

# Better Renting submission re: Modernising SA's renting laws

Thank you for the opportunity to weigh in on modernising SA's rental laws. Better Renting is a community of renters working together for stable, affordable, and healthy homes. Rental laws make a huge difference for the people we support – at the most fundamental level, rental laws determine whether or not people who rent can have decent homes.

In this submission we respond to various questions raised in the discussion paper. We have elected not to respond to some sections.

## 1. Longer Tenancies

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?

The RTA should allow the termination of a lease **only with a good cause**. Prescribed reasons should include where the tenant is at fault, for example non-payment of rent. Where the tenant is not in breach of their tenancy, termination should be possible only by mutual agreement. If other reasons are prescribed, such as the lessor wanting to occupy the property themselves, then compensation should be payable to the tenant.

The language “non-renewal of a fixed term tenancy agreement” is also misleading. Non-renewal is not the same as termination. When a fixed term tenancy isn't renewed by the landlord, it simply becomes periodic. When a fixed-term tenancy agreement is terminated by the landlord, it isn't simply not being renewed, it is being actively terminated.

Lessors can also attempt to force a tenancy to end by increasing rents by unaffordable amounts. Although the tenant may self-evict in this situation, it is hardly a voluntary move: instead, they are being driven out by exorbitant rent increases. Restricting rent increases should be seen as part and parcel of improving security of tenure for people who rent. We recommend a flat 2% cap on annual rent increases. The cap should also apply between tenancies so that landlords don't have a perverse incentive to try to force out incumbent tenants.

Should the RTA be amended to accommodate longer fixed term tenancy agreements?

The RTA already allows for longer fixed-term agreements. In general, we don't think more is needed here. As discussed by Dr Chris Martin, the best way to achieve security for renters isn't through locking them into a long fixed-term, but by allowing an open-ended indefinite tenancy and limiting the grounds by which lessors can terminate a tenancy.<sup>1</sup> Alternatively, the minimum length of fixed-term agreements could be increased, but with tenants given the option to terminate early without penalty.

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

There is no minimum notice period required for non-renewal. We understand that this question is in fact about termination of a fixed-term tenancy. We support longer notice periods for all terminations. However, a long notice period is not useful unless a tenant can make use of it. As such, once tenants have received a notice to vacate they should also be able to terminate the tenancy at any time before the proposed termination date with four days' notice. This would make it possible for people to use the notice period effectively and minimise the risk of paying double rent. Tenants who have been forced to leave their home should not be further harmed by being forced to keep paying rent after they've left the property.

## 2. Residential Bonds

Should the relevant limit be increased to \$800 to allow most tenants in SA to pay a bond of no more than the equivalent of 4 weeks' rent?

Regardless of the weekly rent amount, bonds should be capped at the equivalent of 4 weeks' rent.

Should the RBO be made mandatory and require additional tenant contact details upon registration to minimise unclaimed bonds?

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<sup>1</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3282848](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3282848)

We support a requirement for private landlords to lodge bonds through the RBO. This should include tenant contact details so that RBO is able to facilitate the return of unclaimed bonds to tenants.

### 3. Rent Bidding

Should landlords and land agents be prohibited from advertising a property within a rent range, putting a property up for rent auction and soliciting offers to pay an amount of rent above the advertised price?

Landlords should be prohibited from *accepting* an amount of rent higher than the advertised amount for the property. This will actually stop rent bidding. The model of just preventing soliciting won't stop rent bidding, because people will still offer higher rents out of anxiety and desperation.

The benefit of prohibiting *acceptance* is that it is trivially easy to enforce. If a tenant makes a higher offer and it is accepted, they have a very strong incentive to later take action against the landlord and have the rent reset to the lower amount. Accordingly, a lessor has a very strong disincentive to accept an inflated rent offer, because this could happen to them. It is an elegant and effective solution.

