



Government of **Western Australia**
Department of **Commerce**
Consumer Protection



Residential Tenancy Databases – Model Provisions

Consultation Package

Ministerial Council on Consumer Affairs

November 2009

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Purpose of this Document

The purpose of this document is to invite submissions from WA stakeholders on the draft model provisions for regulating residential tenancy databases.

The model provisions have been prepared at request of the Ministerial Council on Consumer Affairs (MCCA) for a national consultation process.

The draft provisions are provided for consultation purposes only and are yet to receive formal Government endorsement. However, if adopted, it is planned that the model provisions would be introduced by all State and Territory Governments in order to provide a consistent national approach to the regulation of residential tenancy databases.

Background to the Model Provisions

Introduction

Residential Tenancy Databases (RTDs) are privately owned electronic databases which contain information about individual tenancy histories. Most real estate agents subscribe to one or more RTD, and use them to screen prospective tenants for the purpose of renting residential properties.

At the state and territory level, there is no uniform or consistent legislative approach to the regulation of the use of RTDs by agents and lessors. While Queensland, the Australian Capital Territory and New South Wales have enacted laws specifically dealing with the use of RTDs, South Australia and Northern Territory include provisions relating to RTD listing practices in their Fair Trading legislation. Currently, Victoria, Western Australia and Tasmania do not specifically regulate the use of RTDs.

The following table outlines current state and territory legislation on the use of RTDs and the relevant part:

	QLD	NSW	SA	ACT	NT	VIC	WA	TAS
Legislation	Residential Tenancies and Rooming Accommodation Act 2008, (commencing on 1 July 2009)	Property, Stock and Business Agents Act 2002 PS&BA Regulation 2003	Fair Trading Act 1987	Residential Tenancies Act 1997	Consumer Affairs and Fair Trading Act 1997	nil	nil	nil
Part		Schedule 6A	Part 5	Part 6A	Part 8			

In 2006, MCCA agreed to the development of model uniform legislation regulating the use of RTDs, based on the final report of the joint Standing Committee of Attorneys-General (SCAG)/MCCA Working Party, *Report on Residential Tenancy Databases* and the associated Regulation Impact Statement (RIS).

The MCCA asked Queensland to draft the national model provisions based on seven regulatory recommendations in relation to:

- Notice of RTD listing process;

- Types of permitted listings;
- What constitutes a breach justifying listing;
- Listing a breach;
- The accuracy and quality of listings;
- Access and correction of listings and dispute resolution; and
- Duration of listings.

To access the Report and RIS follow these links:

http://www.consumer.gov.au/html/download/Report_on_Residential_Tenancy_Databases.pdf

http://www.consumer.gov.au/html/download/Regulation_Impact_Statement.pdf

For all MCCA publications relevant to the Ministerial Council on Consumer Affairs follow this link:

<http://www.consumer.gov.au/html/publications.htm>

National Working Group

A national working group including all states and territories, the Department of the Prime Minister and Cabinet (Privacy and FOI Policy Branch), and Office of the Privacy Commissioner was formed to assist Queensland lead the development of the model provisions.

Policy Objective of the RTD reforms

The policy objective of the reforms is to address risks to tenancy applicants by ensuring RTDs are not used unfairly or inappropriately, while maintaining the role of RTDs as a legitimate risk minimisation tool for lessors and their agents. The reforms are designed to achieve an effective balance between the competing interests of the stakeholders: tenants, RTD users and RTD operators.

The Privacy Act 1988

The *Privacy Act 1988* (Cth) contains high level principles (National Privacy Principles or NPPs) that regulate the collection, retention, use and disclosure of personal information, although it does not prescribe the detailed acts and practices to be used by organisations in meeting their information handling obligations. As recommended by MCCA, amendments to the Privacy Act in August 2007 extended the application of the Privacy Act to all RTDs. The amendment was made to ensure that all tenancy database operators fulfil the requirements of the Privacy Act so that a tenant's personal information is handled fairly and appropriately.

Individuals who believe their privacy rights under the NPPs have been breached can lodge a complaint with the Privacy Commissioner.

