



# Submission to the Review of the *Residential Tenancies* *Act 1995 (SA)*

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February 2023



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## Residential Tenancies Review

Consumer and Business Services

**Email:** [CBSReforms@sa.gov.au](mailto:CBSReforms@sa.gov.au)

Thank you for the opportunity to provide feedback in relation to the review of the *Residential Tenancies Act 1995 (SA)* (the RTA). This submission formalises the discussion I had with Commissioner for Consumer Affairs Dini Soulio on 11 January 2023.

Housing instability affects all aspects of children and young people's lives, development and their fundamental rights, including rights to health, education, employment, mental health, physical, social and emotional wellbeing, safety, and relationships. As such, this review presents an opportunity for the RTA to recognise children's rights and best interests, including through supporting security of tenure, preventing disruption to children's education and relationships, as well as reducing the impact of housing stress on children and families.

In 2021, more than half (53.6%) of children and young people under 20 years in South Australia were living in disadvantaged socio-economic circumstances, with 26% living in the most disadvantaged circumstances.<sup>i</sup> Further, 20.9% of children and young people in South Australia under 15 years lived in households that spend more than 30% of their income on housing costs.<sup>ii</sup>

Children and young people across South Australia consistently raise the impact of cost-of-living pressures on their family lives, education and participation in extracurricular activities. I have included postcards from 9 and 10 year olds throughout this submission which highlight the significant worries of children in regards to housing stability and affordability.

Over the last two decades there has been a steady increase of families with children, including single parents, renting. Households with children, particularly single parents, are most likely to experience discrimination and to have been refused rentals, affecting children's sense of safety and wellbeing. Housing instability not only impacts on children thriving, but also impacts parental capacity and participation in society as well as connection to community, employment and education.

While young people aged 18-24 make up 17% of renters in Australia, Youth Allowance is the lowest of all government payments. According to Anglicare's 2022 Rental Affordability snapshot, there was only one rental listing (0%) across the whole country that was affordable to a young person on Youth Allowance looking for a share house.<sup>iii</sup>

Although young people under 18 may enter into a residential tenancy agreement, young people can face unique barriers to securing a rental property, including discrimination based on age, which can often be difficult to prove.

In light of the above, this Review presents an opportunity for the RTA to:

- 1. Recognise the rights of children and young people to live in a stable and safe home;**

2. **Recognise the rights and needs of children and young people living with a disability;**
3. **Address the fundamental issue of rental affordability;**
4. **Provide greater stability and security of tenure for families and young renters;**
5. **Strengthen protections for women and children in the context of poverty or domestic and family violence;**
6. **Prohibit discrimination on the basis of pet ownership;**
7. **Recognise the reality of share-housing for young renters;**
8. **Strengthen privacy, including in the collection of information and protection from misleading information; and**
9. **Improve access to information, education and advocacy services for families and young renters to understand and exercise their rights under the Act.**

In addition to legislative reform, there is a need for frameworks for compliance and enforcement, as well as ensuring access to information and advocacy services for young people and families to know, understand and exercise their rights under the RTA.

If you have any further queries, please do not hesitate to contact this office.

