



SACOSS

*South Australian Council
of Social Service*

**SACOSS' Submission to the
Residential Tenancies Act Review - Discussion Paper 2022
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Introduction

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for health and community services in South Australia, and has a vision of *Justice, Opportunity and Shared Wealth for all South Australians*. SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage vulnerable South Australians.

SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low-income consumers in South Australia.

As highlighted in SACOSS' most recent Cost of Living reports, South Australians are currently experiencing a rental affordability crisis. Disappointingly, the review Discussion Paper fails to adequately address this crisis, but our submission is largely focused on affordability issues. Our submission calls for:

- the amendment of the RTA to enable the government to introduce rent price controls by regulation
- the government to use this amendment to cap rent increases at no higher than CPI (All Groups) for a two-year period
- no-cause evictions to be ended and the RTA amended to allow for termination of a periodic lease or the non-renewal of a fixed term tenancy only for a limited number of prescribed reasons, and
- a regime to be established (either in the legislation, regulations or by government policy) to ensure that the use of prescribed reasons for evictions or non-renewal of leases is genuine.

SACOSS also has a long-standing interest in the delivery of essential services. Our research shows the cost of basic necessities like water and electricity impacts greatly and disproportionately on people on low incomes and living with disadvantage. We have therefore focussed our submission in these areas. Our submission calls for:

- the amendment of the RTA to include minimum energy efficiency standards for rental properties
- any minimum energy efficiency standards to be at least equivalent to those introduced in the ACT and/or Victoria, with a clear pathway towards more ambitious standards in the future
- mandatory disclosure of energy efficiency to be required for all rental properties

- section 73(2)(b) of the RTA to be amended to revert the default position to landlords being responsible for the water supply charge for separately metered properties, in the absence of an agreement
- section 73(1) to be amended to explicitly state that statutory charges include both sewerage and water supply charges to avoid any possible misinterpretation of the Act
- section 73(3)(b) to be amended to explicitly state that: *A tenant is not required to pay rates and charges for water supply if— (b) the landlord fails to provide the copy of the account to the tenant within 30 days of receiving the account and at no cost*
- the RTA to provide clarity on landlord responsibility for excess water charges resulting from water leaks that remain unrepaired, and
- section 73(3) to be amended to include: *A tenant is not required to pay rates and charges for water supply if— (c) the landlord fails to comply with minimum water efficiency standards.*

Rental Affordability

While many of the proposals in the Consumer and Business Services discussion paper on amending the *Residential Tenancies Act 1995* (RTA) would provide a modest benefit to renters and are supported by SACOSS, it is disappointing that very few of the proposals deal with the fundamental issue of rental affordability. South Australia (and Australia more generally) is in the midst of a rental affordability crisis. Modest changes to the conditions of tenancy are of no benefit to people who can't afford to rent. The government must implement a rent cap.

SACOSS' recent Cost of Living Updates have tracked the extent of the rental affordability crisis. We found that the median rental in the *cheapest* Adelaide suburbs in the December Quarter 2021 was \$300 per week for a 2-bedroom unit and \$400 for a 3-bedroom house (SACOSS, 2022a). These rental prices were unaffordable for people on low incomes (the bottom 40% of income earners) representing more than 30% of their income (the standard benchmark) as shown in Table 1. Only minimum wage single parents with 2 children were able to afford the rent for a two-bedroom unit (and this would assume that the children shared a bedroom: rent for a more family-appropriate 3-bedroom house also exceeded the affordability threshold).

Table 1: Rental Affordability, Adelaide December 2021

| | Total Income* | % of Income 2-bed unit | % of income 3 bed house |
|---|---------------|------------------------|-------------------------|
| Single JobSeeker | \$393.65 | 76% | |
| Single Age Pensioner | \$555.15 | 54% | |
| Single Minimum Wage | \$772.60 | 39% | |
| Single Parent JobSeeker – 2 children | \$694.43 | 43% | 57% |
| Single Parent Minimum Wage – 2 children | \$1,124.77 | 27% | 36% |

* includes where appropriate Centrelink Supplements, Commonwealth Rent Assistance and Family Tax Benefits based on children aged 10 and 14. Source: SACOSS, (2022a).