Application of Residential Tenancy Databases – Model Provisions in States and Territories

In accordance with the Parliamentary Counsel's Committee Protocol on Drafting National Uniform Legislation (Third Edition: July 2008), national model legislation is legislation that is drafted as model legislation and enacted in participating jurisdictions including any local variations necessary to achieve the agreed uniform national policy when the legislation forms part of the local law.

Therefore, subject to each jurisdiction's executive approvals, those jurisdictions that currently regulate the use of RTDs may choose to amend their legislation so that it is consistent with the model provisions. Similarly, and subject to executive approvals, those jurisdictions that do not regulate the use of RTDs may choose to use the model provisions as the basis for introducing new legislation (or a new part in existing legislation). Local variations may be necessary in some jurisdictions to achieve the agreed uniform national policy.

A table summarising how the model provisions may be implemented in each jurisdiction is attached (Attachment 1).

Proposed Implementation of the Model Provisions in WA

Western Australia is consulting on the consultation draft of the *Residential Tenancy Databases – Model Provisions* (Attachment 3). The purpose of these model provisions is to implement the recommendations of the SCAG/MCCA Working Party, *Report on Residential Tenancy Databases* and the associated RIS. A brief explanation of the model provisions is attached (Attachment 2).

Western Australia does not currently regulate the use of RTDs. Should the Western Australian Government seek to adopt the model provisions, it remains to be determined which judicial body shall have jurisdiction for the resolution of disputes arising out of the operation of the model provisions. Therefore, any reference to "tribunal" in the model provisions or the consultation document should be read as "tribunal or court".

The Consultation Process

All interested individuals and organisations are encouraged to provide comment on the consultation draft of the *Residential Tenancy Databases – Model Provisions* (Attachment 3) by responding to the following discussion questions:

1. Do the model provisions provide an effective framework for regulating the conduct of lessors, agents and database operators in relation to residential tenancy databases?

If not, please explain your view and if possible, provide suggestions for how the model provisions might be amended to address your concerns.

2. If these model provisions were adopted, as drafted, would the provisions be workable in [insert State]?

If not, please explain why, providing practical examples and whenever possible, attach relevant data or documentation to support your view.

3. Are the provisions clear and unambiguous?

If not, please explain your view with reference to specific provisions.

4. Do you have any other comments regarding the draft model provisions?

In addition, in order to understand the context of each submission, we ask that those providing comments identify their jurisdiction and specify their current role, such as tenant, agent, lessor, database operator, or advocate etc.

If your submission contains information that you do not wish to be disclosed to others, please mark it “Confidential”. However, please note that submissions, including confidential submissions, may be subject to freedom of information and other laws and this should be taken into consideration when making submissions.

Comments in writing should be forwarded by **Friday 11 December 2009** to:

National Regulation of Residential Tenancy Databases
Residential Tenancies Authority
GPO Box 390
BRISBANE QLD 4001

Or by email to: review@rta.qld.gov.au

Please use the following contacts if you wish to make enquiries in your jurisdiction:

Western Australia - Patricia Blake, Department of Commerce, ph (08) 9282 0562 or trish.blake@commerce.wa.gov.au

Process Following Consultation

Feedback received on the draft model provisions will be analysed by the national working party and a consultation report will be provided to MCCA for their consideration. The model provisions will then be revised in accordance with the directions of MCCA. Should the model provisions be progressed at this point, each

jurisdiction will then need to take formal steps to implement the model provision in their jurisdiction.

