

To the SA Housing Authority

Re: Housing and Homelessness Strategy for South Australia

Thank you for the opportunity to contribute to redefining and reforming the housing system in South Australia over the next 10 years. As a community of renters working together for stable, affordable, and liveable homes, Better Renting welcomes the chance to articulate the interests and experiences of the growing number of South Australians who rent their homes.

Below, we respond to some of the initiative areas for exploration as outlined in the strategic intent. We hope this can be the start of a conversation about how to improve housing in South Australia.

Warm regards,

Joel Dignam
Executive Director
Better Renting

Support the mobility and housing choice of customers.

Better Renting believes that renting should be a genuine alternative to homeownership. While many people want to own a home, most often what they want are the benefits that homeownership offers: financial security, agency over their living environment, and the confidence that they won't have to move unless they choose to. Enabling these benefits in the rental sector should be a higher priority than promoting homeownership. This is particularly important when it comes to addressing social disadvantage as, almost by definition, the worst-off renters are the ones least likely to be purchasing property and benefiting from homeownership.

In this submission we discuss options to improve rental conditions so that more members of the SA community can have better housing. Compared with a focus on homeownership, this approach is more achievable, cheaper, and more equitable. If the SA Government wishes to support the "housing choice of customers", it should be addressing existing asymmetries between rental and other forms of tenure to ensure that the community does have a genuine choice.

Modernise and reform the private rental market, ensuring balanced rights of tenants and landlords

In recent history, the private rental sector has become much more important in Australia. With fewer people able to buy their first home, and less social housing available, more and more people are renting privately.

Because of these changes, the role of the private rental sector has changed. It is no longer a "tenure of transition"¹, but a long-term tenure for a growing number of Australians. Over one in three renters has been renting for more than 10 years, and two in five rental households include dependent children.² Renting is no longer a step on a journey towards homeownership. Increasingly, it is itself the destination.

Thus, tenancy legislation in Australia is no longer fit for purpose. It is time to rethink what it will take to guarantee decent homes for people who rent, and, correspondingly, the responsibilities of property investors.

¹ T Seelig et al., *Understanding what motivates households to become and remain investors in the private rental market*, in AHURI Final Report No. 130, Melbourne, 2009.

² W Stone et al., *Long-term private rental in a changing Australian private rental sector*, in AHURI Final Report No.209., Melbourne, 2013.

As such, we suggest the following reforms, discussed below, to modernise and reform the private rental market in South Australia:

- strengthen the framework for repairs,
- prevent discrimination against renters with pets, &
- reduce the burden of inspections.

Strengthen the framework for repairs

"I am so sick of basic things like a tap leaking needing washers taking forever to be repaired"

"... it took 10 months to get out roof repaired. It would Flood all through the laundry everytime we had rain. Major thing that shouldn't have taken that long to get fixed"

"Was renting for 13 years, complained about outstanding issues, like storm damage, leaking roof, faulty stove, holes in wall from maintenance not being completed, exposed wires, you name it, they didn't fix anything."

"Laundry tap leaking 1-2 buckets water a day. I have mentioned this to agent twice over 2 months...no reply. I tried calling today no answer."

(Comments from Better Renting Facebook Group, *Adelaide Renters*)

SA tenancy legislation should define a class of "urgent repairs" that must be carried out as soon as possible and should specify a timeframe for the completion of other, non-urgent, repairs.

Currently, tenancy legislation in SA is weak on the question of repairs. No clear timeframes are specified in legislation, creating ambiguity for both renters and landlords. Without a clear sense of their rights (or, for landlords, of their obligations), renters struggle to get their landlord to effect repairs. According to the Australian Housing Conditions Dataset, 16% of South Australian renters rate the need for repairs in their dwelling as "essential", compared with just 7% of homeowners in South Australia.³

³ Baker, Emma; Beer, Andrew; Zillante, George; London, Kerry; Bentley, Rebecca; Hulse, Kathleen; Pawson, Hal; Randolph, Bill; Stone, Wendy; Rajagopalan, Priya, 2019, "The Australian Housing Conditions Dataset", doi:10.26193/RDMRD3, ADA Dataverse, V1

South Australia is also out of step with other jurisdictions, and the difference in legislation seems to be affecting repairs: the 16% figure above is higher than for renters in Victoria or NSW. These jurisdictions both create a class of urgent repairs with a faster process for resolution. Learning from the examples of Victoria and NSW⁴, SA could define urgent repairs to include such matters as:

- a burst water service,
- a blocked or broken toilet,
- a serious roof leak,
- a gas leak,
- a dangerous electrical fault,
- flooding or serious flood damage,
- serious storm or fire damage, &
- a failure or breakdown of any essential service or appliance provided for water, hot water, cooking, heating or doing laundry.

