REISA

SUBMISSION

Response to Discussion Paper
Review of the
Residential Tenancies Act 1995

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Background

The Real Estate Institute of South Australia (REISA) welcomes the opportunity to provide this submission in response to the Discussion Paper on a review of the *Residential Tenancies Act 1995* (RTA).

REISA supports the review of the RTA and the modernisation of tenancy laws.

REISA, established in 1919 is the peak professional body representing more than 600 real estate agencies and 2,000 real estate professionals in South Australia. REISA represents agents, sales representatives, auctioneers, property managers, conveyancers and allied partners in the real estate industry.

REISA is recognised as the leading authority on real estate in South Australia.

One of REISA's principal key objectives is to maintain REISA's position as the leading real estate advocacy body representing the interests of its members to government, industry and consumers.

Consultation

REISA released an online survey to its entire Property Management membership in an identical format to that released by Consumer and Business Services. REISA received its largest survey response ever - 109 responses with detailed commentary on each proposed reform.

REISA has also consulted with:

- REISA Property Management Advisory Panel
- Shelter SA

Executive Summary

REISA supports the key principles underlying the proposed reforms which emphasise safety, security and certainty. As outlined in this submission, we support a number of the proposed reforms or aspects of them.

REISA is concerned that the proposed reforms are almost exclusively tenant focused and seek to address a perceived imbalance by concentrating solely on strengthening tenant's rights while derogating from a landlord's rights.

A number of the proposed reforms will erode fundamental legislative and contractual rights of landlords and some propose to introduce a number of onerous and unreasonable requirements on landlords.

It is submitted that if the more onerous provisions are introduced, this will destabilise the South Australian rental property market and lead to landlords reconsidering their investment due to higher costs, greater risk and the removal of control over their asset.

Given the supply issues of housing stock affecting the current rental market, this would lead to even tighter rental conditions, even more stringent tenancy applications and ultimately even higher rents. The objective of this review, which seeks in many respects to address the issues of rent affordability may consequently be undermined by many of the proposed reforms.

REISA is however mindful, that striking a balance between the rights of the landlord and the tenant will involve negotiation on both sides and REISA has attempted to provide alternatives to those reforms to which it is unequivocally opposed.

In summary, REISA's position on each of the proposed reforms is outlined below:

Longer tenancies

REISA strongly opposes the proposed abolition of the owner's right to terminate a tenancy on a without grounds basis.

REISA supports the increase of time from 12 months under the *Real Property Act 1886* for unregistered leases to gain automatic indefeasibility.

REISA supports the time requirement for a Form 2A (and the complementing Form 4B) to be extended from 28 days to 42 days but opposes the extension to 60 days.

Residential Bonds

REISA supports the bond threshold increasing from $250 to $400 but strongly opposes the increase to $800.

REISA supports the introduction of the requirement for all rental bonds to be lodged via the Residential Bonds Online system.

REISA supports the requirement of additional tenancy contact details upon registration of the bond.

Rent Bidding

REISA supports the introduction of legislative measures that would make it illegal for landlords, land agents and property managers to ask prospective tenants to offer to pay more rent than the advertised amount.

REISA supports the prohibition of rental auctions.

REISA opposes the abolition of a landlord's ability to advertise a price range for a residential rental property.

Rooming Houses and Shared Accommodation

REISA supports a change in the definition of a rooming house to enable the renting of 2 or more rooms to be captured under the definition.

REISA supports a registration scheme with the Government for persons who own or run a rooming house with 3 or more residents.

Renting with Pets

REISA strongly opposes the introduction of a requirement for landlords to accept pets.

REISA strongly supports the introduction of a pet bond if a requirement for landlords to accept pets is introduced.

Housing standards and retaliatory evictions

REISA supports legislative reform that would ensure tenants can exercise their rights without the risk of retaliatory action by the landlord.

REISA in principle supports the introduction of energy efficiency standards subject to the development of the scope and nature of the standards

Safety modifications and minor changes

REISA supports the introduction of changes relating to modifications pertaining to safety, health, accessibility and security subject to the implementation of an owner approval process with reasonable grounds for refusal.

REISA opposes the introduction of changes relating to amenity and personalisation modifications.

Start of tenancy requirements

REISA opposes the introduction of a standardised application form with standardised questions.

REISA supports the introduction of provisions that enable tenants to secure a copy of their tenancy database report provided that the landlord / property manager is able to charge their reasonable costs and expenses in providing that report.

Domestic violence provisions

REISA supports the introduction of provisions that enable a victim of domestic violence to receive their share of the bond.

Water billing

REISA supports the introduction of a requirement that the landlord provides a copy of the water bill within 30 days.

REISA strongly opposes the introduction of a requirement that the landlord pays the water supply charge irrespective of circumstances.

REISA considers it unnecessary to introduce legislative responsibilities for excess water charges. These are already covered in case law and legislation.

Illegal drug activity

REISA supports the introduction of provisions that would require a landlord to undertake testing and necessary remediation upon knowing or suspecting illegal drug have been manufactured in the property.

REISA opposes the introduction of provisions that would require a landlord to disclose this information to prospective tenants.

Third party payments

REISA supports the introduction of provisions that require a landlord to offer an electronic fee free option for the tenant to pay their rent.

Modernisation of Language

REISA opposes the modernisation of terms within the *Residential Tenancies Act 1995.*

Additional Recommendations

REISA strongly supports the amendment of provisions that will require a landlord to give 1 copy of the ingoing inspection sheet (currently it is 2 copies).

REISA strongly supports the introduction of provisions that will allow advertising or open inspections of a property for sale before the legislated 14 days if the tenant consents.

REISA strongly supports the introduction or provisions that will allow notice of entry for a routine inspection to be no less than 7 days and no more than 28 days (currently it is no less than 7 days and no more than 14 days).

REISA strongly supports the introduction of provisions that will allow an inspection to be completed before the 4 week inspection timeframe if the tenant requests it.

REISA strongly supports the introduction of provisions that will require the landlord to request payment from the tenant within 3 months of any utility bill in the name of the landlord otherwise the tenant does not have to pay.

REISA strongly supports the amendment of provisions that will enable break lease costs to be incurred for all Form 2s (currently break lease costs can only be incurred for Form 2s for rent arrears).

REISA strongly supports the amendment of provisions that will enable a Form 2 for rent arrears to be issued once the tenant is 8 days in arrears (currently it is 15 days of arrears).

REISA strongly supports the introduction of a new abandoned property regime that will abolish the distinction between valuable and non-valuable property, introduce a prescribed notice to the tenant and reduce the storage requirement from 28 days to 7 days.

REISA strongly supports the introduction of provisions that very clearly detail the obligations and processes involving the death of a sole tenant and a co-tenant.

Item 1 – Longer tenancies – Removal of no grounds evictions

REISA strongly opposes the proposed reform to remove the ability of landlords to end a tenancy without grounds.

The introduction of this proposed reform would breach fundamental principles of contract law and substantially disadvantage landlords. Effectively, this reform would provide tenants with a unilateral right to determine the length of a tenancy agreement and would prevent landlords having control over an essential contractual term – in this case, the duration of the tenancy agreement. In fact, section 49 of the RTA stipulates that the term of the tenancy agreement is an essential term that must be included in the tenancy agreement.

It has been argued that this reform would provide greater certainty for both tenants and landlords. In reality, it will provide full control of the tenancy duration to tenants and eliminate certainty for landlords.

A residential tenancy agreement is a special form of a contract. Australian contract law requires certainty for a contract to be formed and enforceable. This proposed reform undermines a landlord's contractual right to enter into a contract with a reasonable degree of certainty relating to the length of that agreement. Consequently, the reform may undermine the validity of tenancy agreements.

It is REISA's view that this reform is the most damaging and potentially destabilising reform proposed in the discussion paper. If introduced this reform would significantly erode a landlord's control over their investment property and who may reside in it and for what period of time. The loss of a right to determine such matters will almost certainly negatively impact future property investment in South Australia.

