



**Shelter SA**  
Housing: a basic human right

**Critique of Submissions to the  
review of the Residential Tenancies  
Act**

**Part I: The critique—for all  
interested stakeholders**

**Part II: A guide for parliamentary  
debate on the RTA Amendment Bill**

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# Critique of Submissions to the review of the Residential Tenancies Act

## Introduction

In 2011 Consumer and Business Services (CBS) called for submissions to a review of the Residential Tenancies Act (RTA) and a discussion paper that was prepared by CBS. Shelter SA made a submission, along with 50 other organisations and individuals. Shelter SA's submission is available on the Shelter SA website at: [www.sheltersa.asn.au](http://www.sheltersa.asn.au). Anglican Community Care and Grandparents for Grandchildren endorsed Shelter SA's submission.

## Part I

This paper summarises the submissions to the review of the RTA and CBS' discussion paper and the balance of stakeholder responses. The rationale for producing this paper developed from the discussions that occurred in the House of Assembly in November, 2012 (accessed through Hansard) around the RTA Amendment Bill. Parliamentary members, who did not have access to the submissions at that time, based their discussions on personal experience rather than evidence. This paper provides a useful piece of evidence for parliamentarians and interested stakeholders to refer to.

Of the submissions<sup>1</sup>, those that were made in the name of individuals overwhelmingly represent the landlord's point of view and strongly advocate for an increase in bonds and against the recommendation of negotiating inspection times and conducting these within a 2-hour window. It is **commendable that CBS and the Attorney-General's Department** withstood this pressure in the drafting of the RTA Amendment Bill and considered the needs and rights of tenants.

Shelter SA does not imply that landlords do not care for their tenants, indeed there are many cases of landlords and tenants being respectful of one another and having excellent relationships. However, weighing a basic human need (shelter) against neoliberal<sup>2</sup> prerogatives evidences an inherent imbalance in the system (in favour of those that wield

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<sup>1</sup> A list of individuals and organisations that made submissions that were subsequently made available online is listed in **Appendix 1**.

<sup>2</sup> Neoliberalism refers to a market economy that is premised on economic liberalisation, free trade and privatisation. It is a market in which the fittest survive.

economic power in the form of property investment) that requires a detailed reconsideration of the way the private rental market works.

The major theme to emerge from Shelter SA's review of the submissions articulates the power imbalance between landlords and tenants. A number of 'hot topics' also emerged, including:

- The power imbalance between tenants and landlords;
- Proposed standard tenancy form agreements;
- Rent in advance;
- Compensation;
- Water accounts;
- Serving of Form 2 notices;
- Bond and negotiation of entry times;
- Accreditation of property managers;
- Disincentives to investment in the rental market;
- Pets;
- No cause eviction (s83);
- Discrimination.

## **Part II**

Part II of this paper outlines Shelter SA's specific recommendations for the RTA Amendment Bill. This section provides specific direction for deletion or re-wording of sections and subsections in both the RTA Amendment Bill and the existing RTA. Members of the Legislative Council especially are encouraged to read and carefully consider the recommendations in Part II of this paper.

## Part I

### Balance of responses

There are a total of 51 submissions to the review of the Residential Tenancies Act and CBS' discussion paper on the Attorney-General's Department website at: <http://www.agd.sa.gov.au/newsroom/new-initiatives/submissions-review-residential-tenancies-act>.

32 submissions were lodged in individuals' names; however a number of these were made by property managers, either on their own behalf, or on behalf of their company, although this was not always clear. For the purposes of this review, these submissions are categorised as coming from landlords. Of submissions made in individual's names 7 were from tenants, 15 were from landlords, and 10 were indeterminable, as it was not clear whether they were written from a tenant or landlord perspective. Of the submissions that were determinable<sup>3</sup> however, the number of submissions from landlords was double those of submissions from tenants.

Of the remaining submissions:

- 19 were from organisations;
- 5 were from government divisions;
- 5 were from support and service organisations;
- 4 were from peak organisations (2 representing the interests of community housing organisations and landlords and property managers, and 2 representing vulnerable people);
- 3 were from resident associations;
- 1 was from the landlords association;
- 1 was from a real estate company.

### Major theme: Power

A well-known dynamic that played out in the submissions is the power imbalance that exists between landlords and tenants. This is evident in the number of submissions from the landlord's perspective that were lodged in individual's names and also in the experiences and wants shared by tenants and landlords.

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<sup>3</sup> The perspective was determined by self-identification in the submission as either a tenant or landlord.

In one submission the stress of enduring open house inspections that began soon after signing an 18 month lease was discussed from the tenant perspective. In another submission a tenant spoke about how they felt intimidated by a property manager when they sought to have their property secured after a break-in, ultimately resulting in an eviction under s83 of the RTA. At the heart of these submissions is a sense of disempowerment and lack of control over the home environment that is experienced by some tenants. This was explained well in one submission from the tenant perspective (anonymous):

Tenants are frequently disempowered in comparison to owners and agents yet they must attempt to create a home for themselves and their families in reasonably unstable environments...having a safe and stable home environment is a necessary foundation for any citizen to build a life for themselves and their families...

