



Shelter SA

Housing: a basic human right

SHELTER SA's

SUBMISSION FOR THE

REVIEW OF THE RESIDENTIAL TENANCIES ACT

FEBRUARY 2003

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KEY ISSUE 1:

IMPROVING COVERAGE OF THE RESIDENTIAL TENANCIES ACT

Shelter SA considers that the Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be a house, unit, room in a boarding house, hotel room, caravan park or student accommodation, and irrespective of whether their accommodation is owned or managed by a private investor, institutional investor, public housing authority, or a community housing provider.

Housing is a basic human need and human right, and yet tenants of a number of tenures are currently without any legislative protection under the Residential Tenancies Act, and are therefore vulnerable to exploitation:

- (1) Boarders and Lodgers
- (2) Residents of Caravan Parks and Mobile Home Parks
- (3) Public Housing Tenants
- (4) Residents of Educational Institution Facilities
- (5) Long-term Hotel / Motel Residents
- (6) Residents of "Lifestyle Villages"

1.1 Boarders and Lodgers:

A Rooming House is defined under the Residential Tenancies Act as a

“residential premises in which rooms are available, on a commercial basis, for residential occupation; and accommodation is available for at least three persons on a commercial basis” (Section 3.1).

Currently the Residential Tenancies Act states that

“This Act does not apply to ...an agreement (other than a rooming house agreement) under which a person boards or lodges with another” (Section 5(b)).

Therefore, any situations in which one or two people board or lodge with another person (who is generally the owner of the property) are not covered in any way under the Act.

The lack of coverage for these boarders and lodgers means that there are no minimum standards for the notification time prior to eviction, requirements regarding the holding of bonds, the right to quiet enjoyment of their room, repairs, cleanliness and sanitary conditions. They may be put out on the street at a moments notice without any of their belongings, and may have difficulty getting them back. Their only avenue of recourse is through the Magistrates Court.

In such circumstances, boarders and lodgers are among the most vulnerable housing consumers. As stated in the Office of Consumer and Business Affairs (OCBA) discussion paper: “Boarders and lodgers are considered to be among the more socially and economically disadvantaged. They may lack the skills, knowledge and money to be able to protect their interests (pg. 7).” Boarders and lodgers in

Public Housing are officially termed “Extra Persons” and also have no legislative rights. For reasons of equity, it is therefore imperative that the Residential Tenancies Act covers Public Housing as well as Community Housing and private rental situations.

Recommendation 1:

Shelter SA recommends that Boarders and Lodgers be covered under the Residential Tenancies Act, including people who are boarders and lodgers in Public Housing.

(Please refer to Section B of this submission, Discussion Point 1, for further discussion about Boarders and Lodgers.)

1.2 Caravan / Mobile Home Park Residents:

Caravan Park Residents

Currently the SA Residential Tenancies Act provides no protection for residents of Caravan Parks, who can be among the most vulnerable and disadvantaged group in our society. A person living in a park as their only or main place of residence:

- has no legal right to privacy,
- can be evicted without reason, notice or recourse,
- cannot require the park owner or manager to carry out repairs to the caravan or site
- are not entitled to any notice of rent or hiring charge increases.

They are open to exploitation by caravan park owners and managers. As the majority of them cannot access other housing options, they are unwilling to challenge caravan park owners and managers for fear of eviction and possible homelessness. They can be required to provide “key deposits” which often act as bonds, but the deposits are not registered with the Residential Tenancies Branch, and often not returned.

Housing is considered a basic human need and human right. The Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be a house, unit, rooming house, or caravan park.

The following Case Study is an example of the lack of protection:

CASE STUDY

Shelter SA has been consulting with a group of residents who live permanently in a caravan park in metropolitan Adelaide. Many of the residents have been living in the caravan park for 10-15 years, and have permanent annexes, bricked-in sections, their own toilets and showers etc. A large number of residents complain about the authoritarian nature of the new manager, the poor conditions of the amenity blocks, unsafe wiring in the amenity blocks, being barred entry back into the caravan park on a number of occasions (due to a recently installed boom gate), being charged for having the electricity meter read, privacy and access concerns, and not being able to sell their vans without the manager's permission (which he appears to be refusing unreasonably). The residents are afraid to raise their concerns with the manager due to fear of being evicted, and are afraid even to meet together as a group of residents to seek improvements to the caravan park. If they had better legislative protection and assistance from a Tenants' Advice and Advocacy Service, their situation would be greatly improved.

Recommendation 2:

Shelter SA recommends that residents of caravan parks be covered under the Residential Tenancies Act, using the Queensland Residential Tenancies Act as a basis.

Mobile Home Parks:

It is important that a definition of caravans and mobile homes be included, such as the following:

"The law says that a caravan is something that was designed to be towed on the open road, and a mobile home is a moveable dwelling that was designed so that it could be moved but not towed on the open road."
(www.rta.qld.gov.au/moveable_dwelling.cfm)

In Queensland, Caravan Park residents and renters of Mobile Homes are covered under the Residential Tenancies Act, but the Mobile Homes Act (1989) covers owner-occupiers of a mobile home.

Recommendation 3:

Shelter SA recommends that the Office of Consumer and Business Affairs investigate whether it is more appropriate that owner-occupiers of mobile homes be covered under the Residential Tenancies Act, or under a separate Act, as is the case in Queensland.

Recommendation 4:

Shelter SA recommends that renters of mobile homes be covered under the Residential Tenancies Act.

(Please refer to Section B of this submission, Discussion Point 2, for further discussion about Caravan Park Residents and Mobile Home Park Residents)

1.3 Public Housing Tenants

The Residential Tenancies Act (Section 5.2) states that:

“The following provisions of the Residential Tenancies Act, (and no other provisions) apply to residential tenancy agreements under which the South Australian Housing Trust or the Aboriginal Housing Authority is the landlord:

- (a) Part 3 (Residential Tenancies Tribunal);
- (b) Section 66 (Security of Premises);
- (c) Section 71 (Tenant’s Conduct);
- (d) Section 90 (Tribunal may terminate tenancy where Tenant’s conduct unacceptable);
- (e) Section 93 (Order for Possession);
- (f) Section 99 (Enforcement Orders for Possession);
- (g) Division 3 of Part 8 (Powers of the Tribunal);
- (h) Division 4 of Part 8 (Representation).

As can be seen, the majority of these clauses relate to providing a mechanism for the SA Housing Trust or the Aboriginal Housing Authority to evict the tenant. The Residential Tenancies Act should provide a fair balance between tenant and landlord; however it appears that selectively applying certain aspects of the Act to Public Housing Tenants has resulted in public housing tenants having very little protection under the Act.

In all other States in Australia, the Residential Tenancies Act covers Public Housing Tenants. Shelter SA believes that the Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be owned or managed by a private investor, institutional investor, public housing authority, or community housing provider. This helps to create a sense of social inclusion, where all tenants are treated equally, rather than marginalizing public housing tenants or treating them as very different. Public Housing Tenants are amongst the most vulnerable members of the community and therefore their need for legislative protection is significant.

Recommendation 5:

Shelter SA recommends that Public Housing tenancies be fully covered under all aspects of the Residential Tenancies Act.

1.4 Residents of Educational Institution Facilities:

Section 5(1) (a) (ii) of the Act states that:

“This Act does not apply to-

- (a) An agreement giving a right to occupancy in:
 - (ii) an educational institution, college, hospital or nursing home.”

The Tenants’ Advice Service in Western Australia reports “residents of rental accommodation provided through educational institutions can experience unreasonable disadvantages. For example, they may be subject to arbitrary eviction, without recourse to fair procedure or consideration of their circumstances.” (Tenants’ Advice Service, WA, submission to the Statutory Review of the Residential Tenancies Act 1896, (April 2002) pg. 16)

Recommendation 6:

Shelter SA recommends that the exemption for educational institutions should be removed and that protection be extended to adult residents of facilities owned by educational institutions, (which may be similar to those provided to Rooming House residents). However, in cases where the education institution merely facilitates access to rental accommodation, which is otherwise in the private domain, such tenancies should be considered the same as any other private tenancy.

1.5 Long-Term Residents of Hotels and Motels:

Section 5(1) (a) (ii) of the Act states that:

“This Act does not apply to-

- (b) an agreement giving a right to occupancy in:
 - (i) a hotel or motel”

“With regard to hotels and motels, this type of accommodation is often the principal place of residence of a group of highly vulnerable tenants. This is particularly the case where no boarding and lodging style accommodation exists, such as country areas.” (A Balanced Act, by Shelter WA, pg. 7)

Shelter SA believes that Residential Tenancies Act should provide protection to tenants regardless of whether their principal place of residence happens to be a house, unit, room in a lodging house, hotel room, caravan park home or student accommodation.

Recommendation 7:

Shelter SA recommends that the exemption for motels and hotels should be removed and that protection be extended to residents of hotels and motels, similar to those provided to Rooming House residents, where the hotel or motel is their principal place of residence.

1.6 Residents of “Lifestyle Villages”:

Shelter SA is aware that there are people living in places marketed as “Lifestyle Villages” that may not be covered under the Residential Tenancies Act or the Retirement Village Act. They are similar to Retirement Villages, but are for people under 55 years of age, and are therefore not covered under the Retirement Villages Act. There is a review of the Retirement Villages Act proposed for later in the year, and it may be more appropriate that “Lifestyle Villages” are covered under that Act. What is important is that they do not “slip through the cracks” and end up not being covered by any legislative protection.

Recommendation 8:

Shelter SA recommends that a decision be made as to which Act people living in “lifestyle villages” would best be covered under, and amendments made to the appropriate Act to provide legislative protection for such residents.

KEY ISSUE 2:

SECURITY OF TENURE

“The residential rental market has undergone some fundamental shifts in the last couple of decades. What was once viewed as a transitional tenure is now becoming lifetime tenure for low and middle-income households. Around 40% of Australian tenants have lived in rental housing for more than 10 years.” (Wulff and Maher, 1998, and Wulff, 1997).

“Contrary to a common belief, strong legislative protection, providing for greater levels of tenure certainty, may serve to improve the opportunities for institutional investment which are vital if the viability of the private rental market is to be maintained.” (Berry, 2000)

It is becoming increasingly apparent that improvements in tenure security are vital to ensure stable and sustainable communities, and to prevent further increases in levels of homelessness.

The Tenants’ Union of Victoria, in their submission to the “Victorian Residential Tenancies Act 1997 Review” (May 2001, pg. 9) stated:

“The lack of security of tenure in the private rental market threatens to dislocate people from their communities, friends and support networks, and schooling and local health services. The corresponding insecurity is a powerful disincentive when tenants are considering the exercise of their tenancy rights. It is clear that security of tenure is a necessary prerequisite to tenants’ access to justice.”

The issue of security of tenure is an extremely important issue when reviewing the Residential Tenancies Act, as without appropriate levels of security of tenure, many tenants will be fearful of exercising their rights under the Act.

2.1 No-reason Termination of Tenancy Agreements:

The current SA legislation allows a landlord to terminate a tenancy agreement due to a variety of circumstances including:

- (1) a breach by the tenant of the tenancy agreement
- (2) rent arrears
- (3) the landlord requiring possession for purposes of:
 - (a) demolition*
 - (b) for repairs or renovations that cannot be carried out conveniently while the tenant remains in possession of the premises*
 - (c) for occupation by the landlord; the landlord's spouse, child or parent; the spouse of the landlord's child or parent *
- (4) the landlord entering into a contract for the sale of the premises *
- (5) the landlord requiring possession of the premises for a purpose prescribed by legislation.*

*(*Provisions marked with a * relate to periodic tenancies only and are covered by Section 81 of the Act which prescribes a period of notice of 60 days minimum. Shelter SA considers that 60 days is not a reasonable time frame to make the unexpected but necessary practical and financial arrangements for alternative housing, and recommends that the period of notice be increased to 90 days).*
- (6) where the tenant has, intentionally or recklessly, caused or permitted, or is likely to cause or permit:
 - (a) serious damage to the premises
 - (b) personal injury to the landlord or the landlord's agent or a person within the vicinity of the premises
- (7) hardship on the part of the landlord or tenant
- (8) unacceptable conduct by the tenant.

All of the above provisions are reasonable and provide the landlord with a mechanism to evict tenants on reasonable grounds. However, Section 83 of the Residential Tenancies Act also states "a landlord may, by notice of termination given to the tenant, terminate the tenancy without specifying a ground of termination." The period of notice under this section is a minimum of 90 days. Private landlords and housing associations are currently able to evict tenants using this clause.

In private rental markets characterised by a shortage of affordable housing, tenants are in a relatively powerless position. Threat of eviction, (using the 90 day no-reason termination clause) or threat of not renewing a fixed-term lease, can be used by landlords to intimidate tenants into accepting breaches of their rights. For example, tenants often put up with major repair problems or intrusions into their privacy for fear of being given a notice to vacate. Many are reluctant to call the Housing Improvement Branch about housing that is sub-standard, due to a fear of being "out on the street" as soon as the necessary repairs have been completed and the lease has expired.

In reality, landlords do not terminate a tenancy for no reason at all. In fact, the costs associated with re-advertising and re-letting the property are expenses that any landlord tries to avoid. As is evident, there are already a number of clauses that

allow landlords to evict tenants for valid reasons. However, these require that the landlord justify or provide reason for the eviction, which would seem to be a fair and just process, considering the impact that the eviction will have on the tenant(s). Section 83 (1), "Termination by landlord without specifying a ground of termination", is sometimes used because landlords do not want to have to bother with explaining or justifying the need to evict the tenant, or the reason for them wanting to evict the tenant is weak or of a retaliatory nature.

