



Office of the Public Advocate South Australia

Submission

Review of the SA Residential Tenancies Act 1995

**Anne Gale
Public Advocate**

**David Caudrey
Disability Advocate**

22 December 2022

Author and Contact Person for this report:

Elizabeth Lyster
Office of the Public Advocate
GPO Box 464
Adelaide SA 5001
Phone: 08 73227613
Fax: 08 8429 6120
Email: elizabeth.lyster@sa.gov.au

CONTENTS

1.	Introduction	3
2.	The Public Advocate.....	4
3.	Disability Advocate.....	4
4.	Responses to the Discussion Paper	5
4.1	Longer leases and reasons for non-renewal.....	5
4.2	Residential Bonds.....	6
4.3	Rental Bidding.....	6
4.4	Rooming houses and shared accommodation	6
4.5	Renting with pets.....	8
4.6	Housing standards and retaliatory evictions	8
4.8	Start of tenancy requirements.....	9
5.	Other comments	9
5.1	Singular or Combined Tenancy and Support Services.....	10
5.2	Combined Lease and Tenancy Agreements.....	10
5.3	Combined Rent and other expenses	11
6.	Recommendations	13
7.	Bibliography	14
8.	Glossary.....	14

Review of the Residential Tenancies Act 1995

1. Introduction

The Public Advocate welcomes the opportunity to provide a submission to the review of the South Australian *Residential Tenancies Act 1995* (RTA). The rental market has changed significantly since this legislation was first introduced, so this is a timely review.

Secure and appropriate housing provides the stability needed for organising all other aspects of life. Having a place to call home gives a sense of belonging, supports social connection, and facilitates economic participation.

The Public Advocate is currently the appointed guardian for over 1,700 adults who have been recognised through a South Australian Civil and Administrative Tribunal (SACAT) hearing as lacking capacity to make decisions about health, lifestyle and/or accommodation. The Public Advocate is only appointed guardian when there is no other suitable person willing or able to take on the role.

The Office of the Public Advocate (OPA) works with some of the most vulnerable adults in South Australia, many of whom have high and complex support needs. OPA clients experience higher levels of social disadvantage and face difficulties in securing and sustaining appropriate accommodation in the rental market. Many require significant support to live independently in the community and without that support, face increased risk of tenancy failure and homelessness. The accumulation of poor tenancy histories makes it near impossible to compete in the private rental market. However, some OPA clients also face exclusions in the public and community housing sectors.

Since the introduction of the National Disability Insurance Scheme (NDIS), new housing models are making regulation even more complex, raising questions about the adequacy of tenancy protection. People who find themselves in these situations are highly vulnerable to exploitation by some service providers through practices like combined tenancy and support arrangements. This issue is of great concern to the Public Advocate and is explored in more detail in section 5 of this submission.

The challenges faced by people in the current rental market are compounded for vulnerable people. Inadequate supply of affordable and social housing is a particularly significant issue for OPA clients, the majority of whom are on low to very low incomes. This often leads to the OPA accepting clients being housed in sub-optimal arrangements and being at risk of reduced protections and choice in order to avoid becoming homeless, e.g. sub-leasing, hostel, boarding house options or closed SIL homes (defined later in this submission).

Better protection for vulnerable renters through the RTA is required. People also need to understand their rights and know how to exercise them. Addressing some of the regulatory gaps and the complexity that currently exists is key to reducing the disadvantage that vulnerable people face in the rental market.

2. The Public Advocate

The South Australian Public Advocate promotes the rights and interests of people with impaired decision-making capacity. The Public Advocate is supported by the Office of the Public Advocate (OPA) to provide guardianship, investigation, advocacy, dispute resolution, and information to support people who need assistance with decision making.

The Public Advocate is a statutory officer who advocates for and on behalf of adults with impaired decision-making capacity and their families, carers, and supporters. In particular, the Public Advocate administers South Australian laws that relate to guardianship for adults who are unable to make decisions for themselves, who are at risk of abuse or neglect and may require assistance with decision making.

The OPA's Dispute Resolution Service can provide preliminary assistance and mediation if a person has made an Advance Care Directive (ACD), if there is a dispute about consent to medical treatment, and if there is a disagreement about decisions or decision-makers.