In fact, results from the REISA Member Survey indicated that 91.6% of property managers opposed this proposed reform, 71.l6% stated that their landlords would consider exiting the investment market if this reform was introduced and 44.6% stated that their landlords would be inclined to move to shorter term accommodation if this reform was introduced.

The potential impact of this reform on owners and future investors should not be underestimated. The survey results make it abundantly clear – this reform goes too far.

In circumstances where parties agree to a fixed term at the onset of a tenancy agreement, it is reasonable for either party to end that tenancy on the date that was mutually agreed upon at the commencement of the contractual relationship. This model is consistent with Australian contract law – it is fair, it is clear and it provides certainty for both parties.

Like tenants, landlords desire certainty and stability when it comes to rental relationships. In REISA's experience, landlords will almost certainly (unless specific reasons exist) offer a tenant a further term at the end of the fixed term tenancy if the tenant has demonstrated an ability to pay rent punctually and care for the property.

Landlords and property managers prefer that tenants renew a tenancy on or before expiry and / or commit to a longer term tenancy in appropriate circumstances. This is due to the risks and costs associated with vacant properties:

- Loss of income for the landlord and property manager while the property remains vacant
- Additional costs for the landlord in advertising and re-letting the property
- Additional costs for the property manager to secure a new tenant
- Increased risk of termination of property management services for real estate businesses

In addition, a rental property that remains vacant for an extended period of time is exposed to a higher risk of damage and/or break-in. This consequently then leads to higher insurance premiums for landlords.

It is therefore only in limited circumstances – where essential responsibilities have not been consistently met by a tenant – that a property manager will not recommend a tenancy renewal and/or a landlord will choose to terminate a tenancy at the end of the agreed term.

Potential consequences of the proposed reform include:

- Exodus of at least some portion of existing landlords. This is clearly supported by the results of the REISA Member Survey.
- Landlords' move to shorter term accommodation. This is clearly supported by the results of the REISA Member Survey.
- Exacerbation of rental supply demand and consequent rental affordability as a result of landlords withdrawing their properties from the traditional rental market
- Increased dispute levels as landlords are far more likely to invoke dispute resolution processes at SACAT if they lose the right to not renew a tenant's lease
- High risk applicants may find it difficult to secure a tenancy as landlords fear that they could be procuring "tenants for life" and will develop far more stringent screening processes that they have now.

91.6% of REISA members do not support this proposal.

Alternative to proposal

REISA acknowledges that a common complaint received by Consumer and Business Services and certainly by REISA via its Query Connect hotline is that tenants are being threatened (usually by private landlords) that if they pursue their statutory rights under the RTA (housing standards, maintenance, requests for subletting), their lease will not be renewed.

The only reason for this proposed reform is to safeguard tenants from unfair and retaliatory evictions.

There is a simply way to safeguard tenants from these actions – by amending the RTA to include a provision that if a tenant reasonably believes a landlord has given a notice to leave without grounds as retaliatory action against the tenant, the tenant can apply to SACAT to have the notice set aside. A tenant should have a generous period of time – up to 4 weeks from receipt of the notice – to do so.

This provision would provide tenants with a necessary statutory safeguard and act as a disincentive for landlords to utilise their right to terminate the lease for unfair reasons.

Prescribed reasons for a fixed term lease

REISA is unequivocally opposed to the removal of without grounds terminations for landlords. However, in the event that this proposed reform is progressed, REISA recommends a series of substantial safeguards and requirements to minimise its impact.

Firstly, REISA recommends that landlords retain the right to end a tenancy without grounds for the first fixed term of a tenancy agreement. This will enable owners to "test" the capacity of a tenant to pay rent and care for the property before they are compelled to accept a tenant on an ongoing basis. If a landlord grants a renewal at the end of the first initial term, a landlord would be required to establish prescribed grounds to terminate for any subsequent terms.

Secondly, REISA propose the following grounds for ending a fixed term lease:

- A tenant fails to pay rent punctually on at least three occasions irrespective of whether or not the breach was remedied during the term of the tenancy
- A tenant fails to properly care for the property
- A tenant and/or visitor of the tenant causes damages to the property that is beyond fair wear and tear
- A tenant and/or visitor engages in illegal activity within the rental property
- A tenant commits a breach of the tenancy agreement (other than non payment of rent)
- A tenant and/or visitor has engaged in harassment, threatening or abusive behaviour towards the property manager (including an employee or contractor of the property manager), owner and/or towards neighbours.
- All the grounds currently stated in Section 81 of the RTA for a periodic lease (termination after 60 days).

Prescribed reasons for a periodic lease

The required grounds for 60 days notice should maintain the status quo and include the grounds currently covered in section 81 of the RTA.

The prescribed grounds should include:

- A tenant fails to pay rent punctually on at least three occasions irrespective of whether or not the breach was remedied during the term of the tenancy
- A tenant fails to properly care for the property

- A tenant and/or visitor of the tenant causes damages to the property that is beyond fair wear and tear
- A tenant and/or visitor engages in illegal activity within the rental property
- A tenant commits a breach of the tenancy agreement (other than non payment of rent)
- A tenant and/or visitor has engaged in harassment, threatening or abusive behaviour towards the property manager (including an employee or contractor of the property manager), owner and/or towards neighbours.

and these should give immediate termination rights to the landlord.

Item 1 – Longer tenancies - Minimum notice period

Currently, section 83A of the RTA allows a landlord, by notice of termination given to the tenant, terminate a residential tenancy agreement with the period of notice being at least 28 days.

REISA understands that this can be a difficult time frame for tenants to secure alternative accommodation in the current rental market. However, the work behind the scenes commences a long time before this period. REISA currently trains the following timeframe for extensions and Form 2As:

- 3 months before the end of the lease – consult with landlord
- As soon as possible after instructions to extend the lease, send the extension to the tenant with instructions that it must be completed and returned to the agency 6 weeks before the end of the lease. If it is not returned by that time, then a Form 2A is issued.
- After instructions to not renew a lease, send the Form 2A to the tenant 6 weeks before the end of the lease.

As can be seen from this timeframe, the work behind the scenes is considerable and commences a long time before the extension or Form 2A is issued.

Most property managers would send the Form 2A well before the 28 day minimum notice period.

However, given the tight rental market and the fact that most property managers do send the Form 2A at least 6 weeks before the end of the lease, REISA supports an amendment to the RTA lifting the 28 day minimum notice period to a 42 day minimum period.

56.1% of REISA members support this proposal.

Item 1 – Longer tenancies – Caveats

Currently, there is nothing in the RTA prohibiting a landlord and tenant from entering into any term for a lease.

Section 69h of the *Real Property Act 1886* stipulates that a lease under 12 months does not need to be registered for it to gain priority over all other interests. Therefore, it will automatically go with the sale. There is no need therefore to register or caveat a lease for less than 12 months.

A lease over 12 months (long term lease) does not automatically gain registration status.

Therefore, a tenant can register or caveat a long term lease which then goes with the sale. If the tenant does not register or caveat the long term lease, the lease does not go with the sale and the lease can be terminated by any new landlord.

Although a tenant can register or caveat a lease at any time, the vast majority of tenants would not be aware of this and so would not think of registering or caveating a long term lease. Therefore their long term lease is subject to defeat by a new landlord.

Most property managers desire to keep their management agreements with their landlords and also do not want to lose their leases with their tenants. Therefore, property managers are hesitant to ever offer leases over 12 months because of the fact they could lose their lease with any new landlord who comes in to terminate the lease.

REISA supports amending the *Real Property Act 1886* to enable leases longer than 12 months to gain priority over any subsequent purchaser's right without registration.

Item 2 – Residential Bonds – Mandatory registration with RBO

Currently, section 62(2) of the RTA requires a person who receives a bond amount to pay it to the Commissioner. In South Australia, agents are required to lodge the Bond with Residential Bonds Online through the CBS website. Private landlords can choose to use Residential Bonds Online or to lodge the Bond manually.

