



**Response to:**  
**Residential Tenancy Databases Inquiry**

January 2004

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The Australian Federation of Homelessness Organisations (AFHO) is the national homelessness peak organisation that works to address and prevent homelessness in Australia.

AFHO develops and analyses policy, consults with and represents services for homeless people, advocates for homeless people and provides information about homelessness.

AFHO seeks to collaborate with services for homeless people, government, and the broader community to achieve its objectives.

AFHO federates three founding members representing services for homeless people at the national level – the Council for Homeless Persons Australia (CHPA), the National Youth Coalition for Housing (NYCH), and the Women’s Services Network (WESNET).

Single men and women, families, young people and women and children escaping domestic and family violence are all represented through the founding members of AFHO.

*Advocating for Homeless  
People’s rights  
And working to  
End Homelessness  
In Australia.*

## Background

AFHO makes this submission to the Commonwealth/State Ministerial Council on Consumer Affairs (MCCA) and the Standing Committee of the Attorney General (SCAG) on the public issues paper *Residential Tenancy Databases*.

According to The Age (5<sup>th</sup> September 2003) there are approximately 1.5 million listings on Residential tenancy Databases (RTDs) across Australia, two of largest are Tenancy Information Centre Australasia, also known as TICA and National Tenancy Database (NTD). It is estimated that 70% of the Real Estate Industry use RTDs

AHURI are currently investigating the impact of RTD on tenant outcomes and risk management for landlords, and this research should further inform the debate when completed.<sup>1</sup>

## Introduction

One of the most significant causes of homelessness in Australia is the inability of all citizens to access appropriate housing. All people who are homeless require an appropriate and safe dwelling they can afford as a starting point.

Housing is one of the most basic human needs and most fundamental of human rights. An address and adequate, safe shelter are minimum requirements not only for survival but good health and an opportunity to participate in social life, including employment and education.

The Australian housing market has been characterised over the last 40 years by a growing shortage in low cost housing for low-income earners, particularly in the rental sectors. The current chronic shortage of low cost private and public rental housing in many housing markets is a key factor in contemporary homelessness.

The misuse of Residential Tenancy Databases (RTD), and their unregulated nature, only exacerbates the homelessness problem that Australia is currently experiencing. A listing on such a database generally results in the rejection of a tenancy application. Many tenants are not even aware that they have been listed on such a database, frequently experiencing numerous rejections for housing before being made aware of this situation.

### 1. Do Tenancy databases have a role in the private rental market?

Tenancy databases are only a relatively recent phenomena in the private rental market. Tenancy databases are managed by private companies who hold personal information on people who are tenants (and in some cases tenants friends or relatives) in the private rental market with a view to assisting lessors/real estate agents to assist in risk

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<sup>1</sup> (Adkins B., Short P., Mead E., Minnery J., Owens R., and Heffernan M., *Tenancy Databases in the Context of Tenure management: Risk Minimisation and Tenant Outcomes in the Private Rental Sector*. Qld Research Centre)

management and debt reduction. Access to these databases is through an application of membership to the private companies who manage them. Members can check listing to see if a potential tenant is listed or list a tenant.

Tenancy databases are a commercial ventures and do promote themselves through the number of listings that they have on their database. The accuracy or veracity of these listings is generally not queried.

The real estate industry has strongly argued that Tenancy databases assist them in their risk management and debt reduction strategies ie that they do not lease properties to people who are listed based on the belief that they cannot pay their rent or may damage property.

One the clear impacts of tenancy databases is that they undermine existing State and Territory residential tenancy laws. Residential Tenancy Legislation in states and territories outline clearly the role of tenants and lessors/real estate agents and provides mechanisms for maintenance, payment of rent, general conduct codes for tenants and lessors. Only in the state of Queensland has there been a change in the Residential Tenancy Legislation in an attempt to bring in line the tenancy databases with the legislation and ensure due process.

## **2. Housing as a basic right**

### **2.1 Demand for private rental housing**

Demand for private rental housing has traditionally come from four major groups:

- Transitional housing for those moving towards owner occupied housing;
- A tenure for those who do not want to own a dwelling or take on the responsibility of owner occupied housing;
- Transitional housing for those moving locations for employment and other reasons; and
- Low income households for whom private rental is the only accessible housing option.

This last group is the one of particular interest to AFHO.

Many low-income households find that private rental is the only accessible housing option. At the low-income end of the market private rental housing can become a tenuous and insecure last stop before homelessness, as well as being the most likely pathway out of homelessness.

The percentage of Australians looking to the private rental market for a place to call home is beginning to increase after staying constant since the 1960's. Home ownership is becoming less readily attainable, particularly for younger households and single people. Home ownership is also becoming less desirable for younger moderate-high income earners choosing to investment in the share market over a home.

