



# Disability Rights Advocacy Service Inc

Safeguarding and promoting the rights and interests of people with disability, their families

## SUBMISSION INTO THE REVIEW OF THE *RESIDENTIAL TENANCIES ACT 1995*

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## Acknowledgement of Country



[Image description: Aboriginal and Torres Strait Islander flags]

The Disability Rights Advocacy Service Inc acknowledges that this submission was completed on Kurna Land. We pay our respects to Elders past, present and emerging. We recognise the continuing relationship with the lands and seas and connection to culture.

Kurna Miyurna yaitya yarta-mathanya Wama Tarntanyaku, parnaku yailtya, parnaku tapa puru purruna. Kurna Miyurna ithu yailtya purruna, yarta kuma puru martinhi, puru warri-apinhi, puru tangka martulayinhi.

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## Background

Disability Rights Advocacy Service (DRAS) is part of a national network of disability advocacy organisations funded by the Australian Government Department of Social Services to provide individual advocacy, Royal Commission advocacy and systemic advocacy for persons with disability. We service three areas in South Australia, representing people who reside within greater metropolitan Adelaide, the Adelaide Hills and Murray Bridge, the South-East and Coorong region, and the Riverland.

As part of our work our advocates assist persons with disability directly through the National Disability Advocacy Program (NDAP) and NDIS appeals program, as well as assist individuals to tell their story to the Disability Royal Commission.

## 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?
- Should the RTA be amended to accommodate longer fixed term tenancy agreements?
- Should the minimum notice period required prior to the non-renewal of a fixed term tenancy agreement be extended to 60-days?

DRAS supports implementing under legislation a 'prescribed reason' for landlords to terminate a periodic agreement or not renewing a fixed term agreement tenancy. Our clients have told us that they do not feel that they can confidently lodge service or maintenance complaints regarding their rental properties without fear of retribution by landlords. This creates an unjust power imbalance between landlords and tenants. This is of particular concern to people with disability who may need adjustments to their rental property for accessibility reasons.

Prescribed reasons may include sale of the rental property to the market; *significant* damage done to a property; *significant* rental arrears; among other things. There should be a requirement under legislation that negotiation has taken place between landlords and tenants to attempt to come to an agreement prior to a lease being terminated.

DRAS supports the RTA being amended to accommodate longer fixed term tenancy agreements. People with disability in particular need greater long-term security for tenancies because they are often connected to location-specific community services, allied health professionals, medical practitioners, or support services in education centres. Being able to have security of tenure in an individual's housing situation also guarantees security for their community supports.

The minimum notice period prior to the non-renewal of a fixed term tenancy agreement should be extended to *at least* a minimum of 60 days. The current housing crisis means that it is incredibly difficult to find a rental property. This is compounded for people with disability who also need an accessible property.

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

DRAS supports these amendments to reflect the current state of the rental market and to ensure that tenants are not paying more for a bond than is necessary. We also welcome the RBO being made mandatory to reduce the amount of unclaimed bonds for when tenants vacate a property.

## 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?

DRAS supports landlords and land agents being prohibited from putting a property up for rent auction and soliciting offers over the advertised rent price. We believe that the amendments should go further and prevent the ability for landlords and land agents to accept offers above the advertised price. Current rent bidding is driving up rental prices and pushing many people out of the private rental market, creating increased demand on social housing. Current social housing stock is inadequate to cope with the increased demand from people who can no longer afford to access the private rental market. This particularly impacts on people with a disability from a low socio-economic background. Many of our clients on Disability Support Pension (DSP) or other Centrelink payments simply can no longer afford to rent in the private market.

However, we query whether prohibiting landlords and land agents to prohibit advertising rental properties within a price range will be helpful. Prospective tenants often base their search for rental properties on the prices that they can afford, so this may create unnecessary complexity in the tenant search process.

## Rooming houses and shared accommodation

- Should the definition of a rooming house be amended to include rooming houses that accommodate 2 or more residents?
- 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?

DRAS supports these amendments. We are also concerned about the accessibility of rooming houses and crisis accommodation for people with disability. We have had clients who were denied access to crisis accommodation because their disability meant that they could not access a complex with stairs. We would like to see similar accessibility standards applied to rooming houses and crisis accommodation as is applied to new SA Housing Authority properties.

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## 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 agrees to comply with any reasonable conditions imposed by the landlord?
- Should a pet bond scheme be introduced in SA?

DRAS supports an amendment to the RTA to give tenants with pets greater access to a rental property. Currently many rental properties are advertised with 'no pets allowed' requirements. It is hoped that such an amendment would mean this practice is no longer used by landlords and land agents. People with disability in particular often need access to rental properties that allow pets because they have registered assistance animals or emotional support animals. Furthermore, due to the cost not all emotional support animals are able to be formally registered.

DRAS opposes the introduction of a pet bond scheme in SA, as this would create unfair financial hardship on tenants with pets in a private rental market that is already costly to access.

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

Nationally, Building Ministers have agreed to lift the energy standards of new home through the National Construction Code (NCC). As of NCC 2022, *new* homes and apartments need to achieve the equivalent of '7 stars' of [NatHERS thermal performance](#).<sup>1</sup> However, DRAS is concerned that these standards will not be applied to existing dwellings. We have had clients contact our service seeking advocacy support because maintenance has been ignored for several months or years both in public and private rental accommodation. Our advocacy support has involved lodging maintenance requests or making complaints related to black mould, pest infestations, or general disrepair, among other things. While our service has often had success in these complaints, we are concerned that the issue has required advocacy support before the matter can be resolved, and we are concerned about these ongoing issues in the community.

