Feedback on **Residential Tenancies (Protection of Prospective Tenants) Amendment Bill 2023**

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UNITING COMMUNITIES

Dear Minister Andrea Michaels,

Thank you for the opportunity to comment on the *Residential Tenancies (Protection of Prospective Tenants) Amendment Bill 2023*.

Whilst Uniting Communities acknowledges some of the enhancements incorporated in the Amendment Bill, we remain deeply concerned about the exclusion of core legislative changes that will protect and secure the rights of tenants and improve rental affordability in South Australia. We disagree with the state government that the amendments in this bill are the most 'immediate' changes, which is inconsistent with the issues communicated by community services and tenants through the previous submission process. The most crucial and pressing amendments to the *Residential Tenancies Act 1995* include removing no grounds evictions, limiting excessive rent increases, enabling tenants to have pets in rentals, minimum energy efficiency standards and provisions for domestic violence victims (bond returned in full, ability to enter into a new rental agreement with the landlord and changing locks without permission). The full details about these amendments are in our previous submission. It is critical that these amendments are addressed in the state government's next bill on the broader review of the *Residential Tenancies Act 1995,* which is expected to be tabled to parliament later this year.

There are a number of reforms in the context of 'prospective tenants' that have been excluded from this amendment bill and we believe these should be prioritised for inclusion in the Amendment Bill prior to its presentation to parliament:

Bonds

In the state government's media release on the 15th of February 2023, it specified that 'the bond threshold will now be raised to $800 to ensure that for most rental properties, only a four-week bond will be required.' It was our expectation that this would be included in this amendment bill.

High bond payments are a pressing concern for prospective tenants currently. While some higher-income earners can afford to pay bonds amounting to more than four weeks' rent, the most financially stressed in our community cannot afford this. Uniting Communities supports that the threshold is increased to $800 so that most prospective tenants are only paying a bond of up to 4 weeks' rent.

In addition, we believe there should be a requirement for private landlords to lodge bonds through the Residential Bonds Online (RBO), as opposed to manual lodging. Contact details of the tenant should be included, so that the RBO is able to facilitate the return of unclaimed bonds to tenants in a timely manner.

We also recommend that the penalty for not lodging bonds within the prescribed timeframe be increased from $5,000 to $7,500 to act as a greater deterrence.

Discrimination of prospective tenants with pets

Prospective tenants with pets are currently facing discrimination at the application stage for rental properties. Amendments should prohibit blanket 'no pets' bans on rental advertisements. An analysis of rental advertisements shows that many advertisements describe pets as 'not permitted,' with 34 per cent indicating that pets would be a liability for a potential applicant. In a rental market that is largely unaffordable and competitive, tenants with pets are even less likely to find a rental property, leading to the surrender of the pet or homelessness. During the 2020-21 financial year, 374 animals were surrendered to the RSPCA after their owners were unable to secure rentals that

allowed pets. For women escaping domestic violence, this creates a potentially life-threatening situation as they are more likely to remain in abusive homes if they cannot take their pets with them. A full outline of our renting with pets' reforms can be found in our previous submission.

Fees for information requests

Landlords, agents, and database operators should be prohibited 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. It is not equitable to solicit a fee from tenants upon request of their own personal information.

Disclosure of energy efficiency standards

The amendment bill should require disclosure of the energy efficiency rating of properties at the point of leasing so prospective tenants have full knowledge of the costs of renting properties. This directly affects prospective tenants as it impacts how much money they will have to spend on energy costs.

Illegal drug activity

Landlords who know or suspect that illicit drugs have been manufactured or regularly smoked in their property should be required to undertake necessary remediation before leasing the property and provide evidence of this to prospective tenants. This should be included within the amendment bill as this affects prospective tenants. If a new tenant suspects that illicit drugs have been manufactured or regularly smoked in their rental and notifies their landlord or agent, the landlord should pay for testing. If contamination is found, the landlord should be responsible for remediating contamination, including providing alternative accommodation and storage for the tenant's furniture and belongings within a timeframe. In cases where a tenant's belongings are contaminated, compensation should be made available to them. A contaminated rental poses serious health risks for tenants and hence, the Act should clarify the landlord's obligations and establish a redressal mechanism for tenants.

Legislating against 'license agreements' and other invalid rental agreements

The amendment bill should specify that landlords and agents are prohibited from using non-standard rental agreements such as 'licence agreements' and can only use a residential tenancy agreement.

We have evidence that shows some private landlords are using non-standard rental applications and agreements with tenants. Some private landlords are offering license agreements instead of private rental agreements. We understand that a license agreement is not a valid rental agreement, and as a result, rental protections and provisions under the Act would not protect tenants who sign license agreements. As a result, tenants might be unable to access SACAT's dispute resolution function. Given the rental affordability crisis and lack of awareness, more vulnerable tenants are signing license agreements.

Safeguards against third-party platforms

Uniting Communities agrees with Digital Rights Watch's recommendation that there should be robust safeguards regarding the use of any third-party platforms, including automated decision-

making systems, that use renter data to make decisions, predictions or inferences that impact the approval of prospective tenants.