The Public Advocate can be appointed by SACAT as a guardian of last resort if a person has impaired decision-making capacity, there is a lifestyle, accommodation, and/or health decision to be made and there is no other appropriate person to be appointed.

What this means in practice is that the Public Advocate will only be appointed if there is no one else in a person's life able or willing to make necessary decisions, or if there is family conflict meaning that agreement on decisions is difficult or not possible. Consequently, the Public Advocate often must make decisions for people who have complex needs or experience complex situations and who are often without support networks.

3. Disability Advocate

The Disability Advocate is a position located within the Office of the Public Advocate and was established in November 2018. The purpose of the role of the Disability Advocate is to "ensure that South Australians with a disability and their families are getting a good deal from the National Disability Insurance Scheme (NDIS) during the transition from State-funded to NDIS-funded arrangements."

Throughout 2019 the Disability Advocate attended over 150 meetings with people with disability, families, advocates, and carers to speak with people about their experiences with the NDIS, what was working well and areas for improvement. Regular reports were presented to Ministers and senior State and NDIA officers.

The role was then extended with funding until mid-2023. COVID-19 and other work (such as the Safeguarding Taskforce) made it difficult to undertake face to face meetings in 2020. However, the Disability Advocate managed to conduct over 270 virtual meetings with external stakeholders during the year. Meetings continued in 2021 and 2022, with regular reports prepared for the NDIA and State ministers. All reports are available on the OPA website at opa.sa.gov.au.

4. Responses to the Discussion Paper

4.1 Longer leases and reasons for non-renewal

The rental market landscape has changed since the RTA was first introduced. Renting has increasingly become a permanent and lifelong form of residency as opposed to a short-term, transitional experience.¹ This is particularly the case for people on low to very low incomes who are effectively locked out of home ownership. Longer fixed-term leases provide stability and certainty, allowing people to better engage with services and supports in their local community. This is particularly important for OPA clients who can experience significant disruption to their support services if they are required to move.

The OPA is, therefore, supportive of changes to the RTA that embrace longer fixed-term leases.

The OPA is also supportive of abolishing “no cause” evictions, to ensure adequate reasons are given when a lease is not renewed. These prescribed reasons could include those currently listed in section 81(1) in addition to a breach of the tenancy agreement, specifying the breach. This would provide an important source of evidence on the reasons for non-renewal of leases, so that trends can be identified to inform initiatives like education campaigns and tenancy support programs. Given there is currently no publicly available data on the reasons tenancies end in South Australia², this would address a major gap in knowledge of the market.

Sufficient notice of non-renewal is also important, particularly for OPA clients and people with disability who often require specialised accommodation that is not easy to source at short notice.

Recommendation 1: It is recommended that the notice period for non-renewal of fixed term leases be extended from 28 to 60 days, in line with periodic lease requirements.

Vulnerable people, including OPA clients, are at higher risk of living in “marginal” housing, which lacks the protection of the RTA. This includes sub-letting, temporary accommodation, boarding/lodging arrangements not covered by rooming house provisions and closed SIL homes. In these scenarios, people can lose their housing without any minimum notice or protections. Broadening the scope of the RTA to capture more arrangements, through amendments to Part 5 of the RTA, is needed to better reflect the current housing landscape.

Recommendation 2: It is recommended that the RTA be amended and simplified so that any contractual housing arrangement where rent is paid for the right to reside is captured within its scope.

¹ [Moving-On-2022.pdf \(sheltersa.asn.au\)](#)

² [Moving-On-2022.pdf \(sheltersa.asn.au\)](#)

4.2 Residential Bonds

The OPA is supportive of the proposal to increase the amount of rent defined in the RTA ('relevant limit') that attracts a 6-week bond so that more tenants will only be required to pay a 4-week bond. Changing the relevant limit from \$250 to \$800 is appropriate. This will put South Australia in step with other jurisdictions.

Transferrable or more timely release of bonds would also make it easier for people to move if required and address affordability issues during transition from one rental property to another. OPA is therefore also supportive of initiatives that make this process easier.