### **2.2 Capacity of the private rental market**

Recent research (Yates and Wulff, 1999; Wulff and Yates, 2000; Wulff, 2000; Seelig 2001) clearly indices that much of the new growth in the private rental market is focussed at the higher end of the market and the supply of low cost private rental housing has

declined significantly across Australia.<sup>2</sup> It is of no surprise to anybody that the result of this has been the shrinking of housing affordability and the increasing number of people living in poverty. It is also of concern however that not all low cost housing is occupied by low income households (Yates and Wulff, 2000).<sup>3</sup>

Andrew Beer predicts, on current trends, the continuing decline of home ownership and a corresponding increase in dependence on the private rental market.<sup>4</sup>

The reliance on the market by recent Commonwealth and State governments has not acknowledged market failure in meeting the needs of low income and disadvantaged households.

Resourcing for housing must meet both social and economic objectives. Therefore it is important to maintain a mixture of housing tenures to enable choice to occur.

A research paper titled 'Public Rental Housing Policy: Learning the Lessons from Overseas'<sup>5</sup> examined the housing policies of four overseas countries – Germany, the United Kingdom(UK), New Zealand and the United States of America (USA)– and the lessons that Australia could learn, especially with the increasing reliance on cash assistance over capital expenditure.

The research paper outlines issues such as:

- In New Zealand and the UK there was an increasing affordability problem ie increasing rents in the private rental market.
- In the UK and Germany this exacerbated the housing need and so increased demand, in turn pushing up the numbers of people accessing cash assistance and therefore government expenditure
- In Germany, the UK and that USA an increasing number of people became homeless due to the lack of stock at the lower end of the private rental market – the private rental market did not provide
- Stigma in public housing can be mitigated by better social mixes and spot purchasing policies

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<sup>2</sup> Seelig T (2001), 'Private rental housing provision in Australia: A Structural Analysis Paper prepared for the 2001 National Housing Conference Brisbane, October 2001

<sup>3</sup> Yates J and Wulff M (1999), 'Housing Markets and Household Income Polarisation: A Metropolitan and Regional Analysis', *Paper prepared for 'Reform and Renewal in Social Housing' Conference, Sydney (29-30 November)*

<sup>4</sup> Beer, A., (2000), 'Fast Forward to the Future? A Vision of Home Ownership and Housing Wealth in the Next Century' in Yates, J. and Wulff, M., (eds.), *Australia's Housing Choices*, Australian Housing and Urban Institute, Melbourne.

<sup>5</sup> Research Paper No.6, 1997/98, Dugald Monro, Australian Parliamentary Library

The paper outlines four points that need to be considered in the move from capital to cash assistance. These are;

1. Close monitoring of the private rental market would be required to ensure that shortages of rental accommodation for low income earners did not occur
2. Rent assistance would need to be carefully designed to ensure that financial hardship was not created, increases in private market rent were not encouraged and that work disincentives were minimised
3. Provision in the public or social housing sector would need to be made for low income recipients with special needs as the private rental market is unlikely to cater adequately for many such tenants
4. Measures would be needed to reduce the social effect of the increased concentrations of disadvantaged tenants in public housing that such policies would introduce.

Considering that the private market will not provide for low income earners would seem to strengthen the need for a robust public housing sector and in doing so provide better social and economic outcomes for the community.

The private rental market with the introduction of the use of tenancy databases has not only increased the discrimination against certain groups of people but has also been highly successful in being able to control access to the private rental market.

### **2.3 Aboriginal and Torres Strait Islander people**

Aboriginal and Torres Strait Islander people experience particular difficulty in accessing private rental housing due to discrimination. Further, the current severe shortage of affordable rental housing impacts harshly on Aboriginal and Torres Strait Islander tenants, who have considerable difficulties in accessing and maintaining their tenure of rental dwellings.<sup>6</sup> These trends, compounding the effects of dislocation and the historic and continuing experience of dispossession from traditional lands, provide a particular imperative for Aboriginal and Torres Strait Islander people to access appropriate social housing.

Lack of access to home ownership, the lack of suitable and affordable rental housing in urban areas, racism in the rental property market, and the continuing effects of dispossession and discrimination on communities, families, and individuals, all contribute to overcrowding and homelessness amongst Aboriginal and Torres Strait Islander people.

Aboriginal people make up only 2% of the overall Australian population but make up 17% of all bednights in services operated under the Supported Accommodation Assistance Program (SAAP), the program that offers services to homeless people.

Tenancy database misuse has the capacity to further alienate Aboriginal people within the rental housing market.

