



National Affordable Housing Providers Ltd.

TO: South Australia Residential Tenancies Review

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RE: Submission on Review of the Residential Tenancies Act Discussion Paper

Thank you for the opportunity to comment on potential reforms to the Residential Tenancies Act 1995 (RTA). National Affordable Housing Provider (NAHP) is the representative peak body representing National Rental Affordability Scheme (NRAS) Approved Participants' collective interests to deliver affordable housing across Australia. Our members are responsible for delivering over 15,000 NRAS properties, housing over 30,000 low-income tenants, and including the largest NRAS providers across the country, including providers in South Australia. NAHP members are a mix of not-for-profit housing providers, commercial and ASX-listed entities, representing the broad interests of companies engaged in providing private, affordable housing in Australia through NRAS and other State and Federal Government housing initiatives.

Our submission focuses on the discussion paper questions about prescribed reasons for terminating a lease, minimum notice period and use of a standardised application form. These issues are of great interest to NAHP members as they potentially significantly impact on NRAS providers' ability to remain compliant with federal NRAS regulations.

Q: Should the RTA include a requirement for landlords to provide a prescribed reason for the termination of a periodic lease or the non-renewal of a fixed-term tenancy agreement, and if so, what should these prescribed reasons be?

National Rental Affordability Scheme (NRAS) dwelling owners and property managers acting on behalf of Approved Participants (the entities who hold the NRAS incentives), can terminate tenancy agreements when a tenant becomes ineligible under NRAS regulations. If SA decides to introduce prescribed reasons for terminating a lease, there needs to be provisions that allow owners and property managers of affordable housing, such as NRAS, to terminate leases of ineligible tenants.

An ineligible tenant in an NRAS property breaches NRAS regulations and results in the loss of the subsidy to the provider or owner. If an NRAS provider is unable to remove an ineligible tenant, NRAS owners may withdraw the property from the Scheme, reducing the limited amount of stock in the affordable housing market. A more likely scenario is that the owner/housing provider will not receive the NRAS incentive, and the ineligible tenant remains in the dwelling, albeit at the higher market rent rate, but denying an alternate eligible tenant accommodation in an affordable home.

NRAS eligibility is based on income which is assessed annually. Once a tenant's income exceeds the specified threshold for two consecutive years, they are considered ineligible to

live in an NRAS property, and their tenancy agreement is terminated. Tenants are notified after the first year of excess income and made aware that if their income continues at this higher level, their eligibility will end next year.

Tenants are obligated to provide documentation of income and household composition. If tenants refuse to provide the required documentation to assess their ongoing eligibility, they are deemed ineligible, and their lease is terminated.

If the RTA includes prescribed reasons for termination, NRAS providers need a mechanism to remove ineligible tenants. NAHP recommends the inclusion of the following grounds for termination of a periodic lease or the non-renewal of a fixed-term tenancy agreement:

- An NRAS tenant is found to be ineligible according to NRAS regulations.
- An NRAS tenant refuses to provide the required documentation to assess their ongoing eligibility for NRAS

Victoria, Queensland and the ACT recently amended their RTA regulations. During consultations on the proposed amendments, housing advocates raised similar concerns about the ability of NRAS providers to terminate tenancy agreements for ineligible tenants. In all three jurisdictions, revisions incorporated provisions in the amended regulations that include NRAS ineligibility and refusal to provide necessary documentation as allowable reasons to end a tenancy agreement. Following is a brief summary of those provisions as it may guide appropriate ways to address these concerns in South Australia.

ACT

The ACT just introduced a Bill that abolishes 'without cause' terminations. It does allow termination if the tenant stops being eligible, or will stop being eligible under the rules or requirements of government funding or assistance.¹ The 'will stop' is vital because it allows the provider to issue a notice to vacate *before* the actual date of ineligibility based on an assessment of income from the tenant's documentation.

For example, a tenant provides pay slips that indicate that at the current rate of earnings, the tenant will be over income for the second consecutive year and ineligible to remain in an NRAS dwelling by the end of the tenancy agreement. The ACT notice period is long—26 weeks—so providers need to assess income eligibility more than six months out from the end of the tenancy. This ensures the NRAS dwelling is vacated in a timely manner by an ineligible tenant so as not to jeopardise the incentive and to re-tenant with an eligible household. Further comments on the 26-week notification requirement are in response to another question (see below).

