

SUBMISSION

TO | Consumer and Business Services

**TOPIC | Feedback on Residential Tenancies
(Miscellaneous) Amendment Bill 2023)**

DATE | 4 September 2023

CONTACT

E | advocacy@unitingcommunities.org

P | 08 8202 5111

Feedback on Residential Tenancies (Miscellaneous) Amendment Bill 2023

Key recommendations:

Uniting Communities is thankful for the opportunity to provide feedback on the draft *Residential Tenancies (Miscellaneous) Amendment Bill 2023*.

Overall, Uniting Communities is pleased with this bill as it has included several enhances to the *Residential Tenancies Act 1995* to improve the rights of tenants. This includes the removal of no-grounds evictions and making it easier for tenants to have a pet. Our submission includes recommendations for changes to proposed amendments but also includes provisions excluded from the current bill. We have outlined amendments that we are supportive of and have made a number of recommendations in our additional comments.

Key recommendations include:

- **Rent increases:** A disproportionate rent increase should be defined as above the rate of Adelaide CPI
- **Minimum energy efficiency standards:** Minimum energy efficiency standards be implemented in rental properties such as requirements for ceiling insulation and draught protection
- **Energy efficient appliances:** A requirement that all rental properties have minimum fixed heating and cooling appliances that are energy efficient. Section 68A excludes properties that do not even have fixed heating and cooling appliances
- **Repairs:** Time frames for repairs and definitions of 'urgent' and 'non-urgent' repairs should be included in the bill
- **Pets:** The onus must sit on the landlord to apply to the tribunal to refuse permission for a pet (this occurs in Victoria, ACT and Northern Territory)
- **Pets:** The bill should allow for an approval to transfer to a replacement animal of similar size and type without further application. Currently, the approval to keep a pet expires at the end of a pet's life. This places an unnecessary burden on the tenant and the landlord to seek approval where a replacement pet is similar/same to the one that has died
- **Pets:** A clause for current tenancies is added where a tenant has already received approval to keep a pet on premises either verbally or in writing that the tenant is not required to go through an application process outlined in section 66C-66G
- **Pets:** The bill should address discrimination of pet owners during the application process e.g. by banning 'no pets' caveats on rental advertisements
- **Pets:** The inclusion of a clause that allows for a pet to be defined by regulation
- **Bonds:** For cases of family and domestic violence, a clause should be added that the victim is not liable for their share of the bond for any loss and damage, including if the portion owed to the landlord exceeds the perpetrator's share of the bond
- **Bonds:** Fair wear and tear should be properly defined in the legislation. Some tenants report losing their bond over unreasonable claims about the condition of the property made by the landlord at the end of their tenancy
- **Bonds:** There should be a requirement for private landlords to lodge bonds through the Residential Bonds Online (RBO), as opposed to manual lodging
- **Inspections:** The frequency of inspections be extended to no more than twice yearly

- **Terminations on drug-related conduct:** Section 80A is removed because it may lead to countless illegal evictions where a landlord has made a false accusation of drug-related conduct or tenants are evicted by conduct of another person e.g. perpetrator in family and domestic violence
- **Terminations:** We recommend that penalties for section 91A (1) are the same as the penalty in amendments to section 81 (3) (4) for falsely stating the ground of termination and granting a fresh tenancy over the premises within six months after recovering possession
- **Terminations:** Section 84A should be improved as it is currently ambiguous as to when the tenant will be liable for costs. The tenant should not be liable for any costs associated with a lease ending if this is not the fault of the tenant (breach of agreement) and is a decision made by the landlord
- **Termination:** In section 85AA, 85C and 85B the tenant should not be liable for break lease fees provided the appropriate evidence has been given
- **Maximum liability:** The tenant's liability in section 75A is limited to one or two weeks of rent for each year remaining in a tenant-terminated lease. The current liability in the bill of up to 6 months' rent is still a substantial amount to fall on the tenant
- **Domestic violence:** That victims of family and domestic violence have rights under the Act if they reside at the property but are not on the original tenancy agreement. This includes the ability to enter into a new residential tenancy agreement with the landlord if they reside at the property but are not on the original agreement
- **Locks:** We support section 66A changing of locks that do not require the tenant to ask the landlord for permission in contexts of family and domestic violence. We recommend the removal of section 66B as it is unnecessary. The inclusion of section 66B appears to contradict section 66A as it indicates the tenant needs permission from the tribunal if the landlord unreasonably refuses
- **Penalties:** We are supportive of the increase and addition in penalties for landlords who are not abiding by provisions in the Act as a deterrence for non-compliance, particularly the increase in expiation fees
- **Enforcement:** The current enforcement is ineffective as it relies on a tenant to apply to the tribunal if the landlord is not abiding by the law, putting them in a very vulnerable position. We believe a section could be included in the bill similar to the Residential Tenancies Authority established under the Queensland *Residential Tenancies Act 1994* (and now enforced by *Residential Tenancies and Rooming Accommodation Act 2008*) that allows for the creation of an independent statutory authority whose role is to enforce compliance with the Act through enforcement of penalties and prosecutions.
- **Enforcement:** The addition of specialist legal service is made available to tenants when reforms are enacted. There is no specialist legal advice service currently that assists with legal representation for tenants (only legal advice). At Uniting Communities, we often receive calls about tenants seeking legal representation who have underlying SACAT residential tenancies matters (that we do not have the capacity to provide).