The Tenants' Union of Victoria, in their submission to the Residential Tenancies Act 1997 Review (May 2001) stated:

"Whilst the TUV appreciates that landlords may have legitimate reasons for wanting to evict a tenant, we believe that landlords should be obliged to use the numerous other eviction provisions in the Act. All of these provisions require the landlord to explain, and if necessary show just cause before the Tribunal, why they want to evict the tenant." (pg. 21)

Shelter WA in their submission to the Statutory Review of the WA Residential Tenancies Act 1987 (April 2002), stated:

"Housing is a basic need and human right. While it is acknowledged that owners should be able to exercise control over their property, Shelter WA strongly believes that the current "no just cause" provisions (Section 64) are unjust and unreasonable as they impinge on tenants' human right to secure housing. Shelter WA believes that Section 64 should be regarded as a relic from the time when renting was regarded as a transitional tenure, rather than the long-term tenure it has become." (p25, ABA)

The Australian Federation of Homelessness Organisations Policy Platform, Policy Position 30 states:

*"AFHO urges each State and Territory Government to ensure the following safeguards and processes for tenants are provided, at a minimum:
...just cause termination of tenancy, to ensure that no-cause termination is prohibited and replaced by principles for just cause termination on reasonable grounds". (p9)*

Recommendation 9:

Shelter SA recommends that the period of notice under Section 81 be increased to 90 days.

Recommendation 10:

Shelter SA recommends that Section 83(1) " termination by landlord without specifying a ground of termination" be deleted from the Act.

Recommendation 11:

Shelter SA recommends that housing associations not be permitted to terminate a tenancy without specifying a just ground of termination.

2.2 Termination of Fixed Term Tenancies Without Reason:

Currently there is no notice required to be given to a tenant who is in a fixed lease arrangement as to whether the landlord is prepared to renew the lease at the end of the term. If the landlord decides to not renew the lease, he/she need not give any reason for that decision. This causes a great deal of anxiety amongst renters, and particularly among those who are on low incomes and are most affected by the costs associated with moving house frequently, which include money for an additional bond, reconnection fees and removalist expenses.

The threat of not renewing a fixed term tenancy is sometimes used to intimidate tenants into not exercising their rights in the same way that no-reason terminations are used with periodic tenancies.

Recommendation 12:

Shelter SA recommends that tenants on fixed term tenancies be given the option of signing another fixed term tenancy, or changing to a periodic tenancy, unless the landlord has reasonable grounds for termination. As a compromise position, Shelter SA recommends that landlords be required to give a minimum of 90 days notice to the tenant if they do not want to renew or continue the lease.

The above compromise position provides people with a reasonable time frame to make the unexpected but necessary practical and financial arrangements for alternative housing. The Victorian Residential Tenancies Act currently includes this provision of 90 days notice, which is due to be increased to 120 days in July 2003. Legislation in the Australian Capital Territory includes a provision for 26 weeks notice.

The Residential Tenancies Act in SA does not require a tenant to give notice to the landlord that they do not plan to renew their lease at the end of a fixed lease period. In Victoria, a tenant is required to give 28 days notice in such a case, (Section 235) which then allows the landlord to make necessary arrangements to secure other tenants, etc.; this creates less uncertainty for the landlord.

Recommendation 13:

Shelter SA recommends that the Act be amended to state that tenants of a fixed term tenancy are required to give 28 days notice to the landlord/agent if they do not wish to extend their lease.

KEY ISSUE 3:

QUIET ENJOYMENT AND LANDLORD'S RIGHT OF ENTRY

Section 65(1) (a) & (b) of the Act states that:

“ It is a term of a residential tenancy agreement that –

- (a) the tenant is entitled to quiet enjoyment of the premises without interruption by the landlord or a person claiming under the landlord or with superior title to the landlord's title; and
- (b) the landlord will not cause or permit an interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises”

Section 65 is severely compromised by the provisions of Section 72 regarding the Landlord's Right of Entry.

3.1 Entry for the Purpose of Showing a Prospective Purchaser:

CASE STUDY

Julie and Rebecca have signed a fixed term lease for 12 months, and are paying \$250 per week in rent. Seven months into the lease, the landlord says that he wants to sell the property, and that the Section 72, Clause (1) (g) allows him to enter the premises “for the purpose of showing the premises to prospective purchasers, at a reasonable time and on a reasonable number of occasions, after giving the tenant reasonable notice”. He says that he wants the place looking spotless and that he would prefer if they weren't there while he shows the prospective purchasers around. The landlord states that he thinks he will only need to show the house for a few weeks in a row, on Saturday and Wednesday afternoons, and gives them a notice that they will begin that week.

Julie and Rebecca can't believe that he can do this, and refer to the information brochure about the Residential Tenancies Act 1995, that was given to them by the landlord on the commencement of their tenancy. Under the section “Landlord's right of entry to rented premises” it states that the landlord can enter:

“after giving reasonable notice to the tenant to show the premises to the prospective purchaser; (it is generally accepted that inspections by appointment for the purpose of showing the premises to prospective purchasers should be no more than twice weekly, with 24 hours' notice being given and that open inspections should be no more than once per fortnight with reasonable notice being given).”

Julie and Rebecca are concerned that someone looking at the property will steal something from them, or be “casing the place out” and possibly break in at a later date. They feel that their privacy has been invaded and that they are forced out of their own home on the weekend, or if they do stay, that they will be made to feel uncomfortable. They have no choice but to let the landlord bring people through the property on Wednesdays when they are not present, as they both work full-time. While they know that the landlord can't force them to move out before the fixed term lease is finished, they wonder how long the inspections will go on for. They are

concerned that the landlord may have an open inspection, which would mean that it would be much more difficult to watch people to ensure that nothing was taken or damaged.

Four months later, after weeks of having to leave their home on the weekends, the place is sold, with the settlement date being the day the lease expires. Julie and Rebecca were paying full rent for that whole time, even though their quiet enjoyment of the property was severely compromised.

The above case study illustrates how in this instance the Residential Tenancies Act protects the interest of the landlord while severely compromising the rights of the tenant to quiet enjoyment of the premises that they are renting.

Recommendation 14:

Shelter SA recommends that Section 72 (1) (g) state, in the case of fixed term tenancies, entry for the purpose of showing the premises to prospective purchasers only be allowed in the last 28 days before the lease expires unless the landlord applies to the Residential Tenancies Tribunal citing situations of hardship that necessitate him/her selling the property.

Recommendation 15:

Shelter SA recommends that where the Tribunal considers the situation is one of hardship, and permits entry to the premises before the last 28 days of the tenancy, the Tribunal has the powers to reduce the rent payable during the period of inspections.

Recommendation 16:

Shelter SA recommends that the landlord cannot require the tenant of either a fixed or periodic tenancy to allow him/her to have an open inspection of the property.

Recommendation 17:

Shelter SA recommends that the landlord be required to make reasonable attempts to negotiate a suitable time to enter the premises, should the tenant wish to be present at the time and for the duration of the entry.

Recommendation 18:

Shelter SA recommends that the Act specify that the tenant has the right to remain in the property while the landlord or his agent is showing the premises to prospective purchasers.

3.2 Showing Premises to Prospective Tenants:

Section 72, clause (1) (e) of the Act states that that landlord can enter the premises if:

“The entry is made for the purpose of showing the premises to prospective tenants, at a reasonable time and on a reasonable number of occasions during the period of 28 days preceding the termination of the agreement, after giving reasonable notice to the tenant”

This clause also erodes the quiet enjoyment that the tenant has, and causes tenants to be concerned about the security of their goods or damage to the property. In both Victoria and New South Wales, the period when entry is allowed for this purpose is restricted to 14 days preceding the termination of the agreement.

Recommendation 19:

Shelter SA recommends that Section 72 (1) (e) be modified to allow entry for 14 days preceding the termination of the agreement for the purpose of showing premises to prospective tenants.

3.3 Notice of Entry:

Section 72, (1) (b) of the Act states that:

“It is a term of a residential tenancy agreement that the landlord may enter the premises if (and only if)-

(b) the landlord gives the tenant written notice stating the purpose and specifying the date and time of the proposed entry not less than seven and not more than fourteen days before entering the premises.”

Shelter SA considers this Section 72 (1) (b) to be too open ended, and notes that the Residential Tenancies Acts of NSW and Victoria do not include such a provision.

Recommendation 20:

Shelter SA recommends that Section 72 (1) (b) be deleted.

3.4 Entry and Inspection at the Time of Collecting Rent

Section 72 (1) (c) of the Act states that:

“It is a term of a residential tenancy agreement that the landlord may enter the premises if (and only if)-

(c) the entry is made at a time previously arranged with the tenant (but not more frequently than once every week for the purpose of collecting the rent).”

It does not state that the landlord can inspect the property while collecting rent, although this is common practice. Shelter SA considers that there is no reason why tenants who have their rent collected by the landlord or agent should have their quiet enjoyment of the premises infringed by being subjected to “informal inspections.”

Shelter SA considers that tenants should be given the option of paying their rent by other methods and should not be obliged to have their rent collected weekly by the landlord or agent at the rented property.

Recommendation 21:

Shelter SA recommends that the Section 72 (1) (c) be amended to stipulate that a landlord or agent cannot require that rent be collected at the rented property, but must allow other options of payment of rent.

3.5 Property Inspections

Section 72 (1) (d) states that:

“It is a term of a residential tenancy agreement that the landlord may enter the premises if (and only if)-

(d) the entry is made at a time previously arranged with the tenant (but not more frequently than once every four weeks) for the purpose of inspecting the premises”

The Residential Tenancies Act 1997 of Victoria, Section 86, Clause (1) (f) states that:

“A right of entry in respect of rented premises may be exercised if- entry is required to enable inspection of the premises and entry for that purpose has not been made within the last 6 months”.

That is, general inspections are permitted every 6 months in Victoria, whereas tenants in South Australia can be subjected to inspections once every 4 weeks, which again erodes their right to Quiet Enjoyment. Shelter SA considers that a compromise position of permitting inspections every 3 months should be adopted.

Recommendation 22:

Shelter SA recommends that Section 72 (1) (e) be changed to allow inspections once every 3 months.

3.6 Negotiation of an Appropriate Time for Entry

Recommendation 23:

Shelter SA recommends that the Act be amended to state that, where the landlord is required under the Act to give notice to the tenant before entering the premises, the landlord is required to make a reasonable attempt to negotiate an appropriate time of entry to the premises, and to take into account the circumstances of the tenant in this regard.

Recommendation 24:

Shelter SA recommends that the Act should stipulate that a landlord or his agent shall not enter the residential premises in the circumstances (other than situation of emergency, or by consent of the tenant, or in accordance with the an order of the Tribunal):

(a) except between the hours of 8.00 am and 8.00 pm, unless the tenant otherwise agrees,

(b) on a Sunday or a public holiday, unless the tenant otherwise agrees.

KEY ISSUE 4:

AFFORDABILITY

4.1 Bonds:

Please refer to Section B of this submission, Discussion point 5 for further details.

A. Amount of Bond

Shelter SA considers that the restriction on the amount of bond that a tenant can be required to pay is appropriate. Section 61 of the Act currently states that for properties with a weekly rent over \$250 that the bond can be the equivalent of six weeks rent. With the increasing rental prices, Shelter SA considers that this figure needs to be adjusted annually, in line with CPI (inflation).

Recommendation 25:

Shelter SA recommends that the restrictions on the amount of bond that a tenant can be required to pay remains unchanged.

Recommendation 26:

Shelter SA recommends that the \$250 figure stated in Section 61(3) be reviewed every 2 years or adjusted annually, in line with CPI (inflation).

B. Bond Limits

Shelter SA believes bond limits should not be increased. For renters with low incomes, they are already required to pay at least the equivalent of six week's rent to enter into a tenancy; four weeks rent as the bond and two week's rent in advance. This is in addition to the expenses of moving house and reconnecting basic services. As it takes time for the bond from the previous property to be returned, people moving from one rental property to another must find funds for the new bond, while the other is being returned. Low-income families move house more often (due to lack of security of tenure and problems of affordability), and increasing the bond further would present a significant cost barrier to many tenants, which could result in greater levels of homelessness or overcrowding.

Increasing bond limits would also mean that the number of people that the SA Housing Trust and the Aboriginal Housing Authority could assist through the Private Rental Assistance Program would be greatly reduced.

Recommendation 27:

Shelter SA recommends that bond limits should not be increased.

C. Additional Security

Refer to the above discussion. If “pet bonds” are permitted, they should be lodged with the Residential Tenancies Branch.

Recommendation 28:

Shelter SA recommends that landlords not be allowed to require and receive additional security.

4.2 Rent Increases:

The SA State Housing Plan Discussion Paper (December 2002) states “More than 44,000 low-income households in South Australia are in housing stress (78.7% of low-income private renters). They are paying more than 25% of their income on rental housing costs. More than 14,000 low-income households in South Australia are in severe housing stress (23.2% of low-income private renters). They are paying more than 50% of their income on housing costs” (pg. 7)

In SA, rent can be increased every six months, except when the tenancy is for a fixed term of longer than 6 months, in which case rent generally cannot be increased during the term of the tenancy. In the Australian Capital Territory rent increases are limited to intervals of at least 12 months from the date of the last increase. As most people receive a maximum of one pay rise per year, having rent increased twice per year causes financial hardship for low-income renters. Allowing rent increases every six months also encourages shorter term (i.e. 6 month) fixed term tenancies, which provide less security to tenants.

Recommendation 29:

Shelter SA recommends that Section 55(2) (c) be amended to state “the date fixed for an increase of rent must be at least twelve months after the date of the agreement”.

4.3 Excessive Increases in Rent:

The Australian Federation of Homelessness Organisations (AFHO) Policy Platform, policy position 30, states:

*“ AFHO urges each State and Territory Government to ensure the following safeguards and processes for tenants are provided, at a minimum:
....ability to appeal over excessive rent increases, to ensure that rent increases are limited to rises in line with inflation and to place the burden of proof that an increase is fair on the landlord.”*

Shelter SA recognises that in the current political and economic climate it is not practicable to ensure that rent increases are limited to rises in line with inflation. However it does support the concept of putting the burden of proof on the landlord that an increase is fair (which is not currently the case).

