rental loss in letting the property. If the NRRS only accommodated negatively geared investors, this could reduce the potential coverage of the private residential rental market. To include all investors, we propose that any investor participating in the NRRS could claim the 5 per cent rent discount as an additional credit. This would reduce the loss to the positively geared investor, and when combined with the CGT incentives, still creates an attractive differential. This relies on the same assumptions as above, except that property expenses are assumed to be 61 per cent of rent (\$18,000 per annum rather than \$40,000), which is the average ratio of expenses to rent for positively geared investors in 2021-2022.

A comparison of operating and capital gains for positively geared investors is provided below (Table 8). This reveals the combined effects of a tax deductible rent discount and CGT incentives. A Tier 1 investor would receive tax benefits of \$9,018 over the five years (\$35 per week); Tier 2 \$23,116 (\$89 per week); and Tier 3 \$35,406 (\$136 per week). While these benefits are admittedly more modest than what negatively geared investors receive, landlords would not be worse off from participating in the NRRS. Further, the additional benefits of instant write-off of energy efficiency improvements are likely to increase the attractiveness of NRRS participation.

Table 8: Operating (positively geared) and capital gains scenarios for NRRS tiers

	Current	Private Market	NRRS Tier 1	NRRS Tier 2	NRRS Tier 3
Carried position	\$55,060	\$55,060	\$49,980	\$49,980	\$49,980
Retained CG gain	\$255,458	\$244,328	\$258,426	\$272,525	\$284,815
Net position	\$310,518	\$299,388	\$308,406	\$322,505	\$334,795
Change from Current	\$0	-\$11,130	-\$2,112	\$11,987	\$24,277
Change from Private Market	\$11,130	\$0	\$9,018	\$23,116	\$35,406

Source: Authors calculations

6.10.4 Dynamic implications of the NRRS for the investor-landlord sector

The composition of Australian investor-landlord cohort can be ascertained via the ATO Tax Statistics⁵², which provide information on gearing status, properties held, and income brackets. In 2020-21 there were 2,268,161 who lodged a tax return with an interest in a property. Of these investors, 42 per cent were negatively geared and 58 per cent positively

⁵² ATO (2024), Individual Statistics, <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/taxation-statistics/taxation-statistics-2021-22/statistics/individuals-statistics>

geared. The majority, 90.4 per cent have an interest in one or two properties, with only 9.7 per cent having an interest in three or more properties. The proportion of investors having an interest in five or more is very small, accounting for only 1.8 per cent of investors. The number of investors, by gearing status, and number of interests is shown below (Figure 5).

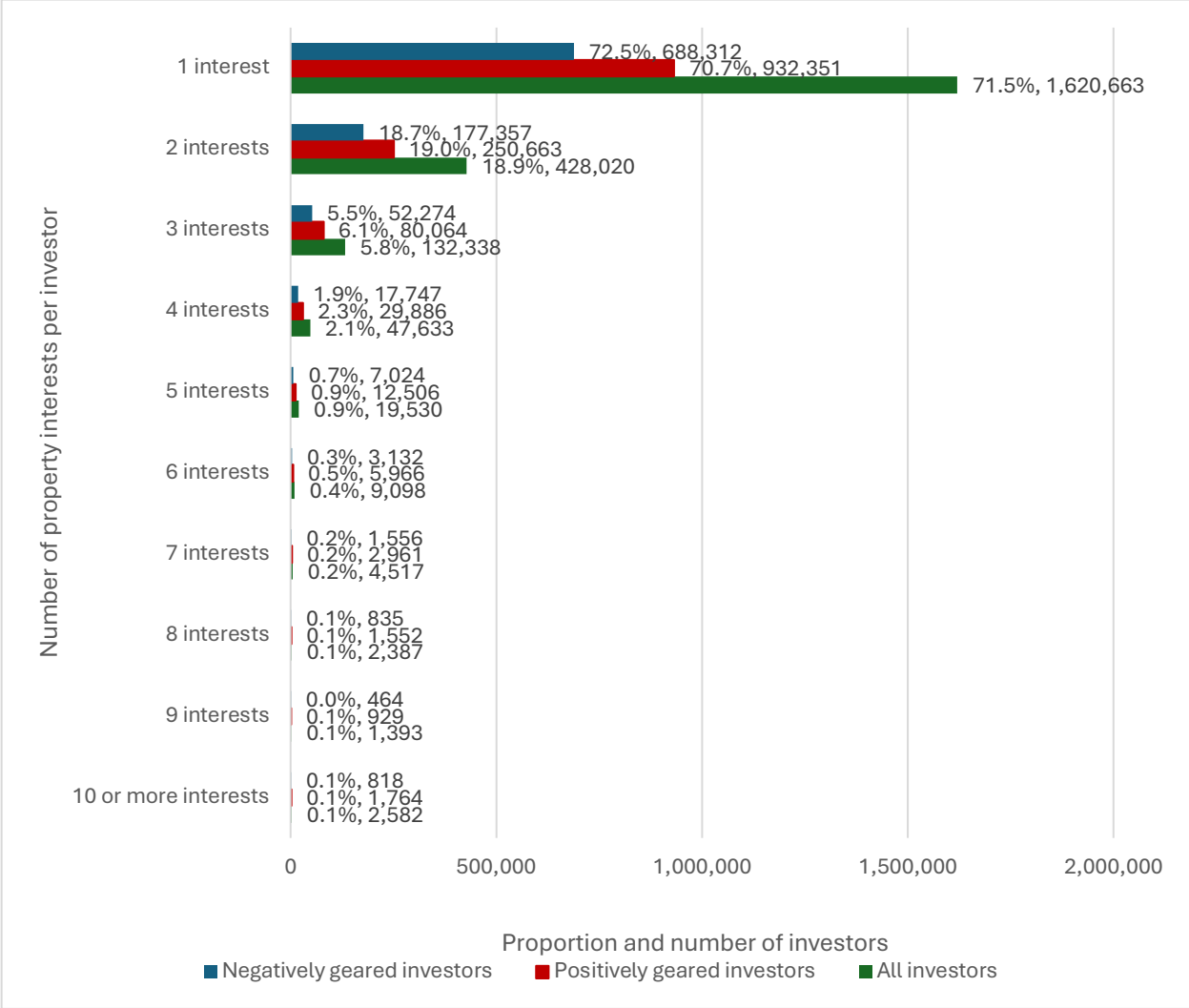


Figure 5: Proportion and number of investors by portfolio size in dwellings

The data also provides the number of interests by investor’s holding, for example, the number of properties which investors with one interest have an interest in. This allows an analysis of what proportions of the stock are held by small-scale landlords, and landlords with large holds. This analysis is shown in Figure 6. Overall, 75.7 per cent of properties are held by landlords with holdings in one or two properties. Landlords with interests in five or more properties have an interest in 7.5 per cent of the rental dwelling stock, and while this

is somewhat sizeable, the residential rental stock is largely composed of small-scale landlords.

