

National Association of Tenant Organisations

Federation of Australian Tenant Unions and Tenant Advice Services

**Tenants' Union of Victoria.
Tenants' Union of New South Wales.
Tenants' Union of ACT
Tenants' Advice Service
(Western Australia)**

**Tenants' Union of Queensland.
Tenants' Union of Tasmania.
Private Renters Advocacy and
Information Service (South Australia).**

February 2, 2004

The Secretary
Ministerial Council on Consumer Affairs Standing Committee of Attorneys-General
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

RE: Inquiry into Residential Tenancy Databases

Please find enclosed a brief submission on behalf of the National Association of Tenant Organisations (NATO), in relation to the Ministerial Council on Consumer Affairs Standing Committee of Attorneys-General Inquiry into Residential Tenancy Databases.

NATO is aware that several member organisations have also provided submissions to this Inquiry, and NATO wishes to express its endorsement of the comments contained within these submissions. Rather than repeat the information and material contained in these other submissions, NATO really seeks to support its members' comments and make recommendations for change regarding the operations of tenant databases in Australia.

NATO thanks the Committee for the opportunity to have input into this important issue, and look forward to considering the recommended outcomes from the Inquiry. Should you require further information, I can be contacted at the Tenants' Union of Queensland, on 07 3257 1411.

Yours sincerely,

Ms Penny Carr
Convenor
National Association of Tenant Organisations
C/- Tenants Union of Queensland Inc.
28 Robertson Street,
FORTITUDE VALLEY QLD 4006

Submission to the

**Ministerial Council on
Consumer Affairs
Standing Committee of
Attorneys-General**

on

**Residential Tenancy
Databases**

**National Association of Tenant Organisations
January, 2004**

Introduction

The National Association of Tenant Organisations (NATO) is a federation of State based Tenants' Unions and Tenant Advice Services across Australia. Its membership includes the Tenants' Unions of Queensland, Victoria, Tasmania, ACT and New South Wales, the Western Australia's Tenants Advice Service, and Shelter SA. NATO is Australia's representative member of the International Union of Tenants.

NATO is unfunded by government but has previously received some in kind support from National Shelter, the peak community housing body. The NATO network communicates mostly via phone link-ups and the national Community legal Centres Bulletin Board Service. Usually, an annual face to face meeting is held at the National Community Legal Centres Conference. NATO is a participating organisation in the National Shelter Council, where it has affiliate membership.

Response to the Discussion Paper

Our response to this discussion paper has been limited given the unfunded nature of NATO and the fact that a number of member organisations have already submitted position papers to this Inquiry. We have therefore contained our response to asserting NATO's recommendations to the key issues raised about the need for regulation of residential tenancy databases.

In making these recommendations, NATO relies on the substantiating arguments made by our member organisations in their written submissions. NATO is available to answer any further queries or issues of clarification which the Committee may have.

Recommendations

NATO recommends:

- 1** *That the use and operation of residential tenancy databases should be prohibited.*

It is the view of NATO that residential tenancy databases do not have a place in the market and their operations should be prohibited.

In the event that the operation of residential tenancy databases be allowed to continue, NATO recommends that:

- 2** *A Nationally consistent scheme of regulation of these operations be developed and incorporate the following elements.*
 - I.** *The regulations should apply to all operators of residential tenancy databases, all users of residential tenancy databases, and all persons who are the subject of a listing (including an existing listing) or a proposed listing; and,*

- II. *Only a person party to a tenancy agreement can be listed. That is, the listed person must have been a tenant under a residential tenancy agreement as prescribed by the relevant state or territory legislation; and,*
- III. *Listings can only be made in circumstances where there is a substantial and quantifiable financial loss to the other party and that loss exceeds a prescribed amount. The prescribed amount must be significantly above the amount of any bond held, as the bond is the tenant's money held in trust. The specific amount over the bond should be decided through further consultation; and,*
- IV. *A listing should only be made if the person's tenancy has already been terminated; and,*
- V. *A listing should only be made if there was an order from the relevant state or territory tribunal for payment of an amount of money (consistent with recommendation 2III) and that order was breached; and,*
- VI. *That where a member-subscriber of a residential tenancy database proposes to list a person's information, the member-subscriber is required to notify the person and provide them with an opportunity to review the information and respond to the proposed listing; and,*
- VII. *That where a residential tenancy database lists a person's information, the residential tenancy database should be required to notify the person of the information listed; and,*
- VIII. *That where a member-subscriber of an residential tenancy databases declines a tenancy application on the basis of a listing, the member-subscriber be required to give the applicant reasons for the decision, including the contents of any information provided by a residential tenancy database; and,*
- IX. *That residential tenancy databases should be required, on request, to provide a person who is listed on the residential tenancy database with a copy of the information listed, without charge and without delay; and,*
- X. *Existing listings be brought within the new regulations; and,*
- XI. *Compensation be available for persons who suffer from unlawful listings; and,*
- XII. *There be control over how long a listing can remain. Once a debt is cleared the listing must be immediately removed. In all other circumstances the listing should be removed after a maximum of two years from the time of the listing; and,*
- XIII. *The national framework developed to enforce these recommendations must have the capacity to address and resolve grievances quickly, due to the immediate adverse impacts of listings on tenant databases. Further, there*