There is no justification for private landlords to not be required to also lodge the bond through Residential Bonds Online. An online system, used by all private landlords and property managers promotes consistency, transparency and a centralised Bond repository which is accessible to all tenants across South Australia. It will also assist in ensuring that a privately managed Bond is lodged and that tenants can expect correspondence from Bonds that the lodgement has indeed taken place.

REISA also supports the proposed reform that will allow Residential Bonds online to obtain further tenant contact details for the purposes of reuniting tenants with unclaimed funds.

REISA supports the introduction of the requirement for all rental bonds to be lodged via the Residential Bonds Online system.

REISA supports the requirement of additional tenancy contact details upon registration of the bond.

82.1% of REISA members support this amendment.

Item 2 – Residential Bonds – Threshold

Currently, sections 61(3)(a) and (b) of the RTA and Regulation 8 of the Residential Tenancies Regulations 2010 stipulate that a bond of 4 weeks rent may be secured if the rent is under $250 per week and a bond of 6 weeks rent if the rent is over $250 per week.

REISA understands that this threshold needs to be raised but strongly opposes lifting it to a threshold level of $800.

As the commentary from the REISA Member Survey clearly indicates, any discussion on this topic needs to take into account the current timeframes for rent arrears, vacant possession and ultimate eviction. This timeframe at present is longer than 6 weeks and therefore exhausts any bond held on behalf of the property.

This also dovetails into REISA's submission that the rental arrears period should be reduced from 15 days to 8 days (see details under Additional Recommendations). If this recommendation is progressed, REISA would certainly consider increasing the Bond to a higher level than $400.

Any increase which would make the vast majority of rental properties only eligible for a 4 week bond would result in less protection for landlords and a strong likelihood that landlords will exit the investment market.

In addition, statistics provided by the South Australian Government show that between 1 July 2022 and 30 September 2022, the median rent for flat and units was $355 and for houses it was $465.

Given these figures and the need for landlords to remain as investors in South Australia and thereby ensuring rental housing supply, REISA proposes that the threshold be increased from $250 to $400. This would certainly provide bond relief for those who are suffering from housing affordability issues as well as for those seeking entry level housing.

REISA supports the bond threshold increasing from $250 but strongly opposes the increase to $800.

50.3% of REISA members support the proposal to increase the Bond threshold.

Item 3 – Rent Bidding – Rental auctions and soliciting offers above advertised price

Currently, there is nothing in the legislation prohibiting rental auctions or soliciting applicants to pay an amount of rent above the advertising price (save for consumer protection legislation prohibiting false and misleading representations).

REISA supports legislation prohibiting rental auctions and the solicitation of offers for rent above the advertised price.

74.0% of REISA Members support this amendment.

However, REISA strongly opposes any amendments that would prohibit a landlord from accepting an offer of rent above the advertised price if such an offer is at the initiative of the tenant. This is not rent bidding in any way. The offer is unsolicited and is simply an expression of the tenant's interest in the property. Also, if rental auctions are banned, the landlord will not then be able to solicit other offers to "match" the price offered.

Item 3 – Rent Bidding – Advertising rent at a price range

Currently, there is nothing in the legislation prohibiting rent to be advertised at a price range.

REISA submits that this should not be within the definition of rent bidding as there is no evidence to suggest that this encourages tenants to make offers above the advertised price. REISA can see no distinction between advertising at a set single figure or a price range. If the tenant wishes to offer more, then it is up to them to do so irrespective of whether a price is set at a single figure or a price range.

Certainly, REISA has never received any calls via its Query Connect hotline, expressing concerns about rent being advertised at a price range.

Property managers who advertise rent at a price range do so for the following reasons:

- It gives an opportunity for potential tenants to apply for the property at a price point that may be lower than their target and to have that considered by the agency
- It is a proactive marketing method toward mitigation of Tenant Lease Break penalties by giving landlords the opportunity to secure a new tenancy at a higher rent, without ignoring opportunities at the existing rent price
- It allows the landlord to capture a larger pool of prospective tenants
- It allows the landlord to consider an application not solely based on payment of the rent but on other terms which could affect the rent within that range (for example, if a property is advertised at $320-$350, a landlord may consider a $340 offer for a 12 month lease over a $350 offer for a 6 month lease)

REISA opposes the abolition of a landlord's ability to advertise a price range for a residential rental property.

Item 4 – Rooming houses and shared accommodation - Definition

Currently, section 3 of the RTA stipulates that a rooming house is residential premises in which (a) rooms are available, on a commercial basis, for residential occupation and (b) accommodation is available for at least three persons on a commercial basis.

There is no justification in setting the limit of rooms to three. There are situations in which 2 unrelated persons are renting out individual rooms and should be afforded the protection of rooming house legislation under the RTA (and recourse to SACAT). It is submitted that if rooms are rented individually with individual agreements to unrelated persons, then rooming house legislation should apply.

REISA supports a change in the definition of a rooming house to enable the renting of 2 or more rooms to unrelated persons to be captured under the definition.

57.0% of REISA Members support this amendment.

Item 4 – Rooming houses and shared accommodation – Registration scheme

Currently, there is no registration scheme for rooming house proprietors.

There is no doubt that rooming houses are often premises that facilitate shelter for residents from lower socio-economic backgrounds and vulnerable circumstances.

There must be protection for those who are therefore living in rooming houses.

A registration scheme must include the following:

- A “fit and proper” person test
- Police checks
- Working with vulnerable persons screening

REISA supports a registration scheme with the Government for persons who own or run a rooming house with 2 or more unrelated residents.

75;.8% of REISA Members support this amendment.

Item 5 – Renting with Pets

REISA strongly opposes the proposed reform requiring landlords to consent to pets unless they can establish reasonable grounds for refusal. The proposed reform erodes a landlord's control over their investment property and fails to provide sufficient safeguards for landlords. In addition, the proposed reform also creates a cost and administrative burden for landlords who will be required to, depending on circumstances, seek a SACAT order to refuse pets and/or defend a decision to refuse pet requests.

74.8% of REISA Members do not support this amendment.

REISA understands the importance of pets to many South Australians and the potential health and wellbeing benefits associated with pet companionship. Allowing a tenant to keep a pet can also be beneficial to landlords as it may encourage longer tenancy periods and positive tenant behaviour. REISA therefore supports the introduction of reforms that encourage pet ownership and provide owner incentives to consent to pets.

REISA supports a collaborative approach with Consumer and Business Services to deliver reforms in a pragmatic and realistic manner which supports the right of a landlord to decide issues relating to their property and the interests of the tenant in leading their fullest and most meaningful lives.

Pets – Executive Summary

REISA recommends that Consumer and Business Services carefully considers the options for pet reform put forward in this submission and work with REISA to deliver an outcome that is mutually beneficial for all parties.

REISA strongly opposes legislation which creates a presumption that a landlord must allow a tenant to keep a pet in their property.

If it is the view of the State Government that a legislated presumption is necessary, REISA seeks extensive consultation with the State Government before any decision is finalised.

As a minimum (if the presumption is progressed), REISA would seek:

- Introduction of a 2 week pet bond
- Prescribed pet agreement
- Mandatory approval from the landlord at all times during the tenancy
- Ability of landlord to reasonably refuse request
- Publication of guidelines for what constitutes a reasonable refusal
- Tenant to pay application fee to SACAT if seeking review of landlord refusal

Current legislation

Residential Tenancies Act 1995

There are no provisions concerning pets and rental properties in this Act.

Strata Titles Act 1988

Section 19(4) of the Act provides that:

The articles of a strata corporation cannot:

(c) prevent an occupier of a unit who has a disability from keeping a relevant animal at the unit, or restrict the use of a relevant animal by the occupier if the relevant animal is trained to assist the occupier in respect of the disability; or

(d) prevent a visitor to a unit who has a disability from using a relevant animal trained to assist the visitor in respect of the disability.