Attachment 1: How the model provisions may be implemented across Australia

Jurisdiction	Current RTD regulation? Yes/no	If current regulation, name Act	Proposed legislative vehicle for model provisions	Additional comments	Contact details
QLD	Yes	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> (RTRA Act)	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> (RTRA Act)	If adopted in Qld, the model provisions will be implemented through amendments to the RTRA Act. Consultation in Qld is focused on amendments to this Act .	Russell Morgan, Residential Tenancies Authority (07) 3361 3650 russell.morgan@rta.qld.gov.au
ACT	Yes	<i>Residential Tenancies Act 1997</i>	<i>Residential Tenancies Act 1997</i>	The <i>Residential Tenancies Act 1997</i> is currently being reviewed by the ACT Government, including the existing provisions regulating the use of RTDs. Comments arising from consultation on the model provisions will be used to inform this review.	Katie Cameron, ACT Department of Justice & Community Safety (02) 6207 0581 katie.cameron@act.gov.au
NSW	Yes	<i>Property, Stock and Business Agents Regulation 2003</i>	Not known at this time		Office of Fair Trading policy@oft.commerce.nsw.gov.au
SA	Yes, broadly through Fair Trading legislation	<i>Fair Trading Act 1987</i>	Not known at this time	The COAG reform agenda requires the harmonisation of all fair trading legislation by 2011.	Office of Consumer and Business Affairs rtd@agd.sa.gov.au
NT	Yes, broadly through Fair Trading legislation	<i>Consumer Affairs and Fair Trading Act 1997</i>	<i>Residential Tenancies Act 1999</i>	The COAG reform agenda requires the harmonisation of all fair trading legislation by 2011.	Sandra Otto, Consumer Affairs Northern Territory Ph: (08) 8935 7705 Sandra.otto@nt.gov.au
VIC	No	nil	<i>Residential Tenancies Act 1997</i>		John Unkovich, Consumer Affairs Victoria ph (03) 8684 6301 rtdconsult@justice.vic.gov.au
TAS	No	nil	Not known at this time		Chris Batt, Office of the Residential Tenancy Commission ph (03) 6233 4555 chris.batt@justice.tas.gov.au
WA	No	nil	Not known at this time		Patricia Blake, Department of Commerce ph (08) 9282 0562 trish.blake@commerce.wa.gov.au

Attachment 2: Summary of *Residential Tenancy Databases – Model Provisions*

Provision 1: Definitions

This provision sets out the definitions for terms used in the model provisions. The definitions of the terms agent, lessor, premises, rental bond, residential premises, residential tenancy agreement and tenant have been given the meaning of the terms in the jurisdiction in which the provisions were drafted. However, if the model provisions are adopted, these terms will take the meaning in the local jurisdiction. Other terms defined will have a consistent meaning across jurisdictions.

Provision 2: Application of the model provisions

This provision provides that the model provisions do not apply to internal databases kept by the private and government sector.

Provision 3: Notice of database and listing (Rec 1)

This provision states that lessors/agents that use residential tenancy databases must give specified information about the databases to applicants before or when an application is made. In addition, if the lessor or agent uses a database to check on the applicant, then they must give the applicant details of any listing.

Provision 4: Listing can be made only for particular breaches by particular persons (Recs 2, 3, 4(a), 5(a) and (b))

This provision sets out the restrictions on listing a person on a residential tenancy database.

Provision 5: Further restriction on listing (Recs 4 (b), (c), and 5(c))

This provision requires a lessor/agent to consult with a tenant about the proposed listing before making the listing.

Provision 6: Ensuring quality of listing – lessor or agent's obligation (Rec 6(c))

This provision requires a lessor/agent that becomes aware of an inaccurate, incomplete, ambiguous or out-of-date listing to give notification of this to the database operator.

Provision 7: Ensuring quality of listing – database operator's obligation (Rec 6(d))

This provision requires a database operator who has been notified of a necessary amendment to, or removal of, personal information to make the specified change.

Provision 8: Providing copy of personal information (Rec 6(a))

The provision requires a lessor/agent and a database operator to give a person a copy of personal information on a residential tenancy database on request.

Provision 9: Dispute about listings (Rec 6(b))

This provision imposes an obligation on a person who disputes a listing to attempt to resolve the matter with the lessor/agent before applying to a tribunal for an order.

Provision 10: Notifying relevant non-parties of tribunal order about listing (R6(c), (d))

This provision requires a tribunal to give a copy of any relevant orders to a person that was not a party to the proceeding.

Provision 11: Keeping personal information (Rec 7)

The provision imposes a timeframe on keeping personal information on a residential tenancy database.

Attachment 3: Consultation draft - *Residential Tenancy Databases – Model Provisions*