



# What happens to your bond when you leave?

Residential Tenancy Bonds – A Discussion Paper

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# Residential Tenancy Bonds - Discussion Paper

## Introduction

Across Australia residential tenancies are administered under State legislation, so often rights and responsibilities of tenants and landlords differ from one State to another. In South Australia residential tenancy bonds and the rules applicable to them are legislated under the *Residential Tenancies Act 1995*.

In recent years new products such as insurance for bonds and bond loans are trying to make their way into, and disrupt the residential tenancies bond market, so bond regulators around the country are having to consider these new market forces and how they might fit or not within current legislation and whether changes should and will be made to accommodate them.

In South Australia, Consumer and Business Services have 'Alternative Bond Products' listed as something to be considered in their Strategic Plan and the State Government has been considering how to reduce the escalating cost of their bond guarantee program for some time. With the number of people experiencing unemployment rising dramatically recently due to the pandemic, the number of people eligible for public bond guarantee assistance will increase.

Additionally, there are many worrying anecdotal stories about bonds which, if proven to be true, are of great concern as to how effective the current regulation is in protecting tenants from illegal treatment.

This paper will describe the current bond system and the issues related to it that raise questions about improvements and areas for further research as well as actions and recommendations for change.

## Legislation in South Australia

The South Australian legislation defines a bond as an amount of money a tenant is required to pay under a residential tenancy agreement as security for the performance of their obligations under the agreement and provides the following details:

### Payment of a Bond

Some of the rules, around the requirement to pay a bond, stipulated in the legislation are:

- A landlord is not allowed to require or receive any payment from a tenant other than a bond or rent.
- There can only be one bond per residential tenancy agreement.
- A bond cannot exceed either 4 weeks rent (if the rent is <\$250 pw) or 6 weeks rent (if the rent is >\$250 pw), or two weeks rent for a Rooming House agreement.
- Additional bond cannot be required for a tenant to have pets or children at the property.
- The amount of a bond required by a landlord can be increased every 2 years in line with any rental increases.
- Receipts must be provided to the tenant for any amount paid as a bond.
- The person who receives the bond must lodge it with the Commissioner for Consumer & Business Services within set timeframes.

## **Refund of a Bond**

When a tenancy ends an application can be made for the bond to be refunded, jointly by the landlord and the tenant, or by either the landlord or the tenant on their own. The application can be for the whole amount of the bond to be paid to either party, or for the bond to be split with part going to each party.

If both parties have agreed, then the Commissioner will refund the bond as requested.

If the application is made by one party on their own and the request is for some of the bond to be paid to themselves, the Commissioner must give the other party notice of the claim and time to respond.

- If the Commissioner receives notice of a dispute, then the matter is referred to the South Australian Civil and Administrative Tribunal (SACAT) for determination.
- If there is no response received, then the legislation allows the Commissioner to refund the bond as requested. Until recently, that is what occurred in such instances, however in 2015 the policy changed, and landlords are now required to provide proof of their claim for assessment, if the tenant has not responded.

## **Bond Guarantees**

If a tenant meets certain criteria the South Australian Housing Authority (SAHA) will provide them with a bond guarantee, meaning that they do not have to pay the bond themselves to secure a tenancy. The bond guarantee is recorded at Consumer & Business Services and SAHA pay the interest that would have been accrued if the money had been lodged and invested.

The criteria are as follows:

- You have an independent income (which can include Centrelink payments).
- Your total assessable household income before tax meets the income limits (ranging from <\$52k pa for a single person to <\$107k pa for a couple with 4 or more children) and cash asset limits (<\$5000).
- The rent is less than 50% of your total household income before tax.
- The total rent for the property is not more than \$450 per week.
- You do not have a debt of more than \$1,000 with SAHA.
- You have an arrangement to repay any debt you owe to SAHA.
- You are not bankrupt with a debt to SAHA.
- You are not an overseas student.
- You do not own or partly own any residential property.
- It will not break the conditions of an intervention order.

If there is a claim made against a bond guarantee when the tenancy ends, any amounts paid to the landlord become a debt the tenant owes to SAHA.

## **Bonds held by the Commissioner**

Bonds paid to the Commissioner of Consumer & Business Services are held in the Residential Tenancies Fund (RTF) and are invested by the State Government. The income derived from the investment can be used as stipulated in the legislation as follows:

- Towards the cost of administering and enforcing the Residential Tenancies Act.

