



Australia's property industry

Creating for Generations

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Consumer and Business Services
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Review of the *Residential Tenancies Act 1995*

Thank you for the opportunity to provide a submission in relation to the Review of the Residential Tenancies Act 1995.

The Property Council of Australia has over 300 member organisations in South Australia and represents one of the largest economic footprints of any sector in the state economy. Property as an industry employs more people in South Australia than manufacturing and mining combined. Residential property and the legislation that governs the management of it, therefore is of great interest to our members and stakeholders who design, build, own and manage various forms of housing in South Australia available to the rental market.

Housing is perhaps the greatest policy challenge currently facing the nation, with affordability pressures as acute as they have ever been.

The share of people owning a home is in decline, rental stress is on the rise, access to social and affordable housing is stretched, and we are ill-prepared for the tsunami of seniors reshaping the nation's demographic curve.

The rental market is a key aspect of the housing landscape, and the legislative settings governing residential tenancy are vitally important.

Striking the right balance between the rights of owners and renters is an exercise that must be exercised responsibly.

While housing is correctly perceived as a right, property is also an attractive asset class providing a degree of economic freedom to those that achieve it through the aspiration of home ownership.

Owners are therefore fundamental to the supply side of the housing equation.

To ensure that residential property continues to be an attractive investment asset class, and investors continue to supply housing to market demand, owners need to perceive that the

risks of investing in residential property outweigh the risks of holding and managing residential property as an asset class.

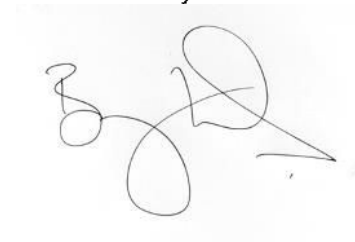
Our submission responds to all 13 themes raised for comment in the discussion paper.

In addition, the Property Council takes this opportunity to note the general direction of the potential reforms which given the current rental crisis facing South Australia naturally lean towards assisting the tenant.

Whilst supportive of the majority of reforms put forward that support a fair go for landlords and tenants alike, we would caution against any policy momentum towards practices such as rental control. There is ample evidence internationally that practices such as rent control create a surge in demand for rental accommodation and a reduction in the quantity supplied. In addition, practices such as rental control disincentivize down-sizing transactions and the upgrading of property amenity by owners.

Please do not hesitate to contact us if you require anything further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bryan Moulds', with a stylized flourish at the end.

Bryan Moulds | Interim SA Executive Director

Longer tenancies

Should the RTA include a requirement for landlords to provide a prescribed reason for the termination of a periodic lease or the non-renewal of a fixed term tenancy agreement, and if so, what should these prescribed reasons be?

It is important to consider the reasons why tenants and landlords may enter periodic or fixed term tenancy agreements prior to considering what might be considered reasonable prescribed grounds for their termination or non-renewal.

As a principle, a tenancy agreement is generally a mutual exchange of value between tenant and landlord.

In relatively stable property market conditions, tenants who enter into fixed-term tenancy agreements provide predictable rental cashflows to landlords and in most cases against mortgages and other outgoings. In return, tenants receive security of tenure and a place to call home.

However, depending on when in the property cycle a tenancy agreement is entered into, landlords or prospective tenants may have asymmetric bargaining power to determine the type of tenancy agreements that are favourable to their needs.

Periodic leases, when offered by landlords can provide landlords the flexibility to time the termination of the lease coinciding with future intentions such as property renovation, owner-occupation or sale. On the flipside, tenants may feel they are carrying most of the risk, living with only short-term tenure.

Periodic leases however can create risks for owners as well. In a situation where a tenant has more negotiating power these leases provide tenants the flexibility they may prefer though only provide short term security for landlords.

While the Property Council does not offer any specific additional suggestions in relation to prescribed reasons for the termination of periodic leases or the non-renewal of fixed term tenancy agreements, we concur that the RTA should list prescribed reasons.

We would propose that that list of prescribed reasons must consider both the risks borne by tenants and landlords under a range of circumstances and that the legislation allows for regularly updating the list of prescribed reasons subject to consultation from an array of stakeholders.

As mentioned in the discussion paper, breaches of the tenancy agreement or one of the purposes listed at section 81(1) of the RTA are already being considered as prescribed reasons and these would cover the majority of circumstances.

Should the RTA be amended to accommodate longer fixed-term tenancy agreements?

The Property Council would like to draw the Review's attention to how the development of the Build-to-Rent asset class in South Australia could deliver on many of the rental reform objectives raised directly or by implication in the discussion paper.

The stated reasons for residential tenancy reform, such as rental stability, security of tenure and safety in rental accommodation could be addressed comprehensively through the development of housing that is specifically designed as an asset class for the rental market.

Build-to-rent is a type of purpose-built housing that enables security (i.e., longer lease periods) of tenure, predictable rental increases, and better overall management of rental housing.