Submissions from landlords discussed being left with costs and dealing with tenants who damaged their properties. In many submissions rental properties being owned by 'mum and dad' investors and rental housing making-up part of superannuation portfolios was discussed. The importance of protecting the landlord's investment was spoken about, which is couched in the broad ideology of neoliberalism. However people living on low incomes are often excluded and disadvantaged and get left behind in a neoliberal economy.

## **'Hot Topics'**

### CBS' recommendations

Many of the submissions responded to CBS' discussion paper with considered responses to many of CBS' recommendations, including those on bond refunds, instructions on use of equipment and storage of abandoned goods with a number of recommendations that appeared to be 'hot topics'.

CBS' recommendation of introducing a standard form tenancy agreement was met with concerns over how one form could be responsive to differing situations and needs. Submissions made by landlords, property managers and groups also raised concerns over only being able to ask for 4 weeks rent in advance when rent is over \$600 per week. The contention was that lower cost housing often sustains more damage than more costly housing, however it is unclear whether this assumption plays out in practice.

Concern was also raised over CBS' recommendation that landlords would be responsible for compensating tenants for their reasonable losses from a failure to carry out repairs. In one submission it was commented that tenants may not respond in a timely manner to landlord attempts to carry out repairs. However, if the tenant's goods are at risk such concerns are a moot point.

There was also discussion in the submissions about the way that water accounts are managed in response to CBS' recommendation that landlords and agents are to pass accurate particulars onto tenants. There were queries over why tenants are not provided with the bill directly.

CBS' recommendations that relate to the periods given to serve Form 2 notices and the ability to claim compensation for abandonment were largely applauded by landlords, property managers and groups.

These 'hot topics' are heavily weighted in favour of the landlord perspective, simply because there were a greater number of submissions from landlords.

#### Bond and negotiation of entry times

Many of the submissions from landlords, landlord groups, property managers and related groups strongly advocated for an increase in bonds and against the recommendation of negotiating inspection times and conducting these within a 2-hour window on the basis that it would complicate their current practices and inconvenience landlords and property managers. **CBS and the Attorney-General's Department are to be commended** for withstanding this pressure and weighing the basic needs and rights of tenants (who were underrepresented amongst the submissions) to quiet enjoyment and access to housing with the desires of landlords.

#### Accreditation

A number of submissions raised the issue of accreditation for property managers. This is a note-worthy recommendation because it was **supported by both tenant and property manager stakeholders**. The Real Estate Institute of South Australia (REISA) currently offers training, but not all property managers and property management bodies are required to be members and engage in training. This is an area that requires further investigation outside

of legislation with the cooperation of the State Government, REISA and property management groups.

### Disincentives

REISA conducted a consultation with their members throughout South Australia and their submission highlighted that stamp duty and land tax act as disincentives to investment in the rental market by landlords. If rental properties are purchased as investments then the viability of that investment is clearly of the utmost importance. Incentives and disincentives to investment must not be confused with tenancy legislation. Multiple research projects have shown (Wait, 2000; Paris et al 1991; Kennedy et al 1994; Seelig et al 2006) that ‘...there is no discernible effect on the supply of private rental housing from the introduction of reforms to tenancy legislation’ (Wait, 2000).

### Pets

‘Pet bonds’ were proposed by landlords and property management groups in response to concerns about damage caused by pets. Petcare Information and Advisory Service (PIAS) and an individual discussed the importance of being able to have pets in a rental property. PIAS quoted research that showed that pet owners were more likely to be responsible and maintain their homes than non-pet owners. Shelter SA maintains that a ‘pet bond’ is another barrier to housing for people living on low incomes, and resonates with neoliberalism as it is a bargaining tool that is at the disposal of landlords who are more likely to have the ability and capacity to negotiate tenancy terms that are in their favour.

## **Important Issues**

### No cause eviction must be removed

Submissions from individuals, the Department of Communities and Social Inclusion (DCSI) and Shelter SA discussed the no-cause eviction (s83). Adjunct Associate Professor Michelle Slatter described the failure to address s83 of the Residential Tenancies Act as a ‘missed opportunity’. She writes that:

A strong case may be mounted that this provision in the context of the Act breaches basic human rights. The Tribunal has no overriding discretion, as is found in overseas legislation. This means that s83 constitutes an occasion of arbitrary eviction...It’s time that s83 was repealed.

The DCSI submission states that Housing SA would like to see s83 abolished as a means to provide better security of tenure, a point which is also raised in the Shelter SA submission.

### Discrimination

DCSI and Shelter SA also raised the issue of discrimination in submissions. A recommendation to broaden s52 to incorporate references to anti-discrimination was addressed by both organisations. A submission made by an individual also raised the issue of discrimination faced by people from culturally and linguistically diverse backgrounds.

### Conclusion

This summary highlights the major issues raised in submissions made to the review of the RTA and CBS' discussion paper that appear on the Attorney-General Department's website. The majority of submissions were presented from the point of view of landlords, property managers and associated groups. However, a number of other themes emerged from submissions that highlight the importance of addressing power imbalances, no cause evictions and discrimination in the private rental market. If you require any further information please contact Dr. Alice Clark, Executive Director of Shelter SA 0425 060 649 or [alice.clark@sheltersa.asn.au](mailto:alice.clark@sheltersa.asn.au).

