

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Question No. 22

Senator Carr asked the following question at the hearing on 14 February 2006:

Implementation of Uniform Residential Tenancy Database provisions:

- a) What constitutional avenues could be explored for there to be national legislation?
- b) Would the Commonwealth rely on referral from the States?

The answer to the honourable senator's question is as follows:

a) Residential Tenancy Databases (RTDs) can be addressed as a privacy issue — dealing with personal information on RTDs — or as a landlord/tenant issue. The Commonwealth does not have a specific head of power directly relevant to RTDs. One relevant Constitutional head of power is the corporations power (section 51 (xx)). The *Privacy Act 1988* is primarily supported by the external affairs power (section 51 (xxix)). The legal relationship of landlord and tenant is regulated by the States and Territories.

b) The Working Party considered three options for achieving nationally consistent regulation of RTDs:

- i) The Commonwealth enacting legislation to regulate RTDs
- ii) States and Territories developing and enacting agreed uniform model legislation, and
- iii) States and Territories amending existing legislation to achieve consistency in outcomes.

As part of (i) and (ii), the Working Party considered whether it was desirable for the Commonwealth to take supporting legislative action to clarify the application of the Privacy Act to RTDs.