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Consumer and Business Services
Reform of Residential Tenancies Act

Via email: CBSReforms@sa.gov.au

4 September 2023

Re: SACOSS Comments on Draft Bill

Thank you for the opportunity to comment on the Draft Residential Tenancies (Miscellaneous) Bill 2023. As the peak body for the non-government health and community service sector in South Australia, SACOSS has studied the proposed bill and welcomes the general thrust of the reforms.

SACOSS has been working with Shelter SA, Better Renting, Uniting Communities and the Anti-Poverty Network and we have collectively called for four key changes to the Act:

- Abolishing no-cause evictions
- Limiting rent increases to CPI
- Introducing minimum energy efficiency standards
- Ensuring landlords can't reasonably refuse a pet.

The reforms proposed in relation to no-cause evictions and renters with pets are welcome, but it is disappointing the bill contains only very minor amendments in relation to the other two areas. This submission will consider the proposed amendments in each of these four key priorities, before discussing other reforms proposed in the bill. Specific suggestions are in italics.

No-cause Evictions

The bill makes a range of amendments to implement an abolition of no-cause evictions. As SACOSS understands the impact of the amendments, evictions will only be allowed for tenant breaches (s80), drug testing (proposed s80A) or (for periodic leases) when a landlord requires premises for "certain purposes" (demolition, repairs, sale, family occupation, etc) (s81) and for any other reason prescribed by regulations (s83). Importantly, the bill also limits the right to evict at the end of a lease (i.e. non-renewal).

The reasons for termination of a lease stipulated in the Act look reasonable and will provide for a greater level of certainty and security of tenure for tenants. The one caveat to our support for these clauses is that other reasons for eviction can be added by regulation. While we understand the necessity for flexibility in the Act, it does open the prospect of future regulations expanding the number of allowable reasons for eviction and watering down the security of tenure. Accordingly, *SACOSS seeks a statement in either the*

Explanatory Notes to the Bill or in the second reading speech that there are no other reasons for eviction being contemplated at this time.

Limiting Excessive Rent Increases

While SACOSS and the groups we have been working with have advocated for a cap on rent increases based on CPI, the bill does not do this. The rationale for limiting rent increases to CPI is obvious given the range of reports, including SACOSS' various Cost of Living Updates, that show the extent of rent increases and their impact on low-income households.

However, in response to proposals for rent caps, governments and commentators often assert that they don't work or undermine future housing supply. As SACOSS has pointed out, this is sometimes simply an assertion of "the landlord myth" (the idea that landlords create supply rather than simply competing to buy existing stock), but a recent report from Per Capita shows that there are different "generations" and types of rent caps. Most of the criticisms and "evidence" from overseas relate to hard rent freezes or caps, rather than the more flexible tie to CPI being proposed by our groups. Moreover, in some overseas examples of second and third generation caps, rent increases are limited within an existing tenancy, but larger increases are enabled when a property goes on the market between tenancies.

As the Per Capita report points out (citing renowned housing academics, Chris Martin and Hal Pawson), all that would be required to give effect to the more flexible approaches argued for would be to *have a clause in the Residential Tenancies Act that a purported rent increase beyond the limit (e.g. CPI) would be unlawful and invalid.* We assume there would be rights for landlords to appeal for exemptions in special circumstances, such as improvements in the property, and there are numerous examples of where this model is in place around the world.

Unfortunately, the state government and the proposed bill does not take this approach. However, we note that it does – for the first time – acknowledge that large rent increases may be unreasonable by including disproportionate rent increases as a reason the Tribunal may consider rent to be excessive under s56(2). This is a welcome, if small step, but the term "disproportionate" is not defined and is too vague for a tenant to risk taking an increase to the Tribunal (particularly when the increase is only one matter to be considered).

If the government is not willing to adopt the more straightforward approach suggested by Per Capita (and Martin and Pawson), it should at least provide some guidance as to what is meant by disproportionate. Accordingly, *SACOSS seeks a statement in either the Explanatory Notes to the Bill or in the second reading speech that, in normal circumstances and unless there was significant new investment in the property, an increase in rent above CPI should generally be considered as disproportionate*.

Minimum Energy Standards

It is disappointing that the draft bill contains no provisions for a general requirement that rental properties meet minimum energy standards. The change proposed in s27 of the bill requires some regulated efficiency standards for replacement appliances, fitting and

fixtures, but this provision is limited both because it does not apply to existing appliances (and some properties do not have many or any relevant fittings and fixtures), and it does not apply to building features such as glazing and draft-stopping. *At a minimum, the proposed clause 68A should include insulation, but in the longer term, a more holistic approach is required*.

Renters with Pets

The draft bill contains a number of provisions that increase the rights of renters with pets. These are welcome in their intent and reach, and in particular, we also welcome the ban on rent bonds or extra payments (in the proposed s66C(10)). However, there are a number of issues that could be addressed to improve this part of the bill.