Additional comments:

Disclosure

Section 47C and 47-48: Provision of information to prospective tenants and tenants

We support these amendments as it is important that tenants are informed about their rights. We believe this prescribed information should be in the form of an information sheet that is written by

Consumer and Business Services that goes into detail about the extent of tenants' rights and include information about services the tenant can call if they have a concern or question about their rights. It is important that questions about the tenant's rights are directed and answered by the relevant advisory service such as Rent Right SA.

Rent and inspections

Section 55: Rent increases

We support changes to Section 55 to clarify that rent can only be increased once every 12 months even if the lease changes.

Section 56: Excessive rent

We support changes to section 56; this is an enhancement to the Act. However, disproportionate is not defined and as a result, it is too ambiguous for tenants to risk going to the tribunal.

We strongly believe an additional clause should be included that defines a disproportionate rent increase as one above the rate of Adelaide CPI. This will provide for reasonable boundaries to prevent excessive rent increases.

The rate of increases above 10% has risen considerably since 2019, indicating that some landlords are increasing the rent more than necessary. New ABS data, reveals that larger rent increases are becoming increasingly more common in Australia for both existing renters and new renters. For new tenants, 2.5% of rent increases were over 10% in June 2019 compared to 68.2% in February 2023. For existing tenants, only 1.7% of rent increases were over 10% in June 2019 compared to 24.9% in February 2023.¹

Section 56A: Manner and payment of rent

We support amendments to section 56A to ensure the tenant has more than one option for making rental payments.

Section 72: Inspections

We support changes to section 72 so that landlords cannot inspect the premises more than 4 times a year. We believe this can be further improved by extending this to no more than twice yearly. Given the burden of inspection on tenants lives we believe the frequency should be twice yearly. This would align with changes made in the residential tenancies act in Victoria.

We also support the changes that create greater protection of tenants' privacy when storing information from inspections such as photos and/or documents.

Bonds

Section 61-63: Bonds

¹ <https://www.abs.gov.au/statistics/detailed-methodology-information/information-papers/new-insights-rental-market>

We support changes to section 61-63. We agree that tenants should be given the option to lodge bonds directly, this would also prevent bonds not being lodged by the landlord.

In addition, we believe a clause should be added in circumstances of family and domestic violence. If the portion owed to the landlord exceeds the perpetrator's share of the bond the victim should not be liable for their share of the bond. In *Victoria Residential Tenancies Act 1997* Section 420A 'the portion of the bond paid by the renter who experienced family violence or personal violence is excluded from bond available to compensate the residential rental provider for loss and damage (if any).'²

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. Sufficient 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 believe fair wear and tear should be properly defined in the legislation. Some tenants are reporting losing their bond over unreasonable claims made by the landlord at the end of the tenancy that the property has not been left in a suitable condition. It is important that clear parameters are set in the legislation that does not leave the rights of tenants open to interpretation.

Renting with Pets:

Section 66C-66G: Keeping pets on premises

We support section 66C-66G for keeping pets on premises, we believe the grounds for refusing pets are reasonable and we welcome the prohibition of pet bonds.

We are concerned about the ambiguity for the prescribed condition 9(a) 'if the pet is not a type of pet ordinarily kept inside—a condition requiring the pet to be kept outside on the premises.' This is very subjective. Many councils are and/or considering mandating that cats are contained to properties, because outdoor enclosures may not be possible (e.g. cost prohibiting or effects the property) in a rental property, landlords should not be allowed to prescribe that the cat be contained outside in these council areas.