Tenants blacklist

It should be mandatory to notify tenants that they are on a tenant's 'blacklist'. We have received reports that tenants have unknowingly been placed on a blacklist that has prevented them from being accepted into a rental property. Tenants should be notified or given the ability to contest the blacklist. Tenants should be afforded recourse to understand the reasons for their inclusion as well as request for its removal if they believe they have been wrongly or unfairly listed.

Residential Tenancies (Protection of Prospective Tenants) Amendment Bill 2023:

Banning Rent Bidding (Clauses 52A and 52B)

We agree with section 52A that the landlord, or an agent of a landlord, must advertise the property for a fixed amount and is prohibited from soliciting and inviting an amount of rent that is higher than the advertised amount of the premises. We note that section 52A does not prohibit third-party operators (which includes websites facilitating tenant application forms) from engaging in rent bidding despite this being mentioned in CBS's summary of proposed changes in this amendment bill. We support section 52B provisions that prohibit third-party operators that facilitate tenant applications from charging a fee for a background check or tenancy rating.

Landlords and agents should also be prohibited from **accepting** rent offers higher than the advertised rent. With agents accepting higher rents across the state, vulnerable renters are being locked out of the market and rental affordability is worsening.

Section 52A (1) as it stands, does not prevent landlords or agents from 'accepting' offers from prospective tenants above the advertised amount. Prohibiting soliciting alone is ineffective, as landlords/agents can still accept higher rents offered by prospective tenants. Some tenants will still offer an amount above the advertised price due to the tight competition, leaving low-income tenants vulnerable and driving up rental prices. Section 52A (3) must be amended to, 'a landlord, or an agent of a landlord, must not <u>**accept**</u> an offer of an amount of rent under a residential tenancy agreement that is higher than the advertised amount of rent for the premises.' This will ensure the legislative changes are robust, so that rent bidding does not continue to occur amongst prospective tenants. In addition, this will make compliance and regulation easier because it will not be left to question whether the landlord/agent or the prospective tenant solicited/offered the higher amount as both will be against the law.

The inclusion in section 52A 'the offence does not apply to certain signs at or near premises' should be removed so that a fixed amount for the property is also applied to signs at or near the property.

Expiation fees and the maximum penalty

The current expiation fees and maximum penalty should be increased to create a greater deterrent effect. Particularly for 'rent bidding' provisions, as it is likely that at the $1,200 expiation level, the financial benefit of breaching the provision may quickly outweigh the proposed penalty and the risk is the expiation fee becomes a 'cost' for agents continuing with this practice.

Protecting Tenant Information (Clauses 76A, 76B and 76C)

Uniting Communities supports section 76B (1) to protect tenant information from misuse, interference or loss and unauthorised access, modification or disclosure. We support the amendment that prohibits tenant information from being disclosed without consent or as required by law, the tenancy agreement, a court or a tribunal. We agree that the prospective tenant's information should be destroyed within 30 days of an agreement being entered into for a particular property (where the application is unsuccessful). We also agree that a prospective tenant should be given the option for their information to be held for up to six months, to support looking for another tenancy.

In section 76B (2) 'in the case of tenant information provided by a successful tenant – as soon as practicable after the day that falls **3 years** after the date on which the end of the tenancy occurs.' We believe 3 years is excessive and creates a greater risk that the tenant information will be breached. Instead of 3 years, it should be reduced to 6 months after the date on which the end of the tenancy occurs as this is a reasonable amount of time for the landlord/agent to remove tenant information. A landlord/agent does not need to keep sensitive information on a previous tenant for an extended period.

Rental application forms (Clause 47B)

We agree that there should be restrictions on the amount of information that a landlord/agent can request from a prospective tenant. The practice of collecting tenants' personal information extends beyond reasonable and can be at times very invasive. Information about rental bond history, a statement from a credit or bank account containing daily transactions, age, source of income, source of bond payment, employment status, disability and the number of children should be prohibited to prevent discrimination during the application stage. This information should only be required once the rental application has been accepted and identification is provided. Prospective tenants that are receiving Centrelink payments may be discriminated against if employment status is requested during the application stage.

Landlords and agents should be prohibited from requesting photo identification at the time of a request to inspect a rental property or to apply for a tenancy. Only successful applicants should be required to provide photo identification which is sighted by the agent or landlord, noted on their file and not retained in any form. Identity documents should only be cited and not stored, given the threat of data privacy breaches.

Section 47B (2) should be removed as there is the potential for discrimination against Centrelink recipients who may receive Commonwealth Rent Assistance, private rental assistance program payments or Housing Authority bond guarantees.

Uniting Communities awaits the 'further targeted consultation' on the information that will be prescribed.

Standard application form

In addition, the amendment bill should specify the inclusion of a standardised application form that landlords and agents are required to use when seeking applications for a property. This provides

legislative authority for a standard application form to be developed. This form would restrict the amount of personal information they can request from a prospective tenant. The form should be developed by Consumer and Business Services in consultation with stakeholders to highlight explicitly the details that can be collected.

Simon Schrapel

Chief Executive