Defining urgent repairs and specifying a timeframe for other repairs (such as 2 weeks), would help to ensure that landlords comply with their legal obligations, and that people who rent can have the safe and well-maintained home that they are paying for.

Prevent discrimination against renters with pets

SA tenancy legislation should establish a default right to have a pet and prevent lessors from asking about pet ownership at any point during the application process for a property.

Despite Australia being a nation of pet owners, with high rates of household pet ownership, people who rent are routinely discriminated against for owning pets.⁵ Lessors are allowed to refuse potential tenants because they have pets; extra terms may also be included in a lease that add to a renter's obligations and expenses.

This situation has many harmful consequences. For one, it leads to abandonment of pets. In Tasmania, the RSPCA recently reported that 15% of all cats and dogs surrendered to them were from renters who were denied the right to take their pet

⁴ Tenants Victoria, 'repairs when renting a home', <<https://www.tuv.org.au/advice/repairs/>> [accessed 28 August 2019]; Tenants NSW, 'Repairs and maintenance', <<https://www.tenants.org.au/factsheet-06-repairs-and-maintenance>> [accessed 28 August 2019].

⁵ ER Power, 'As pet owners suffer rental insecurity, perhaps landlords should think again', in *The Conversation*, , 2016, <<https://theconversation.com/as-pet-owners-suffer-rental-insecurity-perhaps-landlords-should-think-again-63275>>.

into a new home.⁶ Older figures suggest the rate could be as high as 30%.⁷ These abandonments are an emotional ordeal for both the people and the pets involved, and they likely lead to euthanasia.

However, many renters are simply unwilling to part with their pets. This may result in people becoming homeless and, for example, sleeping in their car in order to retain a companion animal. In other cases, it may mean that people are reluctant to leave a domestic violence situation, as they cannot be confident of taking their pet with them to a new rental property.⁸ In other cases, people simply elect not to have a pet, thus being denied the many benefits of pet ownership.⁹

Further, this prejudice against pets cannot be justified from the landlord's side. People who rent with pets remain liable for any damage caused by their pet: there is no situation where a landlord would not have legal recourse to cover any additional damages. And, in fact, evidence suggests that landlords who allow pets receive increased income that more than offsets any additional wear.¹⁰ In net terms, landlords are better off allowing pets. Landlords who refuse to allow pets are not making an economically defensible decision; they are simply acting out of prejudice.

Recently, both Victoria and the ACT have created a presumption in favour of allowing renters to obtain a pet. New laws in both jurisdictions will soon prevent a lessor from refusing a pet, except on reasonable grounds. However, these laws fall short of preventing discrimination. Pet owners may still be discriminated against during the application process, such as missing out on a property because they own a pet. Because renters understand this risk and renting is insecure, aspiring pet owners may

⁶ F Vinall, 'Tenants' Union of Tasmania says get rid of fixed leases', in *The Examiner*, , 2019, <<https://www.examiner.com.au/story/6321150/get-rid-of-fixed-leases-for-renters-union/>> [accessed 23 August 2019].

⁷ D Nancarrow, 'Vet pleads for landlords to welcome pets', in *Brisbane Times*, , 2012, <<https://www.smh.com.au/business/companies/vet-pleads-for-landlords-to-welcome-pets-20120111-1puxl.html>> [accessed 28 August 2019].

⁸ L Novak, 'SA Government releases new proposed measures for escaping domestic violence, allowing victims to take pets or move abusers out', in *The Advertiser*, , 2019, <<https://www.adelaidenow.com.au/news/south-australia/sa-government-releases-new-proposed-measures-for-escaping-domestic-violence-allowing-victims-to-take-pets-or-move-abusers-out/news-story/37e9d5c051bf1e65cb9ae60f663d1235>> [accessed 23 August 2019].