The situation has deteriorated in the last year. SA government rental bond data show that rents for 2-bedroom units newly tenanted in South Australia in the September Quarter 2022 were 12.1% higher than at the same time last year, while rents for 3-bedroom houses were 15.8% higher (Govt of SA, 2022). By comparison, the general inflation rate for Adelaide was 8.4% in the September Quarter (ABS, 2022). Rents have gone up, in some cases, by nearly double the CPI inflation rate.

Although the situation is more varied across regional South Australia, there is also a rental affordability crisis in many areas. While rents are generally lower in regional South Australia than in Adelaide, average income is also lower and as the table below shows, rents remain unaffordable for those on very low incomes.

Table 2: Rental Affordability, Regional SA, June 2022

| | Total Income* | % of Income 2-bed unit | % of income 3 bed house |
|---|---------------|------------------------|-------------------------|
| Single JobSeeker | \$398.35 | 59% | |
| Single Age Pensioner | \$566.70 | 41.5% | |
| Single Minimum Wage | \$772.60 | 30.4% | |
| Single Parent JobSeeker – 2 children | \$715.88 | 32.8% | 44.7% |
| Single Parent Minimum Wage – 2 children | \$1,1235.13 | 20.7% | 28.2% |

Source: SACOSS, (2022b).

As is the case in metropolitan Adelaide, the situation is getting worse in many areas and for many households. In the Fleurieu and Kangaroo Island, Murray and Mallee, and Limestone Coast districts, rents went up significantly more than incomes for all five of the household types in the SACOSS report. (SACOSS, 2022b)

Current provisions of the RTA in relation to rent increases are failing to protect tenants or strike any sort of balance. Landlords must give 60 days’ notice of rent increases and can only increase rent once in a 12-month period, but there is no limit on what that rent increase might be. The result: we see rent increases at double the inflation rate.

This is inequitable. When rent increases faster than inflation, landlords (who are generally in higher income/wealth brackets) receive an increase in their real income, while tenants (who are generally in lower income brackets) see their real standards of living decrease.

It is unthinkable that a review of the RTA could proceed without addressing affordability issues. The proposed prohibition on rental bidding, and any limitations on rental bonds may assist a little in entry affordability and are supported by SACOSS, but they do not address the fundamental issue of the week-to-week price of rents.

Rent Capping

To directly address rental affordability SACOSS is calling for a 2-year cap on rental increases above the CPI (All Groups). This approach was used to protect renters as a response to the COVID pandemic. It is not a rent freeze and would not impact on landlord’s real return on investment. However, safeguards must be enacted, both for renters and landlords. The

proposed prohibition on no-cause evictions should assist in ensuring tenants are not evicted in order that a landlord can increase the rent, but further safeguards may be needed to limit rent increases when there is a change of tenants. There would also need to be safeguards for landlords to enable them, probably via appeal to the SACAT, to increase rents above CPI in certain cases – for instance, where the rent was significantly below market rates.

SACOSS proposes that amendments be made to the RTA to enable the government to implement rent price controls by regulation. The government, with parliamentary scrutiny, could then implement such a cap in response to the current rental affordability crisis and potentially future crises such as pandemics.

Recommendation

That:

- the RTA be amended to enable the government to introduce rent price controls by regulation;
- the government use this amendment to cap rent increases at no higher than CPI (All Groups) for a two-year period.

No Cause Evictions

Under a heading of “Longer Tenancies”, the CBS Discussion Paper notes recent changes in NSW and Victoria which prevent landlords ending tenancies with “no cause”, and suggests that consideration will be given to limiting the termination of a periodic lease or the non-renewal of a fixed term tenancy to a limited number of prescribed reasons, including renovation, occupation or sale.

