

Submission

To Consumer and Business Services

Topic Residential Tenancies (Miscellaneous) Amendment
Regulations 2024

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Acknowledgement of Country

Uniting Communities respects the enduring spiritual relationship First Nations people have with land and sea and the importance of this relationship to the wellbeing of First Nations people, including their languages and customs.

By seeking reconciliation and working in partnership with Aboriginal communities, Uniting Communities will move towards healing, justice, self-determination and empowerment for Aboriginal people.

About Uniting Communities

We are an inclusive not-for-profit organisation working alongside more than 80,000 South Australians each year and have been creating positive change for South Australian communities for more than 120 years. We utilise this expertise to advocate for systemic change across diverse social justice issues to shape public and social policy that delivers better outcomes for marginalised communities.

As a large not-for-profit organisation, a significant portion of our clients are renters and experience firsthand the challenges experienced when renting in South Australia.

We help those in need find the courage to move forward through enriching their lives and uniting the communities in which they live. By tackling the deep-seated challenges that affect people's lives, we are working to create systemic change and brighter futures for all South Australians. We have a bold and unceasing commitment to social justice, advocating for change and improvement in the lives of those who need it most.

Submission on the Residential Tenancies (Miscellaneous) Amendment Regulations 2024

We welcome the opportunity to provide feedback on *the Residential Tenancies (Miscellaneous) Amendment Regulations 2024*. We recommend that the remaining reforms in the *Residential Tenancies (Miscellaneous) Amendment Bill 2023* are enacted as soon as possible. These changes will bring much needed protections for renters in our state.

Our key recommendations:

- That 11A (d) require that gas water heaters are replaced with electric water heaters, to improve long term savings for renters and align with the states Net Zero targets.
- That the grounds of termination in 15 and 16 should require some proof. This includes 16 (1) (J) which should require the landlord to provide proof equivalent to section 80A otherwise a landlord may use this ground falsely.
- That grounds 16 (e) (f) (h) (j) and 15 (a) (b) be confined to only implicate the tenant (or person residing at the premises) that is responsible and not the co-tenant(s). Ending an agreement for all tenants for the act of one is unreasonable.
- 19A (2) also include accommodation that is provided for persons experiencing family and domestic violence.
- That section 91 (1) (ea) also requires the other grounds of termination in 15 and 16 to be accompanied by written evidence.
- That form 6 include a minimum requirement for providing notice. Allowing the tenancy to terminate immediately allows no room for the tenant to leave the property in a reasonable and clean state or dispute the termination at SACAT.
- The Amendment Regulations also include a standardised application form in regard to Section 47B (3) for all rental applications for prospective tenants.
- That 19E applies to periodic leases as well. It is currently unclear whether this would apply to periodic leases as well. It is vital that this applies to both periodic and end of fixed term leases.

Additional comments

9 – (insertion of 11A in Sections 68A and 105PA of Act) Minimum efficiency standards—requirements

11A includes some positive changes to improve the energy efficiency of fixtures in rental homes that will have a positive impact. However, 11A will only include properties that already have fixed heating and cooling. We remain concerned about the properties that do not have fixed appliances to begin with, who will be excluded from these important protections.

In addition, 11A (d) still allows water heaters to be replaced with gas water heaters. Gas water heaters can be less efficient. In addition, as the state moves to phase out the use of gas as a part of Net Zero targets, tenants will be left with higher gas bills if they are left out of this energy transition and are obligated

to use gas appliances. All effort should be made to transition appliances to electric now to avoid this issue.

15 and 16 (Section 83 and 83A) - Grounds of termination

It is our understanding that section 90B would protect tenants in cases of domestic and family violence in relation to grounds 15 (1) (a) and (b) and 16 (1) (e) – (j) where a perpetrator is responsible for the ground of termination.

We are concerned about the burden of proof for these grounds. For instance, for ground 16 (1) (J) *the tenant has used the premises, or has caused the premises to be used, for an illegal purpose (including drug related conduct)*; the burden of proof should be the same as 80A *termination by landlord on ground of drug contamination* that requires proof of testing. Otherwise, a landlord may speculate and come to their own conclusion, making it difficult for SACAT if the tenant were to dispute the termination.

There are also potential issues that will arise because of grounds 16 (e) (f) (h) (j) and 15 (a) (b) that implicate co-tenant(s). For instance, 15 (b) *'the tenant or a person residing at the premises threatened or intimidated the landlord, the landlord's agent or a contractor or employee of the landlord or agent.'* We have concerns that in situations where multiple tenants live at the property co-tenants (who were not responsible for the act) will be forced to vacate instead of just removing the tenant who is responsible for the ground from the agreement and/or premises.

19A (Section 85C) - Termination by tenant in prescribed circumstances

19A (2) should also include accommodation that is provided for persons experiencing family and domestic violence. Although 19B allows a tenant to terminate the tenancy on ground of domestic abuse, it's important to include this in 19A (2) where a victim has obtained crisis accommodation for victims of family and domestic violence.

19B (Section 85D) - termination by tenant on ground of domestic abuse (section 85D of Act)

We believe this is an important section. Specifically, the addition of (3) (b) is a vital provision that will aid in situations where an intervention order is unable to be obtained e.g. in a timely manner. In some cases of domestic abuse, the tenant would require immediate vacation of the property, allowing the authorised professional to provide sufficient proof will aid in this situation.