Recommendation 30:

Shelter SA recommends that Section 56 be amended to include a statement that “the burden of proof that a rent increase is fair is the landlord’s responsibility.”

KEY ISSUE 5:

STANDARDS OF RENTAL HOUSING

5.1 Minimum Standards for Rental Housing:

Section 67 of the Act states:

“ It is a term of a residential tenancy agreement that the landlord will ensure that the premises, and ancillary property, are in a reasonable state of cleanliness when the tenant goes into occupation of the premises”

Section 68(1) (a) of the Act states:

“It is a term of a residential tenancy agreement that the landlord-

(a) will ensure that the premises, and ancillary property, are in reasonable state of repair at the beginning of the tenancy, and will keep them in a reasonable state of repair having regard to their age, character and prospective life”

The problem is that the term “reasonable” is open to a great deal of interpretation, which has led to the concept of introducing minimum standards. The Tenants’ Advice Service WA stated the following in their submission to the Residential Tenancies Act Review process in WA in April 2002:

“Minimum standards are specified for a number of consumer “products” because of the risk to people’s health and well being, for example in relation to cars, medicines and even sunglasses. For similar reasons there should be minimum standards for rental properties, given the potentially significant impact on the health and well being of residents if minimum standards are not met.”

Minimum standards have been examined in Victoria, and are endorsed by the National Association of Tenant Organisations. National Tenancy Standards, including those relating to the quality of rental accommodation, is a plank of the Federal Labor Party’s plan for Affordable Housing (p7, 2001).”

Shelter WA also commented:

“Since the lack of minimum standards poses a real risk to the health and safety of low income tenants in particular, Shelter WA recommends:

- that all residential rental properties be required to meet a set of specific minimum standards regarding tenancy management and the physical condition of rental properties, and*
- that it be the owner’s responsibility that these standards be met.*

Furthermore, minimum standards should not be limited to the physical condition of the building only. For instance, such standards should include, but not be limited to, provisions for:

- factors impacting on the ability of the tenant to maintain his/her tenancy; e.g. the tenant should be able to contact the owner or his/her representative within a reasonable timeframe when urgent repairs are needed*
- factors impacting on the safety of the tenant; e.g. requirements for smoke alarms, general state of repair of the building*
- factors impacting on the health of the tenant; e.g. requirement for rising damp problems to be repaired within a reasonable timeframe*
- factors impacting on the security of the tenant: e.g. external doors to be solid core, appropriate door and window locks to be provided.” (A Balanced Act, by Shelter WA, pg. 22*

Recommendation 31:

Shelter SA recommends that community consultations be undertaken to develop minimum standards for rental housing, and that they be incorporated into the Act.

5.2 Security of Premises:

Section 66 of the Act states that:

“It is a term of a residential tenancy agreement that –

- (a) the landlord will take reasonable steps to provide and maintain the locks and other devices that are necessary to ensure that the premises are reasonably secure”

“Reasonably Secure” is again something that can be open to a great degree of interpretation. Section 70 of the Victorian legislation requires that:

”A landlord must provide locks to secure all external doors and windows of the rented premises.”

The above clause provides greater clarity and better security for tenants, and will allow them to access contents insurance more easily.

Recommendation 32:

Shelter SA recommends that Section 66 be amended to state that the “A landlord must provide locks to secure all external doors and windows of the rented premises”.

Currently when one tenant moves out, he or she may keep spare copies of any keys that he/she has had made for the locks on the premises. This is an obvious security risk for the incoming tenant and the landlord, and options should be investigated to mitigate these risks, such as only using keys that cannot be easily copied for rental properties.

Recommendation 33:

Shelter SA recommends that the Office of Consumer and Business Affairs investigate options to mitigate against the security risks to incoming tenants, due to the fact that outgoing tenants can easily copy keys to the premises.

5.3 Housing Improvement Act

Currently, the SA Housing Trust administers the Housing improvement Act, but its properties are not bound by that same Act. Many tenants put up with substandard facilities or do not complain about repairs that are needed because they are fearful that they may be evicted, have their rent raised, or not have their lease renewed if they complain to the Housing improvement Branch. These would be seen as “retaliatory terminations.”

Recommendation 34:

Shelter SA recommends that the Housing Improvement Act cover the SA Housing Trust and the Aboriginal Housing Authority, and it be administered by a different government unit.

Recommendation 35:

Shelter SA recommends that tenants be protected from retaliatory terminations of tenancies where they have made a legitimate complaint to the Housing Improvement Branch.

Recommendation 36:

Shelter SA recommends that the Housing Improvement Branch conduct a campaign to raise awareness about the Housing Improvement Act, so tenants will know what course of action they may take when living in substandard accommodation.

Recommendation 37:

Shelter SA recommends that information about the Housing Improvement Act and Branch should be included in the information booklet given to all tenants, upon commencement of their tenancy.

KEY ISSUE 6:

TENANTS’ ADVICE AND ADVOCACY SERVICE

For over 10 years Shelter SA and others in the housing sector have been advocating for the establishment of an independent, non-government Tenants Advice and Advocacy Service to assist *all* renters. Such a service is vitally important and is urgently needed to assist all tenants to obtain and sustain their tenancies. **South Australia is the only state in Australia that does not have such a service**, and Shelter SA believes that renters in SA deserve a better deal.

Information, Advice and Advocacy services are closely associated with the alleviation of housing stress, dislocation and homelessness that is be evident in the community. Such services assist individuals and families to maximise the housing opportunities available to them and to resolve issues that may compromise the quality or security of their housing. **The success and continued funding of tenants’ advocacy**

services in all other states demonstrates that everyone – tenants, landlords, and the wider community - benefits from a service that educates tenants about their rights and responsibilities. It is also evident that this is more effective and less costly than relying solely on Residential Tenancies Tribunal hearings to resolve disputes.

The 2002 SA Labor Party Housing Policy Platform recognises the need for a Tenants Advice and Advocacy Service, as shown by the following statements:

- *“Labor is committed to ensuring that all rental tenants have access to tenant Advice and Advocacy services that are consumer focused and independent.*
- *Labor will continue to support tenant advisory services to Trust Tenants.*
- *Labor will support the establishment of a private tenants’ Advice and Advocacy service.”*

The Premier has announced that one of the key goals for the Social Inclusion Initiative is the reduction of homelessness by 50% during the term of the government. The “Discussion Paper following Social Inclusion Unit Consultations with Service Providers on Homelessness”(pg. 15) very clearly states that there is widespread support for a Tenants’ Advice and Advocacy Service, as shown below:

“The lack of affordable vacancies and the discrimination often experienced by a range of people in trying to access the private rental market was highlighted in almost every Consultation session....

In response to this situation, there was a widespread call for the establishment of a private rental market tenancy information and advocacy service. This has been on and off the housing agenda for the past 15 years, but many Consultation participants felt that such a service is needed in the current climate more than ever.”

There have been fundamental changes to the Private Rental Market in SA, which make the establishment of a Tenants Advice and Advocacy Service even more vital today than a decade ago. These include:

- The Federal Government is increasingly reliant on the Private Rental Market to house people with low incomes. Over 1 billion dollars is spent nationally per year on Commonwealth Rent Assistance, while at the same time there is a decline in funding for the construction of new public and community housing.
- The 2001 Census Data shows that in South Australia 25% of dwellings are rented. 17%, or just under 100 000 dwellings are rented privately, and 8% are public or community housing. 100 000 dwellings in the private rental market represents at least a quarter of a million people – 240,000 people in our state that do not have access to Advice and Advocacy services!
- Of the 100,000 households who rent privately in SA, nearly half are low-income households, and 78% of these are paying more than 25% of their income on housing, even with Commonwealth Rent Assistance.
- Private Rental is no longer simply a stepping-stone to homeownership, but is now viewed by many as their only long-term option. Recent research has shown that 40% of renters in Australia have been renting for 10 years or longer.

- While there has been the First Home Owners Grant, there may be an overall decrease in homeownership rates due to factors such as the increasing casualisation of the workforce, the lack of affordable housing and the increase in low-income and single person households.
- Since 1996, there has been a loss of over 7,300 houses from the overall social housing stock in SA. In 1996 there were 62,500 houses, while in July 2002 there were just over 55,000. Social housing stock is expected to further fall to between 35,000 and 40,000 within the next 10-20 years, unless urgent action is taken. A direct consequence of this is that more people, including those on low incomes and with complex needs will be, forced into the Private Rental Market.
- In the 2001-2002 financial year the SA Housing Trust provided nearly 16,000 bond guarantees, worth \$6.67 million, to assist people, who were unable to access social housing, in getting access to the private rental market. Due to a variety of reasons, a large percentage of these guarantees are “lost”, meaning that they are paid out to the landlord, and the lost bond is then charged as a debt to the ex-tenant. Helping tenants to avoid losing Trust bonds, by providing better and more accessible information about their rights and responsibilities, would greatly reduce the level of lost bonds and all the consequences of that.
- Boarding House legislation was introduced in SA in January 2000, but as there was no accompanying education campaign for residents and proprietors, and no Tenants’ Advice and Advocacy Service for residents to consult, these regulations have had little impact.
- Currently long-term caravan park residents have no legislative protection, and would greatly benefit from the establishment of a Tenants’ Advice and Advocacy Service.
- Vacancy rates for the Private Rental Market have been very low, between 1% and 2%, for the past four years, and this is particularly noticeable in the lower cost end of the market. Recent research demonstrated that there had been a 78% increase in the number of low-income families in Adelaide between 1986 and 1996, yet only a 15% increase in lower cost rental properties over the same time period.
- The consequences of these very low vacancy rates are that disadvantaged groups such as young people, single parents, recipients of Centrelink benefits, people of non-English speaking background and indigenous people are further disadvantaged by the highly competitive nature of the Private Rental Market.

When these factors are coupled with a lack of tenants’ understanding of their rights and responsibilities, a fear of being evicted if they stand up for their rights (such as requesting to have basic house repairs completed), and having no one to turn to for advice and support, it can result in tenants being exploited, living in inadequate housing, or losing their tenancy and becoming homeless.

A Tenants' Advice and Advocacy Service can assist people by taking up cases of blatant discrimination, helping people to be better informed about accessing the Private Rental Market, and assisting tenants with advice about a range of topics including:

- starting a tenancy
- bond/ deposit issues
- share accommodation
- privacy and access
- rent
- repairs and maintenance
- termination of tenancy
- evictions

Private Rental is characterised by a lack of security of tenure, problems related to affordability and limited consumer protection. The government can enhance consumer protection by ensuring that all tenants have access to a comprehensive Advice and Advocacy Service.

There are three services currently offered to tenants in SA:

The first of these is "The Landlords and Tenants' Advisory Service", which is operated by the Tenancies Branch of the Office of Business and Consumer Affairs. This provides information about the Residential Tenancies Act and the Residential Tenancies Tribunal only. The tenant is not given advice or assistance in interpreting the information, as the service must balance the interest of different parties. Staff are also therefore unable to act as an advocate. In every other state in Australia, there is both a Department of Consumer Affairs information service and an independent community-based Tenants' Advice and Advocacy Service, which have differing but complementary roles.

There is also a service called Housing Advice and Support SA, or HASSA, which is funded by the government to provide advice and support to customers of the SA Housing Trust, the Aboriginal Housing Authority and Community Housing Tenants. However, HASSA can only help those people in the private rental market who have received bond or rent assistance from the Housing Trust. Even then, HASSA services to private renters are very limited due to funding constraints and lack of a mandate to provide representation to tenants who have disputes with private landlords.

More and more people are being forced into the private rental market, which, unlike social housing, is characterised by lack of security of tenure and problems of affordability. Private Renters – who have more issues to deal with – are denied a service offered to Public and Community Housing Tenants. Shelter SA calls upon the government to address this inequality of access to a Tenants' Advice and Advocacy Service.

The final service available to renters, is advertised in red writing in all telephone directories as "Residential Tenancies Advisory Service (24 Hours Hotline): 90 cents per minute". This "appears" to be an official (government endorsed) service, but it is in fact operated as a private business. The quality and accuracy of advice given is

not monitored as a community-based service would be, and the business actually operates nationwide from its Adelaide base, much to the annoyance of other Tenants Services interstate. The fact that people are so desperate to get advice that they are willing to pay nearly a dollar a minute surely indicates the need for an independent, free service. People in desperate situations should not have to resort to expensive private services such as this one.

Recommendation 38:

Shelter SA recommends that an independent, non-government Tenants Advice and Advocacy Service to be established to assist all renters.

(Please refer to Section B of this submission, Discussion Point 20, for further discussion.)

KEY ISSUE 7:

OPERATION AND ADMINISTRATION OF THE RESIDENTIAL TENANCIES BRANCH

7.1 Interest Earned on Tenants' Bond Money to be Made Public:

It is currently very difficult to ascertain how much money is earned as interest on tenants' bond money, as this information is not made public. Shelter SA considers that there should be greater transparency about interest earned from tenants' bond money, and how this money is spent.

Recommendation 39:

Shelter SA recommends that Part 6 of the Residential Tenancies Act, (Sections 100 –102), be amended to include a provision that the Office of Consumer and Business Affairs be required to publish in its annual report the total amount contained in the Residential Tenancies Fund, how much consists of interest monies, and the amount and details of allocation of the Fund monies.

7.2 Fostering Greater Levels of Consistency Within Tribunal Hearings:

During consultations held by Shelter SA, a number of people, especially staff of Community Housing Associations, mentioned a frustration that the outcome of a Residential Tenancies Tribunal hearing appeared to be very dependent on which member of the Tribunal heard the case. They expressed concern that even for very similar cases, the outcomes could be very different, and felt that there should be more consistency in decisions. Other people, such as tenants of the Housing Trust, have also expressed similar concerns. Suggestions made at the consultation included having 3 people from the Tribunal hear the case, greater training for Tribunal members, and encouraging Tribunal members to consult with other members before making an order.

Recommendation 40:

Shelter SA recommends that the Office of Consumer and Business Affairs consider ways to foster greater consistency of outcomes within the Residential Tenancies Tribunal.