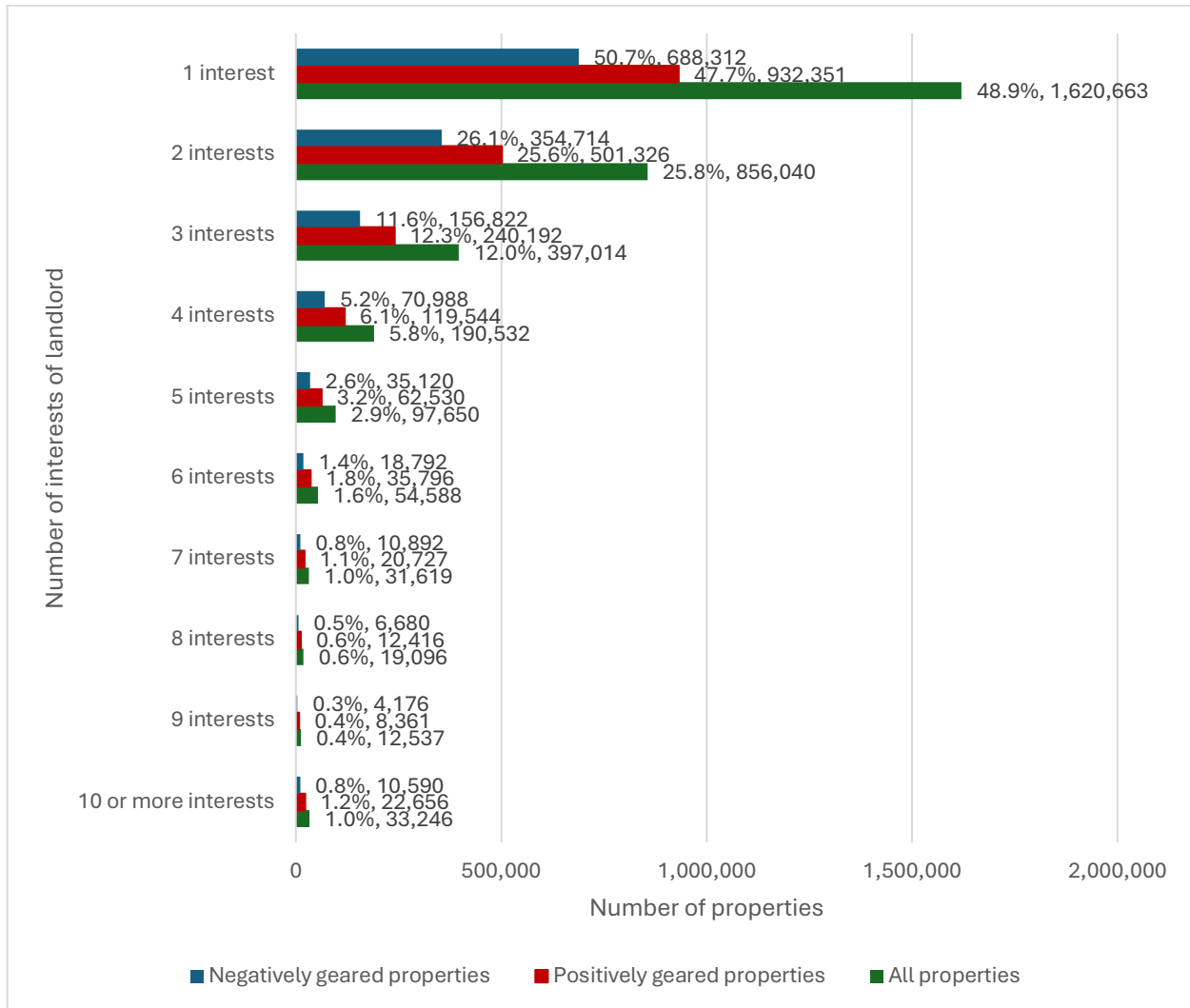


Figure 6: Number of properties by number of interests of landlord

The average net position of landlords, by gearing status and portfolio size is also presented in the ATO data and shown below (Figure 7). The mean rent of a negatively geared investor is calculated to be -\$4,407, with those with one interest having the highest loss of -\$4,721 (7 per cent greater than mean) and those with eight interests having the lowest of -\$3,595 (18 per cent less than mean). For those with a positive rent position, the mean rent was \$6,057, with those having one interest receiving the most, at \$6,588 (20 per cent above mean) and those with 10 or more receiving the lowest, at \$4,858 (9 per cent below mean).

This indicates that net rent positions are reasonably stable across the two investor cohorts of negatively and positively geared investors.

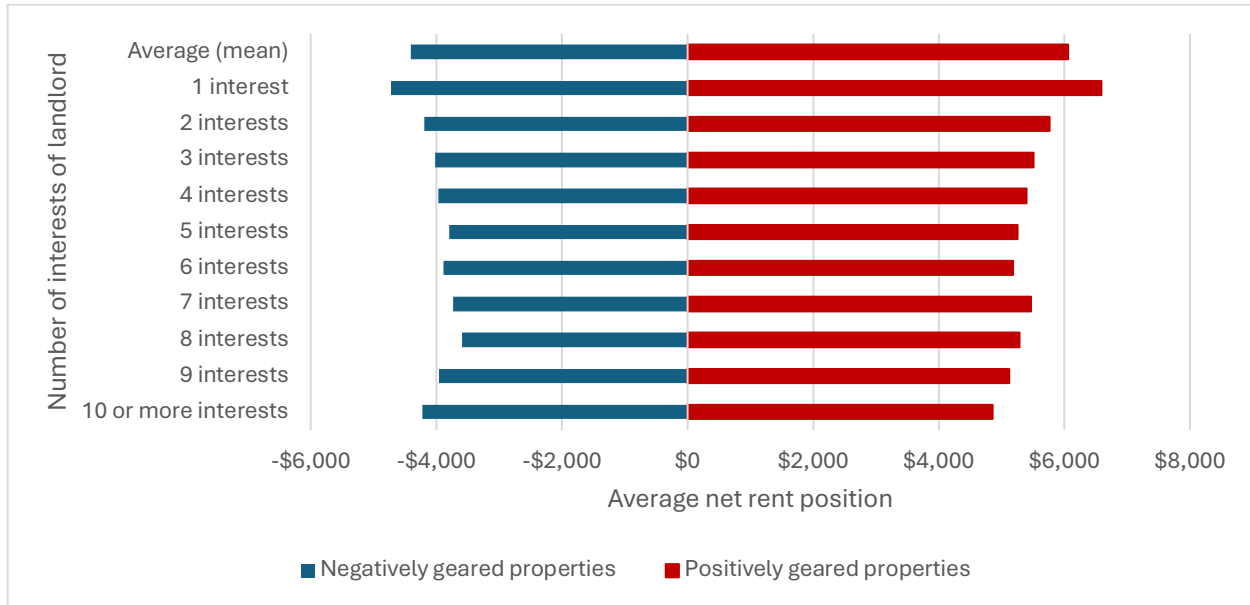


Figure 7: Average net rent position by gearing status and number of interests of landlord