Clause 66E which requires the tenant to go to the tribunal is inconsistent with, Victoria, ACT and Northern Territory which require the landlord to apply to the tribunal to apply for an order to refuse permission for a pet. This ensures greater accountability and oversight and doesn't place the onus on the tenant to apply to the tribunal.

We believe that a clause should be added for current tenancies where a tenant has already received approval to keep a pet on premises either verbally or in writing that the tenant is not required to go through an application process outlined in section 66C-66G.

Further, the bill outlines that the approval to keep a pet expires at the end of a pet's life. This places an unnecessary burden on the tenant and the landlord to seek approval where a replacement pet is similar/same to the one that has died. The bill should allow for an approval to transfer to a replacement animal of similar size and type without further application.

² http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s420a.html

We recommend the inclusion of a clause that allows for a pet to be defined by regulation.

Excluded: prospective tenant discrimination of pet owners

The bill does not address the issue of pet owners receiving discrimination during the application stage. There should be bans on 'no pets' caveats on rental advertisements to discourage the discrimination of prospective tenants with pets, this has occurred in Queensland legislative changes.

Domestic Abuse:

Section 85D: Notice of termination by tenant on grounds of domestic abuse

We support this amendment as it is important to have alternative pathways than the tribunal for tenants experiencing family and domestic violence to terminate a lease early.

Section 90B: Tribunal may make orders in relation to circumstances of domestic abuse.

We support amendments to section 90B that will improve protections for victims of family and domestic violence.

Section 66A-66B – change of locks

We support section 66A changing of locks that do not require the tenant to ask the landlord for permission in contexts of family and domestic violence. We recommend the removal of section 66B as it is unnecessary. The inclusion of section 66B appears to contradict section 66A as it indicates the tenant needs permission from the tribunal if the landlord unreasonably refuses. Whereas section 66A says that the tenant in this circumstance does not need permission from the landlord.

Other states in Australia have also removed the requirement for victims of family and domestic violence to ask landlords for permission to change the locks provided certain conditions are met. In Victoria, if the tenant has a safety notice or intervention order protecting them, and it says the renter who was abusive cannot enter the rental property, they can change the locks without permission from the landlord/agent and their name does not have to be on the lease.³

In these circumstances, the landlord must also be prohibited from supplying a copy of the new key to the perpetrator/defendant.

Recommended additions:

In other states victims of family and domestic violence have rights under the Residential Tenancies Act, even if they reside at the property but are not on the original tenancy agreement. This includes the ability to enter into a new residential tenancy agreement with the landlord if they reside at the property but are not on the original agreement with the perpetrator. This occurs in residential tenancies agreements in Victoria, Queensland and ACT. Sometimes the best option for the victim is to remain in their current home.

³ <https://www.consumer.vic.gov.au/resources-and-tools/family-violence#:~:text=Changing%20the%20locks,-Protected%20person&text=You%20do%20not%20need%20permission,permission%20to%20change%20the%20locks.>

Longer tenancies

Section 79: Requiring a prescribed ground to terminate or not renew a tenancy

We strongly support changes to section 79 to better protect renters from unfair and retaliatory evictions.

We believe careful consideration should be made to any new prescribed reasons determined by regulation so that this does not hinder the security of a tenant. The current prescribed grounds in the Act including selling the property, major renovations and family requiring property already provide for fair parameters in place. We hope any changes to regulation in this regard will include consultation with relevant stakeholders from both a tenant's and landlords' perspective.

Section 83: Termination by landlord without specifying a ground of termination

We support amendments to section 83. Prescribed grounds should include current provisions in section 81 (1) which include family requiring property, selling of property and major renovations.

Section 83A: Notice to be given at end of fixed term

We support changes to section 83A, the current timeframe is not a sufficient length for tenants to find another property, particularly in the midst of a lack of affordable rental properties.

Section 91: Supporting evidence for termination on prescribed ground

We support this amendment to section 91. We believe that supporting evidence should also be sent to Consumer and Business Services as well as the tenant. It is not sufficient for the landlord to provide the prescribed reason and evidence to the tenant. The legislation will be difficult to enforce if Consumer and Business Services (or another government body) does not have access to the prescribed ground and supporting evidence and can determine whether the landlord is in breach of the Act e.g. granting a fresh tenancy within 6 months of terminating the lease.

