

## Department of Human Services submission into the review of the RT Act

### *Streamlining legislation*

The Department of Human Services (DHS) would like consideration given to the current scope of the Residential Tenancies Act 1995 (RT Act), and how it can bring together the rights of renters and property owners, including the SA Housing Authority, community housing providers, and the clients they service.

Ensuring clarity and consistency in decision-making under the RT Act would be beneficial to all parties, ensuring that vulnerable cohorts are protected (with due consideration to the power imbalance between landlord and tenant), and property owners understand their requirements in circumstances such as domestic and family violence and disability.

Currently, there are various pieces of intersecting legislation that require navigation where there are multiple system touchpoints – such as with the public and community housing system and homelessness services.

Renters may move through various complex tenancy arrangements throughout their housing journey, such as:

- leases for single household accommodation
- rooming house leases (made under Part 7 of the RT Act)
- semiformal boarding arrangements
- Supported Residential Facilities (SRFs)
- Specialist Disability Accommodation (SDA), requiring a tenancy agreement
- Supported Independent Living (SIL), operating under a service agreement, without a specific tenancy agreement.

These tenancy arrangements may be further complicated depending on the nature and type of the owner or property manager, that may be subject to separate regulatory systems.

Bringing tenancy arrangements and their legislative requirements together under one legislative framework is one area that requires investigation, noting that the legislative requirements and subsequent regulatory environment may be different, and there may already be work occurring in parallel to review intersecting legislative instruments or related programs.

For example, the RT Act should take into consideration state government efforts to address homelessness, recognising current work to review emergency accommodation.

Where possible, integration and operability should be prioritised in the review of the RT Act, ensuring it provides defined positions on a range of alternate accommodation types not explicitly covered (including hotels who are providing long-stay accommodation). Where other legislation for this exists, RT Act should be aligned and an enabler for clearer rights and responsibilities.

One area requiring streamlining relates to the *Supported Residential Facilities Act 1992* (SRF Act), which DHS is currently reviewing. The regulatory environment for licensed SRFs, local councils and their residents is complex, and it is not always clear how the SRF Act and the Commonwealth *National Disability Insurance Scheme (NDIS) Act 2013* operate together, with interoperability issues between the two that are further complicated by intersections with the RT Act.

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There is further confusion in relation to the *Community Housing Providers (National Law)(South Australia) Act 2013* which also requires addressing.

To determine a way forward, DHS engaged KPMG to develop an options paper. KPMG investigated three potential options and noted that additional Acts and regulations would need to be amended (such as the RT Act) to provide greater coverage and reduce duplication.

As such, it is critical that we work together to understand the intersects between the SRF Act and RT Act and possible opportunities for the future regulation of SRFs.

Consideration should be given to one piece of overarching legislation, such as the RT Act, with specific accommodation types and their registration and licensing requirements outlined in accompanying regulations, stipulating their unique regulatory environments and intersects (the NDIS Act).

Regulatory responsibility could then be delegated to the relevant department, rather than local councils in some instances, who often don't have the expertise or resources to support this. This approach is also important when taking into consideration SIL and SDA, which are NDIS-funded accommodation types.

### *Protecting vulnerable cohorts*

We know that housing provides an important source of stability and affects other areas of a person's life. In the last year, the DHS Child and Family Support System, Intensive Family Services, received around 5,000 referrals. Of these, 40% were from previous or current SA Housing Authority tenants, and almost 20% of referrals reported housing stress at the time of referral.

We also know that home ownership rates for people with disability are about half that of the wider population and therefore they are much more exposed to the rental market.

In addition to higher exposure to the rental market, many people with disability face challenges beyond general supply and affordability of housing that impacts on their choice and control and overall wellbeing. There are challenges for people with disability in finding tenancies that are physically suitable, a lack of independent living options (with many having to reside in congregate settings), and in several cases, there are complex tenancy arrangements further complicated by limited tenancy protections – particularly where a person's support provider is also their landlord.