Lastly, the ATO data details investor taxable income by number of interests. This allows and analysis of how many property interests are held by the different income groupings, as shown below (Figure 8). The largest single cohort is the \$100,000 to \$500,000 income bracket, with 38 per cent of property interests. Relatively few interests – 2 per cent – are held by those on taxable incomes over \$500,000, with the remaining 60 per cent held by investors with a taxable income of under \$100,000. We note the uneven income bands in this data which is an artefact of the ATO statistical release.

It is important to recognise that tax incentives through the NRRS would provide different benefits to investors of different income levels, but there would always be a progressive differential between tiers. Investors within the NRRS Tiers 1-3 would always receive greater tax benefits than those outside. Likewise, those in Tier 2 would always receive more than those in Tier 1. This advantage, as a net position, using all investment assumptions listed in 6.10 above, for different income levels is shown below (Figure 9). No level of investor, either inside or outside the NRRS, is projected to lose money through the introduction of the NRRS, but rather, some investors would make less money, while those who participate in Tier 2 or 3 would make more money. This also shows that lower income investors

achieve a greater net benefit, due to their lower tax liabilities on capital gains. Another metric is the average weekly advantage (again using all investment assumptions listed in 6.10 above), over a five-year investment cycle. This is also shown (Figure 10) below. While higher income earners receive higher benefits per week, this is due to differential tax rates, and notably is already the case with current tax settings, which deliver greater tax advantages to higher income negatively geared investors.

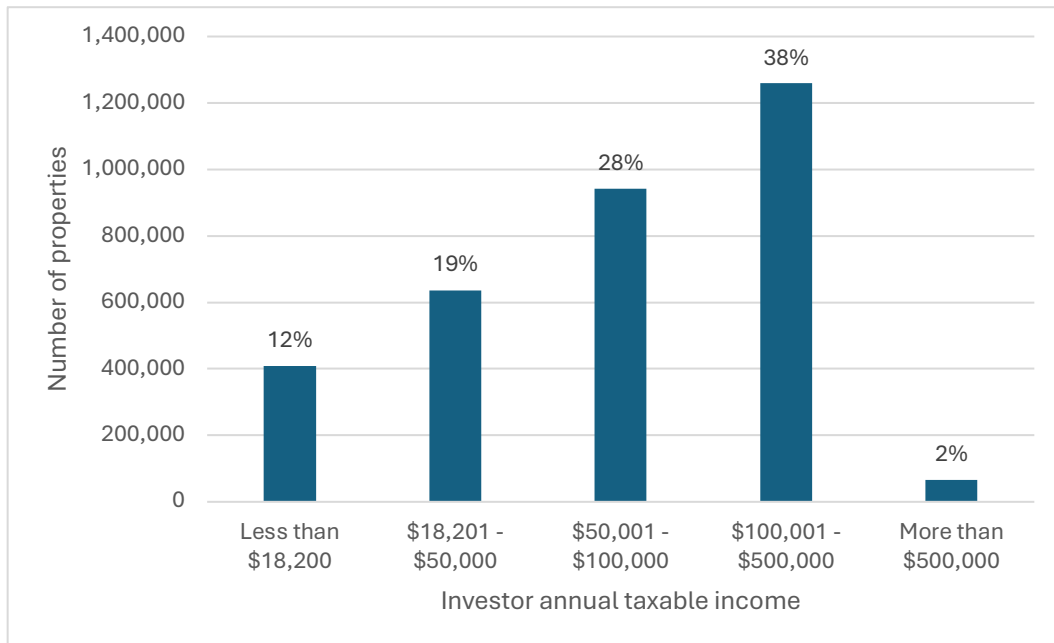


Figure 8: Number of properties by investor annual taxable income

This data also shows that lower income investors achieve a greater net benefit, due to their lower tax liabilities on capital gains. Another metric is the average weekly advantage calculated via the investment assumptions listed in 6.10 above, over a five-year investment cycle. This is also shown below (Figure 10). While higher income earners receive higher benefits per week, this is due to differential tax rates, and notably is already the case with current tax settings, which deliver greater tax advantages to higher income negatively geared investors. Lower income earners face lower marginal tax rates, thus typically have lower absolute tax liabilities compared to higher income earners with high marginal tax rates and high absolute tax liabilities against which to claim the costs of rental operations and investment.

These differentials could lead to a perception that lower income earners should be entitled to different or additional tax benefits for equity reasons, however this is not recommended.

Such differential rates could lead to increased financial manipulation and engineering to capture such benefits. Further, we note that many lower income investors are most likely in retirement, with those over 60 not being taxed on superannuation income withdrawals, which means there can be a disconnect between net earnings and taxed earnings. Rather than offer additional tax support for lower income investors, we consider it would be better for the social security system to remedy income inequality among investors.

