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Mr Dini Soulio  
Commissioner for Consumer and Business Services  
95 Grenfell Street  
ADELAIDE SA 5000

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Dear Commissioner,

### **Review of the Residential Tenancies Act**


I refer to your Discussion Paper, *Review of the Residential Tenancies Act*, and your call for comments on potential reform of the legislation.

The Legal Services Commission (Legal Services) is South Australia's largest legal assistance services provider. We provide legal advice, information, and education to the South Australian public as well as grants of aid for legal representation in criminal and family law matters. We are a significant provider of domestic violence legal assistance services through our Women's Domestic Violence Court Assistance Service in the Magistrates Court, our Northern Domestic Violence Unit, our Health Justice Partnerships, and our Family Advocacy and Support Service in the Family Court.

Through our advisory and domestic violence services, our lawyers regularly provide advice and assistance to tenants in rental accommodation. For example, in the previous financial year, our legal advice section provided over 2,000 advice services concerning residential tenancies. I have consulted with my legal officers who work regularly with the *Residential Tenancies Act*, and they have had input into our response.

Our Submission follows this letter. Thank you for the opportunity to comment on this Review.

Yours sincerely,

  
Gabrielle Z Canny  
Director (CEO)

## Submission - Review of the Residential Tenancies Act

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### 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?

Legal Services supports the current requirement in sections 80 and 81 of the *Residential Tenancies Act 1995* that a landlord provide a reason for the termination or non-renewal of a lease, however limiting a landlord to prescribed reasons may create problems for landlords and tenants as the reasons for termination may be misdescribed to fit into the requirements. In the case of subsequent disputes, it is preferable that the reasons be stated as fully and accurately as possible.

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?

Legal Services supports the accommodation of longer fixed term tenancy agreements. Consideration could also be given to setting a minimum term for any residential lease. It seems incongruous that, in South Australia, a small commercial tenant is guaranteed the security of a minimum five year lease for their business<sup>1</sup> but cannot have the same security for their home. Longer leases provide greater certainty for landlords and tenants.

The 'caveat' issue relating to section 119 of the *Real Property Act 1886* is something of a misinterpretation. The section requires leases longer than 12 months to be registered. As noted in your Discussion Paper, the tenant has a caveatable interest in any event. The *Residential Tenancies Act* could be amended to remove the requirement that residential leases must be registered under the section 119 of the *Real Property Act 1886*. The removal of this requirement could also encourage residential landlords to offer longer leases.

Legal Services supports the extension of the minimum notice period required prior to the non-renewal of a fixed term tenancy agreement to 60 days.

Legal Services submits that a mandatory proforma 'lease agreement', similar to the existing forms on the Consumer and Business Services website<sup>2</sup>, would be of benefit to both parties in negotiations and ongoing dealings. This lease would provide a single written record of what has been agreed in case of later disagreement, or disputes over the bond. It would also provide the parties with basic information about contact details such as phone numbers and email addresses in one document, replacing other forms and guides.

While the requirements for written lease agreements are already set out in sections 48 and 49 of the *Residential Tenancies Act*, creating a compulsory form which is also a *downloadable, electronic* lease that could be accessed on the user's phone as an app, would be convenient and save on the costs of document preparation. Legal Services has had considerable success with online applications as the developer of *amica*, an online tool for separating couples.<sup>3</sup>

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<sup>1</sup> [Retail and Commercial Leases Act 1995 | South Australian Legislation](#)

<sup>2</sup> [SA.GOV.AU - Forms and fact sheets for private rental tenancies \(www.sa.gov.au\)](#)

<sup>3</sup> <https://www.nationallegalaid.org/resources/amica/>



Paper forms of the mandatory lease should also be available for digitally disadvantaged tenants.

### **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?

Legal Services supports this proposal, particularly given the current rental market. We submit that no more than four weeks rent should be the standard bond for all residential tenancies regardless of the value of the lease. Such a change would reflect the fact that these lease arrangements are for private homes and not for business purposes.

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

Legal Services supports this proposal with the proviso that some tenants on low incomes suffer digital disadvantage. As suggested above, just as an electronic lease available as an app on a phone would benefit tenants, a similar phone app for bond lodgement could be of equal benefit to landlords.