For those experiencing domestic and family violence (DFV), it is important that they can end a tenancy early without penalty, access any bond contribution they made, and are not held liable for property damage (and instead, this responsibility is shifted to the perpetrator).

To ensure their safety, renters who experience DFV should also have the ability to change the locks to their property and install additional security measures, such as deadbolts or security lights, without requiring the owner's consent. This is especially important to support people experiencing DFV who choose to stay in a rental they previously shared with a perpetrator. Similarly, people with disability should have a default capacity to make minor modifications to a rental property to manage the onset of disability or the impact of degenerative conditions.

We have also seen barriers to renting for those who have companion animals and would like to see further work to protect those with pets in rental accommodation. Animal abuse and DFV often co-occur. This may mean that people experiencing DFV stay in unsafe households because of concerns for the safety and wellbeing of their pets.

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Another barrier is that pet-friendly and pet negotiable rentals are rare in South Australia, and even in these properties, an owner still must give permission for a pet to live at the property (for example, an owner may agree to a tenant with a small cat, but not a tenant with a large dog).

We also know how important companion animals are in providing companionship and comfort for tenants, contributing to their overall wellbeing – and the importance of assistance animals, who are specifically trained to aid people with disability and are essential to their day-to-day functioning.

DHS has also seen rental discrimination for those experiencing DFV, people with disability, and First Nations people. This discrimination is often compounded for people who have children in their care, especially those with multiple children. There can be assumptions about the risk of property damage and the ability for some cohorts to pay rent.

Additionally, for First Nations people, we know that there are cultural considerations that should be factored in to ensure their tenancies are protected in circumstances where their property is vacant during return to Country, or where they have visitors from remote communities.

For those exiting the child protection and youth justice systems, we also need to ensure that housing is accessible and tailored to their individual needs and circumstances, with reasonable flexibility to accommodate any statutory requirements (bail conditions).

Payment of water supply and usage must also be fair and equitable. While there are benefits to enforcing landlords to pay supply charges, this would result in a reduction of the value of concessions to a large proportion of vulnerable cohorts currently receiving a concession. If landlords become responsible for paying supply charges, they could bury the cost in rental increases, leaving tenants worse off.

### *A tiered system of governance*

While we would like to see greater safeguards for people in residential tenancies, we do not want to see an administrative burden placed on property owners and providers that limits the expansion of the market, and therefore housing options for those who need them most.

Consideration should therefore be given to a regulatory model that can ‘scale up’ where we know the risks are greater – such as rooming houses with 10 or more residents, or SRFs that provide food and personal care services, and not just accommodation.

In this proposed model, there could be different requirements for those who provide accommodation only (Level 1), accommodation and food services (Level 2), and accommodation, food and personal care services (Level 3). The higher the level, the greater accreditation licensing and registration requirements there would need to be. This is a model that is currently operating in Queensland.

Further to this, consideration should also be given to the scale of the accommodation provider (how many people in one house, and the provider’s number of houses). We know that some jurisdictions (such as New South Wales) differentiate registration requirements by the number of residents in a premises, and the National Regulatory System for Community Housing has three tiers of registration depending on the scale of the tenancy and property management activities. There are learnings that could be drawn from these systems for a South Australian context.

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We propose that consideration be given to this approach, with family rentals having minimal requirements, accommodation with up to 10 residents requiring registration, and accommodation with over 10 residents (such as is the case for an SRF), requiring both registration and licensing.

Irrespective of the registration 'level,' there should be rights of appeal in all circumstances, as governed by the South Australian Civil and Administrative Tribunal (SACAT). This will ensure greater oversight and visibility of properties and providers with the highest risk, and greater ability to challenge decisions to protect the rights of all involved.

However, the overarching consideration for such a scheme should focus first on risk, and then on commercial occupancy rates (rather than occupancy being the sole defining measure of risk).

There also needs to be greater clarity around these different types of accommodation for concessions purposes, as we know there are challenges for residents in shared accommodation in accessing concession payments.