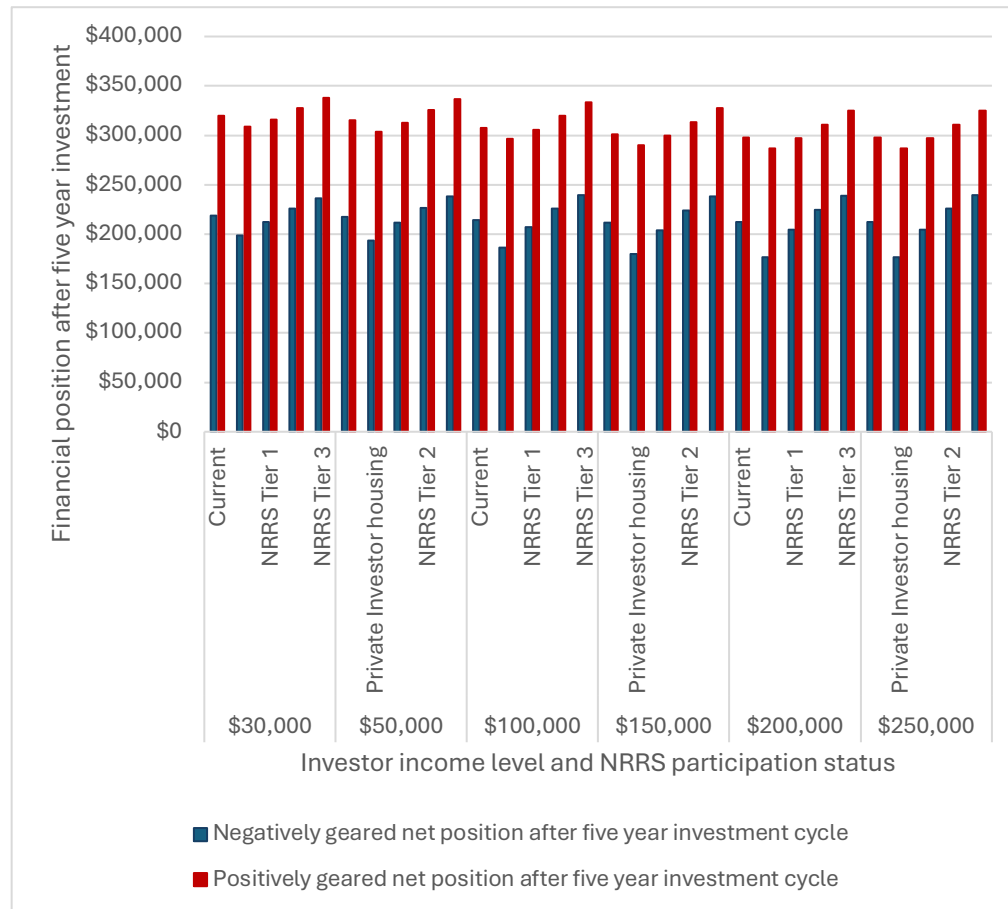


Figure 9: Comparison of net positions for different income level, by NRRS tier

Australia’s private rental sector is predominantly composed of small-scale investors who have an interest in only one or two properties. The number of investors who have very large holdings is relatively small. The financial effects of the NRRS have been estimated for different investor income levels. The results of these estimations show that investors participating in the NRRS would be better off, over the full term of their investment, than those who did not participate. While the advantages of participation increase as income

increases, this is a reflection of Australia’s income tax brackets and is already the case with the current context.

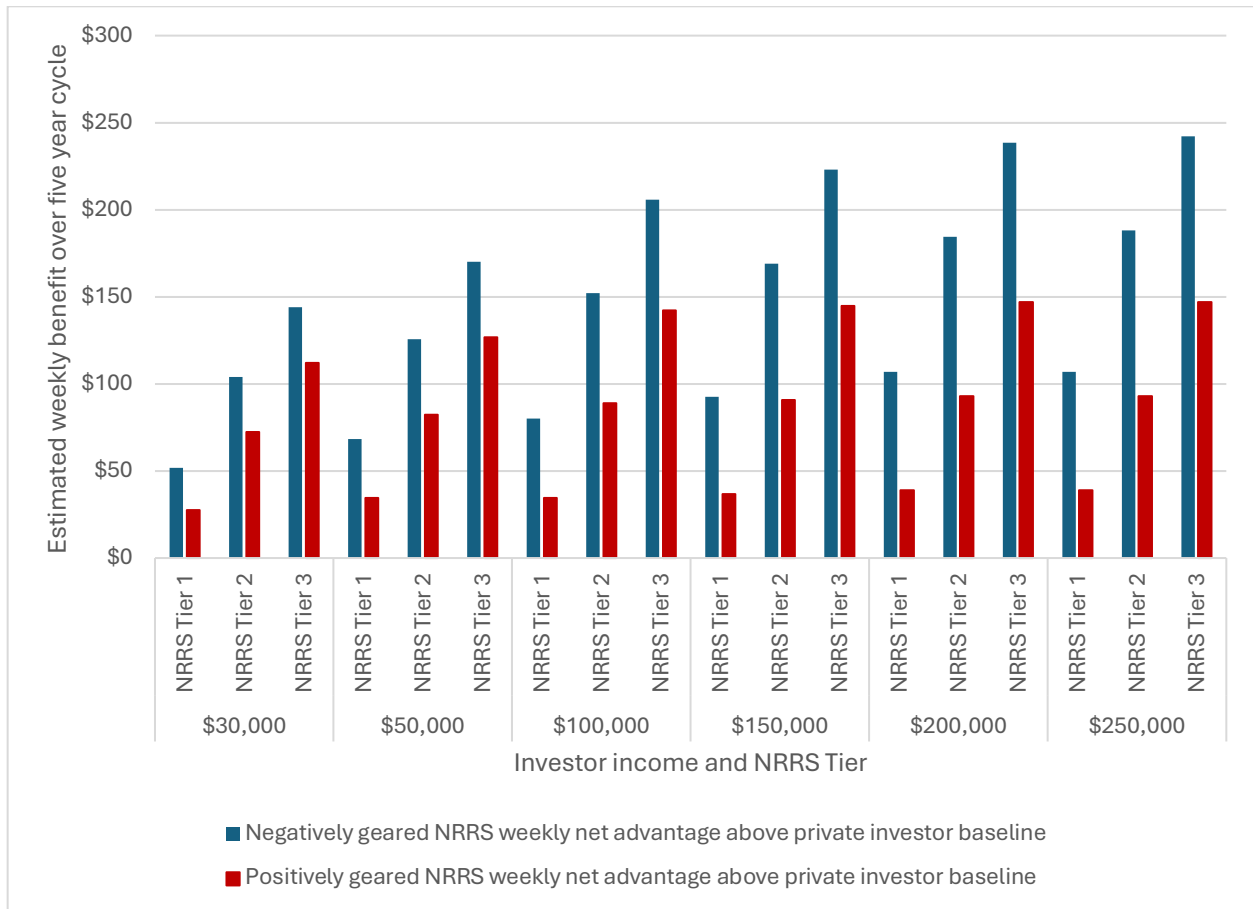


Figure 10: Investor tax advantages from NRRS participation by tier and income

6.11 Fiscal implications and dynamics of the NRRS

While ideally the implementation of the NRRS would reallocate the distribution of tax expenditure on current NG and CGT discount rather than increasing or decreasing this expenditure level, this objective may not in practice be achieved. To understand the fiscal implications of the NRRS, three scenarios have been tested. These tests involve allocating dwellings in the private rental system to the different categories of the NRRS: Private market; Tier 1; Tier 2; and Tier 3. There are two categories of private market investor

considered, firstly, those who are not eligible to participate as their dwellings exceed the affordable rental threshold for the Q3 household income (assumed to be 7 per cent); and secondly private market investors who are eligible to participate but choose not to. A calculation of costs, such as using assumptions in section 6.10, for each category, is undertaken, these costs are then compared against a base case (with current settings) to understand the differential costs. A key assumption is that while negatively geared investors make up only 41 per cent of all investors, it is assumed that these investors are twice as likely to participate in the NRRS, due to the higher tax benefits. These differential rates are then applied to real-world expenditure, providing a high-level estimate of budget impacts. The results of this analysis are shown below (Table 9).