SACOSS welcomes a move to end no-cause evictions, and is particularly pleased that the discussion paper includes non-renewal of fixed term tenancies in this proposed reform. Ending no-cause evictions is vitally important because, without that, tenants’ fear of eviction limits their ability to raise issues with landlords or to assert other rights under the RTA. Insecurity of tenure and concern that eviction is used as a behaviour control was frequently identified by tenants as being the “biggest problem” with residential tenancy law in Australia in a recent review by the Australian Housing and Urban Research Institute (AHURI). The report recommends that termination by landlords should be on prescribed grounds only, and that no-cause evictions be abolished (Martin et al, 2022, pp 74, 82).

SACOSS supports the call for an end to no-cause evictions. The grounds for eviction should be kept to the minimum necessary – because each additional prescribed ground gives a landlord another path and a tenant another reason to fear eviction. There will also need to be a process to monitor the use of the prescribed reasons to ensure that, where used, the purpose stipulated (e.g. renovation, occupation or sale) actually takes place.

Recommendation

That:

- no-cause evictions be ended and the RTA be amended to allow for termination of a periodic lease or the non-renewal of a fixed term tenancy only for a limited number of prescribed reasons;
- a regime is established (either in the legislation, regulations or by government policy) to ensure evictions or non-renewal of leases are monitored for compliance with the prescribed reasons

Minimum Energy Efficiency Standards

SACOSS supports the introduction of minimum energy efficiency standards for public and private rentals in South Australia. This would have a positive impact on rental affordability, and, importantly, would oblige landlords to ensure their properties meet a certain level of energy efficiency before they can be rented, lowering energy stress and improving wellbeing and health for renters (SACOSS, 2021). All Australian governments have committed to reducing greenhouse gas emissions to at least net zero by 2050, and have also committed to implementing a national plan that aims to achieve zero energy and carbon-ready residential buildings - including existing buildings. Improving the energy efficiency of rental homes is a crucial part of ensuring a just and equitable transition to zero emissions.

People who are most affected by higher electricity costs are also often least able to make changes to their property. Fear of eviction and low rental vacancy rates prevent renters from asking for energy efficiency improvements to the property (Wrigley & Crawford, 2017). Perceived landlord reluctance is a barrier to tenants obtaining energy efficient housing in Australia with half of tenants reluctant to ask for improvements due to a fear of rent increases, and two thirds of tenants expecting that their landlord would not support them if they wished to make the property more energy efficient (Jones et al., 2022). Currently, split incentives can be a barrier to implementing energy efficiency measures in rental homes. These split incentives occur because those who are responsible for paying the energy bills - tenants - are not the ones responsible for (or able to make) property upgrades. This can lead to landlords being disinclined to make energy efficiency modifications to the property as they largely associate the benefit of the resulting energy savings accruing for the tenant; not themselves. But improving the energy efficiency of a property does also provide benefits to the landlord: for example, these improvements in the long term are likely to add to the capital value of the property. This should be highlighted as a real incentive for landlords to make energy efficiency improvements to their properties. Tax incentives for landlords (such as receiving tax concessions for property improvements) should also be linked to energy efficiency improvements for the property. Regulation, not altruism, is needed to drive improvements in energy efficiency in rental housing stock in South Australia.

Renters are more likely to live in a home without insulation and are less likely to have either double glazing or curtains on their windows. Rental properties tend to be poorer in quality than other dwellings, particularly in terms of energy efficiency (Daniel et al, 2020). The cost of inefficient housing is distributed unequally, with renters spending on average \$150 extra on their energy bills per year when compared to homeowners, and this has been directly linked to rental properties being less efficient to heat and cool (Best & Burke, 2022). Combined with increased energy costs this can become a source of disadvantage for a large share of the population.

Genuine harm can be – and is being – caused by living in a property that is not energy efficient. Poor energy efficiency in properties can result in crippling bills, discomfort, and potential health problems - particularly during weather extremes. Up to 40% of Australian households who rent experience energy hardship (Daniel et al, 2020). Improving the energy efficiency of homes has been linked to reduced time in hospital, lower blood pressure, and fewer days off from work or school (Maidment et al, 2014). Incredibly, South Australia has a higher rate of deaths from extreme cold than Sweden, with poor heating and insulation and lack of energy efficiency contributing to these deaths (Bright et al., 2014).

