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Advocating for the rights and interests of all landlords in SA to create a balanced and fair rental environment.



LANDLORDS'
ASSOCIATION (S.A.) INC.



General Meeting

5th November Arrive
6:50 for 7pm start.

Fullarton Park Community
Centre
411 Fullarton Road Fullarton,
SA 5063 Parkview Room

Peter Savvas
*Director of Prime
Finance
will be our guest
speaker.*



Andrew Tokley (Kings Counsel's) opinion on the changes to the RTA

By Marco Arnese
President

You may remember that committee wanted to investigate any legal avenues to challenge these laws.

Mr Tokley's opinion was quite detailed and will be available to any member of the landlords association.

If you are interested in reading the opinion, then please contact me.

I am not in a position to summarise all the opinion (23 pages) because the law is a

jungle and I don't want to put anything out of context. Nevertheless, I will extract key, minimally technical, points so that you can have a taste of what was said. The fundamental point is that a lot of the views held by landlords derive from the 'common law'. Statutes, which are laws passed by governments, act to override – as far as the government wants - common law. Cont... p.7

President's Report

Marco Arnese



Dear fellow members,
If you think the recent laws passed by the

Labor party were harsh, then think again. If the Greens hold the balance of power at the next state election, then there (the Greens) policy will be to:

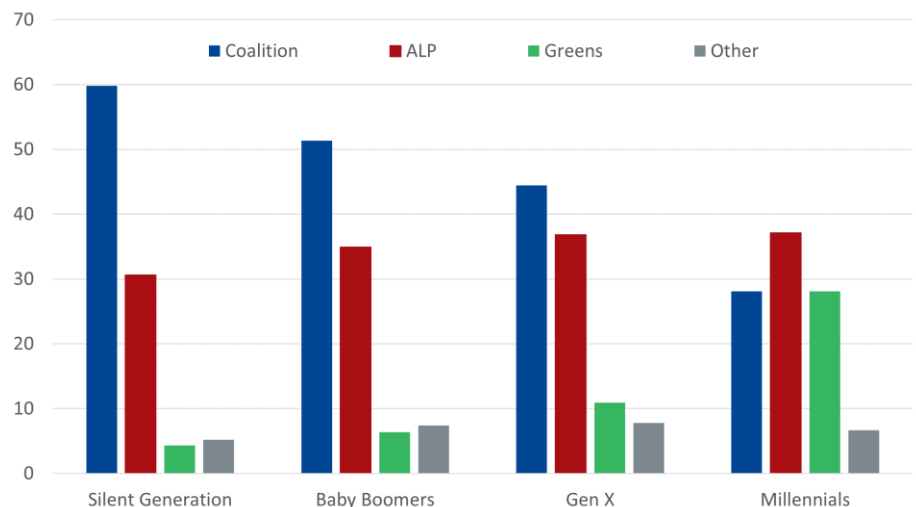
1. Freeze rents for two years
2. Implement long term rent caps
3. Phase out tax breaks that keep first home buyers out of the market.

The problem faced by landlords is that we are outnumbered by the number of tenants hence it is becoming ever more difficult to sway public opinion. All the logic in the world will tell you that these policies will not work

but if people vote for them then we have a big problem.

Below is a graph of first preference percentage by generation and party at the 2019 election, and you can easily see that the younger you are, the more likely you will vote Greens.

They fail because the theory always pushes the government into a corner from which they cannot get out easily. In England, the unions had so much power that it stifled productivity, meaning goods were more expensive than they had to be.



Source: Australian Election Study 2019, Australian National University

has been tried. Israel, India, and the United Kingdom all adopted socialism as an economic model following World War II. Its philosophy is based on the premise that: **It believes its system can make better decisions for the people than they can for themselves.**

In India, it was a crime for a company to become more productive than its allocated quota. Coupled with protectionism; this led to India still having more than half of its population under the poverty line in 1977. Capitalism is credited with the biggest uplift in living

President's Report Continued

standards in the last 4 decades. Many people (including myself) have most likely never lived in a socialist environment and hence have never experienced the consequences. The greatest proportion of this group would be the millennials'. The principal problem is that the ideas of socialism are noble – it's based on a system of redistribution of wealth to fund and support social programs for the benefit of society. People will only truly comprehend the reality once they live 'the dream'.

An interesting side note, one of my clients I recently visited came from communist Poland and we started talking about his time there. He told me he always

complained about the communist system so he came to Australia after the iron curtain fell. I then asked him what "system of government do you prefer?" His answer shocked me – He said the communist system! What's the moral of the story? Be careful what you complain about! Capitalism is not perfect, but only when you have the ability to genuinely compare systems do you realise that it is not that bad.

