



Ref: 1329703

15 December 2022

Att: Residential Tenancies Review
Consumer and Business Services
GPO Box 1719
ADELAIDE SA 5001

By email: CBSReforms@sa.gov.au

Dear Reviewer

Review of the Residential Tenancies Act 1995 (SA)

1. We refer to the Discussion Paper which advised of the above review seeking comments and views on potential reforms to the *Residential Tenancies Act 1995 (SA)* ("the RTA").
2. We note the RTA and accompanying Regulations which govern residential tenancy agreements in South Australia are being substantively reviewed for the first time since 2014. The Review covers reforms in a range of areas including renting with pets, rent bidding, domestic violence and residential bonds.
3. We advise the Society's Animal Law Committee had regard to the Review insofar as it relates to renting with pets and informs the below response on these matters.

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?

4. From the outset, the Society does not have a unified position on the desirability or otherwise of a legislated presumption that pets be allowed in rental properties. However, the Society's Animal Law Committee is supportive of this, with the Committee's views canvassed below.
5. In assessing this question, the Animal Law Committee reflected on a landlord's right to place reasonable conditions on the renting of their own property. The Committee also reflected on the importance of ensuring the definition of "pet" is carefully considered so as to ensure there is a distinction between "assistance animals" as defined within the *Disability Discrimination Act 1992 (Cth)* and the *Dog and Cat Management Act 1995 (SA)* and "therapeutic animals" as defined with in the *Equal Opportunity Act 1984 (SA)*.
6. As to responding to the question directly, the Committee reflected on the important role pets play in people's lives, what is understood to be a significant increase in pet ownership over the course of the COVID-19 Pandemic and a shortage of affordable rental accommodation. The Committee considered that prospective tenants should not be pushed out of the rental market due to a landlord's blanket ban on pets, which has the effect of putting South Australian families in the unenviable position of having to choose between suitable housing and their pets. The Committee suggested such bans could result in

family pets being left at animal shelters, causing welfare issues for the animals and placing an excessive burden on the resources of animal shelters run by charities.

7. The Committee is of the view that a good compromise between the competing rights of landlords and tenants in this context would be a presumption that a person seeking to rent a property can have their pets on the property unless the landlord has a *reasonable* basis for refusing.
8. As to the determination of what might constitute a “*reasonable*” basis for refusing a pet, the Committee looked to the equivalent legislation in Queensland, being the *Residential Tenancies and Rooming Accommodation Act 2008* (QLD). Section 184D of that Act empowers a tenant to request the lessor’s approval to keep a stated pet at a rented premises, with the cumulative effect of this provision and subsequent section 184E providing specific grounds upon which a landlord may refuse a pet (rather than the broader term of “*unreasonable refusal*”). We note Section 184E of that Act lists the following grounds by which a landlord may refuse a tenant’s request for approval to keep a pet at a rented premises:
 - 8.1 *keeping the pet would exceed a reasonable number of animals being kept at the premises;*
 - 8.2 *the premises are unsuitable for keeping the pet because of a lack of appropriate fencing, open space or another thing necessary to humanely accommodate the pet;*
 - 8.3 *keeping the pet is likely to cause damage to the premises or inclusions that could not practicably be repaired for a cost that is less than the amount of the rental bond for the premises;*
 - 8.4 *keeping the pet would pose an unacceptable risk to the health and safety of a person, including, for example, because the pet is venomous;*
 - 8.5 *keeping the pet would contravene a law;*
 - 8.6 *keeping the pet would contravene a body corporate by-law or park rule applying to the premises;*
 - 8.7 *the tenant has not agreed to the reasonable conditions proposed by the lessor for approval to keep the pet;*
 - 8.8 *the animal stated in the request is not a pet;*
 - 8.9 *if the premises is a movable dwelling premises – keeping the pet would contravene a condition of a licence applying to the premises; and*
 - 8.10 *another ground prescribed by regulation.*
9. As to a process for challenging the presumption that pets be allowed in rental properties, the Committee suggested consideration could be given to an approach whereby tenants can apply to the South Australian Civil and Administrative Tribunal (“the SACAT”) for a determination in circumstances where:
 - 9.1 they do not agree that the conditions imposed by the landlord are reasonable;
 - 9.2 a landlord has declined to permit a pet in a rented property; or
 - 9.3 circumstances have changed throughout the tenancy, such as where the pet the tenant now seeks to have present in the property is different to the pet they had when initially making this request.