### 4. Rooming houses and shared accommodation

Should the RTA establish a registration scheme for rooming houses that have 5 or more residents and require 'fit and proper' person checks for proprietors?

We share Shelter SA's view that strong protections are needed here to protect the occupants of rooming houses. This should include a registration scheme at the very least, with the threshold being three or more unrelated adults. Please refer to the Shelter SA submission and their work in this area for further information.<sup>2</sup>

### 5. Renting with pets

Should the RTA include the presumption that a tenant who applies to keep a pet in a rental property cannot have their request unreasonably refused, provided the tenant

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<sup>2</sup> <https://www.sheltersa.asn.au/the-end-of-the-road-for-profit-rooming-houses/>

agrees to comply with any reasonable conditions imposed by the landlord?

Tenants have the right to fair use of their home. This includes the right to have pets. Tenants should not have to apply to keep a pet in their home. But if they are required to apply, then the landlord should not be able to apply without a decent reason, and the landlord should be required to apply to Tribunal to refuse a pet. If a landlord fails to respond to a tenant's request that should be taken as consent, as is the case in Victoria's legislation. Landlords should not be able to require flea treatment (etc) as a reasonable condition where there is not otherwise evidence of the need for such interventions. To be clear, where the property has been damaged due to a pet beyond fair wear and tear — including fleas or property damage — then the tenant should remain responsible.

Should a pet bond scheme be introduced in SA?

Pet bonds are regressive and accommodationist. People who rent already pay rent to cover wear and tear to the property, as well as a bond to cover potential wilful or negligent damage. Introducing a pet bond scheme in SA would be a backwards step. It will mean that your financial means determine whether or not you can have a pet as a renter.

## 6. Housing standards and retaliatory evictions

Should the RTA include further complimentary provisions to those proposed under Section 1 of this paper to ensure tenants can exercise their rights without the risk of a retaliatory eviction or rent increase?

The RTA should protect renters against retaliation through evictions or rent increases. The best way to do this is a model that offers protection by default and doesn't require tenants to take extra action to defend their rights. With respect to evictions, this could be achieved through limiting grounds to terminate a tenancy, as discussed in Section 1. Renters should also receive compensation equivalent to four weeks' rent when a rent is terminated and they are not at fault. This would discourage retaliatory or frivolous evictions. Lessors should also be prevented from re-letting the property for six months after terminating a lease. Retaliatory rent increases should be prevented through a flat 2% cap on rent increases.

Another issue here is the frequency of inspections. Lessors can use frequent inspections to retaliate against and intimidate renters. Excessive inspections may also give rise to

retaliation — for example if a lessor takes umbrage with how a renter is using the renter's home. Reducing inspection frequency will reduce the likelihood of and opportunity for retaliation. We would argue that inspections are entirely unnecessary and should be allowed only at the end of a tenancy. But at the very least, SA could have an inspection schedule more in line with other states, allowing 2-4 inspections per year, instead of the 13 (!) inspections currently allowed each year.<sup>3</sup>

Should the RTA impose minimum energy efficiency standards in rental properties?

Landlords should be required to ensure that their property is healthy for people to live in. This requires minimum energy efficiency standards. The suggested standard is far too weak and could actually discourage a landlord from installing new appliances. Victoria offers a better example in that it *requires* a fixed heater in the main living area and also that the heater has a minimum energy efficiency rating. Ensuring that renters with heaters have efficient heaters is not the same as ensuring that renters have efficient heaters.

Better Renting is a supporter of the Community Sector Blueprint<sup>4</sup>, developed through the *Healthy Homes for Renters* collaboration. We encourage the SA Government to review the blueprint and put it into effect in South Australia. Initially this could include requiring specific features such as efficient heaters or ceiling insulation, heading towards a modelled-performance standard that requires properties to achieve a minimum rating.

We note also that the latest research finds no evidence that action to legislate standards would cause landlords to take rentals off the market. Landlord disinvestment decisions are driven by the desire to realise capital gains or free up capital, not tenancy law.<sup>5</sup> Governments should establish rental laws that protect people who rent without kowtowing to landlords.