Australian renters experience higher rates of energy stress than home owners, with 24% of private renters experiencing elevated rates of energy stress and 35% of public and community housing tenants experiencing energy stress (Bryant et al, 2022). Energy stress also increases among renter households where at least one member has a long-term health condition or disability and less energy efficient rental housing significantly influences stress outcomes. It is also concerning that, despite the risks, households that include someone with a disability or chronic condition are much more likely than other households to restrict heating use due to cost. Negative health outcomes resulting from extreme weather events are more likely where multiple risk factors co-exist, and these risk factors include low incomes, existing health conditions, and inefficient housing (Bryant et al, 2022). Minimum energy efficiency standards are an important action needed to address these issues as they can reduce energy stress by lowering energy costs for renters or improving amenity (such as lessening the need to ration heating/cooling).

Modest investments in energy efficiency improvements can create significant savings on energy bills. Analysis conducted on efficient heating and cooling in Adelaide homes modelled the heating and cooling costs across multiple scenarios for a two-bedroom and three-bedroom home. The analysis found that even small improvements in thermal efficiency or introducing energy efficient heating and cooling significantly lowered heating and cooling costs, as demonstrated by the following tables: (McLeod & Cope, Forthcoming)

Table 3: annual costs of heating and cooling for a 2-bedroom duplex

| | | | | |
|--|------------|----------|----------|--------------------|
| | | | | |
| Scenario 1: gas heater | \$1,361.48 | N/A | N/A | \$1,361.48* |
| Scenario 2: inefficient portable heater | N/A | \$831.55 | N/A | \$831.55* |
| Scenario 3: Reverse cycle air conditioner | N/A | \$385.66 | \$619.61 | \$1,005.27 |
| Scenario 4: Reverse cycle air conditioner and ceiling insulation | N/A | \$198.04 | \$135.50 | \$333.55 |
| Scenario 5: Reverse cycle air conditioner, ceiling insulation and draught sealing | N/A | \$194.57 | \$126.24 | \$320.81 |
| Scenario 6: Reverse cycle air conditioner, ceiling insulation, draught sealing, and blinds | N/A | \$192.25 | \$121.61 | \$313.86 |

Table 4: annual costs of heating and cooling for a 3-bedroom detached house

| | | | | |
|--|------------|----------|----------|--------------------|
| | | | | |
| Scenario 1: gas heater | \$1,164.25 | N/A | N/A | \$1,164.25* |
| Scenario 2: inefficient portable heater | N/A | \$719.21 | N/A | \$719.21* |
| Scenario 3: Reverse cycle air conditioner | N/A | \$349.76 | \$452.83 | \$802.59 |
| Scenario 4: Reverse cycle air conditioner and ceiling insulation | N/A | \$198.04 | \$98.44 | \$296.49 |
| Scenario 5: Reverse cycle air conditioner, ceiling insulation and draught sealing | N/A | \$192.25 | \$96.13 | \$288.38 |
| Scenario 6: Reverse cycle air conditioner, ceiling insulation, draught sealing, and blinds | N/A | \$185.30 | \$88.02 | \$273.32 |

There is significant scope to aim for stronger minimum energy efficiency standards than have been proposed in the CBS Discussion Paper. By limiting the scope to energy efficient appliances, rather than insulation or the availability and energy efficiency of heating and cooling, the Discussion Paper misses an opportunity to address many of the greater challenges that renters face and have limited capacity to change. Other Australian jurisdictions do much more. In the ACT, all residential rental properties will need to meet minimum energy efficiency standards for ceiling insulation to improve energy performance, increase thermal comfort, reduce greenhouse gas emissions, and contribute to climate change resilience (Justice and Community Safety Directorate, 2022). The Victorian minimum standards for properties being offered for rent include requirements for window coverings and heating (Minimum Standards, 2022). SACOSS recommends that the South Australian minimum energy efficiency standards should include a minimum ceiling insulation standard and/or minimum heating/cooling efficiency requirements in rental properties with complementary measures, such as requiring draught proofing and/or curtain hanging where

needed to ensure that the benefit of the minimum energy efficiency standards is maximised.