## Part II

### Shelter recommendations to the RTA Amendment Bill

#### Section 37 (2)

The proposed change from 3 to 1 month to vary or set aside an order should be abandoned and the 3 month deadline maintained. Wording to appear in the legislation as below:

“An application to vary or set aside an order must be made within three months of the making of the order (unless the Tribunal allows an extension of time).”

#### Section 49 (4)

Delete “A failure to comply with this section does not make the residential tenancy agreement illegal, invalid or unenforceable”.

#### Section 52 (1)

Expand this section to read as below:

“A person must not refuse to grant a tenancy to another on the ground that it is intended that a child, Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse peoples, people living on low incomes, younger people, older people, people living with a disability, or any other person as detailed in sections 40, 62, 77, 85L and 85ZH of South Australia’s Equal Opportunity Act, 1984; section 23 of the Sex Discrimination Act, 1984; section 29 of the Age Discrimination Act, 2004; section 12 of the Racial Discrimination Act, 1975; and section 25 of the Disability Discrimination Act, 1992 should live on the premises.”

#### Section 52 (2)

Expand this section to read as below:

“(2) A person must not—

- (a) instruct a person not to grant; or
- (b) state an intention (by advertisement or in any other way) not to grant,

a tenancy on the ground that it is intended that a child Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse peoples, people living on low incomes, younger people, older people, people living with a disability, or any other person as detailed in sections 40, 62, 77, 85L and 85ZH of South Australia’s Equal Opportunity Act, 1984; section 23 of the Sex Discrimination Act, 1984; section 29 of the Age Discrimination Act, 2004; section 12 of the Racial Discrimination Act, 1975; and section 25 of the Disability Discrimination Act, 1992 should live on the premises.”

#### Section 52 (3)

Delete.

**Section 61 (3)**

Delete.

**Section 61 (3) (b) (ii)**

Change from 6 weeks rent to 4 weeks rent to read:

“In any other case—4 weeks rent under the agreement.”

**Section 78A (1)**

This amendment should read:

“Faults that may give rise to compensation for costs or expenses under this section:

Dishonouring of a cheque provided by the tenant;

Failure of a transaction for the transfer of funds from the tenant to the landlord.”

Delete “the loss by the tenant of a record or document”.

**Section 83**

Delete.

**Section 83A**

Delete.

**Section 90 (3) (c)**

Delete.

**Section 94 (3)**

Should read:

“If a tenant has abandoned premises, the landlord is entitled to compensation for loss of rent and the costs of re-tenanting caused by the abandonment.”

**Section 99I (3, 4)**

Delete. There should be **no fee**.

## References

Kennedy, R., See, P. and Sutherland, P. 1995. *Minimum Legislative Standards for Residential Tenancies in Australia*. Commonwealth Department of Housing and Regional Development, Canberra.

Paris, C., Randolph, W. and Weeks, P. 1991. *Impacts on Investment Market Changes Following Changes to Landlord and Tenant and Associated Legislation*. Paper for the National Housing Strategy, Canberra.

Seelig, T., Burke, T. and Morris, A. 2006. *Motivations of investors in the private rental market*. Australian Housing and Urban Research Institute.

Wait, K. 2000 (June). *How can tenancy law contribute to improved housing outcomes? Parity*. Council to Homeless Persons.

## **Appendix 1: List of Submissions**

### **Submissions from organisations**

Ac Care  
Community Housing Council of SA  
Consumer Association of SA  
Council on the Ageing  
Department for Communities and Social Inclusion  
Department of Broadband Communications and the Digital Economy  
Education Adelaide  
Elizabeth Village Residents Representative Committee  
Grandparents for Grandchildren  
Landlords Association of SA  
Law Society of SA  
MALSSA Disability Rights Advocacy Service  
Petcare Information and Advisory Service  
Professionals Christies Beach  
REISA  
SA Health  
SA Residential Parks Residents Association  
SA Retirement Villages Residents Association  
Shelter SA

### **Submissions made in the names of individuals**

Anonymous  
Anonymous  
Anonymous  
Anonymous  
Mr Andrew Baldwin  
Mr Ben Tenant  
Mr Donato Zillante  
Mr Henry Sodomka  
Mr Jack Eskenazi  
Mr Mario Leuci  
Mr Mark Nielsen  
Mr Matthew Greenrod  
Mr Michael Bampton  
Mr Peter Eden  
Mr Peter Kendall  
Mr Peter Millard  
Mr Phil Harrison  
Mr Ray Scheuboeck  
Mr Richard Abbott  
Mr RD and Ms VC Dunstone  
Mr Salvatore Rizzo  
Mr Steve Impett  
Mr Stuart Schilling

Mr Vince Maio  
Ms Deborah Fyfe  
Ms Lesley Habel  
Ms Lil Hughes  
Ms Michelle Slatter  
Ms Nicole Harb  
Ms Nissa Ling  
Ms Rebecca Day  
Ms Shari Wallent