

## **Review of the Residential Tenancies Act University of South Australia (AHURI Research Centre) response**

### **Preamble**

We welcome the Review of the Residential Tenancies Act and the opportunity to provide considered response to the Department of Consumer and Business Services, South Australia Government.

Emerging from the restrictions of the COVID-19 pandemic, as a society we are now more aware than ever of the fundamental importance of our homes in providing us a safe, stable base from which we can participate in community, education, and employment. For many people living within the private rental sector these benefits are far from realised. As housing researchers, we continue to see the very worst of Australia's housing crisis disproportionately impacting tenant households. However, it is promising that we are also starting to see far greater interest in tackling housing issues at both the Federal and State/Territory levels. The proposed reform is timely and, if ambitious, represents an opportunity for South Australia to take a leading role in securing an equitable, affordable, and healthy future for the private rental sector and the Australians it houses.

Before we address in detail the specific areas of focus offered for comment in the Discussion Paper, we take the opportunity to preface our responses with a broader commentary on the dynamics of the private rental sector. Critically, there exists a vast power differential between service providers (landlords/lessors) and service consumers (renters, lessees). Australia's private rented sector is surprisingly lightly regulated by international standards (Leishman et al. 2022). Many landlords are motivated primarily by longer term investment objectives rather than the provision of housing services to occupiers – the latter is a secondary rather than the primary reason for many investors' ownership of dwellings that are privately rented. Notwithstanding the financial motivation of landlords, we must reconcile that, by offering a property for rent, lessors are providing a housing service, which equally carries a responsibility to the consumer tenant.

While the RTA does attempt to mandate equitable conditions between service provider and consumer, in reality - and particularly with record low vacancy rates and the rapidly escalating cost-of-living - the significant power imbalance is a fundamental contributor of many of the conditions and issues that are raised in the Discussion Paper. Therefore, while most of the proposed reforms are, in principle, positive moves to strengthen consumer protections for tenants, there exists a very real problem of enforcement, monitoring, disclosure, and redress.

Beyond this review and the RTA reforms it may bring, we encourage the Department to consider committing to longer-term aspirations including:

- Ethical Lessor Certification;
- Establishment of a Commissioner for Residential Tenancies;
- Introducing a modern system of online rental bonds management;
- Introducing a ‘warranty of fitness for rental occupancy’ certification scheme.

In the sections below, we address the specific areas for reform mooted in the Discussion Paper:

### **1. Longer tenancies**

- The RTA should include a requirement for landlords to provide a specific (prescribed) reason for terminating a periodic lease, or for choosing not to renew a fixed term tenancy agreement. Reasons that have been found to be reasonable in international jurisdictions include a landlord wishing to occupy the property themselves (this might include a close family member), wishing to sell the property, or wishing to undertake a substantial renovation.
- Reforms should accommodate longer leases with arguments regarding caveats clearly unfounded.
- 60 days should be a minimum period of notice. With the tightness of Australian rental markets and historic low vacancy rate, 3 months would represent a more equitable notice period.

We note, however, that it would be easy, in practice, to evade such a provision, difficult to monitor and probably almost impossible to enforce (see the review of evidence in Leishman et al, 2022). We believe that renovations would need to be substantial to justify ending or failing to renew a tenancy, but that requires ‘substantial’ to be defined. Our view is that there should be a presumption that occupation should continue rather than terminate, as a principle, for private renters.

As discussed in our preamble, the suggested amendments to the RTA will not tackle the underlying reason that private renters’ occupation of their homes is so precarious. Investment decisions in the private rental sector are sometimes highly speculative, with some investors buying/selling frequently, and leveraging heavily to maximise their returns. Although these may be a minority of landlords, it is primarily the ease of entry and exit from the investment sector that has created the instability and insecurity of occupancy that is now widespread in the private rental sector.

On the suggestion of extending the notice period to 60 days, we agree with this suggestion but ask whether it should be longer still. Australia’s rental markets are very tight and vacancy levels are at historic lows. Giving outgoing tenants, say, 3 months to find an alternative dwelling would be better.

## **2. Residential bonds**

Increasing the threshold to \$800 per week before requiring 6, rather than 4, weeks' rent is probably the wrong solution to a set of problems created by an antiquated system. We support the mandatory use of RBO, but would argue that reforms need to go much further. Some of the problems described in the discussion paper would be solved automatically if landlords and tenants were required to have unique identifiers. The ATO has recently introduced this requirement for Australian company directors.

Unique IDs and a more modern bond lodgement system would allow bonds to be transferred between dwellings and landlords, removing the need for tenants to outlay new bonds and remain out of pocket until previous bonds are returned. If all adult occupants were required to have a unique ID, this would also facilitate redistribution of funds in the event of relationship breakdown, or in the case of deceased tenants.