OPA clients in the rental market can accumulate high amounts of debt for property damage and other issues like rental arrears. They can, therefore, easily sacrifice their bond to cover these expenses and have insufficient funds to lodge a bond for their next accommodation. Consequently, many OPA clients are forced into non-preferred accommodation arrangements that lack protections under the RTA, e.g. clear and transparent provisions for the payment of bonds, tenancy rights and particularly security of tenure.

4.3 Rental Bidding

The OPA is supportive of prohibiting rental bidding, which disproportionately impacts vulnerable people on low or very low incomes who are not able to match higher offers that may be made. This practice of rental bidding reflects a broader lack of supply of affordable and social housing. In a competitive rental market with low vacancy rates, there is a significant power imbalance between the property owner and the renter, so regulation and awareness-raising campaigns would be essential to ensure the practice of rental bidding is eliminated.

4.4 Rooming houses and shared accommodation

The OPA is supportive of strengthening rooming house provisions in the RTA, including amending the coverage from 3 to 2 people so that more arrangements fall within its jurisdiction. Changes that protect individual lodgers are also supported so that people who cannot share because of their challenging behaviours are also afforded the same protections.

Increasingly, the profile of rooming house residents is one of complexity and vulnerability.³ People who live in rooming houses are some of the most marginalised members of the community and often require support in a range of areas. Many live with poor mental health, substance abuse issues, chronic health conditions and disability. The intersection between the rooming house provisions of the RTA and the *Supported Residential Facilities Act 1992* (SRF Act) requires particular attention given that both service-types house similar populations.

The SRF Act has recently been reviewed by KPMG on behalf of the Department of Human Services. It requires revision given the impact of the NDIS and the

³ [170315-Shelter-SA-The-End-of-the-Road-Final.pdf \(sheltersa.asn.au\)](#)

increasingly complex regulatory environment in which providers now find themselves. As part of reviewing the RTA, consideration should be given to what elements of the SRF Act could be covered by the RTA in terms of tenancy rights and responsibilities. As an example, the *Boarding House Act 2012* (NSW) governs both general boarding houses as well as 'assisted boarding houses' where support is provided to residents with 'additional needs'.

A holistic approach to regulating shared arrangements, especially where support and other services are also provided, is needed. This should take into consideration the changing housing landscape following the introduction of the NDIS where more housing and support providers have emerged, offering a range of different options.

Recommendation 3: It is recommended that the RTA and SRF Act are examined together to ensure a holistic approach is taken to regulating shared arrangements, particularly where support and other services (such as meals and laundry) are provided.

Throughout most Australian jurisdictions, legislation requires that written agreements are made between the proprietor of a rooming house (also referred to as supported facilities or boarding houses in other states and territories) and the occupant. Written agreements protect the rights of occupants by providing an instrument to hold the parties accountable for their obligations. However, protections through these written agreements are only as useful as the parties' knowledge and understanding of the legislation. Often proprietors are not fully aware of their obligations at law or they may exploit the tenant's lack of knowledge to avoid certain obligations. Therefore, when a tenant's rights are infringed upon, either intentionally or otherwise, they have no legitimate agreement to rely on.

In order to provide some protections for occupants of rooming houses, a general provision could be included in the RTA to cover anything that appears to be a rooming house arrangement even where there is no formal agreement. A general provision granting rights and protections to rooming house occupants, regardless of whether there is a written agreement in place or not, would protect individuals who do not have knowledge of the law.

For example, the Australian Capital Territory (ACT) provides for occupancy agreements in the *Residential Tenancies Act 1997* (ACT). This covers arrangements where the proprietor has given the occupant a right to a sleeping space and shared facilities, and allows for the agreement to be either written or oral for the first six weeks. These agreements are governed by the occupancy principles in the Act, meaning even those with only a verbal or informal agreement are protected by these principles for the first six weeks of their occupancy. While this provides greater protection, this still relies on the parties understanding their obligations under the Act within six weeks of the arrangements being made.

Recommendation 4: It is recommended that a general provision be included under the rooming house section of the RTA, affording certain rights and protections to occupants regardless of whether a formal written agreement is in place.

4.5 Renting with pets

The OPA is supportive of measures that ensure people with pets are not disadvantaged in the rental market. As highlighted in the discussion paper, pets provide emotional and psychological benefits. This is true for many OPA clients who may not qualify for assistance animals but still rely on a pet for support.