The analysis of potential fiscal impacts shows that it is only with a very high level of investor-landlord participation that the costs of the NRRS increase above current expenditure. At the highest modelled uptake of 75 per cent of private residential rental sector dwellings, the NRRS would increase housing subsidy costs through negative gearing, CGT discounts and CRA by an expected 20 per cent (approx. \$1.7 billion). However, this level of take-up would place all 1.26 million CRA recipients in Tier 2 dwellings under NRTS rental conditions with five-year leases and with increased CRA, provide 200,000 dwellings to the social housing sector through head leasing, equivalent to a tripling of current levels, and further provide 400,000 rental households in more stable and secure tenure. We have not directly evaluated the economic return on this \$1.7 billion but would expect it provides good value for Commonwealth housing expenditure.

If NRRS uptake were at around 50 per cent of private residential rental sector dwellings, the scheme could prove to be revenue neutral, but would cover two thirds of CRA recipients, offering greater levels of security and stability. It is estimated that with uptake below around 50 per cent, the NRRS would generate extra revenue, which could be used to deliver affordable housing benefits which the market was demonstrating itself as not willing to provide.

With the lower participation of 25 per cent of private residential rental sector dwellings in the NRRS, there could still be around one third of CRA recipients – equivalent to 415,800 households - being provided with NRTS stability, and an extra \$1.9 billion in annual revenue savings from tax expenditure that would be available for the Commonwealth to reallocate to social housing delivery. This could provide thousands of additional social housing

dwellings every year, given the Commonwealth’s current \$2 billion Social Housing Accelerator fund is anticipated to deliver 4,000 dwellings⁵³.

Table 9 Fiscal implications of the NRRS at different participation shares for private investment rental properties

	One quarter of dwellings participating		Half of dwellings participating		Three quarters of dwellings participating	
Number and proportion (%) of dwellings in NRRS per participation rate						
Private Market – Not eligible to participate	175,000	7	175,000	7	175,000	7
Private Market - Eligible, but not participating	1,699,200	68	1,075,000	43	450,000	18
NRRS 1	185,000	7	360,000	14	415,000	17
NRRS 2	415,800	17	840,000	34	1,260,000	50
NRRS 3	25,000	1	50,000	2	200,000	8
Commonwealth budget impact						
Negative gearing changes	-\$1,381,075,517		-\$360,874,324		\$203,439,060	
Capital Gains Tax changes	-\$654,820,025		\$155,390,508		\$1,136,169,902	
Commonwealth Rent Assistance increase	\$119,446,866		\$241,306,800		\$361,960,200	
Total NRRS cost	-\$1,916,448,676		\$35,822,984		\$1,701,569,162	
Current expenditure	\$8,560,000,000		\$8,560,000,000		\$8,560,000,000	
Projected expenditure	\$6,643,551,324		\$8,595,822,984		\$10,261,569,162	
Change from current	-22%		0%		20%	

Estimates of fiscal impacts with different average income assumptions were made to test for sensitivity. The overall fiscal impact was broadly similar, as these recalculations shifted the base case (current assumptions around tax expenditure) and future case in proportion. However, the fiscal impact is affected by composition of investors. For example, if a larger proportion of higher income investor-landlords participated than lower income, the overall fiscal cost would increase due to the greater absolute tax liability against which this cohort could claim negative benefits; conversely, if a larger proportion of lower income investor-landlords participated than higher income, the overall costs would decrease.

⁵³ The Treasury (2023) *Social Housing Accelerator*, <https://treasury.gov.au/policy-topics/housing/social-housing-accelerator>

While we have not considered it in this discussion, there may be merit in designing access to the NRRS Tiers to be uncapped, such that there is no limit on the number of properties investor-landlords can contribute to the scheme. Every additional compliant property added to the NRRS improves dwelling quality and tenancy conditions for tenants at modest unit cost to the Commonwealth compared to other means of procuring good housing outcomes for tenants. The capacity to benefit from NG is limited by the total tax on primary income. Thus, there merit in considering a ‘bottomless mimosas’ model of unlimited access to the tax concessions that the scheme provides⁵⁴ as has been applied by the Biden Administration to tax concessions for investment in renewable energy in the United States. We note that NG concessions are not directly capped and are often used as part of leveraging strategies by investor-landlords to create multiple dwelling portfolios.

6.12 Establishing the NRTS

The NRTS would be established through the development of the necessary administrative arrangements to govern and operate the scheme. Investor-landlords would be notified of the various Tier structures and conditions with the option to register to participate in the scheme followed by a 12-month implementation period during which they would be required to meet the NRTS conditions, including dwelling quality upgrades and preparation of NRTS-compliant tenancy leases. Investor-landlords who choose to leave the NRTS would do so by notification to the ATO, however the NRTS conditions would remain enforceable on the property and the investor-landlord until the end of the period of NRTS tenancy.

6.13 A national rental letting digital platform

In addition to coordination of demand and supply subsidies to achieve improved tenant outcomes there are direct mechanisms that the Commonwealth could also establish, given its extensive administrative capacities. Currently within the private rental market there is extensive concern about the behaviours of letting agents and the use of third-party ‘rent-tech’ platforms to manage the tenant application, vetting and allocation process. These include practices that are potentially discriminatory to tenants while extracting additional rents from the data flows they generate⁵⁵.

⁵⁴ Battistoni, A. & Mann, G. (2023) ‘Climate Bidenomics’, *New Left Review*; 143, Sept-Oct 2023.

⁵⁵ Wolifson, Peta, Sophia Maalsen, and Dallas Rogers. “Discrimination in the Time of Digital Real Estate: Illustrating a Rental Schema in the Australian Setting.” *Digital Geography and Society* 6 (June 1, 2024): 100088. <https://doi.org/10.1016/j.diggeo.2024.100088>.

Because the Commonwealth controls the social security payments digital platform it already holds detailed personal and financial records for recipients of CRA. Meanwhile the Commonwealth also controls the taxation administration platform through which investor-landlords register their access to NG and the CGT discount. Thus, the Commonwealth administers the two essential elements of a rental tenancy management platform: tenants and their landlords. Via CRA records the Commonwealth also has access to the property address and the rent paid for the property. Both sides of the tenancy agreement are thus already administered by the Commonwealth but are not connected and matched.