Schedule 3 also contain default Articles which provide that:

Subject to the Strata Titles Act 1988, a person bound by these articles must not, without the strata corporation's consent, keep any animal in, or in the vicinity of, a unit.

Community Titles Act 1996

Section 37 of the Act provides that:

(d) prevent an occupier of a lot who has a disability from keeping a relevant animal on the lot or restrict the use of a relevant animal by the occupier if the relevant animal is trained to assist the occupier in respect of the disability; or

(e) prevent a visitor to the community parcel who has a disability from using a relevant animal trained to assist the visitor in respect of the disability

Equal Opportunity Act 1984

Section 88 of the Act provides that:

(a) it is unlawful to impose a condition or requirement that would result in a person with a disability being separated from his or her assistance animal; and

(b) a person who imposes such a condition or requirement is, in addition to civil liability that might be incurred under this Act, guilty of an offence. Maximum penalty: $2 500

Section 88A of the Act provides that:

(1) It is unlawful for a person—
(a) to refuse an application for accommodation; or

(b) to defer such an application or accord the applicant a late order of precedence on a list of applicants for that accommodation, on the ground that the applicant intends to keep a therapeutic animal at that accommodation.

(2) Subsection (1)(a) does not apply if the respondent establishes that in the circumstances of the case the refusal was reasonable.

(*3) In this section— therapeutic animal means— (*
a) an animal certified by a medical practitioner as being required to assist a person as a consequence of the person's disability; or
(b) an animal of a class prescribed by regulation

but does not include an assistance animal, a dangerous dog within the meaning of the Dog and Cat Management Act 1995 or a dog of a prescribed breed within the meaning of the Dog and Cat Management Act 1995

Summary of current legislation

- A property owner or strata / community corporation cannot refuse permission for a tenant to keep an assistance animal at their property
- A property owner or strata / community corporation cannot unreasonably withhold consent to a tenant to keep a therapeutic animal at their property
- A property owner or strata / community corporation has the unilateral right to refuse permission for all other animals at their property

The need for pet reform in rental properties

REISA submits that a great deal more consultation needs to be undertaken to determine the actual and verifiable need for pet reform in rental properties. While this can undoubtedly be an emotional issue, the need for pet reform in rental properties still needs to be supported by data that unequivocally shows that there is such a need in South Australia.

REISA's Query Connect service

REISA operates an information and advice line (Query Connect) for members of the public. REISA receives funding for Query Connect through its 2022 Funding Deed with Consumer and Business Services in relation to the delivery of a public advisory service,

REISA receives approximately 4,000 calls and emails per year from members of the public and more than half of those enquiries relate to property management.

REISA advises that since January 2022, no enquiries have been received from either landlords or tenants concerning the issue of pets in rental properties. While enquiries have been received concerning tenant responsibilities about owning a pet (especially at the final inspection and bond stage), no enquiries have been received about pet approvals or the lack of availability of pet-approved properties.

REI Forms Live data

REI Forms Live is the forms platform that almost all REISA member agencies use for their property management documentation needs. This includes the following specific forms and documents relating to pets:

- Management agreement and extension of management agreement
- Tenancy agreement and extension of tenancy agreement
- Standalone pet agreement and Annexure pet agreement
- Addenda to the management agreement and the tenancy agreement

In particular, item 16 in the REISA management agreement outlines the 3 options available to the landlord in relation to tenants keeping pets – Yes, No or Negotiable. Data obtained from REI Forms Live usage from 2022 provides the following insights into the attitude of landlords towards tenants and pet ownership:

- 10% of landlords selected Yes
- 44% of landlords selected Negotiable
- 27% of landlords selected No

A significant majority of landlords therefore indicated support for the consideration of pets to be kept by a tenant. It is also worth remembering that of the 27% who initially selected No, many may well have altered their position if the tenant offered a premium rent, the property was difficult to rent out or a tenant offered significant reasons why they should be allowed to have a pet.

Importantly also, the data showed that 30% of REISA members' combined properties actually do have a pet residing at the property. It is worth noting that this number would be significantly higher if many body corporates did not have blanket prohibitions on tenant pet ownership in their articles and by-laws. Many body corporate landlords would simply select No due to the fact they know that this blanket prohibition exists.

Animal welfare organisations

One of the most vocal advocates for pet reform in South Australia is the RSPCA and other animal welfare organisations.

These organisations argue that there is a large problem of pet abandonments and surrenders and subsequent euthanasias. These organisations argue that this is as a direct result of the lack of availability of pet-approved properties.

However, there is little data to support this often repeated view. There is no data available to directly link the abandonment or surrender of pets to the absence of pet-approved properties.

In fact, when surrendering a pet to the RSPCA, the owner of the pet must simply state "housing" as a reason for the surrender. The category does not identify the owner of the pet as a tenant nor does it identify the reason for surrender as "lack of availability of a pet-approved property". The reasons under "housing" could be many – from being an owner of a pet who has faced complaints from neighbours to Council action to change

of mind to the pet being simply unsuitable for the property. All these explanations could relate just as equally to an owner as it might to a tenant of a property.

Domestic violence shelters and service providers

Another recent advocate of pet reform are domestic violence service providers and allied partners. These organisations argue that domestic violence shelters do not allow the keeping of pets and this in turn causes victims of domestic violence to remain in an abusive situation rather than seek refuge outside of the home.

While REISA has enormous sympathy for this and worked closely with the State Government on the domestic violence reforms, this is an issue for other legislation and not the *Residential Tenancies Act 1995.*

While it is often submitted that domestic violence victims may stay in an abusive relationship because they cannot find an alternative pet-approved property, options do exist under the *Residential Tenancies Act 1995* for the victim to seek an order evicting the perpetrator from the property.

Options for possible reforms

While REISA does believe that it is fundamentally the landlord's right whether or not to allow a pet in their rental property, REISA also acknowledges the trend across Australia to legislate in favour of the tenant being able to keep a pet in the property. REISA also acknowledges the desire of the State Government to find a compromise in the competing interests of both the landlord and the tenant.

From the outset, REISA submits that it is not the "right" of the tenant to have a pet except in the situations outlined in the *Equal Opportunity Act 1984* concerning the keeping of an assistance or therapeutic animal. However, REISA acknowledges that this issue will persist and so is committed to collaborating with the State Government in order to find a pragmatic, realistic and workable compromise.

Consequently, REISA offers the following proposals as worthy of discussion with Consumer and Business Services and the State Government as a suite of recommendations that are designed to more adequately balance the demands of both landlords and tenants.

Pet ownership booklet

Consumer and Business Services currently have excellent resources on their website relating to the landlord and tenant benefits of allowing pets in a rental property.

These resources include:

- Renting with pets – a guide for tenants
- Renting with pets – a guide for managing agents and landlords

Targeted distribution of these resources would have the enormous benefits of educating landlords about the benefits they could achieve (premium rent, long term tenant, happy

tenant) and educating tenants about the considerable responsibilities that complement responsible pet ownership.

Currently, the State Government does not have legislative power over the distribution of the resources to landlords but it certainly does in relation to tenants.

REISA submits the following:

Landlords
REISA would be willing to include the relevant CBS resource (rewritten with assistance from REISA to ensure its balance and relevance) as either an optional or permanent annexure to the management agreement. REISA would also encourage the distribution of the documentation at landlord appraisals.

Tenants
REISA would support the inclusion of the relevant CBS resource (rewritten with assistance from REISA to ensure its balance and relevance) into the mandatory CBS brochure that must be given to tenants before they sign the tenancy agreement.

Pet Application and Agreement

Consumer and Business Services currently have resources on their website outlining tenant tips and guidance on how to complete a pet application and a pet agreement.