Yours sincerely,



**Helen Connolly**

Commissioner for Children and Young People  
Adelaide, South Australia





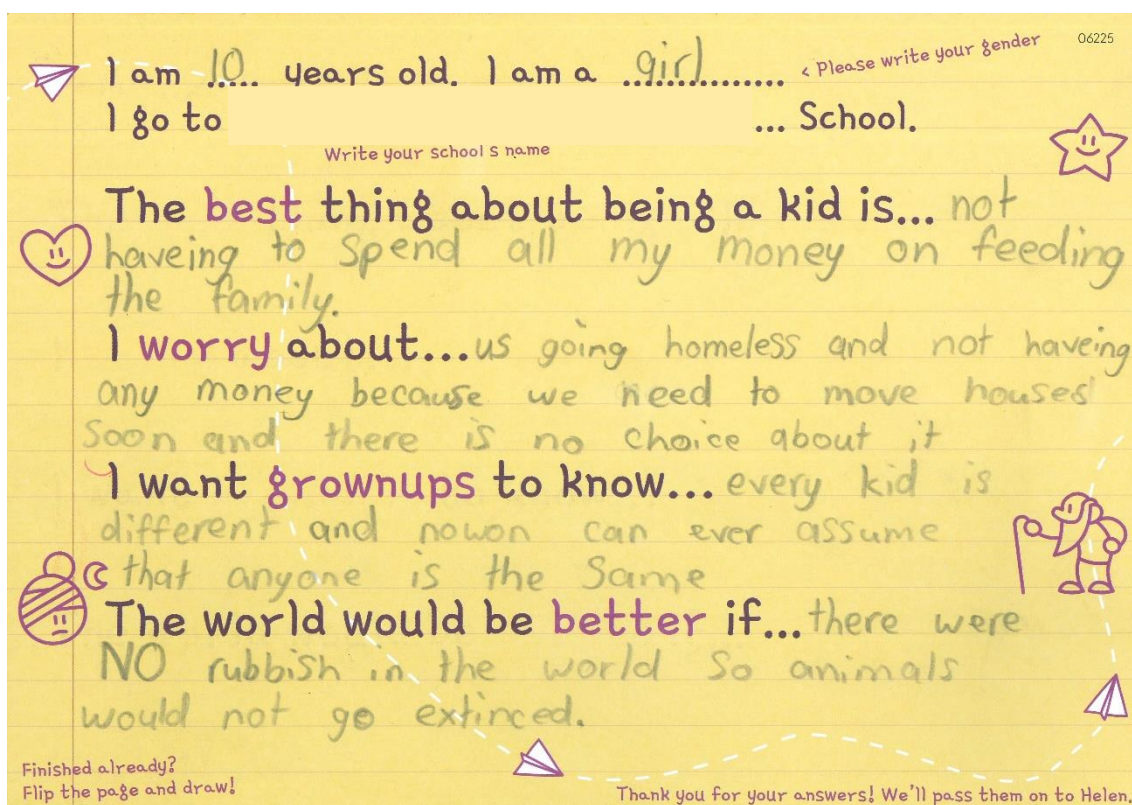
## 2. Recognise the rights and needs of children and young people living with a disability.

Additional protective mechanisms should be included to realise the rights of children and young people with disability. Children and young people with disability are particularly vulnerable and require distinct recognition.

Further to the minor amendments considered in the Discussion Paper and discussed in the previous section, it is recommended that protections against unreasonable refusal of modifications be extended to modifications funded under the NDIS, including modifications that are required for children and young people with disability to live safely in their home, including house 'hardening'.

The RTA should be amended to regulate minimum accessibility requirements and impose a positive obligation on landlords to disclose the accessibility features of a property when advertising.<sup>iv</sup> Most housing on the private rental market is inaccessible, which disproportionately impacts young people with disabilities who may wish to rent with peers in shared housing. Without this knowledge, the onus is on young people to inspect or enquire separately and disclose their disability, increasing the likelihood of experiencing indirect or direct disability discrimination.

The current Act excludes people living in 'supported residential facilities' and people with disability living in rented accommodation who are not party to a residential tenancy agreement. Changes are needed to address the gaps as a result of the interaction between the RTA, the Supported Residential Facilities Act, Commonwealth Social Security legislation and the NDIS.



✈ I am 10 years old. I am a girl..... < Please write your gender 06225  
 I go to \_\_\_\_\_ Write your school's name ... School. ★

♥ The best thing about being a kid is... not  
 having to spend all my money on feeding  
 the family.

I worry about... us going homeless and not having  
 any money because we need to move houses  
 soon and there is no choice about it

☹ I want grownups to know... every kid is  
 different and nowon can ever assume  
 that anyone is the same

☹ The world would be better if... there were  
 NO rubbish in the world so animals  
 would not go extinct. ✈

Finished already?  
 Flip the page and draw!

Thank you for your answers! We'll pass them on to Helen.