## 7. Minor modifications

Should the RTA be amended to prevent the unreasonable refusal of safety modifications and minor changes including the installation of wall anchors, child safety gates, childproof latches, wireless outdoor cameras, showerheads, and internal window coverings?

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<sup>3</sup> See Table 14, [Regulation of residential tenancies and impacts on investment](#)

<sup>4</sup> See <https://www.healthyhomes.org.au/news/community-sector-blueprint>

<sup>5</sup> [Do tenancy reforms to protect renters cause landlords to exit the market? No, but maybe they should](#)

Tenants should be able to make modifications to their home without requiring landlord consent, as long as they 'make good' at the end of the tenancy. A requirement to ask landlord permission is infantilising and alienating. If tenants are required to seek landlord permission, the landlord should not be able to refuse without a decent reason, and the landlord should be required to apply to the Tribunal to test a claimed reason. If a tenant makes a request for consent and a landlord doesn't respond within fourteen days, that should be taken as consent.

## 8. Start of tenancy requirements

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

We support a standardised application form that lessors are required to use when seeking applications for a property. The application form should restrict the personal information that lessors can seek about prospective tenants. The form should be developed by CBS, in consultation with stakeholders, to explicitly say what is allowed. Anything else is not allowed. The alternative approach of ruling out specific lines of questioning is unlikely to adequately protect tenants' privacy. To improve data security, lessors/agents should not be able to ask for identity documents at the application stage. Once a tenant is chosen, identity documents could be sighted, but not stored, to verify identity.

Should the RTA be amended to prohibit landlords, land agents and database operators from charging a fee to a person who requests a copy of the personal information about themselves that is listed on a residential tenancy database?

A person should be able to obtain a copy of personal information about themselves from a residential tenancy database without being charged a fee.

## 9. Domestic violence provisions

Are further amendments required to strengthen financial protections for victims of DV who are renting?

Survivors who leave a tenancy should have their portion of the bond returned to them in full. We also note that one barrier for people to escape from DV is uncertainty about being able to take a pet with them. Reducing discrimination against renters with pets and implementing standardised application forms would help with this.

## 10. Water billing

Should the RTA require landlords to provide tenants with a copy of any water bill the tenant is required to pay within 30 days of receiving the water bill?

If a landlord wants tenants to pay water charges, they should provide a copy of the bill to the tenant within 30 days of the bill's issue date. Tenants should have 30 days from that date to pay any relevant charges. Landlords should not be able to pursue water charges if they don't provide a bill consistent with these timeframes.

Should responsibility for the payment of the water supply fee be paid by the landlord, as is the standard practice in other jurisdictions?

Landlords should absolutely be responsible for paying the water supply fee. This fee applies whether or not the property is tenanted and is effectively a property charge. It is bizarre and indefensible that SA law currently allows the charge to be imposed on renters.

Should landlords have a full or partial obligation to pay the excess water charges resulting from a reported water leak that remains unrepaired, noting this would require the RTA to define how excess water charges are identified?

Landlords already have an obligation to pay compensation when a loss has been imposed on a tenant because of the landlord's failure to effect repairs. This could be clarified and made more explicit around water charges. Where a landlord is notified of a water leak and fails to repair it, compensation should be a fixed dollar amount per day, say \$5, that the leak goes unrepaired. This avoids the complexity of having to estimate the exact amount.

## 12. Third party payments

Should the RTA prohibit landlords or land agents charging tenants an additional fee to

make rental payments, whether this is directly or indirectly by passing on costs from third parties engaged by the landlord or land agent to facilitate payment?

The RTA should prohibit landlords or land agents from charging tenants additional fees to make rental payments. Tenants should be provided with fee-free options that are reasonably available, like Bpay or EFT. A requirement to pay in cash, pay by cheque, or pay in person, is not reasonably available.