Changing tune....

Did anything good come out of the last round of changes to the Residential Tenancy Act? The answer is honestly yes - but only when it comes to subletting and dealing with abandoned property. If you look at the laws around subletting before and after the changes, it is 100x times more black and white. However power still remains with SACAT to determine whether or not the subletting continues – even if no written permission has been given. When it comes to dealing with abandoned property – the

period in which a landlord must not start selling goods has been reduced from 28 days to 7 days.

The biggest changes revolve around finding tenants and terminating leases. Please be aware that certain questions cannot be asked of tenants anymore in your application form. These are outlined in section 6A of the regulations, but are attached to this newsletter for your convenience. Committee has written up a new 'Landlords' Kit' including a revamped application form, however we are not in a position to distribute it to members at this current time until liability issues have been resolved.

When it comes to ending a lease, it was actually a condition prior to the changes that you would need a contract of sale before issuing a termination notice (and giving 60 days notice). If you want to move into your own house, you will need to issue a termination notice with a statutory declaration signed and attached.

See you at the meeting.

Keep Fighting!

More Member Benefits!

Our committee is proud to continue supporting members by offering benefits that support YOU!



RENTAL LISTING

Advertise for rent on
realestate.com, domain.com, plus 11 other websites **\$145**

OR

Advertise for rent on domain.com,
plus 11 other websites **\$55**

SALE LISTING

Sale listing **\$450 plus listing price**

CONTACT: MARCO
PRESIDENT@LANDLORDS.ORG.AU

Members Only | Please have member number ready



Making informed tenant selections at the start of a lease is crucial for a successful tenancy. While previous landlord references are vital, consulting the TICA National Tenancy database is also beneficial.

This service is regularly utilized by real estate professionals. Your Association has subscribed to TICA, and the first two-member search requests are **FREE** within the annual subscription.

Additional searches can be Requested at a discounted rate of

\$18.70 each for 1-3 searches and

\$16.50 each for 4 or more searches. A TICA report details the applicant's tenant history, international criminal record, and tribunal records.

Requesting a search is simple—complete the TICA application form, attach 100 points of ID for the applicant, and send it to john.wyk@landlords.org.au.

We'll handle the rest, providing a report promptly within 2 business days.

Andrew Tokley (Kings Counsel's) opinion on the changes to the RTA continued from front page.

To illustrate:

"At common law, the term 'land' when used in relation to a particular parcel meant the surface of the Earth, the soil beneath the surface to the centre of the Earth and the column of air above the surface. It included all things growing on or affixed to the soil, such as trees, crops and buildings. It also included all the minerals in the soil excepting gold and silver, which at law belonged to the Crown as royal metals" (Hallmann 1994, 9.1).

So if we use this as our law, we could say "I don't want any planes flying in my airspace, I own the air above my land!" Alas we don't hear these arguments in court because they would be thrown out on the grounds that the government has passed a law (Statute) saying that ownership of the air space above the land

surface is qualified by Air Navigation legislation. So yes you still own the air above, but there is nothing you can do about the planes flying above. **The statute has overridden your common law right.**

Returning to our problem as landlords, we still own our properties, however we are restricted on how we use it because statutes constrain our powers as property owners. The only way to reverse the situation is via changes to the legislation.

Another take away from the opinion was that the word 'lease' is contentious when it comes to renting a property. A residential tenancy agreement is defined in the Residential tenancy act as "an agreement (other than a rooming house agreement) under which a person grants another person,

for valuable consideration, a right (which may be, but need not, being exclusive right) to occupy, premises for the purposes of residence"

In other words, a lease and a right to occupy could be considered two different things. I personally don't understand the difference; however every profession has its interpretation of certain words.

Another avenue the committee wanted to explore revolved issues around the Australian Consumer law (ACL) in particular why can't the argument be made that by making every lease endless and very unequal against every landlord the recent statutorily implied terms are unfair and unconscionable?

Upon consultation of the law handbook, A term will be declared unfair by a court if it can be established that a term in such a

Andrew Tokley (Kings Counsel's) opinion on the changes to the RTA

contract:

- Will result in a **significant imbalance** in the parties' rights and obligations; AND
 - Is **not reasonably necessary** to protect the legitimate interests of the party who would be advantaged by the term; AND
 - Would **cause detriment** (either financial or otherwise) to a party if it were to be relied on.
- All three conditions (i.e. 'significant imbalance', 'not reasonably necessary' and 'cause detriment') must be met before a court will decide a term is unfair.
- Examples of an unfair term include:
- A term that permits one party (but not the other) to avoid or limit performance of the contract;

- A term that permits one party (but not the other) to terminate the contract;
- A term that penalises one party (but not the other) for a breach or termination of the contract.

