

June 16, 2000

The Secretary  
House of Representatives Standing Committee  
on Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2000

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**Re: Privacy Amendment (Private Sector) Bill 2000**

Thank you for the opportunity to comment on the Privacy Amendment (Private Sector) Bill 2000. This Bill is intended to extend laws relating to the handling of personal information to the private sector. The Queensland Residential Tenancies Authority (RTA) is providing comment on the Bill because of issues raised with the RTA about some aspects of the operation of tenancy databases. Tenancy database organisations are among the organisations to which the new laws will apply.

The RTA is a statutory authority responsible for the administration of residential tenancy law in Queensland. This law, the *Residential Tenancies Act 1994*, regulates residential tenancy agreements and related matters. The RTA also provides a residential bond custodial service, a conciliation service for tenancy disputes, community education, investigations/prosecution of offences under the Act and provides policy advice on the legislation and residential tenancy issues.

**Tenancy databases**

Residential tenancy databases are a commercially operated information service used within the residential rental industry to screen tenants. Generally, real estate agents are able to list tenants for breaches of their tenancy agreement and obtain information about those listed on the database. Information provided includes the nature of the alleged default or breach by tenants on rental agreements, and details of the listing agent who can be contacted for further information.

Tenancy databases operate across state borders. Examples of tenancy databases in operation are the Tenancy Information Centre of Australasia (TICA), Barclays, and the National Tenancy Database (Remington White).

Issues about the operation of some tenancy databases raised with the RTA, usually by tenants or their representatives, include:

- incorrect information which tenants cannot access or easily correct;
- telephone inquiries by tenants charged by the minute with information sometimes refused;
- mistaken identity;
- trivial or retaliatory listings,



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- threats to list where tenants assert legal rights;
- person listed not being informed of listing, and
- listing despite the outcome of a judicial process in the tenant's favour.

The RTA also understands some property managers have concerns about the risks in using tenancy databases if they were not operated professionally.

The RTA accepts that tenancy databases have become a feature of the industry and provide a way for property owners to minimise risk and protect their investments. The concern is that the databases are operated professionally, with fair dealing with the information collected.

### **Legislative framework**

The RTA therefore welcomes and generally supports the approach taken by the Bill. The extension of the Privacy Principles to private sector organisations including tenancy database companies should address many of the issues that have been raised in the residential rental sector about some aspects of how information about tenancies has been handled. The proposed legislation will have the advantage of operating nationally as do the databases and has the potential to provide better protection for how information about individuals is collected and used.

The RTA considers the introduction of the Bill is necessary. Despite the Government's offer of the Privacy Commissioner's assistance to develop industry privacy codes, no code or complaint handling mechanism relating to tenancy databases has been established. The RTA notes the reasoning behind the co-regulation model on which the Bill is based which allows industry to establish its own code. The effectiveness of this model will depend on how disputes are handled. It would be useful to set a timeframe for the review of the operation of the legislation within 2-3 years of the introduction of the legislation.

The RTA believes the Bill strikes a fair and reasonable balance between the needs of industry and consumers.

### **Specific issues**

#### **1. Section 16C Application of the National Privacy Principles**

Section 16C (3) states that Privacy Principle 6 which provides for an individual to access and correct personal information where it can be established the information is not accurate, complete and up to date, will not apply to information collected before the commencement of that section.

However Section 16C (2) outlines the Principles that do apply to information collected before the commencement of the section. These principles include Principle 3 which includes the requirement that an organisation must take reasonable steps to ensure the information held is accurate, complete and up to date so far as this relates to personal information used or disclosed will apply to information already held.

Therefore there is an apparent conflict between the operation of these two sections. However, it is important and only fair that Principle 6 be included among the Principles that apply to personal information already held where it can be established the information is not accurate, complete or up to date. This should not significantly increase compliance costs given that Principle 3 will already apply so far as it applies to the use or disclosure of personal information already held. The Bill should be modified to remove any ambiguity on this point.

## **2. Mechanisms for handling complaints**

The success of this legislation will depend on the way in which complaints about breaches of the Privacy Code in place are handled and on the enforceability of outcomes. Problems relating to access, cost and effectiveness of complaint procedures have been a common issue raised by tenancy organisations. The RTA supports the Government's approach, noted in the Information Paper on the introduction of the Bill to use the Benchmarks for Industry-Based Customer Dispute Resolution Schemes (Department of Industry, Science and Tourism, 1997) as the prescribed standards for such schemes. These Benchmarks should be the minimum standards used for any complaint handling mechanisms.

## **3. Implementation of the legislation**

The success of the legislation will also depend on how the legislation is implemented. A particular issue relating to the operation of tenancy databases is what constitutes fair and reasonable practice in terms of when information is recorded. All Australian States have tenancy legislation that establishes timeframes for identifying and remedying breaches of the tenancy agreement. Tenancy organisations in Queensland have raised with the RTA concerns that practice regarding listing differs between agents. Some property managers have also been acknowledged these concerns as an issue in terms of standards of professional practice. There may also be an issue in that some property managers list a tenant for breaching a tenancy agreement before the period provided under State legislation to remedy the breach has expired.

Consequently the RTA believes it will be important that the Privacy Commissioner consults with industry stakeholders both in deciding how the legislation will apply to a particular industry as well as about any industry Privacy Codes that are proposed.

## **Conclusion**

The Residential Tenancies Authority welcomes the introduction of the Privacy Amendment (Private Sector) Bill 2000 and generally supports the approach taken by the Bill. The RTA believes that the Bill can address issues that have been raised about some aspects of the handling of personal information by tenancy databases.

It is suggested that individuals should have the right to correct personal information already held when the law commences where that information is not accurate complete and up to date. The standards proposed by the Government relating to the handling of complaints are supported.

The success of the legislation will depend on how it is implemented and particularly on how complaints are dealt with. The RTA suggests that the government undertake to evaluate the effectiveness of the operation of the legislation two to three years after it commences.

Yours sincerely

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**General Manager**