7.3 Providing Information in Languages Other Than English:

Currently there is only a one-page fact sheet on “renting a house or unit” available in languages other than English. The languages chosen are appropriate (Arabic, Bosnian, Chinese, Croatian, Khmer, Persian, Polish, Russian, Serbian, Spanish and Vietnamese), but the information available is very brief and further disadvantages people of non-English speaking backgrounds. An English version of the same fact sheet should be included to aid workers assisting people with a translator.

While it is true that the Translating Information Service is offered to people who do not speak English, this does not provide a substitute for adequate written material, as without the written material, the tenant may not know the right questions to ask

Shelter SA considers that the “Information Brochure “Residential Tenancies Act 1995”, which sets out the general rights and obligations of landlords and tenants in respect of written, verbal or implied residential tenancy agreement, should be translated into the 11 languages stated above. The Residential Tenancies Act stipulates that it is a requirement that the landlord or his agent must furnish the tenant with this information brochure at the time that a residential tenancy agreement is entered into. If it is important enough to be a requirement under the Act, Shelter SA considers that it is vital that the information be distributed in a language that people will understand. As a result, people will have better understanding of their rights and responsibilities and there will be fewer disputes.

Hidden towards the back of this document is a statement in 17 languages:

“If you have difficulty in understanding this pamphlet, ring the Translating and Interpreting Service on 131 450. Don’t hang up; your call will be answered. (Local call cost only).” If versions of the Information Brochure are not made available in other languages, the phrase above needs to be much more prominently displayed, preferably on the front or back cover.

However, if someone were to call the above service and ask “What does the Information Brochure say?”, it is unlikely that they will be read out the whole brochure (10 pages), which again highlights the need to have it translated into other languages.

Recommendation 41:

Shelter SA recommends that the Tenancies Branch translate the “Information Brochure: Residential Tenancies Act 1995” into at least the 11 languages mentioned in it, and that information about the Translating and Interpreting Service be displayed more prominently in all tenancy publications and on the website of the Office of Consumer and Business Affairs.

7.4 More Comprehensive Statistics Kept:

The Tenancies Branch and the Residential Tenancies Tribunal are well placed to be able to provide important information about trends in the Private Rental Market, if more comprehensive statistics were kept. For example, when bonds are lost by people with bond guarantees from the SA Housing Trust or the Aboriginal Housing Authority, no one seems to be able to find out why are they lost. A better collection system of statistics and the ability to breakdown the figures would enable researchers to find out if losses were due to rent arrears, damage or having to break a lease to move into social housing.

Recommendation 42:

Shelter SA recommends that more comprehensive statistics be kept that would assist in analysing trends in the Private Rental Market.)

7.5 Clearer Understanding of the Relationship Between the Court System and the Residential Tenancies Tribunal.

During consultations held by Shelter SA regarding the review of the Residential Tenancies Act, there was concern about the relationship between the Residential Tenancies Act and the Court System. In one case, the tenant appealed a decision of the Tribunal, the case was heard at the Magistrates Court, who then referred it back to the Residential Tenancies Tribunal. While Shelter SA is in favour of appropriate appeals processes, these should be clearly defined and understood, and not cause excessive delays.

Recommendation 43:

Shelter SA recommends the relationship between the Residential Tenancies Tribunal and the Magistrates Court be clearly defined, and that suitable processes be established in situations where a hearing is appealed, to ensure that there are not excessive delays in an order being upheld or disallowed.

7.6 Less Formal Setting

During consultations held by Shelter SA, a number of tenants commented that they find the Residential Tenancies Tribunal very formal and intimidating. As one of its aims was to be less formal than the court situation, attempts should be made to seek to make it less formal and intimidating, and to provide greater information about what to expect.

Recommendation 44:

Shelter SA recommends that the Office of Consumer and Business Affairs seek to create a less formal and intimidating setting for hearings of the Residential Tenancies Tribunal.

7.7 Mediation Services of the Residential Tenancies Branch

The "Information Brochure: Residential Tenancies Act 1995", states on page 6 that:

"A party to a residential tenancy dispute may apply to the Commissioner for mediation of the dispute. Alternatively, the Tribunal may, either before or during the hearing of proceedings, appoint a mediator to achieve a negotiated settlement. A mediator may exercise any powers of the Tribunal that the Tribunal may delegate. The Tribunal may also refer the matter to a conference or list for hearing".

During consultations held by Shelter SA, many people did not seem to be aware of the mediation services offered. During a conversation with an advisor from the "OCBA Landlords and Tenants Advice Service", he indicated that the mediation service was not often used.

Recommendation 45:

Shelter SA recommends that use of the Mediation Service of the Residential Tenancies Branch be more widely promoted.

KEY ISSUE 8:

TENANT DATABASES

The use of tenant databases is becoming increasingly problematic throughout Australia.

The Tenants Advice Service of WA stated the following in their submission (April 2002) to the Statutory Review of the Residential Tenancies Act (1987):

"In recent years landlords have begun to and increasingly make use of a new and burgeoning industry known as tenant databases. These are in essence 'blacklists' which have widespread ramifications for tenants. For example, there is no onus on landlords to ensure that the information contained on databases is correct, and tenants are not entitled to know whether or why they are listed on a database. TAS is aware of many cases where landlords have used the threat of listing on a database to force compliance with unreasonable demands, and many cases where tenants are unable to access rental accommodation because their name is on a database (including cases of mistaken identity and cases of landlords listing tenants in retaliation when the tenant has taken successful action against the landlord, such as securing orders for maintenance and repairs.

It was hoped that recent amendments to the Commonwealth Privacy Act would go some way to address these issues, however it is unclear at this time whether the amendments will be effective, or even that they are applicable to tenant databases."

Shelter SA concurs with the following recommendation proposed by T.A.S. W.A.

Recommendation 46:

Shelter SA recommends that provisions be introduced to the Act:

- **prohibiting database listing without reasonable excuse**
 - **requiring the landlord to ensure that any information provided to database services is correct**
 - **requiring that the landlord notify the tenant of any listing, and the reason**
 - **providing that the tenant may seek orders under the Act to remove their name from a database or to correct wrong information on a database.**
-

SECTION B:

SHELTER SA's

RESPONSE TO THE OFFICE OF CONSUMER AND BUSINESS AFFAIRS (OCBA) DISCUSSION PAPER.

Discussion point 1: Boarders and Lodgers

- A. Should the accommodation arrangements of boarders and lodgers be subject to regulation?**

Recommendation 1 (repeated):

Shelter SA recommends that Boarders and Lodgers be covered under the Residential Tenancies Act, including people who are boarders and lodgers in Public Housing.

Please refer to Section A of this submission, 1.1 "Boarders and Lodgers".

- B. If the interests of these parties should be subject to regulation, should they be regulated under the Residential Tenancies Act, a Code of Conduct under that Act, or separate legislation?**

The most efficient way to provide legal protection to boarders and lodgers is to include them under the Residential Tenancies Act. This could be done by removing Section 5(b). This would have the advantage of avoiding any definitional gaps between different Acts regarding what constitutes a boarder, lodger or residential tenant. It also means that it is a simpler system for people to understand (pg. 6, ABA)

Recommendation 47:

Shelter SA recommends that Section 5(b) be removed.

- C. Are there boarders and lodgers who should not be covered?**

Recommendation 48:

Shelter SA recommends that the following boarders and lodgers should not be covered by the Act:

- **people paying board to live with their parents or other family members**
- **people who are borders or lodgers for the purpose of holidays.**

D. Which aspects of their accommodation arrangements should be regulated?

Shelter SA believes arrangements related to bond, security of tenure, notice of termination and termination of tenancy should be regulated.

The NSW Fair Share report states:

“The report considers that boarders and lodgers in share housing arrangements should be brought within the ambit of the Landlord and Tenant (Rental Bonds) Act 1977, making it a requirement that rental bonds from boarders and lodgers be lodged with the Rental Bond Board. This measure would ensure that the most vulnerable consumers of housing services would receive protection afforded to other occupants...” (pg. 44, The Fair Share, “Reform of residential tenancies law in NSW as it relates to share housing”, Goddard, J., Kessels, and Associates, Stamatellis, S., June 1998)

The Fair Share Report also states:

“If an occupant of residential premises is a boarder or lodger, their rights and responsibilities are not determined by legislation. This means that there are no minimum standards for the notification time prior to eviction, the holding of bonds, the right to quiet enjoyment, repairs, cleanliness and sanitary conditions. In these circumstances, boarders and lodgers are the most vulnerable consumers of housing services, and as a result, housing advocates have been working for many years to introduce legislative coverage. However, the majority of work has centered around obtaining legislative protection for residents of boarding houses, rather than boarders and lodgers per se.” (Pg. 38)

Recommendation 49:

Shelter SA recommends that arrangements for boarders and lodgers related to minimum standards for notification time prior to eviction, process for termination, security of tenure, the holding of bonds, the right to quiet enjoyment, repairs, cleanliness and sanitary conditions should be regulated.

E. Should there be a recommended set of House Rules?

Recommendation 50:

Shelter SA recommends that OCBA facilitate the development of model house rules for boarding / rooming houses.

F. Is there a need to prescribe terms and conditions, and, if so, what should those terms and conditions be?

No comment.

G. Should boarders and lodgers be able to access the Residential Tenancies Tribunal for dispute resolution purposes?

Recommendation 51:

Shelter SA recommends that boarders and lodgers be able to access the Residential Tenancies Tribunal for resolving tenancy disputes.

Discussion point 2: Caravan and Mobile House Residents

- A. Should the interests of parties involved in park-based accommodation arrangements be subject to regulation?**

Recommendation 2 (repeated):

Shelter SA recommends that residents of caravan parks be covered under the Residential Tenancies Act, using the Queensland Residential Tenancies Act as a basis.

Recommendation 3 (repeated):

Shelter SA recommends that the Office of Consumer and Business Affairs investigate whether it is more appropriate that owner-occupiers of mobile homes be covered under the Residential Tenancies Act, or under a separate Act, as is the case in Queensland.

Recommendation 4 (repeated):

Shelter SA recommends that renters of mobile homes be covered under the Residential Tenancies Act.

Please refer to Section A of this submission, 1.2 “Caravan and Mobile Park Residents”.

- B. If the interests of these parties should be subject to regulation, should this be done by bringing them under the Residential Tenancies Act, a Code of Conduct under the Act, or separate legislation?**

The interests of parties involved in park-based accommodation arrangements should be subject to regulation, as it provides a measure of protection for all residents (i.e. those for whom the caravan park is their primary residence).

Recommendation 52:

Shelter SA recommends that the most efficient way to provide legal protection to residents of Caravan Parks is to include them under the Residential Tenancies Act.

Recommendation 53:

Shelter SA recommends that the Queensland regulations should be used as a basis for developing regulations for SA, as they provides a measure of protection for all residents.

The Queensland Residential Tenancies Act avoids the problems inherent in the Victorian and NSW legislation, as described below:

Victoria: Caravan Park residents are covered under the Residential Tenancies Act 1997. Legislative protection is reasonable for those who are classified as a resident, although the “notice to leave” clauses give the

manager a great deal of power and leave residents open to discrimination and intimidation.

To be classified as a resident, the owner must give written consent, or the person must live at the caravan park for 90 days continuously. As a consequence, some owners evict on day 89. No reason for the eviction is necessary. This clause can be used to unfairly disadvantage people, as illustrated below:

Case Study

Samantha is in her mid-forties and has a 17 year old son, Mark.

Last year Samantha's relationship of 20 years broke down and she and her son were left alone in their private rental property. Although they struggled to maintain their rental payments, after three months the burden became too great and they were evicted from the property for rent arrears.

Unable to find another property, and with nowhere else to go, Samantha and Mark, both unemployed, moved into a caravan park. Samantha found living in the caravan park very difficult, particularly because the physical conditions were so poor.

She was concerned that the park was dirty, that the vans were extremely close to each other and that many of the shared facilities, such as the toilets and the bathrooms, were unclean or not working properly.

Samantha took her concerns to the on-site manager. However, it was made clear to her that her comments were unwelcome. With the support of other residents, Samantha persisted raising these issues with park management. After 50 days in the park, Samantha and her son were evicted.

NSW: Long-term residents of caravan parks are covered under the Residential Parks Act 1998. Once a person is classified as a tenant there is reasonable protection. However the "30/30 rule" excludes tenants from coverage by the Residential Parks Act for the first 30 days of the residence and another 30 days if the owner or the tenant themselves requests this. Again this means that up until residents have been in the caravan park for up to 60 days continuously that they have no legislative protection.

Queensland:

- **Caravan parks are covered under the Queensland Residential Tenancies Act 1994.**
- All residents other than those who are staying for purpose of holiday, emergency accommodation, casual overnight stay or owner-occupier of a relocatable home are covered.

This includes those on short-term tenancies as well as long-term tenancies, which provides a degree of legislative protection for people staying in the

caravan as their principal or main place of residence, from the first day of their tenancy. Residents on short-term tenancies have more limited rights and responsibilities than for long-term tenancies, as illustrated below:

There are two types of tenancies described:

- Short term tenancy:
 - defined as periods up to 42 days and extendable by further 42 days, after which must become long-term tenancy (it can become a long term tenancy after 42 days if both parties agree).
 - The Residential Tenancies Act includes provision regarding:
 - if bonds are requested, they need to be lodged with the Residential Tenancies Fund.
 - tenant has rights re. repairs, conditions of amenity block, caravan if rented, rules regarding entry by manager (e.g. 24 hours notice for general inspection), etc.
 - tenancy can be terminated without a reason by the manager /agent with two days' notice and by the tenant with one days' notice.
 - tenancy can be ended for the following reasons, as long as due process is followed:
 - abandonment of the premises
 - breach of Tribunal order
 - illegal use of premises
 - repeated breach
 - unpaid bills
 - unpaid rent
 - in case of damages to the premises
 - for any other unremedied breach
 - when premises are sold
 - end of fixed term tenancy
- Long term tenancy (greater than 42 days, or if extended, 84 days):
 - most of the conditions applicable to short-term tenancies apply, however long-term residents are given greater rights in some areas, for example:
 - 2 months notice is required for the manager to terminate a periodic tenancy for no reason
 - 7 days notice required for general inspection

Recommendation 54:

Shelter SA recommends that caravan park residents have the same rights and protections as Queensland caravan park residents.