### **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?

Legal Services supports a prohibition on rent bidding and soliciting offers for rent above the advertised price. We do not necessarily oppose the advertising of rent within a range provided that the range is made very clear in advertising of the property for lease and before a tenant makes an offer to rent a property. The successful offer should not be permitted to exceed the range.

### **Rooming houses and shared accommodation**

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

This proposal would reduce the required number of tenants for a "rooming house" from three to two and would probably make little difference to landlords and tenants. Of more concern is the current requirement that the provision of the rooms be for a "commercial purpose" which is not defined in the *Residential Tenancies Act* and could potentially allow some business and quasi-charities to evade appropriate regulation. Given the changing dynamics of the current rental accommodation market, Legal Services suggests that a complete reconsideration of the regulation of this type of accommodation may be necessary. Simply mirroring the provisions which apply to residential leases does not provide rooming houses tenants with an effective means of protecting their rights. Limiting involvement of the Tribunal and offering mediation by CBS would benefit this category of tenant, many of whom have complex needs. For example, decisions about whether rooming house rules are unreasonable under section 105B could be decided by the Commissioner at first instance.

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?

An annual license to operate a rooming house could be issued for a fee. The fees could assist in paying for the inspections of the properties and the withdrawal of the license used as a sanction if the properties are not to standard.

I refer to our previous comments on the definition of “commercial purpose” and more generally. Legal Services would support the establishment of a registration scheme for rooming houses of all kinds and a fit and proper person test for all proprietors. Both these initiatives would protect vulnerable tenants.

### **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?

Legal Services supports this proposal. Landlords should not be permitted to refuse offering a lease on the basis that the prospective tenant has a pet. Landlords should be entitled to stipulate the type, size and number of pets allowed relative to the size and facilities of the accommodation in advertisements for the tenancy.

In Legal Services’ experience, the ability to secure accommodation for pets is particularly important for victims of domestic violence, the elderly, and persons needing companion animals who are not necessarily designated assistance dogs. Several jurisdictions overseas, for example the United Kingdom<sup>4</sup> and Ontario Canada<sup>5</sup>, have already passed laws balancing the rights of landlords and tenants while permitting pets in rental accommodation.

Should a pet bond scheme be introduced in SA?

Legal Services is aware that the owners of pet-friendly holiday accommodation regularly require an additional, non-refundable cleaning fee. A similar system could be applied to rental accommodation rather than the imposition of an additional, formal bond and its necessary administration. The amount of the fee should be regulated to ensure it is not used as a deterrent to tenants with pets.

### **Tenants’ Rights**

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?

Legal Services supports the provisions proposed in section 1 of the Discussion Paper. Retaliatory behaviour can be difficult to identify. Setting a mandatory minimum term for residential leases as suggested in our earlier comments would better protect a tenant from retaliatory action and give the tenant greater confidence in asserting their rights.

### **Housing Standards**

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

Legal Services supports this proposal and additionally would recommend minimum heating and cooling standards for residential tenancies. There has been considerable media attention over the last winter regarding tenants suffering from a lack of heating in their homes.<sup>6</sup> As well as a requirement for insulation, installation of ceiling fans and at least one room with a safe, functioning heating appliance should be minimum requirements.

### **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?

Legal Services supports this proposal.

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<sup>4</sup> [New standard tenancy agreement to help renters with well behaved pets - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/new-standard-tenancy-agreement-to-help-renters-with-well-behaved-pets)

<sup>5</sup> [LTB: FAQs | Tribunals Ontario](https://www.tribunals.gov.on.ca/lrb/faq/)

<sup>6</sup> [Renters shiver below minimum healthy temperature 17 hours a day in winter, report finds - ABC News](https://www.abcnews.com/news/2018/12/17/renters-shiver-below-minimum-healthy-temperature-17-hours-a-day-in-winter-report-finds/)



### **Standardised application forms**

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?

Legal Services supports this proposal as it would reduce discrimination against tenants.

### **Tenant blacklists and access to personal information on tenant databases**

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?

Legal Services supports this proposal.