SACOSS supports the *Community Sector Blueprint*, developed through the Healthy Homes for Renters collaboration and recommends that the South Australian Government implements it in South Australia, as it provides an excellent framework for minimum energy efficiency standards for rental properties. In introducing minimum energy efficiency standards, we recommend transition from an initial features-based scheme to eventually adopting modelled performance standards. Modelled performance standards allow for greater responsiveness to climatic and building variation, make higher efficiency ratings achievable, provide flexibility on how the standards are met, and enable property owners/investors to achieve better changes faster. The critical benefit of modelled performance is that the enforcement and compliance system doesn't rely on the renter for compliance. However, starting from a features-based scheme can be useful to begin with as it can bring all rental properties up to a base standard quickly (e.g. all rental properties are insulated, or have electric reverse cycle air conditioning/heating). Minimum energy efficiency standards also need to be rigorously enforced, and the system must ensure that renters are not afraid or unable to report issues with energy efficiency in their rental property for fear of eviction – particularly where they suspect the property they're renting does not meet the minimum energy efficiency requirements.

Landlords should be given a reasonable amount of time to meet the required rating level which is long enough to give them time to prepare to meet the standard without placing a burden on trades and supply chains, but still short enough to ensure that the objectives (lower energy costs and better amenity for renters) are achieved. This could be achieved by implementing a similar phased model such as that in the ACT, where during the phase-in period landlords have nine months from when a new lease is signed for the property to comply with the standards unless they have an exemption. This ensures that landlords not only have sufficient time to make the required changes but also staggers the upgrades to avoid a spike in demand for materials and labour in the associated industries.

There is no evidence to suggest that introducing minimum energy efficiency standards reduces rental property supply. In fact, new research from the Australian Housing and Urban Research Institute has shown that improving tenancy laws has not stopped rental investment. This research found that opposition to mandatory minimum energy efficiency standards is largely unjustified, and that requiring greater energy efficiency does not erode the market position of any individual builder or operator, and the large-scale adoption of energy-saving technologies will drive down the price of these innovations (Martin et al, 2022). Energy efficiency ratings and energy saving features are also increasingly important to renters looking for properties in the rental market (Kusher & Dellow, 2021).

Should reforms to establish minimum energy efficiency standards progress, it may be appropriate to concurrently amend the *Housing Improvement Act 2016* to ensure both Acts complement each other. SACOSS has, in the past, recommended making changes to the Housing Improvement Act to include minimum energy efficiency standards. However, even if the Housing Improvement Act is amended, we would still consider it necessary to amend the RTA to establish frameworks for compliance and enforcement, and so that landlords understand it is their responsibility to ensure the housing they provide meets the minimum standards. SACOSS also recommend that any minimum standards put in place exist not only for private rentals, but for public, community, and Aboriginal housing as well, which may require amending other Acts.

Recommendation

That:

- the RTA is amended to include minimum energy efficiency standards for rental properties
- any minimum energy efficiency standards are at least equivalent to those introduced in the ACT and/or Victoria, with a clear pathway towards more ambitious standards in the future, and
- minimum energy efficiency standards also apply to public, community, and Aboriginal housing as well – not just private rentals.

Mandatory Disclosure

SACOSS recommends introducing into the RTA a mandatory requirement for landlords to disclose the energy efficiency for all rental properties. The aim of mandatory disclosure should be to give tenants a clear indication of how much energy their home will use and to make it easier to understand likely future energy bills. Currently the ACT is the only jurisdiction that requires a property's energy efficiency to be disclosed at the point of sale or lease, though there are exemptions. SACOSS suggests that a mandatory disclosure scheme must be based on energy efficiency audits of the actual properties, and not on energy audits of the property's building plan.

Mandatory disclosure is also important for providing data and transparency about the state of rental housing in South Australia (SACOSS, 2021). International research found that US homeowners were largely ignorant of their home's energy efficiency. Mandatory disclosure would address this market failure and could assist over the longer term to improve the overall quality of housing and encourage participation in energy efficiency incentive programs (Myers et al., 2019). Australians support mandatory disclosure: a 2020 survey found 66% of people support mandatory disclosure around energy efficiency for properties (Jones et al., 2022). Mandatory disclosure is a simple step that the State Government could take towards improving home energy efficiency and awareness in our State.