It is important that people with cognitive impairment are supported to understand any additional obligations on them as renters with pets so they can successfully maintain their tenancy, including plain English and Easy Read information guides. This is also applicable to all tenancy and related information about the RTA.

4.6 Housing standards and retaliatory evictions

The OPA is supportive of changes that protect the rights of tenants by preventing “retaliatory” evictions when a tenant has requested repairs or home modifications. This will need to be closely monitored to ensure it is upheld in practice, including increased education so that renters understand their rights and that mechanisms to resolve disputes through SACAT are clear and easy to access.

Accessibility of accommodation for people with disability is an important consideration in the context of housing standards. According to a study conducted by the *Australian Human Rights Commission* in 2021, most housing in Australia currently does not meet the needs of people with disability due to poor access and unsuitable layouts, particularly inadequately designed bathrooms.⁴

The 2022 edition of the *National Construction Code (NCC)* includes updated standards around both energy requirements and accessibility for all new homes. The decision by the State Government to adopt this new code is welcome. However, it can be difficult to make home modifications of existing housing to increase accessibility, in particular robust features like hardened surfaces and safety glass.

It would be beneficial for the South Australian Housing Authority (SAHA) and community housing providers to explore ways of implementing these new standards in existing rental stock to boost quality and accessibility for renters.

The OPA is also supportive of amendments to the RTA that prevent retaliatory evictions. It is noted that eliminating “no cause” evictions would play a role in stopping this practice.

4.7 Safety modifications and minor changes

The OPA is supportive of the proposed changes, allowing people to make safety modifications to their rental property, particularly considering the proposal to encourage longer fixed-term leases.

⁴ [Adaptable housing for people with disability in Australia: a scoping study \(2021\) | Australian Human Rights Commission](#)

4.8 Start of tenancy requirements

The OPA is supportive of changes that make it easier to apply for a rental property. Proposals to standardise tenancy application forms should also consider accessibility requirements so that information is easy to read and understand.

Recommendation 5: It is recommended that any changes to tenancy application forms consider accessibility requirements as outlined in the State Government's Online Accessibility Toolkit.

4.9 Domestic Violence provisions

The OPA is supportive of measures to strengthen financial and tenancy protections for victim/survivors of domestic violence. Importantly, broadening the scope of the RTA to include all arrangements where rent is paid for the right to occupy a property (recommendation 2), will ensure the protections under section 89A of the RTA apply in more circumstances.

4.10 Water billing

The OPA is supportive of changes to the RTA that make landlord obligations relating to water billing clearer. In particular, responsibilities around payment of water supply fees and excess water charges resulting from a reported leak.

4.11 Illegal drug activity

The OPA supports the proposal for landlords who know or suspect that illicit drugs have been manufactured or regularly smoked in their property being required to undertake necessary remediation before leasing; and that prospective tenants would be able to request evidence that the known contamination of a property has been remediated or evidence that no remediation is required.

4.12 Third party payments

The OPA is supportive of prohibiting landlords from charging tenants an additional fee to make rental payments. Although it is noted that this practice is already likely to be in contravention of s56A, explicitly banning this would ensure people are not unknowingly exploited.

4.13 Modernisation of language

The OPA is supportive of suggestions to make the language in the RTA more contemporary and relevant. However, it is acknowledged that the current terminology is well established so any change would need to be clearly communicated and easy to understand in plain English and Easy Read supplementary documents.

5. Other comments

The OPA would also like to raise some specific issues around housing and tenancy for clients under the guardianship of the Public Advocate.

Over 1,000 clients of OPA are participants of the NDIS. Since the introduction of the NDIS in SA, new providers have entered the marketplace offering a range of

different accommodation and support options to participants. Whilst important in terms of increasing choice for people with disability, these new options are creating challenges in relation to the oversight and regulation required to ensure renters' tenancy rights are upheld.