With the increasing sophistication of data matching, it would be relatively simple for the Commonwealth to establish a national rental tenancy platform (NRTP) under the NRRS that operates as a single digital provider for the electronic management of tenancies agreed under Tiers 1 and 2 of the scheme. The NRTP would provide all the necessary elements for managing the relationship between tenants and investor-landlords, such as:

- property and dwelling information including tenant-sourced condition reports and relevant evidence
- NRTS compliant digital leases (customised to relevant state requirements)
- communications between tenants and landlord-investors
- monitoring of rents and rent increases
- notifications to DSS/ATO by tenants of landlord breaches of leases and conditions

The NRTP could also be used for matching of prospective tenants with potential investor-landlords under Tier 1 and 2 of the NRRS, which impose a requirement on landlords to prioritise CRA recipients in the letting of rental dwellings. This would be done by prospective Tier 1 and 2 investor-landlords registering their dwelling as available for letting on the NRTP after which the platform algorithm nominates potential prospective tenant matches based on a set of social criteria, such as place on the waiting list, income, and other social vulnerabilities that merit prioritised housing access. This would be geographically limited to tenants who have specified the locality for which the dwelling is available. Once a match has been made through the system the digital paperwork for the tenancy lease agreement could be prepared via a 'one-click' arrangement. Compliance of the investor-landlord to the NRTS could be managed via the NRTP, including the potential for tenants to register a landlord breach of the tenancy rules which then suspends their NG and CGT concession access pending verification by a state tribunal.

While the establishment of a centralised state letting platform may at first consideration appear to be an unusual step it would have several social benefits with relatively few disadvantages. By shifting the matching of vulnerable tenants with prospective investor-landlords out of the private rent-tech sector the NRTP would contribute to a reduction in

discrimination against this tenant group. The NRTP would be relatively efficient given the longstanding experience of the Commonwealth in managing large scale social and taxation digital administration systems.

7 Further considerations and observations

In addition to the rationale and design outline of the NRRS presented above there are a set of wider considerations that deserve mention, including queries that may be levied at the scheme. A selection of such matters is surveyed below.

7.1 The demand-subsidy-only model

We note the Productivity Commission has argued that Australia operates an inequitable two-tiered system whereby the sum of financial benefits to social and public housing tenants exceeds those to private residential tenants in similar income and personal circumstances. Instead, the Commission has argued that CRA with additional state-based loadings should be the sole means of delivering assistance to eligible tenants, with rents for social and public housing set at market levels.

In contrast to dragging community and social housing tenants down to the lower tenancy standards of the private rental sector we argue that the perceived problem of nominal inequity between tenants in the private rental sector compared to those in the social and public rental sector would be better rectified in part by strengthening protections for private rental tenants who are receiving CRA, via the NRRS proposals. This would then lift the value of the bundle of quality and tenancy rights enjoyed by private rental sector tenants to more closely match the bundle of conditions enjoyed by social and public tenants. While the Productivity Commission effectively advocates a ‘race to the bottom’ of quality and tenancy security set by prevailing dwelling quality and tenancy conditions in the private rental sector, we argue in favour of a ‘push to the top’ that brings the quality and tenancy conditions in the large segment of the private residential rental sector that receives government subsidies closer to the level generally prevailing in the social and public housing sectors. This approach also improves the efficiency of Commonwealth housing assistance by obtaining better tenancy conditions for both CRA and the tax expenditure on NG and CGT discount.

A further extension of the CRA arrangements we propose in this paper could involve expanding the availability of CRA to all low-income tenants, irrespective of whether they are receiving a principal social security pension payment, such as disability support, aged or sole-carers pensions. Expanding CRA would bring a cost to government, but it would also provide wider access to NRRS incentives for investor-landlords, thus improving tenancy conditions. We note that in New Zealand the Accommodation Supplement (AS), which is an equivalent payment to Commonwealth Rent Assistance is available to all low-

income tenants, not just income support recipients. The New Zealand Accommodation Supplement is also tenure neutral, such that low-income tenants may use the payment for rent or for mortgage repayments if they are purchasing a house.

7.2 Constitutionality of a National Rental Regulation System

The use of Commonwealth taxation law to regulate the conduct of landlords in relation to private rental sector housing via the modulation of negative gearing and capital gains tax exemptions may be open to jurisdictional query. Is it reasonable for Commonwealth taxation powers to be used in a manner that operates as a rental tenancy regulation regime? This question may be the topic for debate among legal observers. However, we contend that existing Australian tax practice and associated jurisprudence offers indications as to the likely constitutionality of the proposed NRRS.

In general the Commonwealth is empowered to impose taxes for a range of purposes, a power that has tended to increase over time when subjected to judicial appraisal.⁵⁶ In particular, 'the tax power enables the Commonwealth to raise revenue, as well as to indirectly regulate behaviour by using taxes to encourage or discourage behaviour'⁵⁷ Legal interpretation has found that the Commonwealth is also empowered to utilise its taxation powers to place penalties on conduct⁵⁸ and that the ultimate limits of this power have not yet fully been determined. The proposed NRRS involves adjusting the way that revenue is generated through taxation, by altering the conditions under which offsets (NG) and concessions (CGT discount) can be claimed. These changes would aim to directly shape the behaviour of investor-landlords and while their application may have differential implications for investor-landlords generally they are not in themselves a penalty for unwanted behaviour. The investor-landlord who opts out of the NRRS suffers no direct penalty; they simply miss out on the tax benefits obtainable pursuant to specified conduct under the NRRS.

In terms of direct query of Commonwealth use of taxation powers in housing, while there has been wide public debate about the necessity and suitability of NG and the CGT discount as mechanisms of housing supply, as far as we are aware, the right of the

⁵⁶ Gordon, M. (2013) The Commonwealth's Taxing Power and Its Limits – Are we there yet?; *Melbourne Law Review*, 36(3), 1037–1063.

⁵⁷ Beck, L. (2024). Taxation power. In *Australian Constitutional Law: Concepts and Cases* (pp. 201–234). chapter, Cambridge: Cambridge University Press.

⁵⁸ Hyde, N. (2008) 'The Hidden Power of Taxation: How the High Court has enabled punitive legislation to bypass the Senate; *Journal of Australian Taxation*; 11 (1), pp.1-41.