- The operation of SACAT.
- The education of parties to residential tenancy, rooming house and residential park agreements.
- Towards the costs of projects directed at providing accommodation, or assistance related to accommodation, for the homeless or other disadvantaged sections of the community.
- Research into the availability of rental accommodation, areas of social need etc.
- For the benefit of landlords, tenants, rooming house proprietors, rooming house residents and park owners and residents of residential parks in other ways approved by the Commissioner.

### Current Statistics

As per the Attorney General's Department Annual Report 2018-2019 the following information on bonds was reported:

<b>Bonds – numbers held</b>	<b>2018-19</b>	<b>2017-18</b>
Total tenant provided residential bonds held	166,153	160,737
Total Housing SA residential bonds & guarantees held	73,431	74,151
<b>Total Residential bonds held</b>	<b>239,584</b>	<b>234,888</b>

Cash bonds paid by tenants make up 69% of all bonds and 31% are provided by way of bond guarantee from SAHA, indicating that in excess of 30% of renters in the private rental market are considered low income earners. The numbers in the below table show how many bonds are lodged and refunded in any given year and indicate that there is a 25% turnover. This shows that on average one in four households are moving every year.

<b>Residential Tenancies Bond Transactions</b>	<b>2018-19</b>	<b>2017-18</b>
Bonds lodged	64,545	66,692
Bonds refunded	61,124	59,840

Shelter SA has requested the following data breakdown in relation to the 61,124 refunded bonds from Consumer and Business Services, but has not received a response at the time of writing this report:

- How many bonds had claims made against them?
- How many of those claims were made without tenant consent?
- How many were assessed and paid out?
- How many were paid out as a result of a SACAT order?
- Overall, what percentage of refunds go back to the tenant and what percentage are paid to the landlord?

It is considered that the data breakdown is not easily obtainable or even collected.

Data obtained shows that in 2015/16 only 50% of bond refunds processed were refunded in full to the tenant at the end of the tenancy. This means half of all tenancies end with problems, but little is known about the reasons for the high number of claims.

Consumer and Business Services also report that they responded to 32,651 general tenancy advice queries, 48,382 bond specific queries in that year and issued 48 expiration notices for bonds that were not lodged within the prescribed timeframes.

Over the past five years there has been a steady year-on-year increase to the amount of bonds lodged with Consumer & Business Services totalling to an increase of 17% or an additional 35,000 bonds held from the 204,538 held in 2013/14 to the 239,584 held in 2018/19. Guarantees continue to hover around the 30% mark. Further breakdown is as follows:

Year	2018-19	2017-18	2016-17	2015-16	2014-15	2013-14
Total Bonds Held	239,584	234,888	228,061	221,397	212,006	204,538
% Guarantee	30%	31%	32%	31%	30%	28%

With South Australia's population growing by only 3.9% over the same timeframe (+65,600 people) this shows that more people are now in the private rental market than ever before and the number is continually increasing.

### **Residential Tenancies Fund Financial Statement**

The 2019 financial statement for the Residential Tenancies Fund was not available online so the 2018 statement is used for the purposes of this report. It appears that the Residential Tenancies Fund has assets totalling \$252,650,000 and liabilities of \$209,720,000, leaving net assets of \$42,930,000.

## **Other Jurisdictions**

### **Bond Amount**

South Australia allows the highest amount of money to be taken as a bond of all the jurisdictions in Australia. For properties with a weekly rental of >\$250 it is the equivalent of 6 weeks rent. The other States' allowable bond rates are as follows:

- New South Wales – 4 weeks rent
- Victoria – one month's rent
- Tasmania – 4 weeks rent
- Western Australia – one month's rent + pet fumigation allowance
- Northern Territory – 4 weeks rent
- Queensland – 4 weeks rent
- Australian Capital Territory – 4 weeks rent

### **Private Rental Assistance**

In South Australia, the private rental assistance provided by SAHA consists of a bond guarantee (as described above) and up to two weeks rent in advance.

In Queensland they do not provide bond guarantees, but bond loans and bond loans plus (includes an additional 2 weeks rent) instead. They are interest free loans and have to be repaid over the approved term. Bond loans need to be repaid at the same time as the tenant is paying rent and so are an additional financial impost, however there is the possibility that some tenants may build up some equity and an asset over time. Rental grants for up to two weeks rent for people in housing crisis are also available to assist with moving costs and these do not need to be repaid.