This is what the KC said regarding the above query:

"The short answer must be "no", for the following reasons. First, there is nothing in the ACL or the Fair Trading Act (SA) that suggests that the provisions of the ACL concerning "unfair" terms would apply to terms imposed by legislation. Secondly, the "unfair" terms provisions only apply in respect of "standard form contracts" and definition terms contained within a piece of legislation are not in a standard form contract. Thirdly one would expect that the "unfair" terms provisions of the ACL

to proceed upon an assumption that legislation enacted by a state to address the terms in a residential tenancy agreement would be excluded from the operation of such provisions. Fourthly, to the extent that the legislative term provisions appear to be unfair from the perspective of one party to an agreement does not mean that they are, in law, "unfair terms"

Furthermore, issues around retrospectivity were discussed. We all know that two sets of laws were enforced – one set of laws became enforceable on the 1st of March, and the other on the 1st of July. What was interesting was that the laws enacted on the 1st of July seem to be backdated to the 1st of March. When did we discover this? On the 1st of July! To clarify, if you looked at the regulations on the 30th of June, you would say that you should be able to terminate a lease

Andrew Tokley (Kings Counsel's) opinion on the changes to the RTA

as per the old laws. But if you look at the regulations on the first of July – (which ONLY came out on the 1st of July) you would read that the laws were back dated to the 1st of March! So any termination notice issued before the 1st of July (but after the first of March) is most likely not going to be enforceable. Again common law dictates that this would not be fair, but because it is legislated, too bad! This is what the KC had to say:

“The potential application of the RTA as amended to residential tenancy agreements means that landlords should be careful not to assume that they can act as they did before 1 July as the amendments (with few exceptions) apply to residential tenancy agreements entered into before 1 July 2024.

Having said that, section 32 of the Interpretations Act would appear to preserve the legal position of steps taken by either a landlord or a tenant before the new amendments came into operation on 1 July 2024”.

So if SACAT rules that your termination notice is invalid, then you could take SACAT to the district court and argue section 32. However, if you lose you would be liable for ALL costs.

In summary, the opinion has established:

1. The laws are constitutionally valid and the only course of action is to appeal or amend legislation through political pressure.
2. Any termination notice issued between the first of March and the first of July is most likely not going to be

enforceable.

3. That the laws are unnecessarily complex, confusing and will not have the affect the government is hoping for. These statements will help the association oppose the laws moving forward.

Regards.

Marco Arnese

Don't Ask!

Things you cannot ask a tenant according to the changes to the RTA

6A—Prospective tenant—requirements relating to provision of information

1. For the purposes of section 47B(1) of the Act, the following information is prescribed:
 - a) information relating to whether or not the prospective tenant has previously taken legal action, has been a respondent to legal action, or has had a dispute relating to a residential tenancy with a landlord or an agent of a landlord;
 - b) information relating to whether or not the prospective tenant has previously been given a notice of termination by a landlord under section 80 of the Act, other than a notice under that section pursuant to which the prospective tenant's tenancy was terminated;
 - c) information relating to whether or not a bond to be paid by the prospective tenant (if relevant) is to be wholly or partly provided through a program for housing assistance (such as a South Australian Housing Trust bond guarantee);
 - d) information relating to the prospective tenant's bond history, including whether a claim has been made on a bond previously paid by the prospective tenant (whether the claim was made by a landlord or an agent of a landlord, or by the prospective tenant);
 - e) information relating to whether or not the prospective tenant has been a tenant under a residential tenancy agreement where the landlord is the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust;
 - f) a bank or other financial statement of the prospective tenant if the outgoing transactions and bank account number on the statement are not redacted or omitted;
 - g) financial information relating to the prospective tenant, including—
 - I. information relating to the discharge of the prospective tenant from bankruptcy;
 - II. information relating to the prospective tenant's financial practices, unless the information directly relates to the prospective tenant's financial capacity;

Note— A landlord, or an agent of a landlord, must not request a prospective tenant to disclose

financial information primarily based on expenditure records of the prospective tenant.