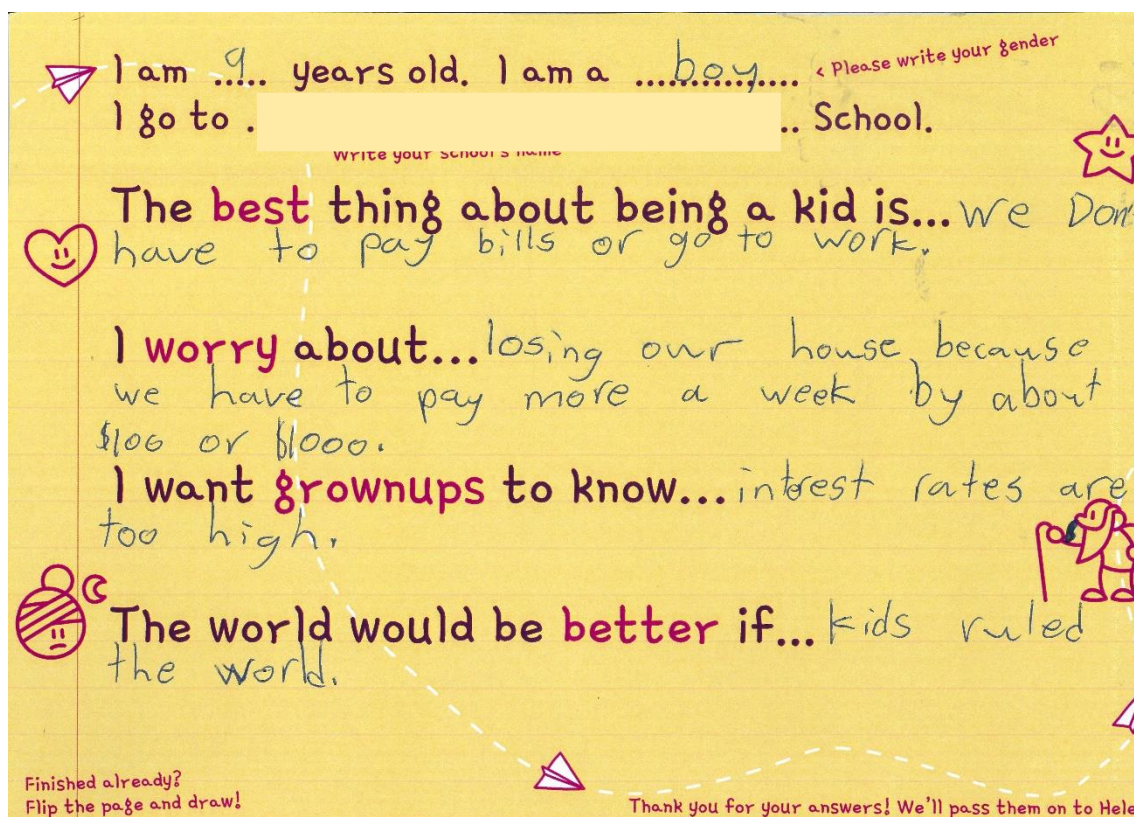
### 3. Address the fundamental issue of rental affordability.

Without stable and affordable housing, young people and families with children and pets are particularly vulnerable, with impacts on their relationships, wellbeing, safety, education and employment outcomes.

The objectives and the principles of the RTA should include a commitment for all children and families to live in stable, safe and affordable housing, and seek to reduce the stress and uncertainty of housing for children and families.

I support proposed changes to stop rent bidding. The RTA should explicitly prohibit landlords and agents from not only soliciting but also accepting offers of rent higher than the advertised amount. Further changes should be considered to address the rental affordability crisis, including rent price controls and capping rent increases, as well as minimum energy efficiency standards.

The SACOSS submission to this review covers issues of affordability in more detail. I support SACOSS' view that 'modest changes to the conditions of tenancy are of no benefit to people who can't afford to rent', many of whom are young people and families with children.'



✈ I am 9 years old. I am a boy... < Please write your gender  
 I go to [redacted] School.  
Write your school's name

♥ The **best** thing about being a kid is... we Don't  
 have to pay bills or go to work.

I **worry** about... losing our house because  
 we have to pay more a week by about  
 \$100 or \$1000.