Please refer to the following website for further explanation about how periods of notice are different between short and long term tenancies:

http://www.rta.qld.gov.au/zone_files/Fact_Sheets/noticemd.pdf

C. Are there accommodation arrangements that should not be covered?

Recommendation 55:

Shelter SA recommends that the following accommodation arrangements should not be covered:

- (1) If a person is renting a caravan for holiday purposes.
- (2) If a person is letting a caravan for emergency accommodation or casual overnight stay.

D. Which aspects of their accommodation arrangements should be regulated?

Recommendation 56:

Shelter SA recommends that the following aspects of accommodation arrangements should be regulated, and that the Queensland Residential Tenancies Act should be used as a basis for writing the Caravan Park legislation:

- (1) There must be an Agreement in writing, stating the terms and conditions.
- (2) Bond:
 - Specify whether one is required or not
 - Must lodge bond with the Residential Tenancies Branch within a certain time frame
 - Receipts to be given for the bond
 - Specify whether or not additional bond can be requested for electricity or key
 - Specify whether or not the can be an increase in the bond, or introduction of a new bond.
- (3) Rent:
 - Stipulate how much rent can be requested in advance (e.g. maximum of 2 weeks)
 - Stipulate what is included in rent (e.g.: electricity included or not)
 - Rent increases: written notice (e.g. at least 2 months for long-term tenancies);
 - protection against excessive rent increases, and
 - Rent reductions: requirement to lower rent if the standard of the premises falls substantially.
- (4) Electricity and other service charges:
 - Circumstance under which residents can be charged for services in addition to rent (e.g. if service is individually metered to those rented premises); services may include electricity, water, reticulated gas and sewage services.
 - Length of time that the resident has to pay the charges for services, if additional to rent.
 - Stipulate that the caravan park manager cannot make a profit when 'on-supplying ' services to residents (e.g. not allowed to

charge for labour in reading meters, or for maintaining equipment.)

- (5) Rules for entering premises:
 - Residents have the right to enjoy a reasonable level of privacy. Therefore there must be rules prescribed for entering their dwelling, including that there be a lawful purpose of entry, prescribing minimum notice to be given, (including under what circumstances no notice is required; e.g. in an emergency)
- (6) Dealing with repairs:
 - Process for vans that are rented to be repaired
 - Damage caused by tenant/ occupant.
- (7) Minimum standards for amenity blocks and other communal facilities, as well as rented vans.
- (8) Under what conditions can a Park Manager deny access to a resident/tenant to the grounds of the Caravan Park:
 - Is it lawful for a Manager to block entry to a resident/ tenant by means of a security boom gate

There have been cases of tenants/ residents being 10 minutes late in paying rent and the Manager blocking access to their car via the boom gate system to “teach them a lesson”.
- (9) Clarify if the Park Manager may refuse to accept someone who wishes to stay at the park and is able to pay the rent and other charges, but the Manager does not like some characteristic of the applicant (e.g. race, age).
- (10) Changes during tenancy:
 - Sale of Caravan Park: amount of notice to be given to residents/tenants; whether owners of caravans have a right to apply for compensation.
 - Transfer of site lease: in cases where a resident wishes to sell their caravan and transfer the lease of the site to the new owner, the resident must get the manager’s permission to do so, but this cannot be unreasonably refused.
 - Change of park manager: notice required
 - Change of co-tenant: bonds
 - Sub-letting of van: resident needs written permission, which Park Manager cannot unreasonably refuse.
 - Relocation to another site: conditions related to the manager requesting that a van relocate to another site.
- (11) Changes to Park Rules:
 - Agreed process for changing of park rules (e.g. as in Queensland Residential Tenancies Act).

- (12) Extending a tenancy:
 - Short-term and long-term tenancies: conditions and processes.
- (13) Ending a tenancy:
 - Notice to be given (by Park Manager or Tenant, depending on who is initiating the termination)
 - Proper process to be followed
 - Protection for tenants against retaliatory evictions.
 - Process to follow if the tenant refuses to leave.
- (14) Abandoned Premises:
 - Process for terminating an abandoned tenancy.
 - Grounds for determining if the premises have been abandoned.
- (15) Goods (including caravans) and documents left behind:
 - Process for dealing with personal documents and money and for goods (including caravan, contents)

Recommendation 57:

Shelter SA recommends that many aspects of caravan park tenancies should be regulated, using the Queensland Residential Tenancies Act as a basis.

E. Should there be a recommended set of park rules?

Section 133 of the Residential Tenancies Act Queensland states that a park operator can only make rules about the following seven topics:

- (16) How the park's communal areas can be used (e.g. play areas, swimming pools, barbecues, toilet blocks)
- (17) How much noise people can make and at what times
- (18) Where and when any sporting or recreational activities can happen
- (19) Speed limits for cars and other vehicles
- (20) Where cars and other vehicles can be parked
- (21) Disposal of rubbish
- (22) Keeping of pets.

and that *"If there is any conflict between the Act and your park rules, the Act overrides the park rules."*

Recommendation 58:

Shelter SA does not recommend that there be a recommended set of park rules, but that there be restrictions placed on the park operator about the sorts of rules that can be included in house rules, as is the case in the Queensland Residential Tenancies Act.

F. Is there a need to prescribe terms and conditions, and, if so, what should those terms and conditions be?

No comment.

G. Should long-term park residents be able to access the Residential Tenancies Tribunal for resolving disputes?

Recommendation 59:

Shelter SA recommends that all residents (i.e. excluding those on holidays or for the purpose of emergency accommodation but including those on short-term tenancies) be able to access the Residential Tenancies Tribunal for resolving disputes.

Discussion point 3: Rooming Houses

(A) Are the Residential Tenancies (Rooming Houses) Regulations 1999 effective and in the right form?

3.1 Form:

Shelter SA considers that the Rooming House Regulations are not in the right form. At present, Part 7 of the Residential Tenancies Act 1995 (taken from: reprint no 5, incorporating all amendments in force as at 1 July 2002), under the heading “Rooming Houses” states the following:

“Codes of conduct

- 103 (1) There is to be a code of conduct governing the conduct of rooming house proprietors.
- (2) There is to be a code of conduct governing the conduct of rooming house residents.
- (3) The codes of conduct are to be prescribed by regulation.

Obligation to comply with codes of conduct

- 104 (1) A rooming house proprietor must comply with the relevant code of conduct.
Maximum penalty: \$1 000.
- (2) A rooming house resident must comply with the relevant code of conduct.
Maximum penalty: \$200.

Jurisdiction of the Tribunal

105 The Tribunal has jurisdiction to hear and determine, on the application of a rooming house proprietor or resident, a question arising under a code of conduct under this Part.

105A The Regulations may prescribe provisions that will be taken to be terms of all rooming house agreements.”

As the Rooming House Regulations came into operation on the 30th January 2000, it seems incorrect that the Residential Tenancies Act states “there is to be a code of conduct...”, as though they have not yet come into operation. There is also no reference to the Rooming House Regulations in the Act, which means that many people are not aware of their existence.

The Rooming House Regulations themselves are not comprehensive enough to provide adequate protection for residents and proprietors of rooming houses, and contain considerably less Regulations than similar legislation in other states. Despite their brevity, the Regulations are difficult to read, as certain information is included in the Regulations themselves and other related information is found in the Schedules at the end of the document (but without cross-referencing). For example, Section 9(1) discusses “security” (bond) in general terms, but it is necessary to refer to Schedule 1 in order to find the clause about the maximum bond payable.

Recommendation 60:

Shelter SA recommends that the Rooming House legislation and Regulations be extensively reviewed, and that all legislation relevant to Rooming Houses be included in the Residential Tenancies Act.

3.2 Effectiveness:

Shelter SA considers that the Rooming House legislation is not effective because of the difficulties raised above in 3.1, and also because there is no independent Tenants' Advice and Advocacy Service to assist people to be aware of their rights and responsibilities, or to advocate on their behalf. The Regulations are less effective because there are no penalties prescribed for non-compliance, whereas the Victoria legislation prescribes penalties.

Recommendation 61:

Shelter SA recommends that penalties for non-compliance with the Rooming House Regulations be prescribed.

- (B) Are there any improvements that need to be introduced, what are they and how should this be done?**

**Shelter SA's Proposed Improvements
to Residential Tenancies (Rooming Houses) Regulations 1999.**

3.3 Section 3: Definitions

Recommendation 62:

Shelter SA recommends that a definition of a Rooming House needs to be included in the Rooming House Regulations. There also needs to be recognition that a very common term for Rooming Houses is Boarding Houses.

3.4 Section 4: Code of conduct for rooming house proprietors

Recommendation 63:

Shelter SA recommends that the responsibilities of rooming house proprietors and rooming house residents should be included as part of the Residential Tenancies Act, rather than have a separate code of conduct.

3.5 Section 7: House Rules

Section 128 of the Victorian Residential Tenancies Act states:

128. What if house rules are thought to be unreasonable?

*(1) A **resident** may apply to the **Tribunal** for an order declaring a house rule to be unreasonable.*

- (2) If the *Tribunal* considers that a house rule is unreasonable, it may declare the rule *invalid*.

Recommendation 64:

Shelter SA recommends that Section 7 needs to be amended to specifically state that a resident may apply to the Tribunal for an order declaring a house rule to be unreasonable.

3.6 Section 8: Availability of Regulations and House Rules

Section 8 of the Rooming House Regulations currently stipulates that:

“ A rooming house proprietor must:

- (a) ensure that a copy of these Regulations and the house rules (in both cases, as in force from time to time) are displayed in a prominent place at the rooming house; and
- (b) at the request of a resident or prospective resident of the rooming house, make a copy of these Regulations (as in force from time to time) available for inspection and provide to the resident or prospective resident a copy of the house rules (as in force from time to time).”

A study conducted by the SA Department of Human Services about Rooming Houses highlighted the fact that in the majority of cases, such Regulations and House Rules were not displayed. It is therefore important that an education campaign, for both residents and proprietors be undertaken to promote an awareness of the legislation. In addition, there should be penalties prescribed in the Act for failure to comply with the provisions, as is the case in the Victorian legislation.

However, requiring Regulations and House Rules only to be displayed in a prominent place in a common area is inadequate for a number of reasons:

- (a) residents of rooming houses may have low levels of literacy and may be embarrassed to be seen to be struggling to read the document
- (b) residents of rooming houses may be fearful of being labelled a “trouble maker” if they are seen by the proprietor to be checking up on their rights
- (c) residents of rooming houses may need to read the document with the assistance of a magnifying glass or require better lighting or require the assistance of another person to explain or translate the documents.

In addition, residents may not request a copy of the Regulations because they may not be aware that they exist, or are again afraid of being labelled a “troublemaker”. However it is in the best interests of everyone, that all residents and proprietors are well aware of their rights and responsibilities.

Section 124 of the Victorian Residential Tenancies Act states:

“124. Display of statement of rights and house rules

A rooming house owner must display prominently in each resident's room and, not later than the day on which a resident agrees to take up occupation, give the resident-

- (a) a written statement in a form approved by the Director setting out in summary form the resident's rights and duties under this Act; and*
- (b) a copy of the house rules.*

Recommendation 65:

Shelter SA recommends that Section 8 of the Rooming House Regulations be amended to allow greater access for residents to a statement of rights and house rules, and that the clause be based on Section 124 of the Victorian Residential Tenancies Act.

3.7 Section 9: Permissible consideration

(1) Definitions:

The definition of “security” and “security bond” are confusing as to the difference between these two terms. It is also unclear what “agreement collateral” refers to, as evidenced by the fact that staff at the Landlords and Tenants’ Advisory Service were unable to define this term.

Recommendation 66:

Shelter SA recommends that the definitions “security”, “ security bond” and “agreement collateral” be presented more clearly.

(2) Maximum bond payable:

Recommendation 67:

Shelter SA recommends the stipulation that the proprietor must not require the payment of security exceeding two weeks' rent should be included as part of a Section or clause of the Act, and not as part of a separate schedule.

(3) Extra payment for rates and charges for water supply:

Section 9 (2) (a) of the Rooming House Regulations states that the “rooming house proprietor may require a resident to make a payment for rates and charges for water supply”. Shelter SA considers that access to water for the purpose of bathing and cooking is a basic human right, and that such charges should be included in the basic accommodation charge.

Recommendation 68:

Shelter SA recommends that Section 9 (2) (a) be amended, so that access to water for the purposes of bathing and cooking, be included in the basic accommodation charge.

(4) Charges for the provision of electricity, gas or telephone services, or meals at the premises:

Section 9 of the Rooming House Regulations require the rooming house proprietor to inform the resident in writing of the basis on which charges for facilities or services would be made, before such facilities or services are made available. However, there are no controls over prices that can be charged (for example, for use of electricity), which leaves residents open to exploitation.

Sections 108 and 109 of the Victorian Residential Tenancies Act state:

108. Separately metered rooms

(1) A rooming house owner may charge a resident a charge not included in rent for electricity and gas consumed in the room if-

(a) the rooming house owner is responsible for the payment of the electricity and gas; and

(b) the room is separately metered.

(2) A charge under sub-section (1) must not be more than the charge made by the relevant supply authority.

109. Schedule of services provided to be given to resident

If a rooming house owner charges an amount for services to a resident, the owner must-

(a) provide the *resident* with a separate schedule of the amount relating to the *services* that the *rooming house owner* provides before the *resident* takes up residency of the *room*; and

(b) if the *resident* uses any of those *services*, provide the *resident* with an itemised account showing the *resident's* individual use of the *services*.