Commonwealth to allow tax concessions of these sort for the housing purposes for which it allows them, has not been contested. Indeed, both these concessions are forms of relief from taxation on income, rather than comprising a direct tax. Further uncontested is the current Commonwealth differential structuring of CGT discounts by providing an additional 10 per cent CGT concession to investor-landlords who let their properties for at least three years at affordable rents and provided via a Community Housing Provider, as described above. While the NRRS proposal presented above is more systematic than the additional 10 per cent CGT discount bonus currently available to investor-landlords, the basic principle of using CGT to improve housing conditions is not presently in constitutional question. A similar CGT discount provision is available to Community Housing Providers.

While the conduct required of investor-landlords is quite detailed in the case of the NRTS these requirements are not markedly outside of the frames of expectation set for the receipt of tax offsets through other schemes, whether for the local production of feature films, research and development, or digital games. The present proposal of restructuring NG and the CGT discount to influence investor-landlord behaviour is also similar in design to the NRAS tax credit scheme which imposed obligations on those investor-landlords to the proposed NRRS in return for tax credit certificates. As far as we are aware the NRAS was not subjected to legal query. The proposed NRRS is however different in formulation from the NRAS because of its rearrangement of NG and the CGT discount, as well as the focus being on individual and personal income, rather than operating via registered providers, as was the case with NRAS, which was also funded directly by fiscal allocation to specific tax credit certificate instruments, rather than adjustment of tax regulation.

7.3 Commonwealth standing in housing

Beyond simply satisfying Commonwealth constitutional responsibilities, the proposed approach to national private rental sector reform also adjusts a perceived political and policy impairment in Commonwealth capacity to act on housing matters. Historically the Commonwealth has been viewed as limited by the constitution as to its scope for direct intervention in housing supply, which is traditionally considered the preserve of the states. The Commonwealth in general does not deliver housing, rather it provides financial assistance to the states or to other entities for such delivery. The main exception to this provisory deference is Defence Housing Australia, though the latter is primarily a financial-legal-administrative entity than rather than a direct owner of housing stock, and operates to provide housing to military employees, thus under the purview of the Commonwealth defence power.

The provision of public housing and latterly community housing historically has been undertaken through negotiated Commonwealth fiscal contributions to state systems of provision. These historical arrangements include the Commonwealth-State Housing Agreement (CSHA), the National Affordable Housing Agreement (NAHA) and its most recent iteration in the form of the National Agreement on Social Housing and Homelessness (NASHH). Each of these have involved a mix of grants and loans given in return for agreed housing actions by the states and with only limited Commonwealth capacity to address perceived or real infractions of the agreements. In contrast the proposed NRRS recognises that Commonwealth-subsidy of private rental sector housing is already and legitimately a ‘public purpose’ under the very wide tax provisions of the constitution. Hence as tax power is already constitutionally the domain of the Commonwealth it is relatively simple to construct an integrated NRRS and NRTS regime out of the existing but fragmented set of tax subsidies. The perceived historical impairment of the Commonwealth to act in housing is thus overcome through its social security and taxation powers.

7.4 The political constitution of Commonwealth housing instruments

As it structures the relationship between owners of capital in the form of investor-landlords and non-asset owners in the form of tenants, an NRRS would necessarily have political dimensions. Currently there is a mismatch in democratic representation among the two key groups of private rental housing sector actors. The tax concessions available to the group of investor-landlords are provided through the Commonwealth parliament, yet the regulation of rental tenancy conditions whereby tenant interests are principally addressed rests with state parliaments. As a result, there is an ‘instrument constituency’⁵⁹ of owners of property capital at the Commonwealth level which is vocal in advocating for the validity and retention of the investor-landlord subsidies.

In comparison to investor-landlords, private rental sector tenants who are not CRA recipients have no direct Commonwealth instrument around which to form a constituency. Their representation is through state democratic arrangements in relation to rental tenancy regulation, which are in turn scattered across the states and territories with limited articulation at the Commonwealth level, while also facing further enfranchisement of

⁵⁹ Perl, A. & Burke, M. I. (2018). ‘Does institutional entrenchment shape instrument adjustment?: Assessing instrument constituency influences on American and Australian motor fuel taxation’. *Policy and Society*, 37(1), 90–107. <https://doi.org/10.1080/14494035.2018.1402527>

investor-landlords. The result is that the interests of capital in the private rental sector, in the form of asset-owning investor-landlords, can easily dominate policy reform debates within the parliament, above the social interests in the sector, namely tenants. By altering NG and the CGT discount to directly benefit tenants through improved rental conditions the Commonwealth would be removing an historical bias in the constituency of these two housing instruments, in turn improving the Commonwealth as a system of democratic representation.

7.5 Lock-in and reversibility

A key element of the NRRS is the policy lock-in that it could achieve through both the establishment of a newly enfranchised tenant cohort, but also via the long-term requirements for tenancies under the NRTS. The improvement of rental tenancy rights for CRA recipient households will in part depend on the level of landlord-investor opt-in under NRRS Tier 2. However, even a low 25 per cent uptake of Tier 2 among investor-landlords would improve rental conditions for around 315,000 CRA recipient tenant households. For comparison total registrations within the NDIS are around 650,000 participants⁶⁰. Such a large CRA cohort would effectively lock in dwellings to the NRRS for the five-year duration. And because the leases under the NRRS are state instruments even if a future Commonwealth government abolished the scheme it lacks the power to break leases. Participation in the NRRS after all is a relationship between the Commonwealth and investor-landlords. The leases remain a relationship between investor-landlords and their tenants which are regulated by state oversight. Thus, the tenancy benefits of the NRRS would continue to operate for the duration of the tenancy even if the scheme was abolished for investor-landlords. In any case, a future government wishing to abolish the scheme would need to contend with potentially millions of renter voters whose tenancy conditions depend on the NRRS. The five-year tenancy cycle would likely intersect with the electoral cycle at some point, providing an opportunity for tenants to express their preferences about the scheme at the voting booth.

On the other side of the rental tenancy relationship, once investor-landlord investment strategies have been designed to operate within the NRRS subsidy framework there would be a continuity incentive not to disrupt the flow of NG and CGT subsidies lest yields be threatened or wider instability be generated in the housing system or in the national financial system. While this is less of a lock-in than the long-term tenancies provided by

⁶⁰ AIHW (2024) *NDIS Data and Research – Explore Data*; Website; Canberra, Australian Institute of Health and Welfare; Accessed 29 July 2024: <https://dataresearch.ndis.gov.au/explore-data>

the NRRS, it might provide sufficient incentive for investor-landlords to prefer continuity of the NRRS rather than reversion to the NG and CGT discount status quo ante. If enough investor-landlords found the scheme to be beneficial then they would provide a counterweight in policy debates to those disfavoured by the scheme. This would reflect the stasis within current policy discussions based on abolition of NG and CGT discount where there is a strong incentive for a proportion of investor-landlords to retain the schemes and to advocate for this retention rather than see them abolished.