It also allows for a termination 'if the tenant does not give the lessor information in accordance with the lessor's request' and provides regulations on reasonable time frames for requesting the information and for the tenant to submit that documentation.²

¹ ACT Residential Tenancies Legislation Amendment Bill 2022, Section 42, 2.5 Supported accommodation clauses

² ACT Residential Tenancies Legislation Amendment Bill 2022, Section 42, 2.5 Supported accommodation clauses

Last, the ACT legislation defines the term 'supported accommodation' and cites the National Rental Affordability Scheme as an example of this type of accommodation. This provision removes any ambiguity about supported accommodation provisions applying to NRAS properties.

With the exception of the 26 week notification period discussed below, NAHP supports the ACT provisions for NRAS and affordable housing providers as the most comprehensive and clearly articulated among the recently adopted reforms in other jurisdictions.

The ACT legislation and explanatory statement can be found here:
https://www.legislation.act.gov.au/b/db_66953/

Victoria

In Victoria, renters who no longer meet NRAS eligibility or have not provided the necessary documentation to assess their eligibility may be served with a Notice to Vacate (NTV). There are procedures the NRAS provider must follow when requesting the documentation and issuing an NTV; and reasonable specified time frames for the tenants to provide the documentation. The portion of the RTA concerning NRAS can be found here:

http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s91zza.html

Queensland

In Queensland, the existing regulations allow a Notice to Leave if a tenant's entitlement under an affordable housing scheme ends (Section 290). As for providing documentation, the Department of Communities, Housing and Digital Economy advised that "If a tenant fails to prove their ongoing eligibility for an affordable housing scheme it would be open to the provider to issue a notice under section 290 as the tenant would no longer be eligible to continue occupying the property"³

The Queensland RTA can be accessed here:
<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2008-073>

Q: Should the minimum notice period required prior to the non-renewal of a fixed term tenancy agreement be extended to 60 days?

Extending the notification period from 28 to 60 days is acceptable to NAHP. NRAS regulations require a minimum of 90 days to notify a tenant if the dwelling leaves the Scheme when the incentive period has expired. This does not necessarily mean the tenant has to vacate. Instead, the notification advises that the dwelling will no longer attract an incentive and the rent will likely increase to the private rental market rate. This scenario may not be the case for NRAS properties owned by community housing providers or other not-for-profit providers. They will likely maintain the tenancy with the current tenants at the discounted market rent rate. In other cases, the NRAS owner may have other plans for the dwelling that require the NRAS tenant to vacate the dwelling. The Department felt 90 days was a sufficient notice to vacate period to enable tenants to secure other accommodation.

³ Queensland Department of Communities, Housing and Digital Economy, correspondence with Queensland Parliament Community support and Services Committee, 23 July 2021

Where the tenant might be NRAS ineligible, income assessment often starts as early as 90 days out to allow enough time for collecting documents and assessing eligibility so that a 60 day notice to vacate can be issued if the tenant is ineligible.

NAHP strongly recommends that SA not follow the ACT example of a 26-week notice period. As noted above, to ensure a notice to vacate is timely to avoid any period when an ineligible tenant is in the property, NRAS providers must undertake a tenant income assessment more than 6 months before the lease end. Any changes in the tenant's circumstances—fewer hours and wages, a new baby or a change in household composition—during the notice period will trigger another assessment process, a time-consuming procedure for both tenants and NRAS providers.

Q: Should the RTA require prospective tenants to use a standardised application form in an application for a rental property that has questions that restrict the amount of personal information a landlord or land agent can gather about the prospective tenant?

While we support the need to prevent data collection for residential tenancy databases, using a standardised application form is a problem for NRAS properties. To determine eligibility, NRAS providers are required to request far more documentation, especially proof of income, than a landlord in the private sector would (or should). The application form typically includes information on an NRAS tenant's obligations under NRAS regulations, primarily around compliance, and requests details about the household composition.

If SA pursues a standardised form, NAHP recommends that providers of affordable housing who are required to assess eligibility for a subsidised housing program routinely be exempt from this RTA requirement. That would allow providers to request necessary documentation without running afoul of the RTA.