Recommendation 69:

Shelter SA recommends that Section 9 of the Rooming House Regulations be amended to include the provisions contained in Sections 108 and 109 of the Victorian Residential Tenancies Act:

3.8 Section 12: Rent increases

(1) Amount of notice given for rent increases:

Four weeks written notice for rent increases is prescribed under Section 12 (2) (c) of the Rooming House Regulations. However, other renters are given 60 days notice, under Section 55(2)(c) of the SA Residential Tenancies Act. Section 101 of the Victorian Residential Tenancies Act prescribes a minimum of 90 days notice for increases in rent for Rooming House residents. As Residents of Rooming Houses generally live on very limited incomes, even small increases in rent can cause financial stress.

Recommendation 70:

Shelter SA recommends that Section 12 be amended to prescribe a minimum of 60 days written notice for increases in rent.

(2) Rent reduced if services reduced

Section 106 of the Victorian Residential Tenancies Act states:

106. Rent must be reduced if services are reduced

If a rooming house owner ceases to provide services to a resident, the rooming house owner must reduce the rent by-

(a) the amount agreed between them; or

(b) an amount determined by the Tribunal in the absence of any agreement on an application by either party.

Recommendation 71:

Shelter SA recommends that a clause be added to the Rooming House Regulations, that rent must be reduce if services are reduced, and that the clause be based on Section 106 of the Victorian Residential Tenancies Act.

3.9 Section 13: Termination of rooming house agreement

(1) Termination due to abandonment:

Section 13(1) of the Rooming House Regulations states that:

“If a rooming house resident abandons the resident’s room, the rooming house agreement is terminated.” This can cause difficulties as there are no criteria prescribed to determine if the room is actually abandoned. Residents may leave for a few days, yet not necessarily abandon their room, and come to find their belongings in storage and their room let out to another person.

Section 271 of the Victoria Residential Tenancies Act states:

271. Termination by abandonment

A residency right ends if the room is abandoned and at least 14 days have passed since the last rent payment was due.

As the maximum bond required in SA is equivalent to 14 days rent, the proprietor would not be financially disadvantaged if the above clause were to be included in the Rooming House Regulations in SA.

Recommendation 72:

Shelter SA recommends that Section 13 (1) be amended to state “If a rooming house resident abandons the resident’s room, and at least 14 days have passed since the last rent payment was due, the rooming house agreement is terminated”.

(2) No reason termination:

Shelter SA is opposed to the principle of no-reason terminations. *Please refer to Section A of this submission, Key Issue 2.1 for more details.* However, if Section 13 (5) of the Act is retained, Shelter SA considers that the amount of notice given should be increased from 4 weeks to 90 days, as is the case in the Victorian Residential Tenancies Act, Section, 288.

Recommendation 73:

Shelter SA recommends that Section 13 (5) be deleted from the Rooming House Regulations.

Recommendation 74:

Shelter SA recommends that if the Section 13 (5) remains, the amount of notice required to be given should be increased to 90 days.

(3) Termination due to selling or renovating the Rooming House:

The current Rooming House Regulations do not specify any period of notice to be given in the case of selling, demolishing or extensively renovating the premises.

Sections 285 and 286 of the Victorian Residential Tenancies Act state:

285. Sale of rooming house

- (1) *A rooming house owner may give a resident a notice to vacate the room occupied by the resident if immediately after the termination date the rooming house is to be sold or offered for sale with vacant possession.*
- (2) *The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.*

286. Repairs or demolition

- (1) *A rooming house owner may give a resident a notice to vacate the room occupied by the resident if –*
 - (a) *the rooming house owner intends to repair, renovate, reconstruct or demolish the rooming house immediately after the termination date; and*
 - (b) *the rooming house owner has obtained all necessary permits and consents to carry out the work; and*
 - (c) *the work cannot be properly carried out unless the resident vacates the rooming house.*
- (2) *The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.*
- (3) *If –*
 - (a) *the proposed repairs, renovations or reconstruction will affect a resident's room but will not affect all the rooms in a rooming house; and*
 - (b) *a room equivalent to the resident's room at an equivalent rent is available for rent in the rooming house –*
the rooming house owner must not give the notice under sub-section (1) unless the rooming house owner has first offered the equivalent room to the resident and the resident has refused to occupy that room in place of the resident's current room.

Recommendation 75:

Shelter SA recommends that 60 days written notice be prescribed in situations where the owner is selling, demolishing or extensively renovating the premises.

(4) Notice of no-effect (retaliatory evictions):

The Victorian Residential Tenancies Act states:

289. Notice of no effect

- (1) *A notice under section 288 is of no effect if it was given in response to the exercise, or proposed exercise, by the **resident** of a right under **this Act**.*

- (2) *A person is not entitled to apply to the Tribunal challenging the validity of a notice under sub-section (1) after the end of 28 days after the date on which the notice is given.*

Recommendation 76:

Shelter SA recommends, in order to discourage retaliatory evictions, that Section 13 of the Rooming House Regulations be amended to include a clause similar to Section 289 of the Victorian Residential Tenancies Act.

3.10 Section 14: Abandoned goods

Section 14 of the Rooming House Regulations, prescribes that the rooming house proprietor must take reasonable care, for a period of 14 days, of the goods (other than perishable foodstuffs) of the resident. However, Shelter SA considers that in the case of personal documents, special consideration needs to be given, as is the case in the Victorian Residential Tenancies Act, Section 380:

380 What happens if personal documents are left behind by a tenant or resident?

If a tenant or resident leaves behind personal documents, the owner of the premises –

- (a) must take reasonable care of the personal documents for a period of 28 days; and*
- (b) may remove but must not destroy or dispose of the personal documents, except in accordance with this Part; and*
- (c) must take reasonable steps to notify the former tenant or resident as to when and from where the documents may be collected; and*
- (d) before the end of 7 days after commencing to take reasonable care of the personal documents under paragraph (a), cause a notice to be inserted in the prescribed form in a newspaper circulating generally throughout Victoria of the owner's intention to dispose of the personal documents at the end of the 28-day period.*

Paraphrasing the Victorian Residential Tenancies Act Section 388:

A rooming house owner must

- (e) take reasonable care of any goods (other than perishable foodstuffs) left behind when the resident vacates the room they occupy; and
- (f) take reasonable steps to notify the former resident as to when and from where the goods left behind can be collected.

This would increase the period that the proprietor would need to take reasonable care of the goods, and make the procedures relating to abandoned goods consistent across tenures.

Recommendation 77:

Shelter SA recommends that there should be a distinction made between personal documents and other goods, and that a clause similar to Section 380 of the Victorian Residential Tenancies Act be incorporated in Section 14 of the SA Residential Tenancies Act.

Recommendation 78:

Shelter SA recommends that Section 97 of the SA Residential Tenancies Act “Abandoned Goods” should apply to Rooming House residents.

3.11 Section 15: No penalty clauses

This section appears to contradict Schedule 1: 1(2) and should therefore be clarified.

Recommendation 79:

Shelter SA recommends that Section 15 and Schedule 1: 1(2) be examined for inconsistencies, and clarified.

3.12 Schedule 1

(1) Condition Report

Schedule 1.1 (2) (b) of the Rooming House Regulations states that the proprietor may deduct the following from the bond:

“If the resident’s room or property provided by the rooming house proprietor for use by the resident is not returned in a reasonable condition (taking into account the condition of the room and property when the resident’s period of accommodation began and the probable effect of reasonable wear and tear) – reasonable costs incurred in repairing the room and property.”

Shelter SA believes that this is open to exploitation by proprietors, and as no condition report is required at the beginning of the tenancy, it is difficult for the outgoing resident to be able to challenge the proprietor about any charges that the resident believes are unfair or unreasonable.

Section 97 of the Victorian Residential Tenancies Act, prescribes the requirement for a condition report to be completed prior to occupation by the incoming resident:

97. Condition report

(1) If a resident or proposed resident pays a bond, the rooming house owner must, before the resident or proposed resident enters into occupation of the room, give the resident or proposed resident 2 copies of a condition report signed by or on behalf of the owner specifying the state of repair and general condition of the room on the day specified in the report.

Penalty: 5 penalty units.

(2) *Within 3 business days after entering into occupation of the room, the resident must return one copy of the condition report to the rooming house owner-*

(3) *signed by or on behalf of the resident; or*

(4) *with an endorsement so signed to the effect that the resident agrees or disagrees with the whole or any specified part of the report.*

Recommendation 80:

Shelter SA recommends that a Condition Report be prescribed as part of the Rooming House Regulations, using Section 97 of the Victorian Residential Tenancies Act as a basis.

(2) Resident's goods not to be taken for rent

Section 107 of the Victorian Residential Tenancies Act states:

107. Resident's goods not to be taken for rent

A person must not take or dispose of a resident's goods on account of any rent owing by the resident of the rooming house.

Recommendation 81:

Shelter SA recommends that a clause be added to the Rooming House legislation or Regulations that states that a resident's goods cannot be taken on account of any rent owing by the resident of the rooming house.

(3) Security of Rooms

Clause 2 (2) of the Schedule 1 of the Regulations states:

However, the rooming house proprietor will not be regarded as being in breach of the obligation to maintain locks and other devices unless the proprietor is aware of the requirement for maintenance and fails to act with reasonable diligence to undertake the maintenance.

Shelter SA considers that this clause is inconsistent with Regulations in other parts of the Residential Tenancies Act (i.e. there are no such provisions for tenants of houses or units).

Recommendation 82:

Shelter SA recommends that Clause 2 (2) of Schedule 1 be deleted from the Rooming House Regulations.

3.13 Schedule 2: General obligations of rooming house proprietor

(1) Quiet enjoyment and access to room by proprietor

Sections 136 and 137 of the Victorian Residential Tenancies Act State:

136. Access to room

A rooming house owner or a person appointed in writing as the rooming house owner's agent for the purpose has a right to enter a room occupied by a resident-

- (a) if the resident agrees at the time entry is sought; or*
- (b) if there is an emergency and immediate entry is necessary to save life or valuable property; or*
- (c) if services are provided and it is necessary to enter to provide them, but only during the hours specified in the house rules; or*
- (d) for a purpose set out in section 137, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the resident in accordance with section 139.*

137. Grounds for entry of a room

A right of entry in respect of a room may be exercised if-

- (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the room has been given and entry is required to show the room to a prospective resident; or*
- (b) the rooming house is to be sold or used as security for a loan and entry is required to show the rooming house to a prospective buyer or lender; or*
- (c) entry is required to enable the rooming house owner to carry out a duty under this Act or any other Act; or*
- (d) the rooming house owner or the rooming house owner's agent has reasonable grounds to believe that the resident has failed to comply with his or her duties under this Act; or*
- (e) entry is required to enable inspection of the room and entry for that purpose has not been made within the last 4 weeks.*

Recommendation 83:

Shelter SA recommends that a clause be added to the Rooming House Regulations to stipulate when and under what circumstances a proprietor can enter a room occupied by a resident, and recommends that Sections 136 and 137 of the Victorian Residential Tenancies Act be used as the basis for such a clause.

(2) Access to facilities

Recommendation 84:

Shelter SA recommends that the following clause be added to the Act:

“The rooming house proprietor provide access during all reasonable hours to other facilities for the residents’ use in the rooming house”, in addition to clause 1(1) (b) of Schedule 2 of the Regulations, (regarding access to room and toilet and bathroom facilities).

(4) Repairs

Schedule 2 1. (1) (d) of the Regulations states that it is the proprietor’s responsibility to “.....ensure that the rooming house resident’s room and any facilities shared by the resident are maintained in a reasonable state of repair”.

The Victorian Residential Tenancies Act (Section 120) states:

120. Rooming house owner must keep room and house in good repair.

(1) A rooming house owner must ensure that the rooming house and its rooms and any facilities, fixtures, furniture or equipment provided by the rooming house owner are maintained in good repair.

(2) If a rooming house owner is repairing or renovating residents’ facilities, the owner must –

- a. minimise inconvenience and disruption to the residents; and*
- b. if necessary, provide temporary substitute facilities.*

Recommendation 85:

Shelter SA recommends that Schedule 2. 1. (1) (d) should be amended to state the rooming house proprietor will “ensure that the rooming house and its rooms and any facilities, fixtures or equipment provided by the rooming house owner are maintained in a reasonable state of repair”.

Recommendation 86:

Shelter SA recommends that the following clause also be included in the Rooming House Regulations:

(2) If a rooming house owner is repairing or renovating residents’ facilities, the owner must-

- (a) minimise inconvenience and disruption to the residents; and**
- (b) if necessary, provide temporary substitute facilities.**

(5) Other repairs

Schedule 2, clause 1 (2) of the Regulations states:

However, the rooming house proprietor will not be regarded as being in breach of the obligation to repair unless the proprietor is aware of the defect requiring repair and fails to act with reasonable diligence to have the defect repaired.

Shelter SA considers that this clause is inconsistent with other parts of the Residential Tenancies Act, as is the case with Schedule 1 (2).

Recommendation 87:

Shelter SA recommends that clause 1. (2) of Schedule 2 be deleted from the Rooming House Regulations.

3.14 Schedule 2: General obligations of rooming house residents

The Victorian Residential Tenancies Act, Sections 110, 112 and 115) states:

110. *Resident's use of room*

A resident's must use the room for residential purposes only.

112. *Resident's duty to pay rent*

A resident must pay the agreed rent to the rooming house owner on the due date and in the agreed manner.

115. *Resident must not install fixtures without consent*

A resident must not install any fixtures in the room or rooming house without the prior written consent of the rooming house owner.

Recommendation 88:

Shelter SA recommends that in addition to the seven clauses under *Schedule 2: General obligations of rooming house residents*, that the following clauses be added:

A resident's must use the room for residential purposes only.

A resident must pay the agreed rent to the rooming house owner on the due date and in the agreed manner.

A resident must not install any fixtures in the room or rooming house without the prior written consent of the rooming house owner.