⁹ Petcare Information and Advisory Service, 'Submission to the Review of the Residential Tenancies Act 1995', , 2012.

¹⁰ D Butkovich, 'How to boost your rental return by 30 per cent (without renovating)', in *Australian Financial Review*, , 2019, <<https://www.afr.com/property/residential/how-to-boost-your-rental-return-by-30-per-cent-without-renovating-20190507-p51kqb>> [accessed 23 August 2019]; P Carlisle-Frank, JM Frank & L Nielsen, 'Companion animal renters and pet-friendly housing in the US', in *Anthrozoos*, vol. 18, 2005, 59–77.

still hesitate to request a pet due to fears that it will make it harder for them to obtain a rental home in the future. Therefore, laws should also disallow discrimination on these grounds during the application process.

Finally, “pet bonds” are a poisonous concept and should not be entertained. As discussed above, there is no evidence that renters with pets leave landlords in a worse financial position. Landlords already have options to cover the costs of damage to the property, including through the existing bonds system. For many renters, moving home is a stressful and expensive time, which may include moving costs, cleaning costs, time away from paid employment, as well as the upfront costs of a new tenancy. To lump a “pet bond” on top of these costs would disproportionately disadvantage vulnerable households, with no justification.

Reduce the burden of frequent inspections

“One agent in particular insisted on returning 2 weeks after each inspection due to minor things like a coffee cup on the sink or the bin had rubbish in it.”

(Comment from Better Renting Facebook Group, *Adelaide Renters*)

SA tenancy legislation should be updated to reduce the permissible frequency of routine inspections to two per twelve months. This would provide renters with the “quiet enjoyment” to which they are entitled and reduce the imposition of too-frequent inspections, which many renters find inconvenient, disruptive, and patronising.

Currently, SA tenancy legislation permits inspections “not more than once each 4 weeks”, as long as appropriate notice is provided. This is in stark contrast with other jurisdictions (Victoria, ACT, NSW), where the permissible frequency of routine inspections is around 2-4 per year. This means that people who rent could be made to endure 13 inspections in a year. In addition, agents sometimes undertake illegal follow-up inspections, also known as re-inspections, for minor transgressions.

The purpose of rental inspections should be to check that the property is being adequately maintained in keeping with the obligations of the tenancy. This can be readily achieved with inspections every six months. Anything more frequent is a violation of a tenant’s right to quiet enjoyment of their property.

Develop innovative approaches to make private rental more accessible and affordable

The SA Government has various options to use tenancy legislation to make private rental more affordable. One option is establishing minimum energy efficiency standards for rental housing, which will reduce the cost of living for renter households. A second option is to implement measures to prevent profiteering behaviour by landlords. Thirdly, SA Government should reform water billing to introduce a fairer system that creates stronger incentives for water efficiency and conservation.

Introduce minimum energy efficiency standards for rental properties

Rental properties are generally less energy efficient than properties inhabited by owner-occupiers. This is typically seen as being a result of split-incentives, whereby landlords do not wish to pay the cost of energy efficiency improvements that would not benefit themselves directly. Tenants, in turn, are often unable to improve their properties. Even if they could, limited security of tenure means that tenants cannot be confident that their investment would be worthwhile.

This lower energy efficiency has a significant impact on the wellbeing of people who rent. Renters experience less comfortable: in South Australia, renters are four times more likely than homeowners to report difficulties with staying comfortably warm in winter.¹¹ They would also have to spend more on heating or cooling, driving up housing costs. A house that is too cold in winter or too hot in summer is a risk to health and wellbeing, with documented effects on physical and mental health, as well as mortality.¹²

If the SA Government introduced minimum energy efficiency standards for rental properties, this could initiate a phased improvement in the energy efficiency of rental properties. This would result in rental properties that are cheaper to run in the summer and winter and, thus, more affordable. Minimum standards also eliminates the scarcity of energy-efficient rental dwellings, thus limiting the opportunities for landlords to raise rents at the expense of tenants.¹³

¹¹ M Smith, 'Renters frozen out when it comes to heating', in *The Advertiser*, Adelaide, 15 June 2019, p. 15.