It is of pivotal importance for the RTA to include provisions to ensure that tenants can exercise their rights without the risk of a retaliatory eviction or rent increase. Due to the power imbalance between tenants and landlords, we have heard from clients that they are wary of raising maintenance requests or risk an adversarial response from their landlord or land agent for doing so.

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<sup>1</sup> Nationwide House Energy Rating Scheme, website, 2022, accessed: [Nationwide House Energy Rating Scheme \(NatHERS\)](#)

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## Safety modifications and minor changes

- 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?

As an advocacy service we have had clients come to us for help in obtaining housing that is physically and sensory-accessible. Housing often does not meet the needs of persons with disabilities and it can be difficult to get approval for disability housing modifications. There is concern in the community about disability discrimination in residential tenancies.<sup>2</sup> Clients have come to us concerned that if they request housing modifications they will face a retaliatory eviction. For example, requesting grab rails, hand rails, sensory lighting, wider doorways, lowered benches, among other things.

The South Australian Housing Association (SAHA) has developed their *Disability Access and Inclusion Plan 2020-2024*, as part of their obligations under the *Disability Inclusion Act 2018 (SA) (DIA)*. We are at the midpoint of the delivery of this plan. The Plan is also part of the broader 10-year strategy of the South Australian Government, *Our Housing Future 2020-2030*.

Persons with disability residing in public and Aboriginal housing properties can request housing modifications if it does not meet their needs. Only SAHA offers disability housing modifications officially, and they must often be supported by comprehensive diagnostic and functional assessment reports that can be difficult or expensive to obtain.<sup>3</sup>

SAHA has also developed internal Sustainable Housing Principles which include detailed requirements about accessibility around and inside a house, as well as housing modifications.<sup>4</sup> However, SAHA has only committed to 'silver' access, which is the minimum requirement for accessibility as opposed to 'gold' or 'platinum' access.<sup>5</sup>

The *Disability Inclusion Act 2018 (SA)* only applies to government agencies and their partner organisations (for example, Housing SA is partnered with community housing providers). People with disability living in private rentals do not have the benefit of knowing that their landlord or real estate agent is accountable to a Disability Access and Inclusion Plan. This is despite many people with disability renting privately, particularly due to the

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<sup>2</sup> *Disability Discrimination and Reasonable Adjustments in Residential Tenancies*, May 2022, p 18, accessed: [Law Society Bulletin - May 2022 by lawsocietysa - Issuu](#)

<sup>3</sup> SA Housing Authority, *Housing Modifications for people with disability policy* Housing modifications for people with a disability policy | SA Housing Authority accessed: 8th August 2022

<sup>4</sup> SA Housing Authority, *Sustainable Housing Principles 2.3 SAHT Universal Housing Design Criteria* accessed: 8th August 2022.

<sup>5</sup> SA Housing Authority, *Disability Access and Inclusion Plan 2020-2024*, 2020, Government of South Australia, p 21

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reduction in numbers of public and community housing places available, and the lack of affordable houses available to purchase.

Persons with disability may struggle to access housing that meets their needs in the private rental market. The Residential Tenancies Act 1995 (SA) is the core legislation that governs private rental accommodation, including the rights of tenants and obligations of landlords or real estate agents. There are no obligations put on private landlords or real estate agents to allow for housing modifications, except that they cannot refuse installation of the internet or a digital television under s 70 of the Act and s 12 of the Residential Tenancies Regulations 2010 (SA). This means there are no obligations on private agencies to allow for housing modifications.

The *Disability Discrimination Act 1992* (Cth) and the *Equal Opportunity Act 1984* (SA) may provide a legal avenue for persons with disability to make complaints about private landlords or real estate agents if they do not provide a housing modification when requested. However, the legal test for discrimination can be a high bar to meet, and it can be difficult to prove that someone is being discriminated against because of their disability.

## 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?
- 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?

DRAS supports the introduction of a standardised application form to limit the amount of information required from prospective tenants. It is currently an onerous process where landlords or land agents can require multiple references and an extraordinary amount of personal information to be uploaded through third party websites, including identification, pay slips or social security accounts. There is limited guarantee that these third-party websites are secure, which is of particular concern due to recent hacking events nationally. We propose that in addition to a standardised application form, CBS look into regulating these third-party websites.

We are concerned about the use of 'blacklists' being unfairly and unjustly used to prevent people from accessing other rental properties. This places marginalised or vulnerable people at risk of homelessness. If residential tenancy databases are maintained DRAS supports tenants having access to this information for free and in a timely manner, which will give people access to procedural fairness in being able to challenge any false or misleading information.

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## Domestic violence provisions

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

An issue that our service has addressed is women with disability requesting advocacy support to appeal debts or costs associated with property damage levied against them due to domestic violence. For example, a perpetrator breaking into a victims' home or committing property damage such as punching walls, breaking windows, or doors. Victims of domestic violence should not have to cover the costs of property damage that is done by a perpetrator. Property damage can also lead to eviction of all tenants regardless of who committed the damage. Protections could be added to the RTA to ensure that allegations of domestic violence-related property damage are taken seriously and that a landlord or land agent must consider these allegations when deciding to recover a debt or to terminate a tenancy.

We are also concerned about the ability for a landlord to enforce a bond payment against a victim of domestic violence as is noted in the Review Discussion paper and would be supportive of amendments to the RTA to safeguard against this.

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

DRAS supports the amendments to the RTA to 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. We believe that it should be the responsibility of the landlord to pay the water supply fee to bring South Australia in line with the standard practice in other jurisdictions. Landlords should have a full obligation to pay excess water charges resulting from a reported water leak that remain unrepaired.

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