I want **grownups** to know... interest rates are  
 too high.

☹ The world would be **better** if... kids ruled  
 the world.

Finished already?  
 Flip the page and draw!

Thank you for your answers! We'll pass them on to Hele





## **5. Strengthen protections for women and children in the context of poverty or family and domestic violence (FDV).**

I support stronger financial protections in the context of domestic violence proposed in the Discussion paper, including ensuring victims are not liable for unpaid rent, bills or damages. Allowing tenants to make safety modifications will also help victims of FDV. Legislative reform will only have a real effect on the wellbeing of women and children fleeing FDV if steps are taken to ensure effective implementation.

Further amendments to the RTA are required to strengthen protections for women and children in the context of family and domestic violence. Legislation should specifically recognise children in these situations. In WA, for example, the court must consider a range of factors when making an order in the context of FDV, including ‘the best interests of any child on the premises’ as ‘being of primary importance.’<sup>vii</sup>

Currently, in South Australia a person experiencing FDV seeking to terminate a lease can apply to SACAT for an order to stay at the property and have the perpetrator leave or to leave the property and be removed from the agreement. This can take some time, and does not necessarily reflect the reality that women and children have to leave a place quickly.

In WA and NSW, tenants experiencing FDV can break a lease or require a violent tenant to vacate without necessarily needing to navigate the law enforcement or court system. They can provide a termination notice directly to the landlord or agent, along with a declaration by a ‘competent person’ that the tenant or a dependent child is experiencing FDV.<sup>viii</sup>

Many victims report that they remain in abusive relationships because they cannot find a new rental that accepts pets and they do not want to leave their pet with the perpetrator. As such, ensuring renters with pets cannot be discriminated against will also help women escaping violence. In both WA and Victoria, the Court may also consider the effect an order might have on any pets kept on the premises.

## **6. Prohibit discrimination on the basis of pet ownership.**

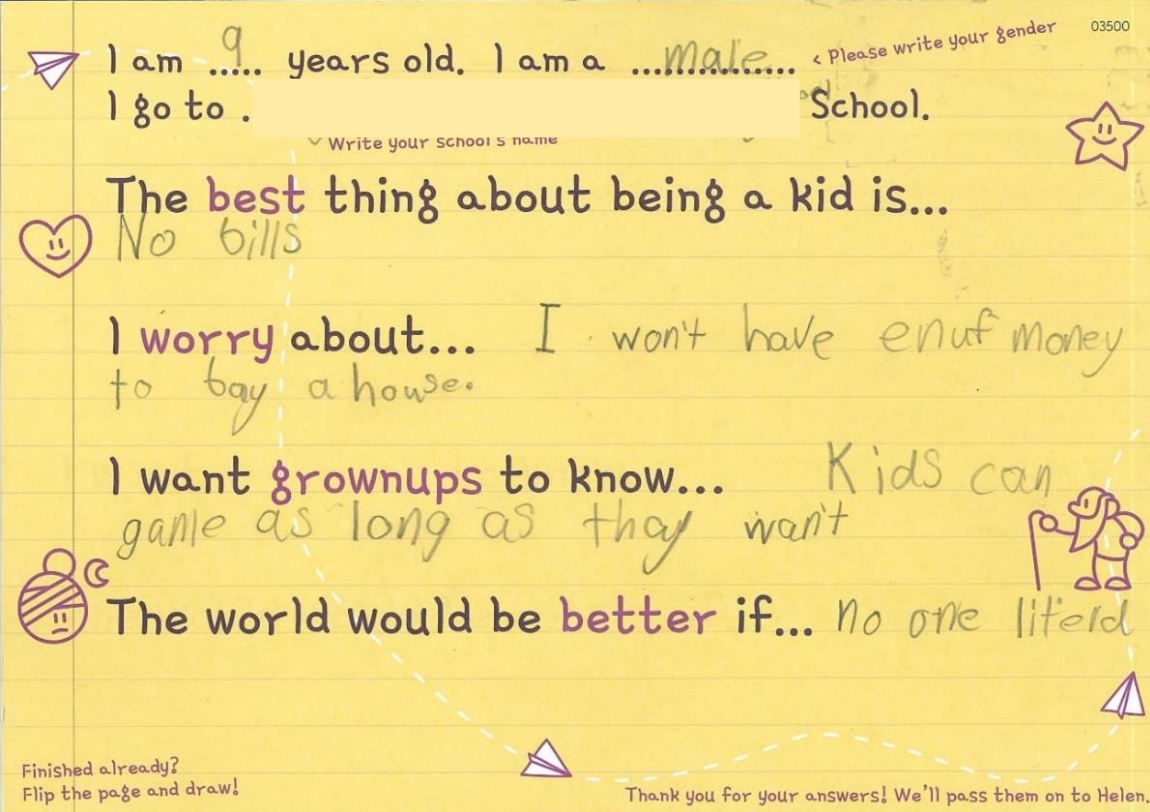
Children and young people describe their pets as important family members, who they communicate with and play, hang out, be active and have fun with. Pets are key to their feelings of safety, comfort and emotional, mental and physical health.