10. The Committee further suggested that this be counterbalanced by landlords also having the right to impose reasonable conditions throughout the tenancy as circumstances change, for example such as where a fence is removed, or STRATA rules have changed and now restrict pet ownership.
11. Of relevance, the Society provided a submission in relation to the Residential Tenancies (Renting with Pets) Amendment Bill 2020, which sought to provide for a legislative presumption that tenants be able to keep a pet in rental properties. A copy of that submission is *enclosed* for your reference.

Should a pet bond scheme be introduced in SA?

12. The Animal Law Committee was of the view that a pet bond scheme would be a reasonable compromise in recognising the rights of tenants, as well as landlords who may be left with costs in repairing damage caused by animals.
13. In Western Australia, the pet bond scheme is restricted to a one-off payment of \$260.00 unless the weekly rent of the property is more than \$1,200.00 per week. It is not clear why Western Australia seemingly allows a pet bond of any amount to be placed on higher value properties.
14. The Committee recommended avoiding a scenario whereby landlords on certain properties can impose disproportionately large pet bonds in order to discourage tenants from being able to keep pets in tenanted properties. One suggestion could be a scaled pet bond amount on certain levels of rent. An alternate approach might be to empower tenants facing pet bonds above a certain amount to appeal to the SACAT to determine the reasonableness of the bond amount. The Committee also reflected that consideration should be given to exempting pet bonds in the context of assistance animals and therapeutic animals.

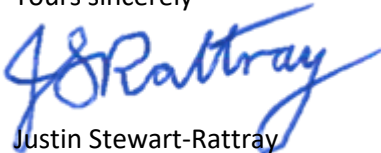
Miscellaneous comments

15. The Society makes some observations as to other aspects of the Discussion Paper, as follows.
16. We note the Discussion Paper advises that a maximum amount for a bond in South Australia is presently equal to four weeks where the weekly rent is \$250.00 or less, or six weeks where the weekly rent is more than \$250.00. The Discussion Paper queries whether this amount should change to \$800.00, having the effect that tenants being charged a weekly rent of \$800.00 or less would only have to pay a maximum bond equal to four weeks of their rent.
17. In response to the above, the Society observes that where the bond does not cover the rental arrears or repair costs for damage (or a combination of both), landlords are required to apply to the SACAT for orders as how much the tenants should pay above the bond, pursuant to section 24 of the RTA. Where tenants do not pay the ordered amount, then landlords can enforce the SACAT's orders via the Magistrates' Court of South Australia. Landlords need an address for service to enforce SACAT orders via the Court, however the Society understands it is often the case that they do not have the former tenants' next address, making enforcement difficult. Resolving this issue may necessitate the increase in the limit of matters heard by the SACAT from \$40,000.00 to \$100,000.00 in section 24(2) of the RTA.
18. We note the Discussion Paper also considers the lodging of residential tenancy bonds in South Australia, making the suggestion that they be all be lodged via the Residential Bonds Online system. While uniformity is generally desirable, the Society notes that online access is not available to all South Australians and accordingly we suggest such a rigid approach might not be appropriate.

19. As to the references to the registration of larger rooming houses, we note the reference to registering with the government in order to determine the property owner or manager is “*fit and proper*”. The Society observes that the term “*fit and proper*” would need to be defined, noting that the present test utilised by the Australian Securities and Investments Commission to determine whether a person is a “*fit and proper person*” to hold a credit licence could be annotated.¹
20. Finally, we note the references to minor modifications to properties, specifically the question as to whether landlord should be able to prohibit tenants making safety modifications and minor changes to the rental property. The Society observes that there have been several recent decisions regarding “*improvements*” and the capital value of land.² From a South Australian perspective, the Society highlights *Bosnakis & Anor v Valuer-General SA*,³ where there was a considerable amount of rubbish strewn over land including car parts, tires and cement. We further note that care should be taken such that “*minor*” modifications do not inadvertently contravene other laws, an example being wireless outdoor cameras operating in contravention of the *Surveillance Devices Act 2016* (SA), or the tort of nuisance.

Should you have any queries, please do not hesitate to contact me.

Yours sincerely



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PRESIDENT

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Encl: Letter from the Law Society of South Australia to the Hon Mark Parnell MLC re Residential Tenancies (Renting with Pets) Amendment Bill 2020, 16 November 2020.

¹ Australian Securities and Investments Commission, Fit and proper people (Web Page) <<https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-204-applying-for-and-varying-a-credit-licence/fit-and-proper-people/>>.

² *Valuer-General Victoria v AWF Prop Co 2 Pty Ltd & Ors* [2021] VSCA 274; *SPIC Pacific Hydro Pty Ltd v Chief Commissioner of State Revenue* [2021] NSWSC 395.

³ [2017] SASC 158.