must be no or limited cost barriers to accessing the available remedies and the remedies must be enforceable, such as through the Federal Magistrates Court.

NATO believes there are three options to develop this framework. They are as follows:

Option One – Mandatory National Standards Model

The basis for this model is to implement either:

- a mandatory code under the Trade Practices Act 1974, enforced by the ACCC, or,
- national legislation that is overseen by an appointed regulator or ombudsman.

This approach would ensure consistent standards of practice binding all operators of tenant databases. Consumers who believe operators are in breach of the standards could take action by making a complaint to the relevant regulator. It is essential that listed persons are able to have a grievance dealt with quickly, and is therefore appropriate to include a direct right for individuals to take action through the Federal Magistrates' Court. Under such a model, it is important unsuccessful claimants are protected against orders to pay costs of the other party, unless such action is vexatious or baseless.

Options Two – the Commonwealth Privacy Act extended

This model involves amending to the Commonwealth Privacy Act by inserting a mandatory code on tenancy information that would regulate tenancy database operators and organisations that exchange tenancy information¹. This code should address all outstanding areas of consumer protections. Its operation would be similar to the credit reporting provisions in Part IIIA of the Privacy Act in that it would deal specifically with these issues. Disputes would be dealt with by the Privacy Commissioner, although it would be necessary for disputes to be resolved more quickly than is currently the case. It appears, due to under-resourcing, complaints to the Privacy Commissioner are processing too slowly to effectively resolve issues regarding database listings.

Option Three – National Standards enforced through the states and territories

This option requires the development of mandatory national minimum standards by the Commonwealth, States and Territories. These standards would then be implemented through relevant existing mechanisms in the States and Territories.

¹ Whilst the development of an Industry Code is possible under the current provisions of the CPA this would not be workable for consumers accessing remedies. It is not workable because the decision to develop a code is voluntary and at the discretion of the Industry. Further, such a Code would only cover parts of the Industry who voluntarily participate in its development. This means consumers with complaints would have to work out whether the database company is covered by the National Privacy Principles or the Industry Code. This type of multi-pronged process is too confusing.

XIV. The Commonwealth government must develop housing policy responses and options for people listed 'lawfully' under any new scheme regulating the use of residential tenancy databases.

Attachment One - List of Members of National Association of Tenant Organisations

Organisation	Postal address	Phone	Fax	Web/Email	NATO Rep
TENANTS' UNION OF QUEENSLAND	28 Robertson St, Fortitude Valley QLD 4006	(07) 3257 1411	(07) 3257 1135		Penny Carr
TENANTS UNION OF THE AUSTRALIAN CAPITAL TERRITORY	PO Box 8 Civic Square ACT 2608	(02) 6247 1026	(02) 6257 4801		Deborah Phippen
TENANTS' UNION OF NEW SOUTH WALES	68 Bettington St., MILLERS POINT NSW 2000	(02) 9247 3813 (general)	(02) 9252 1648	www.tenants.org.au tunsw@fcl.fl.asn.au	Chris Martin
SHELTER SOUTH AUSTRALIA	Shelter SA, Torrens Building, 220 Victoria Square, SA, 5000	(08) 8221 6488	(08) 8221 6292	www.sheltersa.asn.au bryan.hughes@senet.com.au	Bryan Hughes
TENANTS' UNION – TASMANIA	166 Macquarie St, Hobart GPO Box 2110, Hobart 7001	(03) 6223 2591	(03) 6223 2510	tenants@tassie.net.au	Sandra Kent
TENANTS' ADVICE SERVICE –	PO Box 8437 Perth Business Centre EAST PERTH WA 6847	(08) 9221 9499	(08) 9221 9609	www.taswa.org	Sally Mackay
TENANTS' UNION – VICTORIA	PO Box 234 Fitzroy VIC 3065	(03) 9419 5577	(03) 9416 0513	www.tuv.org.au	Michelle Marven