- h) information relating to the employment of the prospective tenant, other than a payslip or a document that confirms their employment;
 - i) information relating to a relevant attribute or circumstance of the prospective tenant;
Note— See subregulation (8) for the definition of relevant attribute or circumstance.
 - j) medical records of the prospective tenant;
 - k) information relating to the prospective tenant on a social media service (within the meaning of the Online Safety Act 2021 of the Commonwealth);
 - l) a registration number of a vehicle owned or used by the prospective tenant;
 - m) a microchip number of a pet of the prospective tenant;
 - n) information relating to—
 - I. the level of education undertaken by the prospective tenant;
 - II. the reason the prospective tenant seeks to move to the premises the subject of the residential tenancy agreement.
2. Nothing in subregulation (1)(a) prevents a landlord, or an agent of a landlord, from accessing or being provided with information required to be made publicly available on a register maintained under an Act or law or records held by a court or tribunal that a member of the public may inspect or obtain a copy of.
3. Nothing in subregulation (1)(i) prevents—
- a. in all cases—a landlord, or an agent of a landlord, from requesting a prospective tenant to disclose whether the prospective tenant is at least 18 years of age and has legal capacity to enter into a lease; or
 - b. in a case where the landlord, or an agent appointed by the landlord to manage the premises, resides in the premises to which the tenancy relates—the landlord or agent from requesting a prospective tenant to disclose whether it is intended that a child or a person for whom the prospective tenant has caring responsibilities will live in the premises with the prospective tenant.
4. For the purposes of section 47B(2) of the Act, the following classes of entities are prescribed:
- a. a participant of the National Rental Affordability Scheme under the National Rental Affordability Scheme Act 2008 of the Commonwealth;
 - b. a provider of specialist disability accommodation as defined under the National

Disability Insurance Scheme Act 2013;

- c. a community housing provider registered under the Community Housing Providers National Law;
 - d. a provider of housing registered under the Australian Charities and Not-for-profits Commission Act 2012 of the Commonwealth.
5. For the purposes of section 47B(3) of the Act, in connection with a prospective tenant applying to enter into a residential tenancy agreement—
- a. an application form given to the prospective tenant by a landlord, or an agent of a landlord, must state the amount of rent payable (calculated on a weekly basis) and the amount of the bond (if any) under the proposed agreement;
 - b. the prospective tenant cannot be required to provide—
 - i. more than 2 documents verifying their identity; or
 - ii. more than 2 documents relating to their ability to pay rent; or
 - iii. more than 2 documents relating to their suitability to enter into the residential tenancy agreement.
6. Subregulation (5) does not apply to an entity of a class prescribed under subregulation (4).
7. For the purposes of section 47B(3) of the Act, a landlord, or an agent of a landlord, must, in relation to information given to a prospective tenant in connection with their entry into a residential tenancy agreement, ensure that—
- a. if the landlord or agent is aware that the prospective tenant has a disability—
 - i. the information is in a form that is accessible to the prospective tenant having regard to the disability; or
 - ii. the landlord or agent informs the prospective tenant as to how they can access such information; and
 - b. if the landlord or agent is aware that the prospective tenant's primary language is a language other than English—
 - i. the information is in that other language; or
 - ii. the landlord or agent informs the prospective tenant as to how they can access the information in that other language.
8. In this regulation— relevant attribute or circumstance—an attribute or circumstance of a prospective tenant is a relevant attribute or circumstance if discrimination of a kind referred to in the Equal Opportunity Act 1984 is unlawful on the ground of the attribute or circumstance.

RATE CUTS in the US: what it means for Aussie landlords

*By Peter Savvas
Vice President*



The US Federal Reserve has lowered interest rates by 50 basis points, a sign that inflationary pressures may finally be easing globally. This move is welcome news not just for homeowners in the US, but also for property owners and investors in Australia, including landlords managing multiple properties.

In its policy statement, the Fed noted that inflation is moving closer to its 2% target, boosting confidence in a more stable economic outlook. This could indicate better borrowing conditions on

borrowing conditions on the horizon for Australian landlords as well, especially if the Reserve Bank of Australia (RBA) follows suit.

Australia's inflation target sits between 2% and 3%, but inflation currently remains elevated at 3.8%. The Australian Bureau of Statistics noted significant price rises in housing (+1.1%), food and non-alcoholic beverages (+1.2%), and other essentials. However, the inflation trend is generally downward after the peak during the COVID-19 pandemic.

For landlords managing properties, this could spell relief in financing as interest rate cuts are forecast for next year, with some experts predicting as many as four reductions. These

cuts could lower the financial burden on property investors, making mortgage repayments more manageable.

As of September 17, the ASX's RBA Target Rate Tracker projected that the RBA would hold its cash rate at 4.35% during the next Board meeting, though Australian financial markets are starting to price in several rate cuts within the next 12 months.

Interest Rate Cuts: A Potential Boon for Landlords

The RBA is expected to make its first 25-basis-point cut in February, followed by three more by August.