Discussion point 4: Retirement Villages and Supported Residential Facilities

A. Should the Tribunal continue to be the dispute resolution forum for retirement village matters?

The relationship between managers and licensees (i.e. residents) of retirement villages is significantly different to the relationship between landlords and tenants. It is more contractual in nature, with a great deal of complexity and variation evident between contracts. Retirement Villages are covered under a their own Act, which requires Tribunal members to be familiar with the Retirement Villages Act, and the individual contracts, in order to be able to make a fair decision.

Shelter SA has consulted residents of retirement villages, who commented that they found the environment of the Residential Tenancies Tribunal “intimidating”, “too formal”, “not at all friendly”, “not suited to older people”. (Similar comments have also been made by others attending the Residential Tenancies Tribunal.)

Recommendation 89:

Shelter SA recommends that the following options be investigated:

(a) Greater training be given to Tribunal Members about the Retirement Villages Act, and /or that there be certain members who develop an expertise in the area, who hear all disputes relating to Retirement Villages, and that such matters continue to be heard at the Tribunal; or

(b) An alternative Dispute Resolution forum be established, as part of the Review of the Retirement Villages Act. (In this case, the Residential Tenancies Tribunal should continue to be the dispute resolution forum for Retirement Village matters, until a suitable alternative is available).

B. Should the definitions of common matters, such as “residential tenancy agreement” and “tenant”, be compatible with similar definitions in the Retirement Villages and Supported Residential Facilities Acts?

“Tenant” and “Residential Tenancy Agreement” are not terms used in the Retirement Villages Act, rather “resident” and “residence contract” are used.

Recommendation 90:

Shelter SA recommends that where possible, definitions of common matters should be compatible across Acts and Regulations.

Discussion point 5: Bonds and Security Arrangements

Please refer to Section A of this submission, 4.1:Bonds

- A. Are these restrictions on the amount of bond that a tenant can be required to pay appropriate?**

Recommendation 23 (repeated):

Shelter SA recommends that the restrictions on the amount of bond that a tenant can be required to pay remains unchanged.

Recommendation 24 (repeated):

Shelter SA recommends that the \$250 figure stated in Section 61(3) be reviewed every 2 years or adjusted annually, in line with CPI (inflation).

- B. Should the bond limits be increased? If so, what would be an appropriate amount?**

Recommendation 25 (repeated):

Shelter SA recommends that bond limits should not be increased.

- C. Should landlords be allowed to require and receive additional security?**

Recommendation 26 (repeated):

Shelter SA recommends that landlords not be allowed to require and receive additional security.

- D. If so, should the legislation prescribe which items?**
-

Discussion point 6: Loss of Bonds When Transferring to Social Housing

Are there options for minimising the loss of bonds resulting from tenants accepting an offer of housing from the SA Housing Trust or a community-housing provider?

Many low-income tenants have to terminate early their private rental tenancy to accept the offer of Social Housing and they begin their social housing tenancy with a debt to the SA Housing Trust or Aboriginal Housing Authority or a community housing provider. This often places a strain on their finances, and is an unfortunate introduction to social housing.

Tenants are forced to make a decision and move house quickly as it is in the best financial interests of the social housing provider to have new tenants in the house as quickly as possible, as they receive rent more quickly and reduce possibilities of vandalism or damage. For tenants that need to break a private rental fixed term lease, consideration should be given to a sharing of the expenses (i.e. lost bond due to breaking lease) between the social housing provider and the tenant, although that is outside the scope of the review of this Act.

In Victoria, if a tenant has received a written offer of public housing, and is on a periodic tenancy, that tenant need only give 14 days notice, rather than the regular 28 days notice (Section 237). A similar clause in the SA Act would help to minimise loss of bonds in these situations.

Recommendation 91:

Shelter SA recommends that Social Housing Providers be required to give 2 weeks notice of the offer of social housing to tenants who have a periodic lease in private rental, and that tenants who have a periodic lease are only required to give 2 weeks notice to their landlord in such circumstances. (Modification of Section 86 (2) of the Act would be necessary.)

Recommendation 92:

Shelter SA recommends that Social Housing Providers be required to give 4 weeks notice of an offer of social housing to tenants who have a fixed-term lease in private rental, and that tenants who have a fixed-term lease are only required to give 4 weeks notice to their landlord in such circumstances. (Modification of Section 86 (2) of the Act would be necessary.)

Discussion point 7: Disclosure of Landlord's Name and Address

If a landlord has appointed an agent, should their details be provided to the tenant, as currently required?

Shelter SA considers that the tenant has a right to know whom the landlord is, regardless of whether they have appointed an agent. The agreement is after all, between the tenant and the landlord, not between the tenant and the agent, and therefore the landlord's name and postal address should be provided.

For the tenant, not knowing whom they are ultimately dealing with further adds to the power imbalance already inherent in a tenant-landlord relationship. It also makes it possible for the tenant to check if the agent is acting on the instructions on behalf of the landlord or not, without going to the Residential Tenancies Tribunal

Recommendation 93:

Shelter SA recommends that the current provisions under section 48(1) and (3) of the Act remain as they are.

Discussion point 8: Section 90 of the Act

A. Should the Act retain the mechanism for an “interested party” to obtain an order terminating the tenancy agreement?

No. Shelter SA considers that Section 90 unfairly discriminates against renters, as they can be taken to the RTT for possible eviction, whereas people who own their own house or are paying it off cannot. This Section of the Act can be used to unfairly discriminate against certain groups of people. Shelter SA considers that all neighborhood disputes can be resolved using other existing mechanisms such as mediation services.

On some occasions the SA Housing Trust encourage tenants to take other tenants to the Residential Tenancies Tribunal rather than deal with the situation itself, which creates a very adversarial and conflictive environment, pitting tenant against tenant.

Section 65(1) (c) of the Act states that:

“It is a term of a residential tenancy agreement that –
the landlord will take reasonable steps to prevent other tenants of the landlord in occupation of adjacent premises from causing or permitting interference with the reasonable peace, comfort or privacy of the tenant in the tenant’s use of the premises.”

If the entire Act were to apply to Public Housing tenants, then Section 65 would apply. This would provide a better mechanism for the resolution of disputes, than expecting tenants to take the matter into their own hands.

As landlords can already apply to the Tribunal for termination of the tenancy, based upon disruptive or illegal behaviour, Section 90 can be deleted from the Act.

Recommendation 94:

Shelter SA recommends that all landlords make more, and earlier, use of mediation services in their disputes with tenants.

Recommendation 95:

Shelter SA recommends that Section 90 be deleted from the Act.

B. If the mechanism in section 90 remains, how should it be enforced?

See recommendation above.

Recommendation 96:

Shelter SA recommends that IF Section 90 remains in the Act, the SA Housing Trust, the Aboriginal Housing Authority, and Community Housing organisations need to bring actions to the Tribunal, as landlords.

Recommendation 97:

Shelter SA recommends that IF Section 90 remains in the Act, action should be based on confidential, sworn, written statements of the nearby neighbors, rather than those neighbors having to enter the adversarial environment of the Residential Tenancies Tribunal hearing.

Discussion point 9: Acceptable Behavior

Should the Act include additional powers for the Tribunal to vary a tenancy agreement to include ‘acceptable behavior conditions’, or to change the form of a tenancy to a limited tenure conditional tenancy?

Restraining Orders are currently provided for under the section 112 of the Act.

Shelter SA considers that the Act should not include additional powers for the Tribunal regarding acceptable behavior conditions. Shelter SA opposes principles such as “tenure demotion” which may be the ‘thin edge of the wedge’ in weakening security of tenure provisions within Social Housing.

Such powers would discriminate against tenants (when compared to homeowners or purchasers who might have similar behavior), and would be almost impossible to effectively monitor and enforce.

Recommendation 98:

Shelter SA recommends that the Act should not include additional powers for the Tribunal regarding acceptable behavior conditions.

Discussion point 10: Restraining Orders

Should the Act extend the powers of the Tribunal to make restraining orders to prevent repeated anti-social behaviour, in addition to the existing powers where there is a risk of serious damage or personal injury?

Shelter SA considers that the Act should not be extended to make restraining orders regarding anti-social behaviour. It is difficult to define ‘anti-social behaviour’ and very difficult to prove. Such orders would be difficult to enforce.

Recommendation 99:

Shelter SA recommends that the Act should not include additional powers for the Tribunal to make restraining orders regarding anti-social behaviour.

Discussion Point 11: Professional Witnesses

Should “professional witnesses”, such as staff of the public housing authority, be permitted to represent complainants at Tribunal hearings?

There is a legitimate concern about possible retribution against people using Section 90 to seek an eviction order based on the behaviour of a neighbour who is renting. However, the applicant(s) are currently required to submit a written application with the details of their complaint, and their name, address and telephone number, which is then forwarded to the person that they are complaining about. There have been cases of intimidation and harassment at this stage of the proceedings, with the applicants not realising that all their details would be passed on to the person that they submitted a complaint about. Therefore the use of a professional witness would not necessarily prevent harassment or fears of retribution.

Furthermore, if a “professional witness” at a hearing of the Tribunal simply reads out a statement that they have taken from the applicant(s), this will not prevent possible retribution, as the name and address of the applicant will be made public at that time. It is likely that this arrangement would be unsatisfactory from the point of view of the Tribunal Member, as they would not be able to ask the applicants questions or clarify statements, which would hinder their ability to make a sound judgement.

If the “professional witness” does more than simply read out a written statement, and answers questions and seeks to provide further clarification, then they will be speaking on behalf of the applicant(s), and will therefore be seen to “take sides”. If the professional witness is a staff of the Housing Trust or Aboriginal Housing Authority, and they believe that the case has merit (and of course that the person the complaint is about is one of their tenants), it would be more appropriate for them to take the tenant in question directly to the Tribunal themselves, as the landlord, rather than tenants having to initiate the action.

Shelter SA considers that Section 90 of the Act should be abolished (refer to Discussion Point 8 above), which would make the discussion about “professional witnesses” irrelevant.

Recommendation 100:

Shelter SA recommends that Section 90 be deleted from the Act, but if it is retained, changes should be made to the application form to ensure that information such as telephone numbers of applicants are not forwarded to the person whom the complaint is about, and that applicants are clearly advised that other information will be forwarded.

Recommendation 101:

Shelter SA recommends that tenant applicants should not be required to state their telephone number during Tribunal hearings.

Recommendation 102:

Shelter SA recommends that Section 90 be deleted from the Act, but if it is retained, that the use of “professional witnesses”, such as the staff of the SA Housing Trust or The Aboriginal Housing Authority, not be permitted to “represent” applicants at Tribunal hearings, but should be bringing the action to the Tribunal as landlord.

Other Points Relating to Representation in Proceeding Before the Tribunal:

Section 113(3) of the Act gives the right for real estate agents to represent the owner of a property they are managing at a Tribunal hearing. However, advocates assisting tenants are required to satisfy a requirement that *“the party is unable to present the party’s case properly without assistance”*.

Shelter SA submits that this situation can be very disadvantageous to tenants, who may be appearing at the Tribunal for the first time, and have little knowledge of either the parameters of the legislation or the procedures involved. In contrast, real estate agents are experienced professionals with a good working knowledge of the law and a familiarity with the dispute resolution mechanism.

Recommendation 103:

Shelter SA recommends that Section 113 of the Act be amended so that if a landlord is represented by an agent, then a tenant can be represented and assisted by their advocate.

Discussion point 12: Termination by Landlord

A. Should the 14-day requirement be reduced?

Any period less than 14 days would result in terminations being ordered in situations of temporary short-term financial distress on the part of the tenant. Many people are only paid once a fortnight, so if the tenant had unforeseen essential expenses (such as medical expenses), any period less than 14 days would not provide the tenant with an opportunity to remedy the situation before receiving a notice of termination.

Recommendation 104:

Shelter SA recommends that the 14-day notice of termination should not be reduced.

B. If so, what would be an appropriate timeframe?

(Not applicable)

Discussion point 13: Frequency of Notice for Breach of Agreement

- A. Is there any appropriate mechanism by which the Act should attempt to deter tenants from paying rent in arrears and remedying only upon service of a Form 2 notice or upon notification of a Tribunal hearing date?**

Shelter SA considers that tenants do not deliberately use this process, except in circumstances of financial difficulty, or because they have difficulty with budgeting.

Recommendation 105:

Shelter SA recommends that a list of Financial Counsellors be included in the “Information Brochure” about the Residential Tenancies Act that is required to be given to the tenant by the landlord upon entering an agreement. In addition, a list of Financial Counsellors and a suggestion to contact them could be sent out with any correspondence regarding Rent Arrears/ Form 2.

Recommendation 106:

Shelter SA recommends that OCBA, instead of using Form 2, develop a form that is specifically about rent arrears, outlining the courses of action a tenant may take to resolve the rent arrears, and informing the tenant that failure to remedy the situation may lead to eviction.

- B. Should a landlord be entitled to apply to be granted vacant possession by the Tribunal where a specified number of valid Form 2 notices have been issued to a tenant for a failure to pay rent?**

Shelter SA considers that the landlord should not be able to apply to be granted vacant possession by the Tribunal where a specified number of valid Form 2 notices have been issued to a tenant for a failure to pay rent. This is because the consequences on the tenant and his/her household of being evicted are much more serious, compared with the inconvenience caused to the agent/landlord by the necessity of issuing a Form 2.

Recommendation 107:

Shelter SA recommends that the landlord should not be able to apply to be granted vacant possession by the Tribunal where a specified number of valid Form 2 notices have been issued to a tenant for a failure to pay rent.

- C. If so, should the length of tenancy have a bearing on this number?**

Every citizen has been late in paying a bill at some time. One of the aims of the Act is for tenancies to be successful and sustainable. Thus information on financial counselling will help tenants pay their rent on time.

Discussion point 14: Effect of Form 2 Notice on Tenants' Liability

If a tenancy is terminated as a result of a breach by the tenant and the landlord issues a Form 2, should the tenant's liability be assessed as if they terminated the lease, irrespective of whether the tenant vacates before the date specified in the Form 2?