New South Wales has a similar interest free bond program for tenants eligible for social housing. Tenants can pay their bonds in instalments over twelve months and Family and Community Services who administer the program consider it to be highly successful. It is a low cost, high impact program that effectively reduces the financial strain on households during frequent moves.

### **Transferrable Bonds**

New Zealand allows for the transfer of a bond from one property to another at the end of one tenancy and the start of another. It requires the agreement of all parties and can have some amounts paid to the outgoing landlord and/or topped up by the tenant if required.

If adopted in South Australia, where a quarter of all renters move annually, it would significantly reduce the financial hardship caused when relocating as tenants are currently required to have double bonds lodged as well as the costs associated with relocating.

By enabling bond transfers as an option, it could also help to stamp out the bad practices of some property managers discussed below, of making claims on bonds - whether or not there appears to be any merit to the claim.

## **Bond Finance and Insurance Options**

### **Loans**

Several private companies such as Bond Loans, Fair Go Finance, easyBondpay and Rent Bond have recently entered the market and offer small personal loans of between \$500 and \$5000 for the cost of a bond and rent in advance, plus moving costs on top if required. The loans are usually for three to six-month terms and are designed to bridge the gap when moving between rental properties while waiting for the bond to be released.

The loan providers claim the benefit of taking out a bond loan is the ability to create a good credit rating by establishing a good payment history and that they are even available to people with a bad credit rating. However, they often require some type of security, and interest rates and fees depend on specific details in each application and are generally considered high. For people living on low incomes this type of scheme also has the potential to create debts and bad credit ratings.

### **Insurance and Sureties**

Another type of product that has emerged is an insurance or surety for bonds. These products are effectively guarantees where the providers promise to pay landlords if there is a compensation claim at the end of a tenancy. Though these products are not technically loans they function in the same manner.

One such product is a program called TrustBond which has been launched by Terri Scheer Insurance. It claims the benefit of providing the landlord with security while not tying up tenant's savings in a bond. There is an upfront fee like any insurance policy, and the risk is assessed by what they call a Trustscore, determined by the tenant's digital profile. If there is a claim to be made at the end of a tenancy the insurance company assess it (there is no role for the Tribunal), and any claim affects the tenant's Trustscore.

Another model is Snug's BondCover where the landlord agrees for there to be no 'bond' for the tenancy and instead, the tenant pays an annual fee (between 5% and 9% ) along with an initial administrative set up fee. In exchange for that fee Snug issues a certificate guaranteeing to the landlord that if there is any breach at the end of the tenancy for which a bond claim would ordinarily be made, Snug will pay it out. To receive coverage by Snug, they must judge you as having a good tenant history and the landlord must also agree to the arrangement. At the end of the tenancy if there is a claim on the bond under \$500, Snug will assess it themselves. If it is over \$500 the claim must go through the tribunal for determination. If money is paid out Snug will recover it from the tenant and if there is any dispute it has to be dealt with through the more onerous and costly local court. Additionally, Snug now pays referral fees to real estate agents who sign their landlords up.

In each of these cases the tenant has their money available in their pocket that they would not have had they paid it as a bond, however they pay fees which effectively constitute significant interest on that amount.

This idea comes from America but has been mostly rejected so far across Australia as the regulatory bodies still consider it to be a paid bond which must be lodged. Only the Australian Capital Territory has completed a legislative amendment to allow such products to operate legally.

Tenant Unions across the country and Shelter SA consider that these bond products are all anti-tenant, intent on capitalising on the tenants' vulnerable position in the market and making the process of disputes more difficult and costly than ordinary bond payments.

## Identified Issues

Below is a list of issues related to bonds and bond guarantees that need to be considered or investigated further.

### Tenure

In 2013 the Grattan Institute found that one in four Australian households rented privately in 2011-12, compared to fewer than one in five in 1994-95. The Institute also established that people are renting for longer. More than half (57%) of all households renting in 2007-08 had been renting for more than five years, and a third (33%) were long-term renters who had rented for more than ten years.

Cultural attitudes to living in rental housing are evolving and private rental is now a permanent tenure type for an increasing number of households, however when you look at the movement in bond numbers above, they indicate that approximately 25% of the people in the private rental market move each year.