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<sup>6</sup> Berry. M., Mackenzie. D., Briskman. L., Ngwenya.T. (August 2001), *Victorian Indigenous Homelessness Study: Final Report*, the Aboriginal Housing Board of Victoria, Melbourne, 15.

## **2.4 Human rights for homeless people**

The Australian Government, as a signatory to the International Covenant on Economic, Social and Cultural Rights ("The Covenant"), agreed to take steps in accordance with its available resources to achieve the full realisation of economic and social human rights.<sup>7</sup>

Homeless people are amongst the most marginalised and isolated people within our community with limited economic opportunities due to the experience of homelessness, which is often compounded by the abuse of their rights, for example, through discrimination in housing. The rights of homeless people must be actively advanced within the community to ensure that the Government guarantees the provision and maintenance of the social, economic and cultural rights of homeless people. The Australian Government while demonstrating a commitment to a program of progressively ensuring these rights, has not yet fulfilled its obligation to ensure homeless people an adequate standard of living. Article 2.2 of the Covenant makes it incumbent upon the government to guarantee that the rights defined within the treaty will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Homeless people experience a far higher degree of discrimination in housing, employment, and the use of public space than the majority of Australians. Homeless people also do not have access to all the services necessary to enjoy their rights. Due to their circumstances, homeless people often do not have access to education, employment programs and health care. In so far as these services do not effectively reach homeless people, homeless people are discriminated against by virtue of their homeless status. AFHO believes that the government needs to improve provision of services to homeless people in order to ensure that homeless people enjoy fundamental their human rights and that the government discharges its obligation under the Covenant.

AFHO believes that the government has failed to discharge its obligation to protect its citizens from discrimination. This discrimination prevents homeless people from accessing housing, an adequate income, employment, education, training and health care. AFHO believes that the misuse of Residential Tenancy Databases feeds into this discrimination, leaving homeless people even further alienated and isolated.

This, then, is further reason for strict standards in relation to tenancy databases, lest the homelessness problem in this country continue to rise.

## **3. RTD and Their Impact upon Homelessness**

People at risk of homelessness are often vulnerable to exploitation by landlords and agents because they are either unaware of their rights as tenants, find it difficult to assert these rights, and/or do not have adequate legislative protection of their rights. In a private rental market characterised by a shortage of affordable housing, tenants are in the least powerful position. The most disadvantaged tenants are the most likely to

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<sup>7</sup> **Article 2. 1.** Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

end up on tenancy databases as they are the most likely to fall behind in their rents or are unable to maintain the grounds. These tenants who include young people, single parents, women escaping domestic violence and people with a mental illness are often accustomed to poor treatment and abuse of their rights and need legal protection to ensure equality before the law.

In 2001 the Queensland Tenancy Databases Action Group surveyed a number of people accessing homeless people's services. Over a one-week period of the 162 clients surveyed, 76 (47%) respondents said they were listed on an RTB while 86 (53%) said they weren't. Of those who said they were listed on a RTD, 59 (78%) said the listing was the primary cause of their homelessness.

The results are clear – that these databases were a direct factor in people becoming and remaining homeless. This further caused a bottleneck in homelessness services, where people were/are staying longer than necessary because they are unable to obtain exit housing due to their RTD listing.

### **3.1 Veracity of listings & cost of access to information**

The key issue in the listing process is the lack veracity of the listing. In particular there needs to be a resolution at a number of levels:

- 1) Whether or not a breach has occurred – many listings are for matters that did not happen and due to the lack of process cannot be verified anyway.
- 2) Whether it is a breach if it does not reside within the RTA laws of the state or Territory – listings are occurring for items that are trivial or just nasty such as not mowing the lawn, informing the landlord of a change of tenants. The current RTA laws have a process whereby the landlord and tenant can indicate that there is a problem, a time for this to be remedied and some sort of a dispute resolution process.

We understand that there are a number of databases in operation containing apparently uncorroborated information on tenants, supplied by landlords/agents for other landlords/agents. There is no obligation on agencies to advise potential tenants that information is kept on them or whether the information has been used to assess their suitability for rental. These databases are currently unregulated. They are not covered by the Commonwealth Privacy Act or anti-discrimination legislation.

There is no formal mechanism by which tenants can access the information. Access to some of the databases by tenants is costly and even if they could receive information on their listing they cannot have this amended if they can prove it is untrue. Further there is no indication as to how long they will be listed on the database. They should also be informed of the exact nature of the information to be provided and their rights to appeal a listing. Property managers should have the responsibility of advising the tenant when they are proposing a listing and the exact nature of the listing. It should be a requirement that property managers be required to substantiate adverse listings, beyond this being appropriate and ensuring consistency, it will also act to mitigate against situations where an adverse listing cannot be challenged due to a real estate agent going out of business.