## **3. Rent bidding**

We view the proposals as well-intentioned, but likely to lead to unintended consequences. Rent bidding occurs as a result of very low vacancy levels and excess demand for private rental accommodation. This is the underlying problem. Prohibiting the advertisement of properties with a rent range would therefore encourage informal behaviours because the root cause of the problem would remain. The current system requires prospective tenants to hand over a great deal of personal and historical information in their rental applications, and allows landlords to select the tenant of their choice. In other words, there is already a great deal of informality in the system. It would be straightforward for landlords, or their agents, to suggest that a prospective tenant needs to bid over the advertised rent due to the amount of competition for a particular dwelling.

## **4. Rooming houses and shared accommodation**

We support the proposal to lower the rooming house threshold from three to two people sharing. We support the idea of introducing a registration scheme for proprietors of rooming houses but do not follow the logic of a threshold of five or more people sharing. This could be consistent with the proposed rooming house definition.

More generally, we note that in many international comparators (UK, Canada, Netherland), registers of all private landlords either already exist or are being introduced currently. Conditions, security and rights in the private rented sector are under considerable scrutiny in many countries and other jurisdictions. We suggest the broadening of this proposal to include all private landlords. Alternatively, this could be phased in by requiring the registration of new entrants to the sector.

## **5. Renting with pets**

We agree with the suggested presumption that a tenant cannot have their request unreasonably refused. It would be important to define this test of reasonableness with some precision. We question why there is a presumption in the discussion paper that requiring a tenant to keep a pet outside would not be considered an unreasonable condition. This seems implicitly assume that all tenants who rent with a pet possess a pet which can reasonably live either indoors or outdoors.

## **6. Housing standards and retaliatory evictions**

The discussion paper is optimistic in its assumption that “specifying clear permissible reasons for the termination or non-renewal of a tenancy agreement is likely to prevent evictions that are retaliatory in nature.” As noted earlier, our view is that this measure would be relatively easy to evade. For example, suppose that a landlord decided not to renew a lease on the basis that s/he wished to occupy the dwelling, but then later changed his/her mind. It would be impossible to prove that the landlord did not have the intention of occupying at the time of termination or non-renewal. In addition, enforcement is impossible – the landlord could not be compelled to occupy the property. Meanwhile, the tenants could not be restored to the property as, presumably, they will have signed a lease on an alternative.

The suggestion to gradually increase the energy efficiency of privately rented dwellings is a sound and aspirational one. However, there is a serious risk of unintended consequences. Recent research has found that there are much more serious and widespread problems in the private rental sector involving the physical condition of dwellings, dampness, condensation, mould and plumbing issues (Baker et al, 2022). There is a wider question of why so many landlords are motivated to supply dwellings in such a poor state of repair. Logically, they do this to make sure their returns are sufficient to remain in the sector. A relatively small change to their overheads could easily persuade some landlords to exit, with a negative impact on supply.

One option might be to name a relatively distant date (say 5 or 10 years hence) upon which energy standards will be introduced. This would allow time for the market to adjust.

## **7. Safety modifications and minor changes**

We support this proposal but note that it should be made very clear in revisions to the RTA that tenants are not financially responsible for the removal of these minor alterations at the end of the lease. Without such a provision the proposed amendment is meaningless.

## **8. Start of tenancy requirements**

We support both of the proposed amendments. In addition, we repeat our earlier suggestion that a registration scheme for private landlords should be introduced. The lack of such a scheme and associated database is a critical part of the imbalance that currently exists in the private rental sector. Tenants' responsibilities extend beyond simply paying their rent. This is also true of landlords, but there is currently no way to monitor activities such as refusing to undertake repairs, undertaking unauthorised inspections or visits, threatening or actioning retaliatory evictions, for example.

## **9. Domestic violence provisions**

We are not expert in this area of research and have no comments on the proposals.

## **10. Water billing**

We support the proposals in the sense that they will improve transparency, but note that they are something of a work-around and do not address the underlying problem (that tenants are not recognised as customers).

## **11. Illegal drug activity**

We support this aspirational proposal, but note that in practice it would be very difficult to prove that a landlord had such knowledge. We suggest extending the definition to include mould, which is a much more prevalent problem in privately rented dwellings, and a factor that research has shown to be very damaging to the health of occupations (Baker et al, 2022).

## **12. Third party payments**

We support this proposal.

## **13. Modernisation of language**

We support this proposal and note that it is not independent of the lease length issue, the presumption that fixed term leases are not automatically renewed, and the issue of dwellings that are in a general state of disrepair. These factors are all linked, and they reflect the power imbalance in the private rental sector. They also reflect the precedence of the investment motive over the 'supply of housing services' motive of some landlords. We suggest referring to landlords as 'housing suppliers' and tenants as 'housing consumers'.

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## **References**

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