Recommendation:

That:

- mandatory disclosure of energy efficiency is required for all rental properties

Water Billing

When compared to housing and energy costs, water expenses are typically considered less of a pain point for tenants. However, cost of living pressures have a cumulative effect. Unpicking the interaction between income, housing, and the cost and usage of energy, water and telecommunications is crucial to understanding affordability challenges. Previous SACOSS analysis found that 31% of low-income South Australian households in energy stress, were also in water affordability stress (SACOSS 2020c). There is consensus among tenants and landlords¹ about the solutions (Uniting Communities report 2022a): the water billing recommendations outlined below are “quick wins” in relieving cost of living pressures on tenants. SACOSS encourages CBS to act on them while the *Water Industry Act 2012* is concurrently under review.

Supply Charge

Amendments to the RTA in 2014 saw the cost of water supply shifted from landlords to tenants. As noted in the discussion paper, South Australia is the only jurisdiction in Australia where tenants are liable to pay for the water supply charge (unless otherwise agreed with the landlord).

Currently in South Australia, the landlord and tenant can reach an agreement regarding responsibility for water supply and usage. This must be specifically included as terms in the lease agreement. In the current rental market, the likelihood of tenants being able to negotiate equitable arrangements for rates and charges of water supply is unrealistic and unfair. The current default position reinforces this power imbalance.

Due to the 2014 amendments, there are now different arrangements where there is no specific agreement in place:

- **Lease agreements from 1 March 2014** – The tenant is responsible for paying all water supply and usage charges for separately metered properties
- **Lease agreements before 1 March 2014** – The tenant is responsible for water use over 136 kilolitres per year

This creates inconsistencies in the system, with SA Water research in 2019 indicating that 44 per cent of tenants were being on-charged for water supply, 67 per cent were charged for water usage, and 12 per cent reporting that they were being charged for sewerage. The lack of consistency gives rise to potential exploitation, noting that Section 73(1) of the RTA states

¹ Including Shelter SA, Landlords’ Association of South Australia, and Turner Real Estate

that the landlord must bear all statutory charges imposed in respect of the premises. Sewerage costs are considered a statutory charge, being a rate or charge imposed under the *Water Industry Act 2012*. This represents a gap between the intent of the RTA, and what happens in practice. Therefore, SACOSS suggests that the RTA is amended to make it clear that 73(1) is inclusive of sewerage costs and supply charges.

Recommendation

That:

- section 73(2)(b) of the RTA is amended to revert the default position to landlords being responsible for the water supply charge for separately metered properties, in the absence of an agreement, and
- section 73(1) is amended to explicitly state that statutory charges include both sewerage and water supply charges to avoid any possible misinterpretation of the Act.

Landlords providing copies of the bill

Currently, under Section 73(3) of the RTA, a tenant is not required to pay rates and charges for water supply if:

- (a) the landlord fails to request payment from the tenant within 3 months of the issue of the bill for those rates and charges by the water supply authority; or
- (b) the tenant has requested from the landlord a copy of the account for the rates and charges and the landlord has failed to provide the copy to the tenant within 30 days of the request and at no cost.

While the RTA already has provision for tenants to request copies of their water bill, we note the inherent power imbalance which limits tenants' ability to enact their rights. There are further complexities with shared meters, as noted in *Uniting Communities' (2022b)* recent issues paper, and different provisions depending on when lease agreements were entered into. For example, in advising tenants of water charges:

- **Lease agreements from 1 March 2014** – the landlord must pass on charges within three months of the bill being issued from SA Water.
- **Lease agreements before 1 March 2014** – the landlord does not have to pass on charges within a specified time but the tenant can dispute a claim for payment if the landlord is slow in passing on the bill and can dispute the claim for payment with the South Australian Civil and Administrative Tribunal (SACAT).

The pre-2014 lease agreements are archaic. Applications to SACAT are not only burdensome and stressful; they also attract a range of application fees, which act as a barrier to access. While there are fee waivers and reduced rates for those experiencing financial hardship, the process is reliant on the renter proactively enacting their rights.

