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National Regulation of Residential Tenancy Databases

Residential Tenancy Authority

GPO Box 390

Brisbane 4001

Queensland

Dear National Working Group,

**Subject: Shelter Tasmania submission on Residential Tenancy
Databases - Model Provision**

Shelter Tasmania welcomes the opportunity to provide feedback on the draft model provisions for residential tenancy databases, which have been prepared by the Ministerial Council on Consumer Affairs for national consultation. Shelter Tasmania promotes the right to housing free from discrimination and accessible to all, in particularly those disadvantaged in the current housing system and at risk of homelessness or already experiencing homelessness.

About Shelter

Shelter Tasmania is an independent not-for-profit housing peak organisation funded by the Department of Health and Human Services as a 'Housing Consumer and Provider Peak Body Service'. Shelter Tasmania is the key body that represents the interests of low-to-moderate income housing consumers and housing providers across Tasmania.

Shelter's membership consists of a wide range of organisations across Tasmania, such as: tenants groups, community housing providers, private rental support services, homelessness and crisis accommodation services, local government, research organisations and a range of individuals and services interested in housing and homelessness issues. Shelter is an affiliated member of National Shelter and is part of a network of organisations representing consumer issues in relation to housing and human rights. The Council of Homeless Persons (Tasmania) is a subcommittee of Shelter. Shelter's Management Committee is made up of 12 elected members from across Tasmania. Management Committee members represent a range of agencies and individuals with a broad knowledge and experience of issues facing low income housing consumers and housing provision.

Context

As the peak body in Tasmania for low income housing consumers, providers and support agencies for tenants in the private rental market, Shelter Tas is aware that the majority of people on low incomes who require housing reside in the private rental market. Those people are therefore potentially affected by the use and regulation of Residential Tenancy Database (RTDs). Anecdotal evidence from members is that RTDs are not used in Tasmania but have the potential for use in the future.

Tasmania, along with other States and Territories, has a very competitive private rental market with consistently low vacancy rates (currently 2% statewide) and shortage of low cost rentals. With a chronic shortage of emergency housing, as well as public and community housing, in Tasmania the majority of low income people must compete for housing in the private rental market. As the rental market tightens, and the demand for properties increases, those on low incomes are at the most risk of not being able to access affordable housing, thus facing the risk of homelessness.

In addition to difficulty accessing affordable housing, tenants in the private rental have fewer protections than social housing tenants and face a range of issues such as: insecurity of tenure and, especially for people on a low-income, rent increases and evictions. This means that private tenants are more likely to move and be looking for housing and could potentially be listed on a RTD.

The link between risk of homelessness and the private rental market has been noted in the Australian Government Whiter Paper *The Road Home* which outlines specific actions and initiatives to tackle homelessness at the State, Territory and Federal level. National Shelter has recently been funded by the Federal Government to undertake a project to provide input into the development of national standards of tenancy legislation, areas for reform and effect of current legislation on highly disadvantaged and marginally housed households. The project is due to commence in December 2009.

Shelter would recommend that the use of RTDs must be considered in the wider economic and social context, to ensure they do not increase the risk of homelessness and are not counterproductive to other government initiatives to reduce homelessness and provide consumer protection.

Comment

Shelter Tas does not support the use of tenancy databases as studies have shown that RDAs have been misused and is detrimental to tenants, and therefore Shelter Tas advocates for their prohibition. In practice they have been difficult to monitor and regulate and exclude people from housing without providing access to natural justice for tenants.

Shelter Tas has consulted with members on this submission and has worked closely with the Tenants Union of Tasmania (a member of Shelter) who provide expert

advice on tenancy matters. Members have agreed to support the key points put forward by the Tenant's Union submission, which include:

- Shelter Tas, along with the Tenants Union, does not support the use of tenancy databases. They tend to perpetuate the ever present power imbalance between a tenant and lessor and impact upon those who are most disadvantaged and vulnerable in our community. In practice they are difficult to monitor and regulate.
- However, we acknowledge that while they are not widely utilised in Tasmania, the use has become extremely prevalent in other Australian States. Therefore, Shelter Tas supports the approach of all Australian jurisdictions in adopting uniform provisions as this provides a cohesive collaborative approach in regulating the use of these databases.
- We believe that uniform legislation is important in regulating this industry as they can fill in gaps where privacy legislation is unable to do so. While privacy legislation can act to regulate the collection, retention, use and disclosure of personal information, uniform legislation can regulate the circumstances in which matters can be listed with a database in the first place.

Areas of concern with the model provisions include:

- a) That the legislation does not achieve a balance between the rights and interests of the parties concerned and is obsequious to the rights and interests of lessors and agents, to the detriment of tenants.
- b) The model legislation allows a person to be subject to a listing in the absence of a court order.
- c) The provisions place the onus on the tenant to undertake dispute resolution processes before applying to a court or tribunal.
- d) The provisions place minimal obligations on lessors and agents to disclose information to a tenant before listing, and imposes no obligations on a database operator at all in these circumstances.
- e) The model provisions do not prohibit the listing of a tenant in the circumstances where the tenant disputes the potential listing. This loophole in the provisions is open to exploitation by the lessor/agent.
- f) Enforcement provisions – while this may have been left to discretion of each jurisdiction by the Ministerial Council on Consumer Affairs we advocate for substantial penalties to be contained in the provisions to create uniformity in enforcement. Otherwise, anomalies could arise whereby database operators operating in multiple jurisdictions could be subject to different provisions.

- g) Charging of fees – there is a limitation placed on agents not to charge fees in providing information to tenants, however, the only limitation placed upon a database operator is the requirement that they do not charge excessive fees. The Tenants’ Union would advocate that database operators need to provide information to tenants free of service charge. There are also no penalties attached to this provision, albeit their penalties attached to the previous provisions.
- h) Timeframes – we have concerns that the timeframes need to be reduced from fourteen days to seven days. Databases are about quick access to information and should be changed in accordance with this.
- i) Out of date listings – the definition contained in section 457 of the model provisions imposes a limitation upon the kind of listings that are out of date. If monetary debts are paid within three months then a listing can become out of date. Our concerns here are twofold:
 - i. A tenant can be listed for breaches that are not monetary in nature. This means that a breach can never be regarded as out of date unless it is monetary, and
 - ii. It raises a problem that if a tenant pays a monetary debt outside the three month time frame they are subject to a listing even if it is unjust in the first place.

In conclusion, we have raised a number of concerns about the regulation of RTDs and their ability to impact on housing outcomes for low-income consumers, including the increased risk of homelessness.

If you require further information please contact Shelter Tasmania.

Yours truly,

Pattie Chugg
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