7.6 Interaction with home-ownership sector

The offer to investor-landlords of the opportunity to contribute to better social conditions in the Australian private residential rental sector may not be adopted by all landlords. Those who wish to remain in the largely Commonwealth-unsupported private rental market tier within the NRRS would be welcome to do so. Limits on access to negative gearing and capital gains discount may result in reduced rates of return on their investment. If returns decline below profitability then investor-landlords may choose to exit the sector. The question of investor-landlord exiting of the private residential rental sector has been raised within debates about negative gearing and the capital gains tax discount. Our view is that for a given level of dwelling stock, the NRRS rental tenancy conditions would provide a level of security for tenants in general that starts to approach that of home ownership, given rates of dwelling mobility. This places a degree of liability on the dwelling, which is offset by the access to tax concessions. Hence the raising of tenancy standards through the NRRS would better align the private rental sector with owner occupation using the tax system. Where investor-landlords exit the private residential rental sector those dwellings may become available to other investor-landlords to either remain within the private rental market or enter the NRRS or become available to purchasers for owner-occupation. The result is that the dwelling remains within the housing system. The main shift would be in whether it receives tax concessions or exits the rental sector to become owner-occupied. In this context new Commonwealth supported financing arrangements to allow NRRS tenants to purchase their rental dwelling may be worth exploring.

7.7 Data, monitoring and evaluation

The establishment of an NRRS would generate new data through the linking of the DSS social security administration system with the ATO taxation systems. With the requirement for national residential tenancy leases to be lodged with either DSS or the ATO, for the first

time detailed information on dwelling quality and tenancy conditions will be matched with tenant social status, investor-landlord income and wealth status, plus dwelling energy and sustainability performance. The availability of such a multi-dimensional linked dataset would provide a major advance in transparency of the CRA, NG, and CGT subsidies and on the overall performance of the private residential rental sector in Australia.

To ensure adequate monitoring and evaluation of the NRRS a national linked-data platform should be established to compile NRRS data and serve it for research and policy use. This includes monitoring dwelling and tenancy conditions, use and effectiveness of the CRA, NG and CGT subsidy regimes as well as sophisticated modelling of the national rental system. The platform could be developed in collaboration with universities that host housing research and analytics capability, and connected to other linked datasets, such as the ABS' Person Level Integrated Data Asset.

8 Conclusions

The Australian government expends very large sums on the private rental sector annually through direct cash payments to social security recipients and through tax concessions and exemptions to landlords. Yet, under current arrangements there is little transparency or accountability as to the outcomes experienced by tenants. In the context of a sustained ‘housing crisis’ a responsible government should ensure that its expenditure on housing subsidies is optimised to achieve the best possible outcomes for low-income renter households in terms of quantity and quality of the dwellings subsidised. Through the modest changes to the administration of social security and taxation programs identified in this discussion paper the Australian government could markedly improve the conditions in the private rental sector, at little or no cost to the national treasury.

Because of the large size of the tax concession-assisted private residential rental dwelling stock, depending on the extent of uptake of the NRRS tiers, the proposal we have presented could rapidly bring large numbers of dwellings under tenancy conditions that more closely approximate those in the social housing sector. A shift of just 1 per cent of current private residential rental sector dwellings to Tier 3 of the NRRS would expand the effective social housing stock by 25,000 dwellings, compared to the 30,000 social dwellings anticipated to be constructed over five years under the \$10 billion Housing Affordability Future Fund.

Beyond its potential for direct private residential rental housing change, the NRRS proposal we have advanced demonstrates that there are major gaps between key elements of Australian housing policy. The incoherence of Australia’s national housing policy system and housing interventions has previously been noted^{61,62}. The NRRS proposal is one step towards greater coherence and efficiency in the coordination of policy and application of housing policy instruments. It operates on the principle that aggregate subsidies signal a social preparedness to address important problems, but that these subsidies can be subject to ‘lazy’ implementation. A more active and dynamic perspective on policy shows that there are opportunities to get better policy outcomes at modest cost.

⁶¹ Dodson, J. et al. (2017) *Housing, multi-level governance and economic productivity*, AHURI Final Report 284, Australian Housing and Urban Research Institute Limited, Melbourne, <http://www.ahuri.edu.au/research/final-reports/284>, doi:10.18408/ahuri-5307501;

⁶² Martin, C., Lawson, J., Milligan, V., Hartley, C., Pawson, H. and Dodson, J. (2023) *Towards an Australian Housing and Homelessness Strategy: understanding national approaches in contemporary policy*, AHURI Final Report No. 401, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/401>, doi: 10.18408/ahuri7127901.

We note that the proposed NRRS will not solve all problems in the housing sector. Indeed, the purpose of the NRRS is principally to get better value out of existing subsidy arrangements and the dwellings they apply to, rather than to resolve systemic housing problems. For example, the NRRS will not necessarily directly bring forward new dwelling stock, nor generate growth in the social housing stock beyond the head-leasing arrangements. The NRRS cannot improve dwelling sustainability performance generally. The main effect of the scheme would be to shift dwellings from the poorly governed private residential rental property sector into three new semi-social NRRS subsidised housing Tiers. Thus, while an important reform, implementation of the NRRS is not sufficient to resolve all of Australia's manifold housing problems and should be accompanied by a suite of further interventions into the national housing system.

The private residential rental sector is not the only housing area that is supported by Commonwealth interventions that deserves reformist attention. Future research might for example consider the approximately \$28 billion in annual profits achieved by the 'big four' banks, largely through mortgage lending based on household depositor savings covered by Commonwealth deposit guarantees, and investigate opportunities to exercise Commonwealth policy instruments in ways that better benefit mortgagors. Another area of investigation might be the \$10.9 trillion in total residential property asset value in Australia and whether the sheltering of the owner-occupied proportion of this total asset from CGT is appropriate. What 'mutual obligation' might homeowners be expected to perform in return for this considerable government tax discount largesse that is not available to renters.

While this proposal aims to support better dwelling and tenant outcomes through improved coordination and regulation of the private rental sector in Australia, this should not be seen as a substitute or alternative to large-scale investment in social and affordable housing. We note that research has previously projected that 777,000 public housing dwelling units are needed by 2036 to address the current level of need as measured by public housing waiting lists⁶³. Greater effort is needed to achieve that objective as well as many others across the housing system.

⁶³ Lawson, J., Pawson, H., Troy, L., Nouwelant, R., and Hamilton, C. (2018) *Social housing as infrastructure: an investment pathway*, AHURI Final Report No. 306, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/306>, doi:10.18408/ahuri-5314301.