

Shelter SA Open Letter to all Members of SA Parliament

It is time to remove Section 83 “no cause evictions” from the Residential Tenancies Act

Shelter SA is the peak body for housing in South Australia. Our vision is for every South Australian to have an affordable, safe place to call home. We advocate for improved policies and systems for all citizens, particularly those that affect people living on low incomes. We are writing to you to urge you to support Mark Parnell’s amendment to the Housing Improvement Bill to repeal Section 83 of the Residential Tenancies Act – the right for a landlord to evict a tenant without cause. Mark’s previous speech about Section 83 is attached as Appendix 1.

It is Shelter SA’s position that the no cause eviction voids the rights and responsibilities outlined in the Residential Tenancies Act (the Act). The Act outlines in detail the rights and responsibilities of landlords and tenants, as well as procedures and standard terms of residential tenancy agreements. Residential tenancy agreements serve as a contract between landlords and tenants. The no clause eviction renders that contract useless, as the landlord can exit the agreement without giving reason.

The profile of private renting has evolved since the Act came into effect in 1995. In the past, private rental was a transient option, however long-term renters are becoming increasingly common. Today, more than one in every four households in South Australia rent, and the number continues to steadily grow. The cost of home ownership is rapidly becoming more unaffordable. The Act must reflect these changes to housing affordability in South Australia. Currently, Section 83 of the Act provides landlords with the power to evict tenants without giving a reason. The no cause eviction disrupts security of tenure, renders the rights outlined in the Act useless, is unnecessary and ignores interstate and international best practice. A better balance of landlord and tenant rights is possible and will not decrease interest in the housing market as suggested by some of our parliamentarians the last time the Act was discussed.

Security of tenure is an assurance that if a tenant complies with their rental agreement they have a legal right to rent their property for as long as they wish. The Grattan Institute illustrates the impact of not having security of tenure by focussing on the lives of children. Without a stable location that is afforded through security of tenure, children can be forced from their friends, school and community, which has a negative impact on their development. A greater chance of eviction also means the family has a greater chance of facing homelessness, as finding an affordable new rental can be difficult in a competitive, expensive housing market. The no cause eviction destroys security of tenure and creates a living arrangement where eviction is an ever-present threat for tenants who comply with their lease agreements. The no cause eviction is creating negative social and economic consequences for South Australian families.

National Shelter has previously stated concerns about no cause evictions and retaliatory evictions. A tenant is less likely to exercise their rights under the Act if they fear a no cause eviction. Retaliatory evictions, through the no cause eviction, effectively limit or remove the rights of tenants under the Act.

The no cause eviction is unnecessary. If a landlord is not satisfied with the behaviour or financial performance of a tenant, there are various avenues within Part 5 of the Act that give power to the landlord to lawfully evict a tenant. The avenues to evict are exhaustive and capture any unsatisfactory tenant behaviour. The only reason a landlord would need to rely on the no cause eviction would be to evict a tenant that has performed reasonably and appropriately. Tenancy laws that allow for no cause evictions consequentially allow for the evictions based on retaliation and discrimination.

One defence for the no cause eviction is that its removal from the Act will cause some landlords to disinvest in rental housing. Examples throughout Europe, where renting has become a common, long-term, accepted dwelling type, present an ethical balance of rights between landlords and tenants without affecting the market. Germany has a robust housing market that relies substantially on small-scale investment, however it has managed to provide ample security of tenure to renters. In Australia, the States are beginning to rescind the no cause evictions in their legislation. Tasmania has taken the first step, strictly limiting the circumstances in which a landlord can use the no cause eviction. There are international examples, and interstate leaders. South Australia must be next.

A fair system would involve listing all reasonable grounds for eviction in the legislation, as opposed to providing an open, 'catch all' provision through the no cause eviction. Such a system would allow landlords to evict tenants who do not comply with their lease agreement, but grant security of tenure to those who do. Law reform that provides reasonable grounds for termination would neither require nor entail a change to the structure of the rental market or the investment strategies of landlords.

For landlords that wish to repossess the house for their own or a family member's occupancy, or out of necessity, there must be checks and balances to ensure that the eviction is *bona fide*.

The system must change to ensure reasonable security of tenure to tenants. The Residential Tenancies Act must change to guarantee that evictions are only a last resort.

Shelter SA is currently gathering signatories to this letter in South Australia which will be published in the near future. We look forward to your response and would be pleased to provide you with any further information you require.

Yours faithfully

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References

- Tenants Union of NSW (2012), *Residential tenancies act report*.
- M. Slatter, A Beer (2004), *Evictions and housing management: toward more effective strategies*. Australia Housing and Urban Research Institute
- National Shelter (2010), *Better lease on life*.
- Shelter SA (2015), *House for rent – apply within*.
- ABS (2011), *Time series profile*.
- NSW Parliamentary research service (2015), *Private rental housing and security of tenure*.
- J-F Kelly (2013), *Renovating Housing Policy*. Grattan Institute

Appendix 1 – Mark Parnell’s speech from February 2013 during debate about the review of the Residential Tenancies Act in the South Australian parliament:

One key issue is the notice period for ending periodic tenancies. Fixed-term tenancies are fairly straightforward. If you have rented a house for a year, you have got it for a year, but with periodic tenancies, whether it is a fixed-term tenancy that has, by the effluxion of time, morphed into a periodic tenancy, or whether the arrangement was always a month-by-month or a week-by-week proposition, there are statutory protections for both the landlord and the tenant, and the law recognises that people's circumstances change.

On the landlord side there may be a desire to sell the property, there may be a desire to undertake extensive renovations, or for the landlord to move in themselves or have a family member move in, and the law recognises that these circumstances should be able to be relied upon to end a tenancy provided that sufficient notice to the tenant has been given, and in those cases I have described, that is two months.

But there is also a provision that a landlord can end a tenancy agreement and evict a tenant for no reason whatsoever provided they give three months' notice. In other words, if they do not like you, they can get rid of you, and the landlord is under no obligation to justify their action. Members will know what that means in practice, that tenants who request repairs or who dispute unreasonable landlord demands can be evicted, and proving that it was retaliatory or unlawful is almost impossible.

I would say that of all the provisions of the Act that require reform, getting rid of no cause evictions would be the greatest reform that this parliament could make. Having that provision in the legislation is the clearest indication that the tenant is a second-class citizen whose desires will be subservient to those of the property owner. I refer to the submission of Adjunct Associate Professor Michele Slatter, who has also called for section 83 of the Residential Tenancies Act to be reformed. She says:

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 [section] 83 constitutes an occasion of arbitrary eviction...It's time that [section] 83 was repealed.

Members might think that is sounding pretty tough and pretty radical, but what you have to remember is that no-one is forcing a landlord to keep a rental property as a rental property for ever and a day. If the owner wants to sell it, if the owner wants to move in, if the owner wants to renovate it, or if the owner wants to demolish it, all of those are covered in the legislation. What we do need to reform is getting rid of no-cause evictions.