These resources include

- Considerations for a Pet resume
- Considerations for a Pet agreement between a landlord and a tenant

Many agencies (and private landlords) use their own pet agreements which lack detail, do not sufficiently detail the tenant obligations of pet ownership and in so doing, do not emphasise the importance of responsible pet ownership.

Alternatively, many agreements that REISA has seen contain provisions that contravene section 115 of the *Residential Tenancies Act 1995* in containing special conditions that are inconsistent with the provisions of the Act – eg that carpets must be cleaned at the end of the tenancy if a pet is approved or a tenancy agreement is terminated immediately and the landlord can take immediate possession if damage occurs or complaints are made by neighbours.

These pet agreements are likely to deter landlords from considering a pet if the responsibilities of the tenant are not clearly outlined and the consequences flowing therefrom and deter tenants from applying for a property if the conditions are seen as too restrictive.

REISA submits the following:

That REISA assist Consumer and Business Services in the drafting of a pet agreement that outlines the following:

- The overriding principles of responsible pet ownership
- Detailed obligations of the tenant (including the need for tethering or removal of the pet during inspections)
- Consequences of failing to adhere to the obligations outlined in the pet agreement, the tenancy agreement and the Residential Tenancies Act 1995 (in particular, landlord right of access, damage, cleanliness, safety of landlord, property manager and tradespeople, interference with quiet enjoyment of neighbours etc)

It is also submitted that the pet agreement be as similar as possible to the standard pet agreement used by industry stakeholders so that the obligations, conditions and compliance provisions are very similar. Alternatively, Consumer and Business Services could canvas the option of making the pet agreement a prescribed form to ensure consistency among all real estate industry professionals (in addition to private landlords).

Education sessions on pet ownership with Consumer and Business Services

An important key to this issue is the education of landlords and tenants. Both parties need to understand the competing interests at stake.

REISA does not receive funding under the 2022 Funding Deed with Consumer and Business Services to implement education or professional development programs on behalf of members of the public.

While education of consumers remains a key responsibility of Consumer and Business Services, too often this is seen by members of the public as being too tenant focused and "toeing the Government line" and it is therefore unclear how much credibility such sessions would impart with landlords and property managers.

REISA submits the following:

That REISA would be willing to collaborate with Consumer and Business Services in the education of consumers and agents in sessions that would explore the benefits, obligations and rights of all parties to tenant pet ownership

In this way, consumers will receive both perspectives and the sessions would be beneficial in providing landlords and tenants with information and resources that would assist in the resolution of mutually beneficial outcomes.

Change of strata and community titles legislation

Currently, Strata and Community Corporations are able to refuse pets (other than assistance and therapeutic animals) as part of their articles (strata) or by-laws (community).

Data from REI Forms Live show that of the 14,418 unique properties identified in management agreements over the past 12 months, over 2,000 properties were marked as Strata or Community title.

Unlike other States, South Australian legislation in this regard does not have provisions relating to a Court being able to strike down articles or by-laws that are harsh, oppressive, restrictive or unreasonable. In fact, recently in New South Wales, the Court of Appeal held that a blanket prohibition in a body corporate's by-laws was invalid due to them being oppressive and unreasonable. It stated that:

a by-law can be oppressive if it limits the ability of an owner to use their property, without exception or qualification, on a basis that has no connection to the impact on other lot owners.

As South Australia does not have a similar provision, body corporates are able to insert a blanket prohibition on pets being allowed in the property, even though some individual property owners in the body corporate may not have any objections.

For instance, imagine the situation when two tenants at the end of a group of units want to have a cat but cannot even though they are separated from other units by common property and the cats will have no impact on the amenity of the property or the quiet enjoyment of properties by other residents. Those individual lot or unit owners should be able to make the decision regarding pets on their individual property.

REISA submits the following:

The strata and community titles legislation should be amended to include a provision that articles or by-laws of a strata or community corporation cannot be oppressive, unreasonable or restrictive. Alternatively, so that court action will not be required to deem a blanket prohibition on pets contravenes this new amendment, a provision could be included that articles or by-laws cannot contain a provision relating to pets and that it is the option of each individual owner of the unit or lot whether to approve a pet.

A tenant in a body corporate should not have to seek the approval of the body corporate

A tenant in a body corporate should only have to seek the consent of the individual owner of the relevant lot or unit

An individual owner of a body corporate unit or lot should be afforded the same legal rights and obligations of a residential private landlord in relation to a tenant keeping a pet on their property (ie a unilateral right of refusal but with more education and resources as outlined in previous options)

While it may be argued that this would be unfair to a resident who specifically bought into the strata or community title with the knowledge that pets are not permitted, it is worth noting the following:

- Tenants are already able to have assistance and therapeutic pets in the body corporate unit or lot
- Provisions already exist in the strata and community title legislation regarding nuisance and quiet enjoyment of the property which would enable other residents to seek a resolution to a pet dispute (similar to that of current residential tenants)

It is submitted that there is no disadvantage to removing the right of body corporates to unilaterally refuse pet ownership.

Item 5 – Renting with Pets - Pet Bond

REISA strongly supports the establishment of a pet bond for current and / or future pet approvals.

88.6% of REISA members support this amendment if pet provisions are introduced.

Under the *Residential Tenancies Act 1995*, a pet bond is not permissible. The issue of a pet bond has been extensively canvassed in State Parliament on previous occasions with no resolution. Common issues raised concerning a pet bond include:

- The difficulty of an adequate definition of a pet
- Amount of pet bond
- Affordability of the pet bond
- Impact of the pet bond on the rental market
- What the pet bond can be used for at the end of a tenancy
- Fair wear and tear vs damage if caused by an approved pet and its relation to a specific pet bond
- Inter-relationship of the bet bond with the normal bond (especially if pet damage exceeds the pet bond)
- Consequent increase and affordability of insurance premiums for landlords
- Likelihood of pet bond covering any damage or cleaning issues caused by the pet
- Consequences if pet leaves or dies during the tenancy – refund of bond
- Housing SA issues

While all these issues are problematic, REISA believes that a solution could be found which balances the needs of all parties. Western Australia has pet bond provisions in place though it is noted that the pet bond can only be used for the fumigation of premises at the end of the tenancy.

REISA submits the following:

<u>If a pet is approved, then the landlord must be able to ask for 2 weeks' rent as a separate pet bond.</u>

There is no doubt that a pet bond would encourage landlords to consider a pet and also reinforce the need to tenants that they must take their responsibilities seriously (after all, they want their pet bond back at the end of the tenancy)

REISA also submits that failure to secure a pet bond will result in landlords setting premium prices for the privilege of allowing pets – and over time this would be much more than a 2 week bond. A problem will also arise in landlords who do not want pets charging much higher than average rents to deter tenants with pets from applying.

REISA further submits that a pet is an expensive option in any event (food, bedding, insurance, veterinary expenses) and a pet bond of 2 weeks rent (given the fact the tenant could be at the property for many years) is not an excessive impost.

Consequences of mandatory tenant pet ownership

REISA submits the following:

- There is the potential for an exodus of investors from the market exacerbating the current rental supply situation
- There is an increased risk to the landlord with no corresponding risks to the tenant particularly if a pet bond is not viewed favourably by the Government
- Increased injuries to private landlords and property managers and tradespersons
- Increased use of pets as a means of deferring or avoiding property inspections
- Huge demand on SACAT resources of consent applications, bond claims etc
- Increase of rents if no pet bond is allowed as landlords charge a premium for pet ownership

Item 6 – Housing standards and retaliatory evictions

Currently there is no legislation preventing a landlord from choosing not to renew a tenancy agreement.

REISA is aware, via its Query Connect line, that there are private landlords currently threatening tenants with retaliatory action or a rent increase if they make too many maintenance requests, advise that they are seeking HIA redress or plan to exercise their statutory rights.

REISA, in line with its recommendations in Item 1, supports the introduction of provisions that will enable a tenant to seek redress in SACAT if the tenant reasonably believes that an owner has given a notice to leave without grounds or increased the rent as retaliatory action against the tenant.