Section 91A: prohibition on letting premises after notice of termination

We support this amendment. It is our understanding that this will apply to all terminations including at the end of a fixed term agreement. We recommend that the penalty is the same as amendments to 81 (3) and 81 (4) that has increased the maximum penalty and expiation fee (higher than 91A (1) for falsely stating the ground of termination and without the consent of the tribunal, granting a fresh tenancy over the premises within six months after recovering possession.

Section 90A: Tribunal may make orders in relation to retaliatory behaviour

We believe section 90A is an important amendment. Tenants have been reporting retaliatory evictions when they request a repair or exert their rights as a tenant. This amendment will provide for greater protections against retaliatory evictions.

Section 84A: Compensation for termination in certain circumstances

As we understand it this will allow for compensation for the landlord where the landlord has terminated an agreement due to a tenant breach aside from the current unpaid rent.

We believe this section should only be applicable in the context of the tenant breaching the terms of the tenancy agreement and should not apply to any other circumstances where the landlord has ended the tenancy at the end of a fixed term or during a periodic lease. Meaning the tenant should

not be liable for any costs associated with a lease ending if this is not the fault of the tenant and is a decision made by the landlord.

Section 85AA: Notice of termination by tenant for successive breaches of the agreement

We support this amendment. Further, the tenant should not be liable for any break lease fees in this circumstance given the landlord has failed to abide by the agreement.

Section 85C: Notice of termination by tenant in certain circumstances

We support this amendment. The tenant should not be liable for break lease fees in this circumstance.

Section 75A: Maximum liability for longer term tenancy

We support this amendment. Tenants are reluctant to enter into a longer fixed term agreement because if their circumstances change, they are liable to extensive break lease fees.

We recommended this amendment could be further improved by making the tenants liability limited to one or two weeks rent for each year remaining in a tenant-terminated lease. A liability of up to 6 months rent is still a substantial amount to fall on the tenant.

Shared living

Section 74-74C – Sub-letting

We support this amendment to allow for tenants to sub-let the property without being unreasonably refused.

Minimum standards and alterations

Section 67A: Minimum housing standards at the beginning of the tenancy

We support this amendment to align with provisions provided in the *Housing Improvements Act 2016*. We recommend that the landlords ongoing obligation for repairs and condition of the property should include *Housing Improvements Act 2016* as well as current provisions in section 68 ‘landlords obligation to repair.’

Section 85B: Notice of termination by tenant due to condition of premises

We support this amendment. The tenant should not be liable for break lease fees in this circumstance as this is a matter of health and safety.

Section 70: Alteration of premises

We support amendments to section 70 to allow tenants to make modifications without being unreasonably refused.

We believe, in line with amendments to the Residential Tenancies Act in Victoria, certain minor modifications should not require landlord permission. It is unreasonable for tenants to request permission from the landlord for minor modifications such as installation of a picture hook.

Repairs

We believe the bill does not appropriately address issues with repairs. Urgent and non-urgent repairs are not defined in the Act and there are no timeframes for repairs in the Act. Some landlords are exceeding what would be considered a reasonable timeframe to respond to both urgent and non-urgent repairs. This includes months or even years beyond what is considered a reasonable timeframe. This presents a major issue for tenants who subsequently live in substandard and poor housing conditions.

Victorian legislation outlines the landlords' responsibility for responding to urgent repairs and tenants have rights if the landlord does not make non-urgent repairs within 14 days of the date of the written request. This includes the right to request a repairs inspection by Consumer Affairs if the landlord has not fulfilled their responsibility. Similar approaches could be considered for South Australia.

Energy Efficiency and utilities

Minimum energy efficiency standards

We are concerned about the exclusion of minimum energy efficiency standards in rental properties such as requirements for ceiling insulation and draught protection. This is crucial for tenants' health and wellbeing. Despite the substantial increase in the cost of rental housing, the standards of homes have not improved.

Due to poor insulation and housing conditions many rental properties are too hot in summer and too cold in winter which can have significant adverse health effects on tenants. Energy inefficient homes cost considerably more to heat and cool with little effect and as such tenants are forced to turn off heating and cooling appliances as the bill is too high.

The ACT government has recently implemented minimum energy efficiency standards for ceiling insulation in rental properties and has included a transition period for landlords to abide by the Act.