For landlords, this could be a key opportunity to reduce mortgage costs, especially if you act early to re-finance at

RATE CUTS in the US: what it means for Aussie landlords

at a better rate.

Consulting a mortgage broker could help you take advantage of any upcoming rate changes and ensure you're getting the best deal on your property loans.

The RBA's current official cash rate sits at 4.35%, with standard variable rates for owner-occupiers hovering around 7.07%. Four anticipated rate cuts would bring much-needed financial relief for landlords and could help stabilize your cash flow in managing properties.

However, keep in mind that rate cuts could also reignite competition in the property market, potentially driving up housing prices. If you're planning to expand your property portfolio, it may be wise to stay ahead of market shifts by speaking with a broker to secure the most favourable terms on

your investment loans.

Market Expectations and the Impact on Property Prices

Louis Christopher, Director of SQM Research, believes that multiple rate cuts could drive a significant rebound in Australian property markets, particularly in cities like Melbourne and Sydney. This would unleash pent-up demand from buyers, some of whom have been waiting on the sidelines for more favourable borrowing conditions.

For landlords, this means there could be an increase in demand for rental properties as homeownership becomes more competitive. Higher demand generally equates to higher rents, so be sure to factor this in when reviewing your

your rental increases.

A free RP data rental report can give you a good indication on what your property should rent for.

Lenders have already begun cutting fixed and variable home loan rates for both owner-occupiers and investors, reflecting growing confidence that the RBA's next move will be a rate cut. If you have found that your lender has not begun to cut rates yet, give them a call and ask them if you are eligible for a rate reduction. If they say no, call your mortgage broker and get them to shop around for you. That's what they are there for.

What Should Landlords Do Next?

Experts are predicting that four rate cuts could save

RATE CUTS in the US: what it means for Aussie landlords

save homeowners and landlords thousands on their mortgage repayments. For landlords managing multiple properties, this could translate into substantial savings. However, market predictions can shift quickly, so it's important to stay informed and be proactive.

The rate cuts, if they occur, could also make refinancing an attractive option, especially for landlords with soon-to-expire fixed-rate loans. Your mortgage broker can help assess your current situation and provide tailored advice on how to reduce your financing costs moving forward.

While rate cuts can ease financial pressure on existing mortgages, they may also push property prices higher, making it tougher to acquire new investment properties. Partnering with a broker can help ensure that you

favorable conditions and protect your long-term investment strategy.

Conclusion

As economic conditions evolve, landlords should keep a close eye on interest rate movements and be ready to act. Whether it's refinancing an existing loan or preparing to expand your portfolio, consulting a mortgage broker could provide you with the insights and options needed to navigate these shifts successfully. With rate cuts on the horizon, now is the time to ensure your financing is optimised for the future.

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Landlords' Association(SA)Incoffersitsmembersaccessto CoreLogic's RP Data service.

CoreLogic's RPData software emerges as a game-changer for landlords and residential property investors, offering an array of benefits that elevate property management and investment strategies. With real-time access to comprehensive property data, landlords gain a competitive advantage in making informed decisions. RPData simplifies the rental market landscape, providing crucial insights into tenant histories and market trends.

For landlords, the software facilitates accurate property valuation and optimal rental pricing for increased returns. Investors, on the other hand, benefit from predictive analytics that pinpoint emerging opportunities and potential risks, allowing for strategic portfolio adjustments. RP Data streamlines the due diligence process, providing a thorough understanding of an area's growth potential and investment viability.

In an industry where timing is crucial, CoreLogic's RP Data empowers landlords and residential property investors to stay ahead, optimizing their returns and navigating the ever-evolving real estate market with confidence and precision.

Click [HERE](#) to access your FREE reports and see the full Ts&Cs



Don't forget to check out our website!

Go to landlords.org.au



Click [HERE](http://landlords.org.au) to see our full range of member benefits or visit our website and click on the membership tab at the top of the page landlords.org.au.

We are proud to be partnering with Roach Corporate Law and SA Debt Recovery Services to support our members who require legal and debt recovery services.

Members will now receive:

1. \$300/hr + GST for consultation and/or for legal work (Non-members \$450+)
2. Letter of demand (part of debt recovery process) for \$100
3. Legal representation at magistrate court - as per magistrate court costing schedule.

Email president@landlords.org.au and have your membership number ready!

GENERAL MEETING AGENDA ITEMS

- MEETING OPENING AND WELCOME
- APOLOGIES
- GUEST SPEAKER
- MINUTES OF THE PREVIOUS MEETING
- BUSINESS ARISING FROM MINUTES
- PRESIDENT'S REPORT
- GENERAL BUSINESS
- CLOSE MEETING

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