5.1 Singular or Combined Tenancy and Support Services

In addition to options like social housing (public and community), Specialist Disability Accommodation (SDA) under the NDIS and Supported Residential Facilities (SRFs), support providers are at times resorting to other arrangements e.g. renting a property in their name through the private rental market and sub-letting to the NDIS participant. This is usually done with the intention of addressing the imminent plight of a client who might otherwise be homeless given demand for social housing is outstripping supply. These service providers are funded to deliver support with daily living (referred to in the NDIS as Supported Independent Living, SIL) i.e. the person is living in a property supplied by the support provider. The NDIA has referred to these arrangements as 'closed system SIL homes'. The emergence of this model is inconsistent with recognised principles in the provision of housing, and the provision of daily living support services, whereby they are to be separated, not intertwined or interdependent.

As the example outlined above demonstrates, it is becoming increasingly common for tenancy and support to be provided by the same organisation which means that when arrangements break down due to challenging behaviours or other client issues, the person can lose their tenancy often at very short notice. There is a high potential for exploitation in these kinds of arrangements, including being evicted informally without any protections if OPA clients are not covered by a legitimate lease.

These arrangements give rise to a potential and/or real conflict of interest, that is, the service provider is also the landlord. The National Disability Insurance Agency (NDIA) advised the Public Advocate that service providers who enter into such arrangements should report any conflict of interest to the NDIS Quality and Safeguards Commission. The rate of such reporting is unknown, and it is unclear how the conflict is monitored or regulated. The NDIA and NDIS Quality and Safeguards Commission have both indicated that tenancy matters in "closed system SIL homes" fall beyond the scope of their jurisdiction and are a matter for the State and Territory tenancy regulators.⁵

5.2 Combined Lease and Tenancy Agreements

The OPA has received tenancy and support service agreements as one document. This formally combines the arrangements and is not consistent with the RTA requirements. It also puts the housing/tenancy arrangement at serious risk of ending if the support services do not succeed. There have been a number of OPA clients evicted at the same time as the support services ending, hence losing their tenancy and there is little redress with tenancy rights. The OPA now requires service providers to generate separate agreements for the tenancy and for support services.

⁵ [Closed Setting SIL Homes-Policy-Position-Statement.pdf \(summerfoundation.org.au\)](#)

However, this does not sufficiently address the inherent risks and implications of tenancy failure if and when the support service arrangements fail or end.

This issue has been raised with the NDIA, NDIS Quality and Safeguards Commission and SA Consumer and Business Services in the past. It is critical that greater clarity and education (both for the community and for service providers) regarding the various roles and responsibilities of both Commonwealth and State regulators is provided in future.

Recommendation 6: It is recommended that increased education around tenancy rights and obligations for both community members and service providers is prioritised by the State Government.

5.3 Combined Rent and other expenses

The OPA has observed service providers drawing up tenancy agreements that combine rent and other expenses within a single charge e.g. a 'periodic lease', with rent listed as 79% of their Disability Support Pension. It is not clear what mechanism is regulating the amount of this boarding/rent charge. There is also a lack of transparency around the goods and services covered by this payment. Even in examples where the 'boarding' charge is separately listed to rent, agreements often fail to provide an itemised list of what expenses are covered by the payment. Extensive enquiries have not provided a satisfactory answer to the question "Who regulates additional charges above rent?". It is noted that under section 53 of the RTA, a landlord must not require or receive from a tenant a payment other than rent or a bond.

In summary, the rental options above are subject to requirements under various pieces of legislation, overseen by different agencies and levels of government. Through the provision of services to OPA clients, it is clear that there is a level of misunderstanding about these requirements, particularly in relation to areas of application of the RTA.

Complexity and inconsistency risk rendering the regulatory structures ineffective, particularly when it comes to vulnerable people. Given that responsibility for oversight is dispersed among various agencies and levels of government, it can be difficult to determine who is regulating the activity of property owners and operators. Of particular concern is the potential gaps in oversight that have been created through the new accommodation models.

The RTA has not kept up with developments in tenancy arrangements over the years. The RTA needs to be simplified so that all residential tenancy arrangements fall within its jurisdiction (including board and lodging houses, and closed SIL homes). Further, consideration could be given to ways in which the RTA can best safeguard vulnerable people with high and complex needs who now find themselves navigating a difficult housing market.