Listing should not take place even if the tenant has failed to rectify where it can be shown that the tenant has extenuating circumstances, such as family death, trauma, illness, domestic violence etc..

Overall it is important that a RTD provides for fair, objective and consistent listings which ensure the accuracy of the information provided and ensure that the tenant is notified of an event which results in a listing, the content and disputes resolution process.

Further the information held on tenants should not be held indefinitely. Credit Reference Associations hold adverse credit information for a period of 5 years. Given that the information held by these organisations usually involves far more substantial amounts of money it would seem appropriate that the information held on RTD be held for a shorter amount of time, say 3 years.

Applicants for rental housing should be informed if their application has been refused on the basis of an adverse RTD report. They should be informed of their rights to dispute this and the process to do this. There is no legal obligation on real estates to disclose the reason for non-selection. Thus tenants may be denied the opportunity to 'defend' themselves, and most likely not even be aware they are listed. This is of particular concern where a listing is unjustified or unfair. Such decisions may keep people from obtaining private rental housing or lock tenants into a bad housing situation. Tenants' being denied access to private rental properties on the basis that they are listed on a commercially driven, unaccountable tenancy database is a serious issue affecting access to private rental that has resultant, negative implications for the level of homelessness.

### **3.2 Disputes:**

Currently there are no processes to dispute adverse listings. Adverse listings could be the result of people with the same name and consequently an innocent individual may not be able to rent a property. Similarly vindictive property managers may make a listing where a tenant has, for example, disputed the withholding of a bond amount.

It is also the case that for tenants to access their information, from RTD companies, the cost is usually \$5 plus per minute over the phone. There are also costs (upwards of \$11) for posting out of reports and the timeframes for receiving these are usually weeks. Given that the amounts involved are generally small the current cost system is punitive and unfair. In a situation where a person is homeless such costs and delays are unreasonable.

As listings are something that is done to tenants and not by them, it is unreasonable and unfair for tenants to have to pay for this. The advantage of the RTDs is to the landlord and they should be paying for the system. Any costs associated with appealing adverse information held on RTDs will seriously disadvantage homeless people or people at risk of homelessness and is therefore completely inappropriate.

That when an appeal is lodged, until the appeal is concluded the adverse listing should be removed. In the event of a finding of an unfair listing that that listing should be immediately removed.

## **4. Conclusion and Recommendations**

Management practices of those who utilise RTDs must be challenged to ensure that misuse does not occur, and to minimise the impact that RTDs can have upon the numbers of people becoming and remaining homeless in this lucky country. It is imperative that legislation guides these practices and that this legislation enshrines the rights of all people.

RTDs must operate effectively and not at the current cost to our community in terms of exacerbation of homelessness, and the alienation of individuals. We must ensure that listings are fair, appropriate, and time-limited.

We urge the Australian Government and the governments of the States and Territories to implement regulation that is based upon these tenets, and that clarifies in exact detail the reasons for listing a tenant, the length of the listing, the process undertaken to ensure a listing is correct, and dispute proceedings.

AFHO would support the need for a strong National Framework to provide consistent protections for tenants in Australia against the unfair practices of tenancy databases. While state and territory governments can afford tenants a level of protection through the amendment of state and territory residential tenancy laws there is a need for these companies to be regulated. In an arena where the Commonwealth is placing more reliance on the private rental market by decreasing the provision of supply in social housing they are obligated to ensure that the private rental market affords tenants protection.

**4.1** Consistent provisions should be made across all State and Territory Residential Tenancy Legislation to regulate tenancy databases, and provide mechanisms to resolve disagreements on information included in the databases.

**4.2** State and Territory RTD Legislation must ensure that;

- tenancy databases are regulated including penalties for non compliance;
- there should be no arbitrary listing before the conclusion of due process in Tenancy tribunal;
- breaches of regulation are enforced by an unrepentant mechanism linked to Fair Trading or Consumer Affairs portfolios;
- proposed listed tenants are notified when information about them is registered;
- proposed listed tenants have guarantees to free and timely access to information kept about them;
- proposed listed tenants are able to appeal decisions
- proposed listed tenants are removed from databases for the period of any appeal; and
- an independent force such as a privacy commissioner investigates and resolves disputes and appeals.
- all listings are time limited
- where a person has remedied the issue for which they are being breached, the listing is then removed.

**4.3** Access to affordable dispute resolution procedures must be made available to tenants.

**4.4** The Federal government needs to implement mandatory National Standards for the operation of Tenancy Database companies.