¹² Public Health England, 'Local action on health inequalities: Fuel poverty and cold home-related health problems', , 2014; F Miller, 'Too Hot to Handle: Assessing the Social Impacts of Extreme Heat', in *Turning up the heat: a symposium for SIA practioners and reseachers*, , 2014, 1–7.

¹³ AHURI, 'When it comes to rental property standards, what can Australia learn from New Zealand?', , 2018, <<https://www.ahuri.edu.au/policy/ahuri-briefs/when-it-comes-to-rental-property-standards-what-can-australia-learn-from-new-zealand>> [accessed 17 October 2018].

Prevent rent profiteering

The current rental vacancy rate in Adelaide is less than 1.5%, and the rental vacancy rate has not exceeded 2.5% since at least 2005.¹⁴ When the vacancy rate is low, landlords often take advantage of a scarcity of rental housing to increase asking rents.¹⁵

While it may be defensible for a landlord to increase rent in nominal terms to keep up with inflation, or following improvements to a rental property, exploiting a situation of scarcity in order to extract increased rents is best understood as profiteering behaviour. Rent increases above inflation reduce the disposable income of rental households, in some cases forcing them to cut back on essentials such as food or utilities. Rent increases can disrupt communities, creating dislocation and accelerating gentrification.¹⁶ In this context, measures to mitigate extreme rent increases benefit individual rental households, but also entire communities. Supporting people to remain in their communities, and preserving economic diversity in their communities, makes for a stronger society.¹⁷

There are various ways by which the SA Government could look to prevent rent profiteering.

As a first option, we suggest a 'soft' limit linked to the CPI. This would allow a landlord to increase rent (say, every 12 months) in line with changes to the cost of living. If a landlord wanted to increase rent above this limit, and their tenant disagreed, then the landlord would have to have the increase approved by SACAT.

This is like the model soon to come into effect in the ACT, although the ACT model uses the housing component of CPI and sets the limit at 110% of the housing component of CPI. The tenant would still have the option of opposing an increase lower than CPI.

The benefits of this approach are:

¹⁴ SQM Research, 'RESIDENTIAL VACANCY RATES', , 2019, <https://sqmresearch.com.au/graph_vacancy.php?region=sa%3A%3AAdelaide&type=c&t=1> [accessed 23 August 2019].

¹⁵ T Saunders & P Tulip, *A Model of the Australian Housing Market*, , 2019.

¹⁶ S Stein, *Capital City: Gentrification and the Real Estate State*, London, Verso, 2019.

¹⁷ P Mares, *No Place Like Home: Repairing Australia's Housing Crisis*, Melbourne, The Text Publishing Company, 2018.

- A soft limit means that a property investor can still increase rent by more than CPI where they can justify this to the tribunal, such as if they have improved the property;
- If both parties agree to a rent increase, such as if they negotiate for an increase alongside improvements to the property, then the tribunal doesn't need to be involved;
- The onus is on the landlord to seek approval for a potentially excessive increase. This recognises the intrinsic power imbalance and the relatively vulnerable position for people who rent;
- By tying the limit to CPI, and not the housing component of CPI, rent increases would be linked to rate of inflation in the general economy. A limit tied to the housing component of CPI may still allow rent increases well above inflation.

One limitation of this approach is that it typically applies only to existing tenancies. However, in parts of the world governments have investigated options to prevent rent profiteering also in relation to new tenancies (for example, in Berlin), and these options may be worth considering.

Reform water billing

Water billing is a recurring nuisance for people renting in South Australia. In addition to struggling to afford the water bill itself, renters struggle with poor communication from property managers, who may impose arbitrary payment deadlines or not provide a copy of the bill.

As part of improving the affordability of private renting, the strategy should look towards:

- Requiring landlords to pay water supply charges, leaving tenants liable for consumption only;
- Allowing tenants to be billed for consumption only when the property meets water efficiency criteria and has a separate meter; &
- Facilitating direct billing of tenants.

Firstly, it is unclear why tenants should pay water supply charges. These are fixed charges that are associated with the property, regardless of whether it is occupied. Water supply charges, like other fixed charges, should be borne by the landlord, as in every other state in Australia. As well as being fairer, this would improve affordability, by reducing the total expense paid by the renter. In addition, if 100% of the tenant's

water costs are due to their own consumption, this may create a stronger incentive to conserve water.