19D (Section 91) – Form of notice of termination – prescribed grounds

We support the requirements for written evidence when accompanying a landlords notice to terminate. However, written evidence, in section 91 (1) (ea), could be extended to other grounds in 15 and 16. Otherwise it will be more difficult for the tribunal to determine the credibility of the termination without written evidence. For example, *the tenant kept a pet on the premises without authorisation and the tenant or a person residing at the premises threatened or intimidated the landlord, the landlord's agent or a contractor or employee of the landlord or agent.* A lack of written evidence will make it difficult for a tenant to dispute the termination if the grounds are untrue.

19E – Prohibition on letting premises after notice of termination

This section is important in the context of no cause evictions, to deter landlords from falsely claiming that they are ending the tenancy for one of the prescribed grounds e.g. selling the property. It is unclear

whether this would apply to periodic lease as well, it is vital that this applies to both periodic and end of fixed term leases.

Form 5 - Landlord's notice of breach to tenant—termination of agreement

Under Form five in part four is the inclusion of the below note next to the option of mailing the notice to the tenant:

The landlord/agent should ensure an appropriate postage delivery time frame is taken into consideration. The landlord should take all reasonable steps to ensure the dates provided on this notice are accurate and the service of this notice is valid. If serving this notice by mail, you may wish to confirm the postal delivery time frame with the service provider (ie Australia Post).

We recommend this is included next to the option of 'mailing it to the tenant,' for every form listed as it applies to all given these notices have time constraints.

Form 10 and 18 – Notice of termination where agreement frustrated

In Form 10, 'information for the tenant,' point two includes the note (*however this obligation may not apply if the premises are rendered uninhabitable*), when this could also be included under point 3 in regards to inspecting the premises.

This is also the case for Form 18 where this note is only included in point 1 and not 2. This would make it clear that these do not apply in circumstances where the premises have been rendered uninhabitable.

Form 6 – Notice of termination by landlord on ground of drug contamination

Form 6 outlines that *A landlord may terminate a tenancy on this ground immediately*, with no inclusion of a minimum period for the date on which the tenant is required to vacate the premise. We are concerned about this inclusion. We believe it is unreasonable to allow landlords to terminate the tenancy immediately in these circumstances. There is no time for a tenant to dispute the notice with SACAT if the termination is unjustified or fulfill their obligation to leave the property in a clean and reasonable state.

For other breaches of the agreement, such as rent not being paid or property damage, the tenant is given an opportunity to remedy the breach and if not remedied they are given at least 7 days to vacate the property. The tenant could be given the option to remedy the contamination with a commercial clean.

We also recommend that the first point under 'Information for the tenant' in Form 6 – should be amended to - *Testing for drug contamination conducted in relation to the premises or ancillary property showed that the premises or ancillary property were contaminated as a result of your drug related conduct*. This is an important addition to make it clear to the tenant this termination and contamination is in relation to their drug related conduct not contamination from a previous tenant's conduct.

Form 9 - Notice of termination by landlord at end of fixed term tenancy (General Form)

Under Form 9 it says:

Note—

A landlord may end a fixed term residential tenancy agreement at the end of the fixed term on a ground of termination set out in this notice after giving at least 60 days notice to the tenant. If notice is not given, the agreement continues for a periodic tenancy, with a tenancy period equivalent to the interval between rental payment times under the agreement and with terms of agreement that in other respects are the same as those applying under the agreement immediately before the end of the fixed term.

Although we understand that this wording is included in the *Residential Tenancies Act 1995*, we believe the language could be made clearer in this form for renters and landlords.

47B (3) Standardised application forms

We recommend the inclusion of standardised application forms for applying for rental properties in these amended Regulations. In the *Residential Tenancies (Protection of Prospective Tenants) Amendment Act* was the inclusion of section 47B (3) - *The regulations may include requirements relating to the provision of information to or by a prospective tenant in connection with the prospective tenant applying to enter into a residential tenancy agreement (including requirements relating to the manner or form in which information is to be provided).*

We recommend the inclusion of a standardised application form in the Regulations with set questions (based on the previous consultation that was conducted on prescribed information) that all landlords and agents must use during an application process for a prospective tenant. There is the possibility for certain information to be missed in the information that cannot be prescribed and hence would expose prospective tenants to other potentially unreasonable and invasive information requests.

Excluded in the Regulations

In section 43 of the *Residential Tenancies (Miscellaneous) Amendment Bill* is the insertion of (2a) - *For the purposes of subsection (2)(d), the regulations may make provision in relation to the matters to which regard must be had in determining whether a landlord has taken reasonable steps to mitigate any loss –* which is absent from these Amendment Regulations. The Regulations could include, matters such as advertising the premises for rent in a timely matter (specifying time period) that would ensure renters are not liable for excess losses that could have been avoided by the landlord.

Conclusion

We are thankful for the opportunity to provide feedback on the *Residential Tenancies (Miscellaneous) Amendment Regulations 2024*. We look forward to continuing our work with the state government to help strengthen tenancy laws that improve housing outcomes in our state.