In the context of a tight rental market, SACOSS calls for the onus for providing copies of the bill to be shifted to the landlord. The explicit recognition of tenants as customers under the *Water Industry Act 2012*, would also assist in providing further rights for tenants, such as access to free dispute resolution services via the Energy and Water Ombudsman of South Australia, increased transparency, access to hardship supports and easier access to concessions.

Recommendation

That:

- section 73(3)(b) is amended to explicitly state that: *A tenant is not required to pay rates and charges for water supply if— (b) the landlord fails to provide the copy of the account to the tenant within 30 days of receiving the account and at no cost*

Excess water charges resulting from leaks

SACOSS supports landlords having full or partial obligation to pay the excess water charges resulting from reported water leaks that remain unrepaired. Landlords are already able to receive a leakage allowance from SA Water of fifty per cent of water lost due to the leak (based on average usage at the property) capped at 600kL (SA Water, 2022). However, tenants are currently unable to access this allowance as they are not considered ‘customers’ of SA Water. Smaller providers have similar provisions to the SA Water definition (e.g. Roxby Council, 2022), which could provide a basis for identifying situations in which the landlord obligation for excess water charges would apply.

While it is worthwhile to establish clear responsibilities around managing water leaks, minimum water efficiency standards are also needed to prevent leaks in the first place. SACOSS supports the introduction of minimum water efficiency standards for all new tenancies. In Queensland, landlords cannot pass on full water consumption charges to tenants if the rental premise does not meet the following water efficiency standards according to the 3 Star WELS requirements (Queensland Government, 2021):

- **Internal cold water taps and single mixer taps** (excluding bathtub and appliance taps): maximum flow rate of 9 litres per minute
- **Showerheads:** maximum flow rate of 9 litres per minute
- **Toilets:** dual flush function not exceeding 6.5 litres on full flush and 3.5 litres on half flush and a maximum average flush volume of 4 litres (based on the average of 1 full flush and 4 half flushes)

Minimum water efficiency standards could be set out in the RTA or incorporated into the *Housing Improvement Act 2016* and Regulations.

Recommendation

That:

- the RTA provides clarity on landlord responsibility for excess water charges resulting from water leaks that remain unrepaired;
- Section 73(3) is amended to include: *A tenant is not required to pay rates and charges for water supply if— (c) the landlord fails to comply with minimum water efficiency standards.*

Conclusion

SACOSS believes the reforms we are proposing here are relatively modest and particularly so by comparison with rental regulation in comparable jurisdictions overseas. We are in no doubt that the current regulatory framework in place for the rental market in SA invests the greatest power and control in the hands of landlords rather than tenants.

This asymmetry of power is then amplified whenever tenants have less income or have identities or other characteristics (e.g. own pets, don't speak English, are in receipt of income support payments, are Aboriginal, live with a disability, are single parents with children, have just left prison, etc.) that increase the likelihood they will be actively discriminated against.

And this asymmetry then extends for these groups of people to all those other processes and settings (e.g. proceedings in the SA Civil & Administrative Tribunal) in which tenants find themselves attempting to argue for their modest rights to be upheld - without access to proper advice, support or the help of advocates. In stark contrast landlords and agents are well informed about the law and its application and frequently have access to and will draw on legal advice in such proceedings.

While AHURI's recent review had a focus on national tenancy law reform, SACOSS concurs that:

The overarching principle of a national [tenancy] law reform agenda should be to unapologetically centre the rights of tenants to affordable housing, in decent condition, that supports autonomy and secure occupancy. Whereas 'the profitability of investment' was 'borne carefully in mind' by the Sackville Report, the national agenda should leave it to the ingenuity of the private sector as to whether it can profitably operate rental housing services according to the standards set. Where landlords or their representatives say it is too difficult and they will disinvest from existing PRS [private rental sector] dwellings, this should not be taken as a threat, but as a good thing: that is, the incapable and the unwilling exiting the sector, and thereby opening up prospects instead for new owner-occupiers or for differently oriented landlords—especially non-profit rental housing providers. On the same

reasoning, were higher standards and expectations to discourage new private landlords from entering the sector, there would be more scope opened up for new owner-occupiers and investors less inclined to churn properties and households (Martin et al, 2022, pg 83).