63% of REISA Members support this amendment.

Item 6 – Housing standards and retaliatory evictions – Minimum energy efficiency standards

The *Housing Improvement Act 2016* sets out comprehensive minimum housing standards for all residential properties.

REISA understands that energy efficiency requirements, particularly in relation to heating and cooling, are beneficial to a tenant in terms of their wellbeing and comfort

While REISA supports the idealistic view of making homes as comfortable and energy efficient as possible, we would need to consult much further and in more detail about what energy efficiency standards are proposed.

Energy efficiency requirements in relation to appliances would serve very little useful purpose if the broader issues of insulation, window and door seals were also not taken into account.

The following considerations would need to also be taken into account in any discussion on this topic:

- Age of property
- Definitions of appliances (not many for a tenanted property)
- Current appliances in the property
- Expense to the landlord
- Likelihood of landlords exiting the investment market
- Likelihood of rents increasing as landlords seek to recoup their costs
- Time frame for introduction of standards.

60.6% of REISA Members do not support this amendment without further consultation and clarification.

Item 7 – Safety modifications and minor changes

REISA supports:

- Implementation of an approval framework for modifications relating to safety, health, accessibility and security.

REISA does not support:

- Introduction of minor changes not related to safety, health, accessibility and security (ie amenity or personalised modifications)
- Requirement for landlords to consent to amenity or personalised modifications unless reasonable grounds can be established.
- Introduction of "approval free" modifications of any sort whatsoever

It is critical that any safety modifications and minor changes are mutually agreed by tenants and landlords and that minor changes are carried out in a professional and workmanlike manner and by a licensed tradesperson when required. This ensures that the safety of tenants (both current and future) is protected and that the amenity, quality, structural integrity and value of the property is maintained.

Safety, health, accessibility and security modifications

REISA recognises that safety modifications relate to matters of need and personal welfare. REISA also understands that the Government is considering modifications relating to health, accessibility and security – also matters of need and personal welfare.

REISA appreciates the higher level of important to these modifications – rather than amenity modifications – and supports the proposal that tenants seek consent before undertaking such modifications.

REISA has developed a framework for these need and personal welfare modifications. This framework is designed to ensure that these modifications are treated with priority and, where appropriate, responded to with a sense of urgency and within a specified timeframe.

- Tenants must obtain consent from the landlord to complete modifications which relate to safety, health, accessibility and security. The request must contain:
    - A detailed description from a licensed contractor or professional of the requested modification outlining the proposed scope of work in sufficient detail to enable the landlord to make an informed decision. This must include a quote/s from a licensed contractor or professional.
    - Written confirmation that the tenant intends to use a licensed contractor or professional if applicable to the nature of the work.
- The landlord is required to respond to this request within a strict timeframe of 10 business days
- The definition of these modifications will need to be considered but examples may include: requests for child safety gates, furniture anchors, non-slip grip on

stairs, security door installation and other essential requirements that do not involve structural changes and modifications to the property

- Landlords must consent to these modification requests within the allocated timeframe or consent will be deemed
- The landlord cannot unreasonably refuse the request (see comments below)
- The landlord may grant consent with conditions that are reasonably necessary
- Reasonable grounds for refusal could include reasons such as:
    - The modification request falls outside the scope of a security, health, accessibility and safety modification
    - There is a reasonable risk that the modification would cause significant damage to the property
    - The property could not be restored to substantially the same condition at the end of the tenancy
    - The modification would present a health or safety threat
    - The modification would breach a law, by-law or some other rule (for example, strata or community by-laws)
- The tenant must pay for the modification
- The tenant must agree in writing to restore the premises to the same condition at the end of the tenancy. The property must be entirely restored where necessary. For example, if grab rails have been installed and the same titles cannot be sourced at the end of the tenancy, the tiles in all impacted areas/rooms must be replaced. To that end, the owner may stipulate restoration requirements when granting consent.

54.7% of REISA Members support this amendment in relation to safety modifications.

Amenity or Personalisation Modifications

REISA supports the tenant's right to request minor modifications for amenity or personalisation reasons. However, REISA strongly opposes any deemed consent grounds or any requirement for the landlord to consent to same unless reasonable grounds can be established. It is REISA's view that the landlord has the absolute right to reject modifications that are outside modifications relating to safety, health, accessibility and security.

If the Government sees fit to progress amenity or personalisation modifications, REISA submits that they should be subject to a strict approval timeframe with similar reasons for refusal provided to the landlord as indicated above in relation to safety, accessibility, health and security modifications (in particular restoration of the property at the end of the tenancy)

Item 8 – Start of tenancy requirements – Standardised application forms

Currently there is no legislation concerning application forms for a tenancy save section 51 of the RTA which makes it an offence for a tenant to give false information to a landlord about the tenant's identity or place of occupation. Importantly this does not necessarily entitle a landlord to terminate a tenancy agreement if they discover that details of the person's application are false.

As a result, property managers have a clear fiduciary duty and contractual duty under the management agreement to ensure that they have enough information about the tenant to assess their capacity to afford and look after the property.

The type of landlord and more importantly, the type of property may dictate differing information that is required from a tenant. For example, a high end property commanding a premium rent may require more due diligence concerning the tenant's financial resources and ability to pay the rent than a lower end property.

In addition, further information may be required from a tenant if there are inconsistencies in the application, facts that have come to light from a previous property manager or landlord and additional evidence that may be required to rebut or clarify any claims from a previous landlord or property manager.

To prescribe an application form with set criteria – a one size fits all approach – is not appropriate for all kinds of circumstances.

It has been suggested that landlords and property managers may ask for information that is intrusive, personal and not related to their capacity as a tenant. REISA certainly makes it very clear to all property managers that such questions may be contrary to the *Equal Opportunity Act 1984*. There is already legislation covering this field.

In addition, all property managers use standardised applications in their agency based on the CRM and application platform that they use. A large number of agents use Tenants Options or Form1 which are standardised applications. That should not stop agents however, from seeking more information to validly fulfil their fiduciary and contractual obligations to the landlord.

REISA, via its Query Connect hot line, has not received any calls from tenants about the content of applications in the last 5 years.

REISA understands that some tenants may feel concerned as to the status of their personal information and it is worth noting that the *Privacy Act 1988* only applies to organisations that have a turnover of $3,000,000 or more. To this end, REISA would support provisions in the RTA concerning the storage and disposal of personal information contained in applications.

REISA <u>opposes</u> the introduction of a standardised application form with standardised questions.

68.3% of REISA Members oppose this amendment.

Item 8 – Start of tenancy requirements – Tenancy databases

Currently, section 99G of the RTA stipulates that a landlord, landlord's agent or database operator must not list personal information about a person in a residential tenancy database unless the landlord, agent or operator has, without charging a fee, given the person a copy of the personal information or taken other reasonable steps to disclose the personal information to the person.

Therefore, a tenant already has a free copy of the information.

Section 99J of the RTA then stipulates that a landlord, landlord's agent or database operator must give the person a copy of the information within 14 days after the request is made. A fee that is not excessive may be charged for providing a further copy to the tenant.

It is submitted that it is entirely appropriate to charge the tenant a reasonable fee if the landlord has reasonably incurred costs or expenses in providing the second copy if they have mislaid the original free copy that they received free of charge.

This also correlates with section 78A of the RTA which stipulates that if, as a direct consequence of a tenant being at fault, a landlord reasonably incurs costs or expenses in connection with the residential tenancy agreement, the landlord is entitled to compensation for the costs or expenses. An example provided in section 78A states that this specifically encompasses the loss by the tenant of a record or document.

It is submitted that section 99J(4) should be amended so not only should the fee not be excessive, it also should be only for reimbursement of the reasonably incurred costs or expenses in providing the further statement.

51% of REISA Members support this amendment.