Section 68A: Energy efficiency of appliances, fittings and fixtures

It is not enough to mandate appliances are energy efficient when replaced as this excludes all current appliances. Further, there is no requirement to have fixed heating or cooling appliances in a rental property so many tenants currently do not have a fixed appliance therefore this will exclude many properties from ever installing energy-efficient appliances.

It is unrealistic to expect tenants to afford to heat and cool their homes with portable appliances. Portable appliances cost more to operate and are less efficient.

We recommend that section 68A should include 'insulation' in the clause.

Section 73B: Excess water charges

We strongly support amendments to section 73B that will clarify the landlords responsibility to pay for excess water charges resulting from a leak.

Section 73A: Installation of solar energy system

We support changes to section 73A. Tenants will still be hesitant to contribute to the costs associated with solar panels as they have no guarantee their lease will be renewed/or they won't be evicted. It's

a long-term investment before benefits to tenants are experienced, which is difficult on short, fixed term contracts that lack security.

Section 73: Statutory charges

We strongly support changes that make landlords responsible for the supply charge and require the landlord to give a copy of the bill to tenants within 30 days. This has been a part of the key recommendations in Uniting Communities work to improve water protections for tenants.

We believe that greater clarity could be made in the bill to confirm that the landlord is responsible for charges for sewerage services by adding sewerage to the list of prescribed services in amendments to section 73 (6).

Tenants are unlikely to ask the landlord for permission to access hardship support for fear the landlord will see this as an indicator they cannot afford their tenancy. Uniting Communities still seeks changes to the *Water Industry Act 2012* that recognises tenants as water customers so that tenants can access hardship support without needing consent from the landlord.

Drug related conduct

Section 67B: Testing and remediation in relation to drugs

We support section 67B that will improve protections. We recommend that a penalty be included in this amendment to act as a deterrent to non-compliance.

In cases where a tenant's belongings are contaminated, compensation should be made available to them. A contaminated rental property poses serious health risks for tenants and hence, the bill should clarify the landlord's obligations and establish a redressal mechanism for tenants.

Section 80A: Termination by landlord on ground of drug related conduct

We do not support the addition of section 80A. We strongly recommend that section 80A is removed because it may lead to countless illegal evictions where a landlord has made a false accusation of drug-related conduct and/or tenants are evicted by conduct of another person e.g. perpetrator in family and domestic violence is engaging in drug-related conduct and the victim is evicted by no fault of their own.

We are very concerned about the enforcement and compliance of this amendment. The clause stipulates that "the landlord is aware that the tenant has engaged in, or allowed another person to engage in, drug-related conduct on the premises" but does not require the landlord to provide evidence that the tenant has engaged in drug-related conduct on the premises before eviction occurs.

This is a highly problematic section that should be removed.

Rooming houses

We support Shelter SA's feedback on proposed amendments to rooming house clauses.

Miscellaneous

Section 99J: Providing a copy of personal information listed on a ‘tenant blacklist’.

We support amendments to 99J. We support higher penalties in this section that will deter noncompliance and improve the transparency of tenancy databases. It is important for tenants to have recourse to dispute inaccurate and unfair claims made about a tenant on a tenancy database.

Penalties and offences

We are supportive of the increase and addition in penalties for landlords who are not abiding by provisions in the Act as a deterrence for non-compliance, particularly the increase in expiation fees.

Commencement date

We strongly encourage the state government to make the commencement date for this legislation as soon as possible.

Enforcement

We remain concerned about the issue of enforcement; the Act still places the responsibility for the tenant to apply to the tribunal if the landlord is not abiding by the law. This is not sustainable or effective due to the significant power imbalance between tenants and landlords. Tenants are unlikely to apply to the tribunal out of fear they may lose the property, incur a rent increase or have a poor review made about them on a tenancy database. We believe a section could be included in the Act similar to the Residential Tenancies Authority established under the Queensland *Residential Tenancies Act 1994* (and now enforced by *Residential Tenancies and Rooming Accommodation Act 2008*) that allows for the creation of an independent statutory authority whose role is to enforce compliance with the Act through enforcement of penalties and prosecutions.

Conclusion:

Overall, we welcome the *Residential Tenancies (Miscellaneous) Bill 2023* and the enhancements it brings to the Act. Issues around affordability and minimum standards in properties remain a concern for us and others in the sector working to improve the rights of tenants. We look forward to working further with the state government to improve renting in South Australia.