The development of this asset class would help to address some of the objectives of rental reform and provide additional stock to the housing market. There are however tax hurdles before Build-to-rent is considered viable by institutional investors in the Australian market which are outside the scope of this discussion paper.¹

Build-to-Rent aside, The Property Council supports RTA being amended to accommodate greater flexibility and choice for tenants and landlords to enter into longer fixed term tenancy agreements.

Should the minimum notice period required prior to the non-renewal of a fixed term tenancy agreement be extended to 60-days?

The Property Council would support extending the minimum notice period required prior to the non-renewal of a fixed term tenancy to 60-days – except for student accommodation, which is covered in a separate submission prepared by Property Council Division the Student Accommodation Council.

Residential Bonds

Should the relevant limit be increased to \$800 to allow most tenants in SA to pay a bond of no more than the equivalent of 4 weeks rent?

The Property Council would support tenants paying a bond of no more than the equivalent of 4 weeks rent in South Australia, given the current relevant limit appears anachronistic.

The paper floats that consideration will be given to whether it is practical for a bond to automatically be returned to a tenant once a certain amount of time has passed and no claim on the bond has been made.

The Property Council would suggest that caution be exercised in this regard whilst a tenant remains in a property. It is often not until a tenant vacates a property that cause for using the bond becomes evident. However, if a tenant has a positive rental inspection history, and has

¹ <https://info.propertycouncil.com.au/property-australia-blog/build-to-rent-insights>

never defaulted on paying rent it is worth considering whether a portion of the bond could be returned after a certain period of time. This would provide a cash incentive for good tenancy and still provide the landlord a degree of insurance.

Should the RBO be made mandatory and require additional tenant contact details upon registration to minimise unclaimed bonds?

Moving the lodgement of bonds exclusively online is highly encouraged – though provision will always have to be made for those unable to perform this task online.

The Property Council would also support collecting additional tenant contact information that enables unclaimed bond amounts to be minimised and clarification of the bond refund process in circumstances involving a deceased estate.

Rent Bidding

Should landlords and land agents be prohibited from advertising a property within a rent range, putting a property up for rent auction and soliciting offers to pay an amount of rent above the advertised price?

Landlords and land agents should not be prohibited from advertising a property within a rent range. It is the right of the property owner to test what the market is willing to pay for the benefit of living in their property. Advertising rent withing a range is one method used by agents to test market demand.

Critically it is important to remember that rental properties are an investment vehicle by which many Australians seek to achieve a degree of financial freedom. Undermining this by restricting the free market tools at their disposal to gain a market appropriate return would be unjustified.

Nevertheless, rent auctions and actively soliciting offers to pay an amount of rent above the advertised market rate could in some circumstances be considered manipulation of the free market.

The Property Council would support landlords being able to accept offers above the advertised price, provided the offer is not solicited by the landlord or land agent in a fashion which is deceptive. Careful consideration would need to be made of what constitutes deceptive behaviour or manipulation.

There are circumstances where a prospective tenant may be willing to pay more than the advertised price but does not wish to indicate how far beyond the advertised prices, they are willing to pay to ensure they maintain a degree of bargaining power and achieve the best price possible.

In a scenario where an agent has two or more equal offers at the advertised price, but is forbidden from disclosing whether a prospective tenant's offer needs to increase - and by how much to be considered a viable one - the prospective tenant cannot make a sensible counteroffer, and indeed may overbid, because all the negotiating power is centralised in the hands of the agent who is the only party in possession of live rental bid information.

The underlying issue arises from the asymmetry of information available to agents and landlords which is not transparent to prospective tenants. Though not in scope as part of this Review of the RTA, it should be noted that advances in technologies such as blockchain will likely level the playing field between buyers and sellers in regard to information transparency for a range of commercial transaction scenarios in the future and legislation will need to be created to support it.

It should be noted that when purchasing property, auctions and solicitation of higher offers by agents are common and unchallenged industry practice.

The Property Council is not advocating for these sales practices to change but wishes to highlight that property owners themselves are frequently the object of these practices themselves at the point of purchase. To outlaw these practices *carte blanche* when it comes to renting out a property would mean removing the tools agents have to offer owners when it comes to getting a return on the capital outlay they have made for their investment.

Rooming houses and shared accommodation

The Property Council's Student Accommodation Council has prepared a separate submission that will focus on responding to this aspect of the discussion paper. Their submission goes into further details regarding the current provisions of the Act which do not adequately cater for the nature of the tenant/landlord transactions within the purpose-built student accommodation sector.

Given the vital importance of the international education sector to South Australia's economy, the Property Council supports any changes to the Act which reduces administrative burden and increases housing choice for students living in purpose-built student accommodation.

Renting with pets

The Property Council would support including the presumption in the RTA that a tenant who applies to keep a pet in a rental property cannot have their request unreasonably refused, provided the tenant agrees to comply with any reasonable conditions imposed by the landlord.

A pet bond scheme should be introduced in SA as pets can cause significant damage to a property and this liability is left with the owner if the tenant does not cover it or does not comply with any make-good provisions. As with ordinary bonds, efforts should be made to return this bond to renters as swiftly as possible upon vacant possession.