Property managers are incentivised to turnover tenants regularly as they can charge fees for finding new tenants, the renewal of leases and associated open inspections in addition to their normal management fees. We have heard of several instances where the property owner was happy to retain the current tenant and provide a longer lease, but the property manager would only put a twelve month agreement in place.

When moving houses, the bond for the new property needs to be paid prior to moving in, and the bond for the property being exited is not released until the final inspection is completed after

moving out. This means that money is required for two bonds and sometimes double rents during the cross-over period, as well as the significant costs associated with relocating, creating financial difficulties for many tenants.

Additionally, claims can only be made against bonds at the end of a tenancy, so the less tenant turnover the less opportunity for bond monies to be diminished.

If the tenures of residential tenancies were increased and there was less need to move so often these problems would be significantly reduced. This could be achieved by removing the option for no-fault evictions, providing incentives for landlords and property managers to enact longer agreements or legislation requiring greater security.

### **Time Taken for Refund**

As stated above the property manager/landlord requires a final inspection to be completed, and to ensure all payments due have been received, prior to agreeing to release the bond. This can take some time and if there is any disagreement between the parties it is extended even further while agreement is reached, or a hearing is completed and a determination made at SACAT.

Additionally, many tenants believe they must wait for the property manager or landlord to apply to have the bond refunded. This is a misconception, as they are also able to initiate the bond refund and greater education of tenants is required.

### **Claims Made on Bonds**

Most claims made by landlords/agents on the bonds are for either unpaid monies (rent/water etc), uncleanliness or damage to the property.

Sometimes these claims can be made for significant issues of extreme uncleanliness, rubbish piled up, unpaid bills or rent and unrepaired damage.

In these instances, if there was more support and education available for tenants that helped them to maintain their property to a good standard and if property managers/landlords were encouraging, providing referrals to the support services as required, this could be improved.

At the other end of the scale many claims are for very minor issues like dust in window channels or on top of air conditioning units and in these cases are often more related to a culture among some property managers/landlords to ensure they claim some of the bond money every time a tenancy turns over.

Statistics in relation to refunds that show in 2015/16 only 50% of bond refunds processed were refunded in full to the tenant at the end of the tenancy, highlight this issue. It is inconceivable that half of tenancies genuinely end with problems.

### **Multiple Tenants on One Agreement**

When there are multiple tenants on one residential tenancy agreement they are considered as jointly and severally liable for properties they rent which means they are essentially considered a single entity when it comes to the bond refund. They can individually be held liable for any claims made against the bond and one tenant can authorise the refund of a bond to be paid to their account without the approval of any other tenants.

If the legislation was changed to allow a bond to be split into portions per tenant on the agreement (i.e. 2 tenants = 2 bonds) this would alleviate some of the issues created by this system.

### **Lack of Data**

We do not collect and use so much of the data that is available in South Australia regarding tenancies. How often tenancies turnover, what percentage of bonds are claimed and then paid out, why tenancies end, why evictions occur and on what grounds, would all be invaluable data for the Government to use when making policy and funding decisions.

New South Wales Fair Trading commenced a trial Tenancy Exit Survey in December 2019 as they realised that they have very little data about how and why tenancies end. Survey invitations are sent to all renters, landlords and real estate agents who have finalised an online bond claim. It has been established to help Fair Trading understand the experience of renters, landlords and agents and aims to provide a balanced view of the renting experience.

Shelter SA has designed and will implement a similar survey to determine why tenancies end and enable better data collection regarding bond claims and payouts at Consumer and Business Services and SACAT. Shelter SA will analyse and present the data to identify systemic issues and ways to channel resources to improve the private rental market and the financial situation of South Australians.

### **Rooming House Bonds**

A recent review into rooming houses in SA showed that there are 161 known rooming houses and only 17 of them had lodged bonds with Consumer & Business Services. Consumer and Business Services wrote to them all and many responses received indicated that they had not collected bonds.

This situation does not reflect many people's experiences where bonds are taken in rooming houses and Shelter SA is concerned that this is a bigger issue requiring further exploration.

### **Extra Bonds Taken**

Anecdotally an issue we hear of is that at times tenants with pets and children are offering higher bonds to secure homes in a competitive market, and property managers/landlords are accepting those extra amounts even though this is illegal.

The idea of additional pet bonds being allowed has been considered twice by the South Australian Parliament over the past seven years and rejected both times. Although there is a hypothesis that pet bonds might allow more people with pets to find and secure rental homes, there is no evidence to support this idea and it has been determined that it will only hurt vulnerable consumers living on low incomes and struggling to afford the current bond amount. Four or six week's rent is sufficient insurance for landlords and Shelter SA strongly opposes the introduction of pet bonds.