### **Domestic violence provisions**

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

In domestic violence situations, tenants can still be liable to pay the break lease fee and advertising costs. This often means they do not receive their bond back and they are placed under further financial strain. It would be beneficial for the Act to be amended to state that the break lease costs, and advertising costs do not need to be paid by the tenant in a domestic violence situation where the landlord has consented or where there has been a finding of domestic violence by SACAT.

### **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?

Legal Services supports this proposal. Tenants should be provided with all information to prove they are being charged the correct amount for water.

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

Legal Services supports the proposal that the payment of the water supply fee be paid by the landlord.

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?

Legal Services supports this proposal but appreciates there are issues involved in requiring the *Residential Tenancies Act* to define how excess water charges are identified. With regards to the leak, SA Water offers a leakage allowance if the leak was concealed or not easy to see and has been repaired by a licensed plumber or adequate self-repair<sup>7</sup>. The leakage allowance is paid to the landlord, not the tenant, therefore the *Residential Tenancies Act* should be able to account for this with any amounts paid to the landlord deducted from the amount for which the tenant is responsible.

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<sup>7</sup> <https://www.sawater.com.au/forms/leakage-allowance-application>

### **Illegal drug activity**

Should landlords who know or suspect that illicit drugs have been manufactured or regularly smoked in their property be required to undertake necessary remediation before leasing the property and provide evidence of this to prospective tenants?

Legal Services supports this proposal. This information should be disclosed on a mandatory lease document and falsifying such information should be grounds for the tenant to break the lease without penalty.

### **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?

Legal Services supports this proposal. These business costs should be the responsibility of the landlord and would be deductible expenses.

### **Modernisation of Language**

Should terms within the RTA be updated? If so, which terms should be revised and what should they be replaced with?

Legal Services supports the retention of the terms 'landlord' and 'tenant' as they are deeply entrenched and in common usage in this area of the law. Changing these terms now could lead to confusion for members of the public.

There are, however, other provisions in the *Residential Tenancies Act* that would benefit from a reconsideration, including revisiting sections which vest decision-making powers in the Tribunal (SACAT) where those issues could be more effectively dealt with by the Commissioner in mediation.

Some references in *Residential Tenancies Act* need updating and modernisation, for example, the *Commonwealth Aged or Disabled Persons Care Act 1954*, (section 5 RTA) was repealed in 2011 and incorporated into the *Aged Care Act 1997* and the *Retirement Villages Act 1987* (section 101 RTA) is now the *Retirement Villages Act 2016*.

Sections requiring the provision of contact details should include a reference to email addresses and SMS communication, (for example sections 48 and 49 RTA).

Some fines seem anomalous, for example discriminating against a tenant because they have a child (section 52) only has a fine of \$1,500 while accepting payment of rent other than in cash (section 56A), has a fine of \$5,000.

Other timelines in Act also need reconsideration as they are particularly short, for example, breach of non-payment of rent (section 80(2)) and notification that a property has been sold (section 71A) only require a 14 day notice period.

### **Housing Trust Tenants**

Consideration should be given to placing tenants of the South Australian Housing Trust in the same position as a private tenant with regard to the landlord's obligation to repair (section 68 RTA). Under section 68 of the *Residential Tenancies Act* a landlord has an obligation to repair once made aware of the defect and SACAT can order the landlord to pay compensation to the tenant if defects are not remedied in a timely manner. However, these rights do not apply to those renting from the South Australian Housing Trust or its subsidiaries.

Tenants of the South Australian Housing Trust who believe the delay for a repair to be unreasonable must first exhaust an internal complaints procedure before applying to SACAT under a number of possible provisions with potentially different outcomes. Consequently, vulnerable tenants are being forced to navigate a complex legal system.

**Mortgagee in possession**

Under the *Residential Tenancies Act*, a residential tenancy agreement is terminated if a mortgagee takes possession under a mortgage. The tenants have no security of tenure and none of the notice periods to which landlords are subject apply, including provisions regarding sale of the property by a landlord. It is suggested that section 79 (e) of the Act be repealed and replaced with provisions allowing time for the tenant to meet and negotiate with the mortgagee.