1. New Tenancies: The bill appears to be written to give rights to sitting tenants, but it does not provide rights or protection to pet owners applying for a new tenancy. Prospective tenants have two options:

a) Apply to a landlord for permission to have a pet at the time of application/signing a lease – at which point a landlord may decide to lease to someone else; or
b) Wait until a lease is signed and accommodate their pet somewhere else until a separate application for a pet is made and decided.

The first allows for discrimination and limits rental options for pet owners, the second is complicated, requires knowledge of the act and available options for the pet – both in the short run and in the longer term if the application is refused.

SACOSS is open to any proposals to fix this problem, but as a starting point, *it should be a requirement of a landlord to declare prior to entering into a rental agreement if there is an impediment to a tenant having a pet* (e.g. strata by-laws). Further, while it may have limited effectiveness, *it should be an offence for a landlord to preference one tenant over another on the grounds of pet ownership* or some other provision analogous to the way the current s52 deals with children or s52B deals with rent bidding.

2. Changing Pets: It is not clear in some sections whether the provisions apply to a pet in general, or a particular (pet) animal. For instance, s66C(1) and (10) refer to "a pet" (general), while ss(8) and (9) and s66D refer to "the pet" (specific). The proposed s66F is explicit in stating the approval to keep a pet expires at end of the pet's life – so a new authorisation would be required to get a new dog/cat when one dies. In many cases where a replacement pet is similar to one that has died, this requirement to re-apply imposes an unnecessary burden on both tenant and landlord. *The bill should be amended to clarify if approval is for keeping a pet (in general) or a specific animal, and to allow for an approval to transfer to a replacement animal of similar size and type without further application*.

3. Existing Agreements to have Pets: It is not clear from the bill what happens to existing agreements to have pets and which may not have made in the "manner and form determined by the Commissioner" (proposed s66C(3)). Presumably the Commissioner could simply recognise any arrangements in place at the time the legislation commences, or transitional clauses could be included in the bill to recognise existing agreements. *SACOSS*

seeks clarity on how existing agreements will be treated to ensure that current tenants with agreements with their landlords need take no further action.

Other

Beyond these 4 major issues, SACOSS generally welcomes or has no comments on most other parts of the draft bill. However, there are a number of issues detailed below which SACOSS has raised previously, or has a particular interest in, where we wish to either specifically welcome the proposals in the draft bill or suggest changes to the proposed amendments to enhance their effectiveness.

- **Limiting rights of entry to inspect the premises (s31)** to 4 times a year is a significant advance on the oppressive current allowance of monthly inspections, but given the intrusion on tenants' lives and homes caused by such inspections, *SACOSS would prefer even less frequent rights of entry* – perhaps twice yearly, or twice in the first 6 months and then 6-monthly after that if the inspections are satisfactory.

- **Changes to statutory charges (s32)** are mostly welcome, and in particular the reversion to landlords having default responsibility for water supply charges is a good step that has been called for by SACOSS. We are unsure if the same approach applies as easily to the other "prescribed services" – but even if this framing is changed, *the change to make the landlord responsible by default for the water supply charge should be maintained*.

  Further, as per SACOSS' submission to the initial CBS review of the Act last year, there is a lack of clarity in relation who is responsible for charges for sewerage services and whether these are included in water supply or other statutory charges. To avoid all doubt, *sewerage services should be added to the list of prescribed services in the proposed amendment to s73(6)*.

  Finally, *we welcome the provisions in s32(3) and 32(3a)* tightening requirements for tenants to be provided with bills and providing for easier access for tenants to relevant concessions.

- **Excess Water (s33)** changes, making landlords responsible for excess water charges caused by a fault in water infrastructure or equipment on the property, unless the tenant had failed to advise the landlord of the fault, are *a welcome recognition that the tenant should not bear the cost of failure of the landlord's property.*

- **Reduction of maximum liability for tenants breaking a lease (s35)** is welcome, although even with the proposed limitation on liability, one or two months' rent still represents a substantial payment which is not really justified by potential lost rent to the landlord. *SACOSS would prefer the liability to be limited to one or two weeks' rent for each year remaining in a tenant-terminated lease* – but if this is not accepted, the proposed amendment is still welcome as a step forward.

- **Additional rights for termination by tenants (s50)** will be useful in allowing tenants to take opportunities or deal with the situations referred to in the section.

Finally, SACOSS wishes to ask a question in relation to the proposed change to the definition of a rooming house (s3). While SACOSS' advocacy has not generally focused on rooming houses, we recognise the importance of protections to residents in rooming housing. In this context, we note the change in the definition of a rooming house proposed in s3(4), reducing number of rooms from 3 to 2. We have no issue with the change in number or residents, but the revised definition appears general enough to capture a share-house or an owner/chief tenant taking in boarders – which may be better termed sub-letting. We assume that this broad application is not the intention of the redraft, and so *we ask that the definition be checked to ensure it applies appropriately to rooming houses and not share-houses*.

Thank you for your attention to this submission and for the work done in what are significant and positive reforms to the Act.

If you have any queries or want further information on the issues raised in our submission, please contact our Senior Policy and Research Analyst, Dr Greg Ogle at greg@sacoss.org.au or on 8305 4229.

Yours,

Ross Womersley, CEO