We acknowledge that while our submission to this process has primarily focused on rental affordability issues, ultimately the scope of the review and of issues affecting renters in South Australia is much greater. In light of this, we would like to draw your attention to the submissions of Better Renting, the Anti-Poverty Network, Shelter SA, and Uniting Communities, which we know that while not referenced, contain a range of recommendations we would wholeheartedly endorse.

SACOSS believes that although modest, the reforms we have proposed in this submission will significantly improve “the rights of tenants to affordable housing, in decent condition, that supports autonomy and secure occupancy”(p. 83) as outlined in the recent AHURI review.

We encourage the government to be emboldened in this push for reform and to act on all the recommendations we have made.

Appendix: Summary of Responses to Review Questions

| Topics for Feedback | | SACOSS Recommendations |
|---------------------|--|---|
| Longer tenancies | Prescribed reasons for termination and non-renewal | That no-cause evictions be ended and the RTA amended to allow for a termination of a periodic lease or the non-renewal of a fixed term tenancy only for a limited number of prescribed reasons (<i>page 9</i>). That a regime is established (either in the legislation, regulations or by government policy) to ensure evictions or non-renewal of leases are monitored for compliance with the prescribed reasons (<i>page 9</i>). |
| | Longer fixed term agreements | <i>No comment/recommendation</i> |
| | Termination notice periods | <i>No comment/recommendation</i> |
| Residential bonds | <i>No comment/recommendation</i> | |
| Rent bidding | <i>No comment/recommendation</i> | |
| Rooming houses | <i>No comment/recommendation</i> | |
| Renting with pets | <i>No comment/recommendation</i> | |

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| Housing standards and retaliatory evictions | Minimum energy efficiency standards | <p>That the RTA is amended to include minimum energy efficiency standards for rental properties (<i>page 14</i>).</p> <p>That any minimum energy efficiency standards are at least equivalent to those introduced in the ACT and/or Victoria, with a clear pathway towards more ambitious standards in the future (<i>page 14</i>).</p> <p>That minimum energy efficiency standards also apply to public, community, and Aboriginal housing as well – not just private rentals (<i>page 14</i>).</p> |
| Safety modifications | <i>No comment/recommendations</i> | |
| Start of tenancy requirements | <i>No comment/recommendations</i> | |
| Domestic violence | <i>No comment/recommendations</i> | |
| Water billing | Supply charge | <p>That section 73(2)(b) of the RTA is amended to revert the default position to landlords being responsible for the water supply charge for separately metered priorities, in the absence of an agreement (<i>page 16</i>).</p> <p>That section 73(1) is amended to explicitly state that statutory charges include both sewerage and water supply charges to avoid any possible misinterpretation of the Act (<i>page 16</i>).</p> |

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| | Landlords providing copies of the bill | That section 73(3)(b) is amended to explicitly state that: <i>A tenant is not required to pay rates and charges for water supply if – (b) the landlord fails to provide the copy of the account to the tenant within 30 days of receiving the account and at no cost. (page 17)</i> |
| | Excess water charges resulting from leaks | That the RTA provides clarity on landlord responsibility for excess water charges resulting from water leaks that remain unrepaired (<i>page 18</i>). That section 73(3) is amended to include: <i>A tenant is not required to pay rates and charges for water supply is (c) the landlord fails to comply with minimum water efficiency standards. (page 18)</i> |
| Illegal drug activity | <i>No comment/recommendations</i> | |
| Third party payments | <i>No comment/recommendations</i> | |
| Modernisation of language | <i>No comment/recommendations</i> | |
| SACOSS additional considerations | Rental affordability | That the RTA be amended to enable the government to introduce rent price controls by regulation (<i>page 8</i>). That the government use this amendment to cap rent increases at no higher than CPI (All Groups) for a two-year period (<i>page 8</i>). |

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| | Mandatory disclosure | That mandatory disclosure of energy efficiency is required for all rental properties (<i>page 15</i>). |
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