In Victoria, Part 12A of the *Residential Tenancies Act 1997* (Vic) was amended to specifically recognise SDA properties and it provides a range of protections for

tenants living in these arrangements. This includes protections around what can constitute grounds to give a notice to vacate. For example, an SDA provider is not permitted to evict as a result of behaviour arising from the resident's disability or due to the failure by a person to implement or comply with the resident's support plan. There is also a requirement to provide 90 days' notice when a tenant is required to vacate. The OPA also understands that the Victorian Government broadened the definition of 'SDA residential agreement' in its *Residential Tenancies Act 1997* (Vic) to ensure that people with disability who live in SIL housing settings have rights and protections that are not afforded to them through the NDIS. Similarly in Queensland, SDA and SIL providers, previously covered by the *Disability Services Act 2006* (Qld), may now fall under the *Residential Services (Accreditation) Act 2002*, which regulates boarding house style accommodation where residents rent rooms and receive personal support.

Many service providers in Victoria who deliver SIL still fall under the jurisdiction of their *Disability Act 2006*, which includes provisions around supported accommodation, including protections for residents and regulatory oversight by the State Government. The OPA is aware that this ensures people living in these arrangements are adequately protected by accommodation agreements under the *Disability Act 2006*. As discussed above, these gaps exist in South Australia so addressing these issues through the RTA would ensure people with disability living in these arrangements are afforded the same tenancy protections as other members of the community.

These interstate examples are positive and warrant further examination as part of this review, including identifying opportunities to strengthen and align tenancy protections for people with disability living in arrangements where they may be sharing and/or receiving personal support through the NDIS. In particular, the practice of closed SIL homes where the support provider is the landlord requires adequate regulation and oversight.

Recommendation 7: It is recommended that amendments are made to the RTA to regulate the activity of SDA and SIL providers who become landlords to ensure people with disability are afforded adequate tenancy protections, in particular security of tenure and transparent rent and other expenses. This should include consistent, transparent and separate agreements for tenancy, support services and living expenses.

6. Recommendations

Recommendation 1: It is recommended that the notice period for non-renewal of fixed term leases be extended from 28 to 60 days, in line with periodic lease requirements.

Recommendation 2: It is recommended that the RTA be amended and simplified so that any contractual housing arrangement where rent is paid for the right to reside is captured within its scope.

Recommendation 3: It is recommended that the RTA and SRF Act are examined together to ensure a holistic approach is taken to regulating shared arrangements, particularly where support and other services (such as meals and laundry) are provided.

Recommendation 4: It is recommended that a general provision be included under the rooming house section of the RTA, affording certain rights and protections to occupants regardless of whether a formal written agreement is in place.

Recommendation 5: It is recommended that any changes to tenancy application forms take into account accessibility requirements as outlined in the State Government's Online Accessibility Toolkit.

Recommendation 6: It is recommended that increased education around tenancy rights and obligations for both community members and service providers is prioritised by the State Government.

Recommendation 7: It is recommended that amendments are made to the RTA to regulate the activity of SDA and SIL providers who become landlords to ensure people with disability are afforded adequate tenancy protections, in particular security of tenure and transparent rent and other expenses. This should include consistent, transparent and separate agreements for tenancy, support services and living expenses.

7. Bibliography

Australian Human Rights Commission – Adaptable housing for people with disability in Australia: a scoping study (2021): [Adaptable housing for people with disability in Australia: a scoping study \(2021\) | Australian Human Rights Commission](#)

Closed setting SIL homes – Policy Position Statement by the Summer Foundation (October 2021): [Closed_Setting_SIL_Homes-Policy-Position-Statement.pdf \(summerfoundation.org.au\)](#)

Shelter SA – Moving On: How do tenancies end in the private rental market (2022): [Moving-On-2022.pdf \(sheltersa.asn.au\)](#)

Shelter SA – The End of the Road: Rooming Housing in South Australia (March 2017): [170315-Shelter-SA-The-End-of-the-Road-Final.pdf \(sheltersa.asn.au\)](#)

8. Glossary

Acronym	Term
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
OPA	Office of the Public Advocate
RTA	Residential Tenancies Act 1995 (SA)
SACAT	South Australia Civil and Administrative Tribunal
SAHA	South Australia Housing Authority
SIL	Supported Independent Living
SRF Act	Supported Residential Facilities Act 1992 (SA)