Housing standards and retaliatory evictions

The Property Council would support consideration of the RTA including further complimentary provisions to those proposed under Section 1 of the discussion paper to ensure tenants can exercise their rights without the risk of a retaliatory eviction or rent increase.

In relation to the RTA imposing minimum energy efficiency standards in rental properties, with recent changes to the National Construction Code, it is understood that new housing stock built after 1 October 2023 must have at least a seven-star rating.

Australia does not have nationally consistent minimum energy efficiency standards for rental properties. This is problematic as rental properties are typically less energy efficient than owner occupied premises. This places renters in a difficult position as they have limited ability to make changes to the properties they live in, and landlords have little incentive to invest in upgrades that do not benefit themselves. Introducing minimum energy performance standards for rental properties would help to overcome the landlord-tenant split incentive and ensure that all households have an acceptable level of energy efficiency. This would also benefit low income and disadvantaged households, who are more likely to live in inefficient homes and have less efficient appliances.

The South Australian Government should work with its state and territory counterparts to develop and implement a nationally consistent approach to deploying minimum energy efficiency standards for existing rental properties. This should include provisions to incentivise highly efficient all-electric appliances.

These standards could include requirements for basic, cost-effective measures, such as insulation, draught sealing and low-flow shower heads. Alongside these standards, governments should review mechanisms for tenants to initiate upgrades to rental properties and investigate incentives that encourage landlords to upgrade rental properties, as well as safeguards to avoid any unintended consequences around housing affordability, such as significant rent increases.

It is important to note that the Property Council of Australia has previously made comments in the public realm supporting a new report from the Australian Sustainable Built Environment Council (ASBEC) - an output of the Rapid and Least Cost Decarbonisation of the Built Environment project - confirming that full electrification is the lowest cost, fastest emissions reduction pathway for Australia's built environment. Electrification is supported over gas in the residential setting and the paper outlines that innovations in hydrogen should be chiefly reserved for energy intensive industries.

ASBEC's report includes six clear policy recommendations including an upgrade to the National Construction Code. The report outlines that electrification is the least-cost option to drive down emissions, but it is not a no cost option, and that public policy can enable a faster and cheaper transition by smoothing the pathway through incentives structures.

Safety modifications and minor changes

The Property Council would support the RTA being amended to prevent the unreasonable refusal of safety modifications and minor changes.

Start of tenancy requirements

The RTA should require prospective tenants to use a standardised application form in any application for a rental property that has questions that restrict the amount of personal information a landlord or land agent can gather about a prospective tenant. The Property Council also supports the implementation of a single application form with standardised

questions to enable prospective tenants to apply for multiple properties with minimal paperwork.

The Property Council would also support the RTA being amended to prohibit landlords, land agents and database operators from charging a fee to a person who requests a copy of the personal information about themselves that is listed on a residential tenancy database.

Domestic violence provisions

The Property Council would support further investigation in relation to amendments required to strengthen financial protections for victims of DV who are renting.

We also take this opportunity to reference a March 2022 report by the Retirement Living Council, a division of the Property Council, "Retirement Living – A solution for Older Women at Risk of Homelessness."

The paper details a suite of recommendations as a solution to a growing category of women - labelled the 'missing middle' - who are in housing limbo because they have too much money to qualify for social housing and too little to buy a house.

Their age often presents a barrier to applying for housing finance, and the costs of rent eat rapidly into any modest retirement savings they may have.

Across Australia, the paper details that nearly two in three retirement village residents are female, and an estimated 80 per cent are single and living alone.

A viable retirement living sector therefore plays an important role in supporting older single women in safe and secure, purpose-built affordable age-friendly communities. Over the past decade there has been a 31 per cent increase in women who are homeless, and it is the fastest growing group of homeless people in Australia.

Water billing

The Property Council would support the RTA being amended to require landlords to provide tenants with a copy of any water bill the tenant is required to pay within 30 days of receiving the water bill.

The Property Council supports harmonisation with other jurisdictions so that the responsibility for the payment of the water supply fee be paid by the landlord.

In reference to whether landlords have a full or partial obligation to pay the excess water charges resulting from a reported water leak that remains unrepaired, this would depend upon the circumstances of the cause of the leak, and would no doubt inform the process by which the RTA would come to define how excess water charges are identified.

Illegal drug activity

Landlords who know or suspect that their properties are being used to regularly consume or manufacture illicit drugs without taking action to report these actions to agents or authorities should be liable to undertake remediation before leasing the property and provide evidence of to prospective tenants. Of course, if such activity is discovered and a landlord reports it this is a matter for law enforcement. Any bond monies held should automatically be quarantined to enable appropriate remediation.

Third party payments

The RTA should prohibit landlords or land agents charging tenants an additional fee to make rental payments, to cover third party fees. Such fees should be considered a cost of doing business and be absorbed by landlords.

Modernisation of language

The Property Council has no comments in regard to the modernization of language within the RTA.