Secondly, landlords should be prevented from billing tenants for consumption except when the property meets water efficiency criteria and has a separate meter. In many rental properties, the 'split incentive' problem means that landlords under invest in efficiency measures, meaning that the people renting the property use more water or energy than they would otherwise need to. This proposal would align incentives, so that landlords are economically motivated to improve the water efficiency of their properties. This could lead, for example, to greater uptake of dual-flush toilets or low-flow showerheads.

Tenants should also be liable for consumption only when their property is separately metered. That is, tenants should only pay for their own water consumption. Currently, in a split metering situation (multiple properties on the same meter) tenants are in a weak negotiating position and this likely results in their accepting whatever terms their landlord imposes at the start of the lease. Renters in these situations end up paying an arbitrary proportion of the water bill, which is only partly influenced by their actual consumption. Where individual metering is not possible, the landlord should remain fully liable for water consumption costs, with the rent, in effect, covering water costs.

Finally, direct billing of tenants has significant potential to reduce the workload of property managers, while also enabling more transparent communication and accountability for renters. In addition, it would make it simpler for suitable tenants to access hardship programs.¹⁸

Increase security of rental tenancies, including longer term leases

"I was on 12 month leases for years. It doesn't give you much stability or ability to plan ahead, especially given landlords only need to give you 28 days notice before the end of the lease about whether it's being extended or not. Not much time to find another rental property - especially if you're in a sharehouse situation."

(Comment from Better Renting Facebook Group, *Adelaide Renters*)

¹⁸ H Matthew, *Sinking Incomes*, , 2012.

We appreciate the acknowledgement of how important it is to improve the security of rental tenancies. As discussed above, helping people who rent to remain in their home leads to stronger and healthier communities. In addition, if tenants don't have to worry about retaliatory evictions, then they can more confidently exercise their other rights, for example concerning repairs. However, longer-term leases are the wrong way of increasing the security of rental tenancies. Instead, it is far preferable to shift to 'indefinite tenancies' and limit the grounds on which a tenancy may be terminated by a landlord.

The problem with a long-term lease is simple: the future is uncertain. A tenant may find themselves in an unsuitable house, or with an unbearable landlord. Or, their life circumstances may change: a relationship could end, or a new job could be won in another suburb, or another state. In these likely but unpredictable situations, a long-term lease poses the risk of significant financial liabilities for a tenant. Thus, in the words of Dr. Chris Martin, Research Fellow, Cities Futures Research Centre, UNSW,

"law reform should not be directed at trying to fix tenants in occupation of their current premises, but instead to support them in autonomously determining and pursuing their housing interests, whether in relation to their current premises or other prospective premises."¹⁹

Instead of limiting long-term leases, a superior approach is a shift towards indefinite, 'open-ended' tenancies. This demands the abolition of "without grounds" termination, and a review of current grounds for termination to ensure they are defensible and prevent retaliatory evictions. As Dr. Martin writes, "Law reforms regarding grounds and notice periods for terminations, and regarding rent increases, represent the better way forward [compared to long-term leases]."²⁰

As such, the SA Government should:

- Abolish termination without grounds (Sections 83 and 83A of the Residential Tenancies Act 1995);
- Define prescribed grounds for a termination. This could cover situations where the tenant is at fault, such as a breach of tenancy or rental arrears; and

¹⁹ C Martin, 'Improving Housing Security through Tenancy Law Reform: Alternatives to Long Fixed Term Agreements', in *Property Law Review*, vol. 7, 2018.

²⁰ Martin.

- If prescribed grounds include grounds where the tenant is not at fault (such as for the landlord or a family member to reoccupy the property), prohibit premises from being relet for a period of time after such a termination. This would mitigate against the fraudulent or retaliatory use of terminations.

For a discussion of different ways of classifying and thinking about terminations, we encourage you to read a post by Better Renting, “The Rub on Unfair Evictions”.²¹

²¹ Better Renting, ‘The Rub on Unfair Evictions’, , 2019,
<https://www.betterrenting.org.au/the_rub_on_unfair_evictions> [accessed 23 August 2019].