I support changes to the RTA to ensure families and young people are protected against discrimination based on pet ownership. Two out of 3 households in SA include an animal and almost 1 in 4 respondents to the 2022 Shelter SA ‘Moving On’ survey were tenants with both pets and children.<sup>ix</sup>

Having pets is key to ensuring tenants have ‘fair use’ of their home. Tenants should not have their request to keep a pet in the property unreasonably refused, as per the proposed ‘reasonable conditions’ model (in line with recent reforms in Victoria, QLD, NT and ACT). There should be clear definitions for what constitutes reasonable grounds.



I oppose a 'pet bond' model, which may risk creating a 'two-tiered' system in which those who have the financial resources are allowed pets while those who do not are excluded from this right.



I am 9 years old. I am a male. < Please write your gender  
I go to School. Write your school's name  
The best thing about being a kid is... No bills  
I worry about... I won't have enuf money to buy a house.  
I want grownups to know... Kids can game as long as they want  
The world would be better if... No one lifted  
Finished already? Flip the page and draw!  
Thank you for your answers! We'll pass them on to Helen.

## 7. Recognise the reality of share-housing for young renters.

Currently, the RTA focuses on the relationship between landlord and tenant. As a result, it does not recognise the rights and realities of share housing. SACAT has no power to hear disputes between tenants or between landlords and agents.

For young people, issues relating to unstable tenancies often arise from co-tenancy issues. Young people are often likely to sublet, pay rent to friends, or are in overcrowded share houses or boarding houses. If they are not on a lease, they will often not have access to remedies if there are disputes. It is important for those who are not legally on the lease have a mechanism that enables them to address any issues.

Further, young people are not always aware of their tenancy status. In cases where young people are not offered the opportunity to be on the lease, they are not entitled to legal protections that RTA provides to tenants.

In addition to providing security of tenure highlighted above, it is important that the RTA:

- clarify consistent rights and responsibilities between various types of tenure;
- recognise that tenants have separate and sometimes competing legal interests;

- allow for an appropriate mechanism for co-tenant to end tenancy (inability to terminate without co-tenant consent); and
- regulate co-tenant disputes and recovery of possessions.

Any Act should make it easier to determine what legal status a renter has and there should be easily enforceable remedies available to them. For example, if someone is living as primary place of residence and paying rent, they should be deemed a tenant and afforded protections.

Such reform is important insofar as it is likely to increase stability for young people and reduce potential strain on youth homelessness sector resulting from co-tenancy disputes.<sup>x</sup>

### **8. Strengthen privacy protections, including in the collection of information and protection from misleading information.**

I support the introduction of a standardised tenancy application form that will limit the information collected to that which is reasonably required to evaluate the suitability of a tenant. This is an important way of protecting tenants (and young people in particular) from unlawful discrimination, arbitrary decision-making and invasion of their privacy. These amendments should be adequately monitored and breaches should be given appropriate penalties.