Item 9 – Domestic Violence Provisions

REISA believes that the current provisions in section 89A of the RTA provide appropriate protection for domestic violence victims in terms of termination of the tenancy agreement.

However, Section 89A(11) only allows the Tribunal to assign responsibility to 1 or more, but not all, of the co-tenants under the residential tenancy agreement, for damage to the residential premises or ancillary property that is in excess of the bond.

This leads to the unsatisfactory situation that when a lease is terminated under the domestic violence provisions, the victim may be liable up to their share of the bond even if they are not responsible for any damage caused.

This, of course, is the same for any standard tenancy situation as tenants are jointly and severally liable for the bond.

However, as envisaged by the Act, domestic violence is an extraordinary circumstance with its own complementing provisions.

To this end, REISA believes that the domestic violence victim should be able to access their bond if the Tribunal finds, on termination of the lease, that their share of caused damage is less than their share of the bond. Any arrangement to continue the tenancy with the perpetrator will require a top-up bond from the perpetrator.

REISA supports the introduction of provisions that enable a victim of domestic violence to receive their share of the bond.

Item 10 – Water Billing – Copy of Bill to Tenant

Under section 73(3)(a) of the RTA, a tenant is not required to pay rates and charges for water supply if the tenant has requested from the landlord a copy of the account for the rates and charges and the landlord has failed to provide the copy to the tenant within 30 days of the request and at no cost.

REISA believes that a requirement to issue the water bill rather than only upon request would achieve the important objective of notifying and allowing the tenant to modify their water use if need be.

REISA supports the introduction of a requirement that the landlord provides a copy of the water bill within 30 days.

67% of REISA Members support this amendment.

Item 10 – Water billing – Water supply fee

Under section 73(2) of the RTA, rates and charges for water supply are to be borne as agreed between the landlord and tenant and in the absence of an agreement, by the tenant (if supply is separately metered) and in any other case by the landlord.

The discussion paper is unclear on whether the proposal to pass on water supply charges to the landlord is only for the default position if there is no agreement by the landlord or tenant and the supply of water is separately metered or across the board to all circumstances.

Default position

REISA has no objection to amending the RTA for water supply charges to be borne by the landlord if:

- The supply of water is separately metered and
- There is no agreement between the landlord and tenant as to who pays the supply charge

Across the Board

REISA is strongly opposed to the landlord bearing all costs of water supply irrespective of whether the premises is separately metered or whether an agreement has been made between the landlord and the tenant.

Water supply is an integral component of the tenant's water usage and is determined irrespective of the value of the property (unlike Council rates, ESL etc). A tenant must pay supply charges for all other utilities connected to the property and there is no justification in changing this liability to the landlord.

REISA strongly opposes the introduction of a requirement that the landlord pays the water supply charge if there is an agreement between the landlord and the tenant as to who bears which cost.

82.7% of REISA members do not support this amendment

Item 10 – Water Billing – Excess Water

The extent to which landlords are responsible for excess water charges is covered under current provisions in the RTA and case law.

It is REISA's understanding that liability for excess water only passes to the landlord once they have been notified of the water leak under section 68 of the RTA.

Any reported water leak is the responsibility of the landlord following notification of the water leak.

Until that occurs, the responsibility (irrespective of whether the leak is patent or latent) is that of the tenant.

It is not necessary to amend the RTA in any way to take into account this circumstance.

Item 11 – Illegal drug activity

Currently, pursuant to sections 67, 68 and 69 of the RTA, a landlord must ensure that the premises are in a reasonable state of cleanliness at the start of a tenancy and in a reasonable state of repair at the start of a tenancy and a tenant has an obligation to keep the premises reasonably clean through the tenancy and not intentionally or negligently cause or permit damage to the premises.

REISA supports the proposition that if a landlord knows or has reasonable grounds to suspect that illegal drugs have been manufactured in the property that they must take the necessary remediation steps (and, of course, oncharge the tenant for deliberately and negligently damaging their property).

67.7% of REISA Members support this amendment.

REISA is unaware of any evidence that shows that there is a health risk to prospective tenants if the illegal drugs have only been smoked in the property and not manufactured. REISA would like to reserve its position on this proposed reform at this stage pending further consultation.

REISA opposes the proposed amendment that there be an obligation on the landlord to inform prospective tenants of whether contamination and subsequent remediation has occurred. If the contamination has been remedied and there is no danger to the tenant, then the landlord has fulfilled their obligation to provide the premises in a reasonably clean property that is in a proper state of repair.

Item 12 – Third party payments

Currently, Section 56A of the RTA requires a landlord to pay rent under the agreement by at least 1 means that does not involve the payment of cash by the tenant or the collection of rent from the tenant by a third party who charges a fee, payable by the tenant, for the collection service.

REISA is aware that currently some agencies are offering two rent payment options – Australia Post and via an app that incurs a collection fee. REISA does not believe that Australia Post is an appropriate fee free method in this circumstance.

REISA supports the amendment of Section 56A to require that 1 means of rent payment must be via an electronic fee option.

75.2% of REISA Members support this amendment.

Item 13 – Modernisation of Language

REISA submits that the modernisation of language within the legislation is not required.

The terms of landlord, tenant and tenancy agreement are clear, universally understood and used extensively throughout the legislation and prescribed and general forms.

Changes to these terms would involve a great deal of administrative work for Government and REISA (changing every single web page and tenancy form online) for no benefit whatsoever.

86.5% of REISA members do not support changing the term “landlord”
90.3% of REISA Members do not support changing the term “tenant”
75.2% of REISA Members do not support changing the term “tenancy agreement”

Additional Recommendations

Inspection sheets

Regulation 4 of the Residential Tenancies Regulations 2010 stipulates that the landlord (or his or her agent) must complete and provide to the tenant 2 signed copies of the ingoing inspection report.

There is no justification for providing the tenant with 2 signed copies. The purpose of providing the ingoing inspection report is to provide the tenant with the opportunity to agree or disagree with the landlord or agent's assessment of the property.

If the tenant agrees or disagrees with the assessment, they are required to make a copy of their response in any event (as it would be nonsensical to require them to make the identical comments on both forms – one for the landlord/agent and one for themselves).

Furthermore, most ingoing inspections managed by an agent provide an electronic copy to the tenant through various software applications. The tenant in these circumstances always then has an electronic copy of the ingoing inspection permanently on hand.

REISA strongly supports the amendment of provisions that will require landlords to give only 1 copy of the ingoing inspection sheet to the tenant.

100% of REISA Members support this amendment.

Sale of residential premises

Section 71A(1)(b) of the RTA stipulates that following notice of the landlord's intention to sell the residential premises, the premises will not be advertised for sale or made available for inspection by prospective purchasers before the day falling 14 days after the tenant is given notice of the landlord's intention to sell the premises.

REISA agrees that the tenant should be notified that the property they are renting is being offered to the market for sale.

In many cases however, the tenant is agreeable to opens being conducted prior to the expiry of the 14 days particularly if they just wish to begin the process and ascertain whether the purchaser will be an investor.

REISA strongly supports the introduction of provisions that would allow advertising or open inspections of a property for sale before the legislated 14 days if the tenant consents.

Routine inspections

Section 72(1)(c) of the RTA stipulates that notice of entry for an inspection must be given to the tenant no less than 7 and no more than 14 days before the day of entry.

There are many instances where an inspection date will be known considerably in advance and it makes sense and would be a courtesy to the tenant to notify them of this advance date.

It is appropriate to allow a notice of entry for an inspection to be no less than 7 days and no more than 28 days to accommodate these advance notices and also allow the tenant and agency far more flexibility in allowing alternative times to be proposed if the tenant (or owner) wishes to be present.

REISA strongly supports the introduction or provisions that would allow notice of entry for an inspection to be no less than 7 days and no more than 28 days (currently it is no less than 7 days and no more than 14 days).

Inspections

Section 72(1)(c)(I) of the RTA limits the number of inspections that can be done to not more than once each 4 weeks.