### **Form 4**

A 'Notice by tenant to landlord to remedy breach of agreement - notice of termination' (Form 4) can be served by the tenant on the landlord if they believe the landlord has breached the tenancy

agreement. This notice provides the landlord seven days to remedy the breach or if they do not, the tenancy can be terminated by the tenant after another eight days.

While this seems like a reasonable option to have, in practice it often causes further problems for the tenant, resulting in the loss of their bond and possibly more compensation to be paid to the landlord. It appears that this happens due to tenants serving the notice on the landlord and moving out for reasons that do not constitute a breach under the Act once it is challenged at SACAT. At this point in time it is too late to move back into the property and a debt is owed.

As legalities defined by Acts can be esoteric and tenancy disputes can be complex this form creates more issues for tenants than the protection it intends to provide.

## Conclusion

Shelter SA have identified eight specific issues while conducting this review that make renting a home more difficult and costly than it needs to be, particularly for people living on low incomes. Additionally, we found that new products trying to find a place in the market will not help, but rather further increase financial hardship.

By addressing these issues, the rental market would become more equitable and more accessible to people currently struggling to maintain a home. It would not only assist to reduce homelessness and the threat of homelessness in South Australia but it would also reduce the cost to the Government's Private Rental Assistance Program and provide a valuable evidence base about how and why tenancies end, to inform decisions going forward.

Further research is required to consider how landlords can be incentivised, or legislation changed to encourage longer tenures for residential tenancy agreements.

To address these issues Shelter SA has determined to take six actions and makes another six recommendations for Consumer and Business Services to consider, all of which are defined below.

## Shelter SA Actions

**Action 1:** Shelter SA will develop and implement a Rental Exit Survey to collect data about how long residential tenancies have run, why they have ended and how the bond was refunded, so data can be used for future regulatory change recommendations.

**Action 2:** Shelter SA will advertise the survey using direct mailing, media and social media.

**Action 3:** Shelter SA will collate and analyse the survey data every twelve months and produce a report to be published on its website.

**Action 4:** Shelter SA will use the report results to raise awareness of renting issues to the public, government, landlords, property managers and renters.

**Action 5:** Shelter SA will ask tenants to notify Consumer and Business Services if they have experienced paying or offering additional bonds or rental bidding to secure a rental property.

**Action 6:** Shelter SA will conduct a more thorough review of the success and problems experienced by New Zealand with their transferrable bonds program and explore the possibility of implementing a similar scheme in South Australia.

## Recommendations for Consumer and Business Services

**Recommendation 1:** Consider including the link to the Shelter SA Rental Exit Survey to the refund emails generated by the Residential Bonds Online System.

**Recommendation 2:** Consider providing funds to Shelter SA to administer the Rental Exit Survey.

**Recommendation 3:** Develop and run a specific campaign to educate tenants about their bond rights including the ability to claim a refund at the end of a tenancy.

**Recommendation 4:** Conduct compliance activity, involving asking tenants in rooming houses whether or not they have paid a bond, and cross reference with their records to determine if there are non-compliance issues to be followed up.

**Recommendation 5:** Do not make amendments to the Residential Tenancies Act to enable insurance or surety products to operate.

**Recommendation 6:** Review the application of the Form 4 and consider requiring a SACAT hearing prior to the tenancy termination or another alternative to protect the tenant from applying it incorrectly.

### Legislative Change Recommendations:

That the *Residential Tenancies Act 1995* or the associated Regulations be amended to:

1. Include a clearer definition of what is a reasonable state of cleanliness.
2. Allow multiple bonds per residential tenancy agreement. Identified as per individual tenant if required, provided they only total to the currently allowed maximum.
3. Enable the transfer of bonds and bond guarantees from one property to another.

You can access the Shelter SA [Rental Exit Survey here](#). The survey is for tenants, landlords and property managers of private rental properties, community housing and public housing. You can also [subscribe to the Shelter SA enews](#) to keep up to date with the survey results and renting report, [join as a member](#), [make a tax-deductable donation](#), or follow our social media platforms. Please contact us at [sheltersa@sheltersa.asn.au](mailto:sheltersa@sheltersa.asn.au) if you wish to provide feedback or comment on this report.