Digital Rights Watch have raised concerns in their submission to this Review that are likely to disproportionately impact young people, including in relation to:

- Third party platforms that use renter data to make decisions or predictions that will impact access to housing or ‘score’ applications in ways that incentivise rent bidding or facilitate ‘over-collection’ of renter personal information.
- The current ability for landlords to collect personal information outside what is required, including access to bank account statements. Victoria’s Act outlines that certain info is not allowed to be requested (section 30C, Regulation 15).<sup>xi</sup>

While the RTA covers provision of false information by tenants (s51), it does not cover false or misleading information by landlords. Victoria’s Act outlaws false, misleading and deceptive representations made by landlords as well as the asking of inappropriate, proscribed questions of tenants in applications. I support protections that ensure landlords do not disclose misleading information and disclosing minimal information around the house.

Further, current provisions regarding the frequency of inspections allow landlords to inspect the property once every 4 weeks and be at the property for up to 2 hours. This appears to be unreasonable and potentially intimidating and invasive for tenants. The frequency of inspections should be increased to at least 3 or 6 months.

## 9. Improve access to information, education and advocacy services for families and young renters to understand and exercise their rights under the Act.

The effectiveness of any legislative change depends on tenants having knowledge of their rights and access to information and support. Under Section 48 of the RTA, landlords must ensure tenants are given information regarding the agent or landlord's details and 'any other information required by the Commissioner'. This should be amended to require tenants to be informed of their rights and obligations under the RTA at the start of, during and at the expiration or termination of a tenancy, as well as where they can gain further information or access advocacy services.

Given that children and young people often do not know where to turn for information and assistance, they require particular consideration. While Youthlaw Australia provides clear information on their website, this information could be standardised in a statement prepared by the Consumer of Business Services,<sup>xii</sup> and should adopt youth-friendly language and format.

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<sup>i</sup> Child Development Council. How are they faring? South Australia's 2022 Report Card for children and young people. Accessed at <https://childrensa.sa.gov.au/wp-content/uploads/2022/12/How-are-they-faring-SAs-2022-Report-Card-FINAL-2022-12-21.pdf>

<sup>ii</sup> *ibid.*

<sup>iii</sup> Anglicare 2022 Rental Affordability Snapshot: National Report, Page 7. <https://www.anglicare.asn.au/wp-content/uploads/2022/04/Rental-Affordability-Snapshot-National-report.pdf>.

<sup>iv</sup> This is consistent with recommendations in SA Unions Submission, p.32.

<sup>v</sup> SACOSS, 2022. Submission to the Residential Tenancies Act Review – Discussion Paper 2022. Available at

[https://www.sacoss.org.au/sites/default/files/public/221215\\_SACOSS\\_RT\\_A\\_Final%20submission.pdf](https://www.sacoss.org.au/sites/default/files/public/221215_SACOSS_RT_A_Final%20submission.pdf).

<sup>vi</sup> Uniting Communities, 2022. Submission to the Residential Tenancies Act Review. Available at <https://www.unitingcommunities.org/file/jlbpaqsgz/Uniting%20Communities%20RTA%20Submission.pdf>.

<sup>vii</sup> *Residential Tenancies Act 1987* (WA), s71AE(4) and s71AE(5).

<sup>viii</sup> UniSA 2021, Impact of Tenancy Laws on Women and Children escaping Violence. Available at <https://www.unisa.edu.au/globalassets/resources/research/impact-of-tenancy-laws-on-women-and-children-escaping-violence.pdf>

<sup>ix</sup> Shelter SA, 2022. Moving On: How do tenancies end in the private market? Available at <https://www.sheltersa.asn.au/site/wp-content/uploads/Moving-On-2022.pdf>.

<sup>x</sup> See also Youthlaw submission to the Victorian Fairer Housing review: <https://engage.vic.gov.au/download/document/1744>.

<sup>xi</sup> Digital Rights Watch, 2022. Submission to SA Rental Law Reform. Available at <https://digitalrightswatch.org.au/wp-content/uploads/2022/11/DRW-Submission-SA-Rental-Law-Reform-Dec-2022.pdf>

<sup>xii</sup> As recommended in the SA Unions Submission to this review.