This provision is typically used for re-inspections (as the Tribunal has held that original inspections conducted every 4 weeks may constitute harassment of the tenant).

Often a tenant will want to prove that they have remedied a breach and restore their standing with the agent and the landlord. They may wish for the reinspection to happen at an earlier time.

REISA strongly supports the introduction of provisions that will allow an inspection to be completed before the 4 week timeframe if the tenant requests it.

Utility costs

Section 73 of the RTA stipulates that a tenant is not required to pay rates and charges for water supply if the landlord fails to request payment from the tenant within 3 months of the issue of the bill for those rates and charges by the water supply authority.

There is no justification for not extending this requirement to all utility services that are in the name of the landlord (eg electricity where solar panels are installed).

This would provide certainty for landlords and tenants and encourage landlords to be more proactive in their facilitation of invoices to the property manager.

REISA strongly supports the introduction or provisions that would stipulate that a tenant is not required to pay the utility bill if it is not forwarded to the tenant within 3 months.

Break lease costs on Form 2s

Section 80(2)(d) of the RTA stipulates that if a tenant gives up possession of the premises pursuant to a Form 2 for rent arrears, the landlord is entitled to compensation for any loss (including loss of rent) caused by the termination of the tenancy. In effect, the landlord is entitled to break lease costs.

REISA is wholly supportive of this current provision.

However, there is no justification for not allowing break lease costs for a tenant vacating pursuant to any Form 2 other than rent arrears.

For example, if a tenant has caused substantial damage or had an unapproved pet or allowed unapproved subtenants to reside in the property and as a result of a Form 2 issued for these breaches has vacated the property, the landlord is not entitled to break lease costs.

The whole rationale of section 80(2)(d) being introduced into the RTA in 2014 was to stop the situation where tenants who wanted to break lease, simply elected to stop paying rent so that they would be issued a Form 2, vacate the property and avoid break lease costs.

However, tenants can now cause damage or stop paying their water bills deliberately so they could use the Form 2 route and avoid break lease costs – it is absurd that the legislation does not provide for break lease costs for ALL Form 2s irrespective of the breach.

REISA strongly supports the amendment of provisions that will enable break lease costs to be incurred for all Form 2s (currently break lease costs can only be incurred for Form 2s for rent arrears).

98% of REISA Members support this amendment.

Rent arrears

Section 80(2) of the RTA stipulates that a Form 2 for rent arrears is only effective when the rent has remained unpaid in breach of the agreement for not less than 14 days (15 days in practice) before the notice was given.

There are 2 issues with this extended time frame:

- Tenants using this time to pay their rent during the 15 days (so the rent is still overdue but not in the Form 2 category)
- Practical application

Extended time

Given the fact that the tenant is aware that a Form 2 can only be issued after 15 days of arrears, many tenants abuse this process by habitually paying their rent late but within the legislated 15 day time frame.

This was exactly the reason why section 87(1a) of the RTA was brought into effect in 2014 – to allow the Tribunal to terminate the tenancy when on at least 2 occasions in the preceding 12 months following the latest breach, Form 2s were issued.

While this is effective for the chronically late tenant who is the subject of numerous Form 2s, it is of little effect for the majority of tenants who pay their rent late but in the 15 day timeframe.

A shorter timeframe before issuance of the Form 2 would put tenants on notice of the importance of punctual rent payments and allow landlords to more easily access the provisions of section 87(1a). The tenant still has 15 days to pay the rent (8 days of arrears and then 7 days to remedy the breach but at the moment they have 22 days to pay the rent (15 days of arrears and then 7 days to remedy the breach);.

Practical application

The practical application of this extended timeframe is as follows:

On Day 16, the landlord / property manager issues the Form 2 for breach.
On Day 24, the tenant is required to vacate the property if the breach is unremedied

If the tenant has not vacated the property, the landlord / property manager must apply to the Tribunal for Vacant Possession. The waiting time for such a hearing is usually 3-4 weeks.

Therefore on Day 52, the Tribunal will set a date for the tenant to vacate and if they still do not, appoint the bailiff to evict the tenant. This will add more days to the total.

As can be clearly seen from this example, by the time the eviction process is completed, the tenant would have completely exhausted the bond money and this is not taking into account any monies the tenant owes from other liabilities (damage, cleaning, water etc).

REISA strongly supports the amendment of provisions that will enable a Form 2 for rent arrears to be issued once the tenant is 8 days in arrears (currently it is 15 days of arrears).

94.3% of REISA Members support this amendment.

Abandoned Property

Under section 97B of the RTA, the landlord must take reasonable steps to keep non-valuable property safe for 2 days and valuable property safe until at least 28 days after possession of the premises is recovered.

Non valuable vs valuable property

Section 97B of the RTA stipulates that if the value of the property is less than the costs of removing, storing and selling the property, then it is non-valuable. Likewise, if it is more, it is valuable property.

Given the difficulties in establishing what property falls into each category and the potential liabilities of categorising property as non-valuable when in fact it is not, most (if not all) property managers choose to categorise all the property as valuable and therefore subject to the 28 day rule.

REISA supports the retaining of the definitions (and processes) related to perishable goods (disposal immediately) and personal documents (disposal after 28 days).

REISA strongly supports abolishing the distinction between valuable and non-valuable property.

Duration of time

The 28 day obligation of the landlord is an unjustifiable duration of time for the landlord to bear responsibility for the tenant's goods that they have (often deliberately) left behind. This 28 day period involves the landlord either storing the property at the premises thereby foregoing any rent during that period or paying the storage costs for the 28 day period.

Given that the tenant who leaves property will invariably have rental, water or damage amounts owing, this very quickly raises any debt owing to the landlord to above the limit of the bond.

REISA strongly supports amending the RTA so that that the timeframe for storage of property other than perishable goods and personal documents be reduced from 28 days to 7 days.

Prescribed notice

The procedures relating to abandoned property are not well known to landlords and tenants (particularly the 2 day requirement for access). A large number of enquiries to REISA's Query Connect line are related to abandoned property procedures.

A prescribed notice that must be given to the tenant after recovering the premises, would clearly alleviate these difficulties by explaining the process and informing the tenant that the property could be disposed of at the end of the legislated timeframe. The legislated timeframe would commence after service of the notice.

REISA recommends that a prescribed notice must be provided to the tenant if there is abandoned property.

96.1% of REISA Members support these amendments.

Death of a Tenant

There are currently no provisions in the RTA concerning the death of a tenant save section 79 which stipulates that a tenancy terminates on the death of a tenant.

There is considerable confusion among real estate practitioners as to the correct and preferable approach to dealing with a sole tenant or joint tenant who has died.

The following situations are unclear:

What happens when a co-tenant dies during the tenancy.

REISA is of the view that the death of that co-tenant terminates that person's tenancy and they are only liable for rent and water up until the date of death. The tenancy still continues but the landlord or the surviving co-tenants would be able to then apply to the Tribunal for an order terminating the tenancy on the grounds of hardship.

It would be extremely useful to have legislative clarity for this situation.

What happens when a sole tenant dies during the tenancy

It is clear that the tenancy ends on the death of a tenant.

Is the estate responsible for compensation for loss of rent until premises are relet/ cleaning costs / damage over and above the bond?

It would be extremely useful to have legislative clarity for these situations.

Who is entitled to access the property following the tenant's death.

REISA is of the view that only the executor or Public Trustee would be entitled to access and remove the property and that effectively, the property of the deceased tenant becomes subject to the abandoned property provisions in the RTA. It is understood that CBS advice on this matter is that the landlord or property manager can allow any one access to the property and in the eventuality that there is a dispute as to ownership of the property, then civil recourse would be taken by the executor and / or beneficiaries.

Whichever approach is correct, it would be extremely useful to have legislative clarity for this situation to provide reassurance for property managers as to the correct way forward.

93.1% of REISA Members support this amendment.