Shelter SA considers that tenants do not deliberately use the "Form 2 process" if they wish to end a fixed term tenancy early. If they do breach a condition of the tenancy, and expenses are incurred (e.g. rent arrears) then the landlord is able to recover such expenses from the bond.

Recommendation 108:

Shelter SA recommends that there be no changes to Section 80 of the Act, "Notice of termination by landlord on grounds of breach of the agreement".

Discussion point 15: Requirement of Attendance for Vacant Possession

A. Should the Act dispense with the requirement of attendance by the parties for vacant possession applications?

Shelter SA considers that the low rate of attendance by tenants is in part due to the fact that SA is the only state in Australia that does not have an independent Tenants' Advice and Advocacy Service, and therefore tenants are not well informed about their rights or the importance of attending the Tribunal hearing in order to present their case.

Evicting someone from their house is not something that should be done lightly, but with full consideration of all of the facts, and therefore it is important that the parties have the opportunity to present their case to the Tribunal member.

Recommendation 109:

Shelter SA recommends that the Act should not dispense with the requirement of attendance by the parties for vacant possession applications.

Recommendation 110:

Shelter SA recommends that the tenant must be clearly informed in writing of the "Order of Possession of the Premises", and the tenant should also be given information at that time about what will happen with any goods that remain in the house, how and when access to the property can be gained, and be given the telephone number and information about an independent Tenants' Advice and Advocacy Service.

B. If so, how should proof of service be required?

Posting a notice of a hearing to the tenant at the address of the rented premises should be sufficient to get the notice to the tenant. The issue seems to be that most tenants do not appear before the Tribunal when they receive a notice. This may be because they have difficulty getting to hearings.

Recommendation 111:

Shelter SA recommends that with any notice to appear, the Tribunal should send information about how hearings are conducted.

Recommendation 112:

Shelter SA recommends that the Tribunal hold more suburban and country hearings.

Discussion point 16: Requirement for Attendance for Repayment Plans

Should the parties be permitted to seek such orders (regarding repayment plans for rent arrears) without the need for attendance by either of them, on application and the production of the relevant documents?

Shelter SA has a number of questions in regard to the above proposal: What constitutes relevant documents? How can the Tribunal know if the signature (e.g. of tenant) is valid? How can one be sure that the tenant receives a copy of the conditional order? How can one be sure that the tenant understands what can happen if they do not comply with the agreement/ conditional order?

In addition, Tribunal members play the important role of ensuring that the repayment plan is reasonable, taking into account the income and other necessary expenses of the tenant. Without a Tribunal hearing there is a possibility that tenants could feel forced to sign an agreement that they know they will not be able to keep to, or not be aware of the consequences of not complying with the order. This may then cause an increase in people being evicted due to breaking the conditional orders.

Recommendation 113:

Shelter SA recommends that parties should not be permitted to seek conditional orders regarding repayment plans without both parties' attendance at the Tribunal.

Discussion point 17: Time Limit for Enforcement of Order

A. Should the legislation remove this doubt by prescribing a time limit by which an order must be enforced?

Shelter SA considers that there should be a time limit prescribed and that 2 weeks would be sufficient.

B. If so, what should this be?

Recommendation 114:

Shelter SA recommends that the time limit for enforcement of vacant possession orders should be two weeks from the date set by the Tribunal.

Discussion point 18: Vacant Possession and Request for Bailiff

- A. Should a tenant be afforded another opportunity to be heard before enforcement is effected?

Recommendation 115:

Shelter SA recommends that so long as due process has been followed up until this point (i.e. Tribunal hearing gives vacant possession to landlord, tenant does not vacate, and bailiff is called), then it is not necessary to afford the tenant another opportunity to be heard.

- B. Should a landlord be required to provide a written account of what has happened between the landlord and the tenant after the date of the hearing and before the enforcement is requested?

Recommendation 116:

Shelter SA recommends that the landlord not be required to provide a written account of what has happened between the landlord and the tenant after the date of the hearing and before the enforcement is requested.

- C. Alternatively, is a legislative amendment required to remove any doubt that the landlord is entitled to request enforcement without the tenant being informed?

Recommendation 117:

Shelter SA recommends that the Tenancies Branch advise the tenant that the bailiff has been called, in cases where the tenant is on a Conditional Order (e.g. for rent arrears) and breaks a condition.

Recommendation 118:

Shelter SA recommends that the tenant must be clearly informed in writing of the "Order of Possession of the Premises", that the landlord/ agent has the right to call the bailiff during a specified period, that the tenant will be required to leave when the bailiff arrives, and that no further notice shall be given.

Recommendation 119:

Shelter SA recommends that at the time of eviction, the tenant should also be given information about what will happen with any goods that remain in the house, how and when access to the property can be gained, and be given the telephone number and information about an independent Tenants' Advice and Advocacy Service.

Discussion point 19: Process to Vary or Set Aside an Order

- A. Where a landlord has been granted orders giving him or her vacant possession of the premises for the non-payment of rent, should the process to *vary or set aside* still be available to the tenant on grounds other than lack of notice?**

Recommendation 120:

Shelter SA recommends that other grounds, such as not being able to attend the hearing due to an emergency, provision of new evidence, etc. be permitted in the process to vary or set aside orders.

- B. Should the legislation prescribe a time limit for lodging an application to vary or set aside an order for vacant possession?**

Recommendation 121:

Shelter SA recommends that if there is a valid reason why the order should be varied or set aside, the tenants must lodge an application with the Residential Tenancies Tribunal to vary or set aside the order within 7 days after the order has been posted to the address of the tenant

Discussion Point 20: Advice and Advocacy Service

A. Is there a demonstrable need for a tenants' advocacy service?

Recommendation 38 (repeated):

Shelter SA recommends that an independent, non-government Tenants Advice and Advocacy Service to be established to assist all renters.

Please refer to Section A of this submission, Key Issue 6, Tenants' Advice and Advocacy Service.

B. Is there a demonstrable need for an advocacy service for unrepresented landlords?

Landlords are able to receive advice and support from the Landlord's Association, or information about the Residential Tenancies Act from the "Landlords and Tenants Advisory Service" (OCBA). Shelter SA considers that there is a demonstrable need for an advocacy service for unrepresented landlords.

Recommendation 122:

Shelter SA recommends that unrepresented landlords be required to attend a half-day seminar about the Residential Tenancies Act, to ensure that they have an adequate understanding of their rights and responsibilities under the Act.

C. If such services are to be provided, who should administer them and what features should they have?

Objectives of a Tenants' Advice and Advocacy Service for South Australia

- (1) To improve and protect the rights of all people in South Australia who are tenants of public or community housing, tenants in the private rental market, residents of Boarding Houses and (long-term) Caravan Parks.
- (2) To ensure a fair balance of power between a tenant and a landlord
- (3) To provide a service that people are confident is acting in their best interests, that is tenant-focused and not part of a government department.
- (4) To empower tenants to be able to use information about their rights and responsibilities to improve their own housing situation.
- (5) The role of the Tenants' Advice and Advocacy Service would be to:
 - a. Assist people by taking up cases of blatant discrimination, helping people to be better informed about accessing the Private Rental Market, and assisting tenants with advice about a range of topics including:
 - starting a tenancy
 - bond/ deposit issues
 - share accommodation

- privacy and access
 - rent
 - repairs and maintenance
 - termination of tenancy
 - evictions
- b. Provide information and advice to tenants regarding their rights and responsibilities regarding the Residential Tenancies Act,
 - c. Helping them to understand the meaning of the relevant sections of the act,
 - d. Outlining the options available to the tenant, and the possible consequences of each of those actions. This would be achieved primarily through a telephone advice line, publications and some face-to-face contact where deemed necessary.
 - e. Encourage the tenants to advocate on their own behalf, but where the tenant is unable to do so, to provide support and advocacy on an individual basis.
 - f. Assisting tenants who face imminent eviction from their home.
 - g. Represent tenants at Residential Tenancy Tribunal hearings, when deemed necessary
 - h. Monitor the performance and effects of tenancy laws through daily contact with tenants and housing services.
 - i. Educate tenants and the broader community about tenancy law and tenants' rights, and in particular to address issues affecting low-income tenants and to improve access to tenancy information services for tenants who are most disadvantaged in the private rental market.
 - j. Undertake research about issues related to tenancies and the rental market, and develop campaigns to improve conditions for South Australian tenants through changes to tenancy laws and government housing policies.
 - l. Seek to ensure that tenants' views are heard and that policy makers ensure tenants receive fair and equitable treatment.
 - m. Train other people or organisations that might be working in the area of tenancy law or assisting tenants
 - n. Engage in systematic and systemic advocacy and law-reform related to tenancy issues, using the direct service-delivery work and contact with tenants to inform their position.
 - o. Represent the collective interests of tenants and monitor developments and issues that impact on residential tenants' rights and responsibilities. Represents tenants' views to government, industry and community sectors, including developing submissions on issues of relevance to

tenants in response to reviews conducted by Local, State and Commonwealth government bodies.

- p. Casework would include conducting test cases that seek to achieve favourable Tribunal or court decisions for tenants.

If such a service is to be provided, who should administer it and what features should it have?

- (1) The service must operate in the interests of the tenant, be independent and self-governed, and accountable to the government and the general community,
- (2) The service should be administered by a non-government, non-profit, community-based incorporated organisation.
- (3) The service should be free of any real or perceived conflict of interests: e.g. an organisation that is also a landlord should not run the service.
- (4) The service should ensure that there is adequate access to people from regional areas, and that it is culturally appropriate to indigenous people and people of non-English speaking backgrounds.

FUNDING:

Currently tenants, through the interest generated on their bonds, are paying entirely for the services provided by the Office of Consumer and Business Affairs Tenancies Branch and the Residential Tenancies Tribunal. This is despite these services being provided to landlords, real estate agents and managers of properties as well as tenants.

Statistics from the Tenancies Branch and the Residential Tenancies Tribunal show that from 1 January to 31 December 2002, 9216 (80%) applications were lodged by private landlords / agents, 478 (4%) by the SA Housing Trust / the Aboriginal Housing Authority, 208 (2%) by interested persons, and only 1609 (14%) by tenants.

Clearly, landlords, either directly or via agents benefit greatly from the services provided directly through the interest on tenants' bonds. Currently there is \$38 million dollars in bond money in the Residential Tenancies Fund.

Landlords and agents do not contribute to the costs of operating the Office of Consumer and Business Affairs Tenancies Branch or the Residential Tenancies Tribunal. In particular, it is surprising that the real estate industry does not contribute to the costs of operating such services given the professional nature of their own services and the for profit motivation. It is also surprising that tenants pay exclusively for the services provided to landlords and agents, even when the use of such services are applied to their detriment (such as an application to the Residential Tenancies Tribunal for an eviction order). Little is spent to either pay tenants their own interest monies (generated from the bond) or to provide services for the specific and unilateral benefit of tenants. Tenants currently receive interest (at 0.1%) on their bond monies when they claim their bond at the end of a tenancy.

Given the nature of funding to the Tenancies Branch and Residential Tenancies Tribunal, Shelter SA believes a service should be established which will provide a universal benefit to tenants regardless of the amount of bond they pay. Such a service should be made available for the exclusive use and benefit of tenants. The reason why funds for such services are not currently available is that the resources are being used to provide services to all parties to a tenancy agreement. The 2001 – 2002 Commissioner for Consumer Affairs Report states that as of June 2002 there was a total of \$48,658,921 held in residential bonds.

Landlords/ agents should be required to pay a fee to lodge a bond, with the strict understanding that this cannot then be charged to the tenant. In this way, they would help to pay for a service that directly benefits them, and part of the money from the interest earned on tenants' bonds can be used to fund a Tenants' Advice and Advocacy Service

Recommendation 123:

Shelter SA recommends that landlords/ agents be required to pay a fee to lodge a bond, with the strict understanding that this cannot then be charged to the tenant.

Recommendation 124:

Shelter SA recommends that money from the interest earned on tenants' bond money should be used to fund a Tenants' Advice and Advocacy Service.

Discussion point 21: Public and Community Housing

A. Are South Australian Housing Trust tenancies covered appropriately by the Residential Tenancies Act?

No. Refer to Section A, Key Issue 1, "Improving Coverage of the Act: Public Housing"

Recommendation 4 (repeated):

Shelter SA recommends that Public Housing tenancies be fully covered under all aspects of the Residential Tenancies Act.

Recommendation 125:

Shelter SA recommends that the Aboriginal Housing Authority should also be specified in all instances where the SA Housing Trust is mentioned specifically in the Act.

Recommendation 126:

Shelter SA recommends that the Housing Improvement Act should apply to public housing (SAHT and AHA) customers.

B. Are Community Housing tenancies covered appropriately by the Residential Tenancies Act?

Refer to Section A of this submission, Key Issue 2, "Security of Tenure: No reason terminations".

Recommendation 10 (repeated):

Shelter SA recommends that housing associations not be permitted to terminate a tenancy without specifying a just ground of termination.

Discussion Point 22:

Any outcome from this review that results in broadening the scope of the current Act, or introducing any other form of statutory protection, will impact on the capacity of these services to remain self-funding. Consideration would therefore have to be given to other options or sources of funding for these services.

Please refer to page 71: Funding

EXTRA ITEM

Share Housing

One way people on low incomes survive is to move into share housing. Often there are disputes within the house about a number of issues. An agreement might help prevent or resolve some issues. This agreement is to be used as guide by people considering share housing, and to promote consideration of house management issues prior to entering into a share house agreement. While it is not intended that the model share housing agreements be binding in any way, it may be possible to refer to it in the resolution of disputes between tenants. (pg. 8, The Fair Share, NSW)

Recommendation 127:

Shelter SA recommends that the OCBA facilitate the development of a model share housing agreement covering matters between occupants of share housing, including sections regarding the development of appropriate arrangements for payment of utilities, rent and other bills and suggested means of resolving disputes.

END