

PCC—Draft for Ministerial Council on Consumer Affairs

General notes—

- 1 In relation to residential tenancy databases, the model provisions confer minimum rights on tenants or potential tenants, and impose minimum obligations and limitations on lessors, agents and database operators. A jurisdiction may add to the rights, obligations or limitations, including by adopting a higher standard for them. For example, a jurisdiction may—
 - (a) apply the model provisions to a database kept by an entity for its own use; or
 - (b) further limit the types of breaches for which a person may be listed in a database; or
 - (c) allow a person to apply for a [*tribunal*] order preventing a lessor or agent listing a person.
- 2 The model provisions have been prepared on the basis that a person who claims that personal information should not have been listed on a residential tenancy database, or that personal information listed on a residential tenancy database is inaccurate, incomplete, ambiguous or out of date, may apply to a tribunal or another entity (called a ‘tribunal’ in the model provisions) for an order for the removal or amendment of the personal information or another remedy.

The model provisions do not otherwise prescribe the consequences for a person contravening them. Each jurisdiction is to prescribe the consequences that are to apply in that jurisdiction. Possible consequences include—

 - (a) a right of a person adversely affected by a contravention to apply for a [*tribunal*] order requiring the contravention to be remedied; and
 - (b) a penalty for an offence.
- 3 Key concepts about residential tenancy agreements adopted in the model provisions (namely *agent*, *lessor*, *premises*, *rental bond*, *residential premises*, *residential tenancy agreement* and *tenant*) are based on the terms and definitions used in Queensland, as this is where the model provisions were drafted. A law enacting the model provisions would use the terms and definitions equivalent to these concepts applying in that jurisdiction’s laws about residential tenancy agreements.

Residential Tenancy Databases—Model Provisions

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1 Definitions

In these model provisions—

agent, of a lessor, means a person employed, or otherwise authorised, by the lessor to act as the lessor’s agent.

database means a system, device or other thing used for storing information, whether electronically or in some other form.

database operator means an entity that operates a residential tenancy database.

lessor—

- (a) means a person who gives the right to occupy residential premises under a residential tenancy agreement; and
- (b) includes—
 - (i) a person who is to give the right to occupy residential premises under a proposed residential tenancy agreement; and
 - (ii) a personal representative, successor or assign of a person mentioned in paragraph (a) or subparagraph (i).

list, personal information about a person in a residential tenancy database—

- (a) means—
 - (i) enter the personal information into the database; or
 - (ii) give the personal information to a database operator or someone else for entry into the database; and
- (b) includes amend personal information about the person in the database to include additional personal information about the person.

out of date, in relation to personal information in a residential tenancy database, means the information is no longer accurate because—

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- (a) for a listing made on the basis the person owes a lessor an amount that is more than the rental bond for a residential tenancy agreement—the amount owed was paid to the lessor within 3 months after the amount became due; or
- (b) for a listing made on the basis the tribunal has made an order terminating the residential tenancy agreement—the order has been revoked following a review of the making of the order.

Drafting note—

A jurisdiction’s law enacting paragraph (b) of this definition is to refer to the existing appeal or review process (if any) available in that jurisdiction for the making of the termination order.

personal information means—

- (a) an individual’s name; or
- (b) information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

premises include—

- (a) a part of premises; and
- (b) land occupied with premises; and
- (c) a caravan or its site, or both the caravan and site; and
- (d) a manufactured home in, or intended to be situated in, a moveable dwelling park or the home’s site, or both the manufactured home and site; and
- (e) a houseboat.

Drafting note—

Given this definition is subject to local variations, the terms ‘caravan’, ‘manufactured home’, ‘moveable dwelling park’ and ‘site’ of a manufactured home have not been defined in these model provisions.

See general note 3.

rental bond, for a residential tenancy agreement—

- (a) means the amount (however described)—

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- (i) paid by or for the tenant under the agreement, whether to the lessor under the agreement, [*name of Residential Tenancies Authority*] or another entity at the direction of the lessor; and
 - (ii) intended to be available for the financial protection of the lessor against the tenant breaching the agreement; and
- (b) does not include rent paid in advance.

residential premises means premises used, or intended to be used, as a place of residence or mainly as a place of residence.

residential tenancy agreement means an agreement under which a person gives to someone else a right to occupy residential premises as a residence—

- (a) whether or not the right is a right of exclusive occupation; and
- (b) whether the agreement is—
 - (i) wholly in writing, wholly oral or wholly implied; or
 - (ii) partly in a form mentioned in subparagraph (i) and partly in 1 or both of the other forms mentioned in the subparagraph.

residential tenancy database means a database—

- (a) containing personal information—
 - (i) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or
 - (ii) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; and
- (b) used, or intended to be used, by lessors or agents of lessors for checking a person’s tenancy history for deciding whether a residential tenancy agreement should be entered into with the person.

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tenant means a person to whom the right to occupy residential premises under a residential tenancy agreement is given.

the tribunal means the [*name of tribunal or other entity empowered to deal with disputes about listings*].

Drafting note—

See general note 2.

2 Application

These model provisions do not apply to a residential tenancy database kept by an entity (including a department of the government of a State or Territory) for use only by that entity or its officers, employees or agents.

3 Notice of database and listing

- (1) This section applies if—
 - (a) a person (the ***applicant***) applies to a lessor, whether or not through the lessor’s agent, to enter into a residential tenancy agreement; and
 - (b) the lessor or, if the application is made through the lessor’s agent, the lessor or agent uses a residential tenancy database for deciding whether a residential tenancy agreement should be entered into with a person.
- (2) The lessor or agent must, when the application is made, give the applicant written notice of the following—
 - (a) the residential tenancy database the lessor or agent uses for deciding whether a residential tenancy agreement should be entered into with a person;
 - (b) the reason the lessor or agent uses the residential tenancy database is for checking an applicant’s tenancy history;
 - (c) how persons may contact the database operator who operates the residential tenancy database and obtain information from the operator.

Drafting note—

See general note 2.

- (3) Subsection (2) applies whether or not the lessor or agent intends to use the residential tenancy database for deciding whether a residential tenancy agreement should be entered into with the applicant.
- (4) However, the lessor or agent is not required to give the written notice mentioned in subsection (2) if a written notice stating the matters mentioned in the subsection was given to the applicant not more than 7 days before the application was made.
- (5) If the lessor or agent uses the residential tenancy database for checking whether personal information about the applicant is in the database, the lessor or agent must, as soon as possible but within 7 days after using the database, give the applicant a written notice stating—
 - (a) whether personal information about the applicant is in the database; and
 - (b) if personal information about the applicant is in the database—
 - (i) details of the information; and
 - (ii) how and in what circumstances the applicant can have the information removed or amended under these model provisions.

Drafting note for subsection (4)—

See general note 2.

4 Listing can be made only for particular breaches by particular persons

A lessor or lessor’s agent must not list personal information about a person in a residential tenancy database unless—

- (a) the person was named as a tenant in a residential tenancy agreement that has ended; and
- (b) the person has breached the agreement; and

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- (c) because of the breach, either—
 - (i) the person owes the lessor an amount that is more than the rental bond for the agreement; or
 - (ii) the tribunal has made an order terminating the residential tenancy agreement; and

Drafting note—

The reference to the tribunal in paragraph (c)(ii) is based on the position that the entity that deals with disputes about breaches of residential tenancy agreements is also the entity that deals with disputes about listings. A jurisdiction will need to make local variations to the paragraph if the matters are not dealt with by the same entity.

- (d) the personal information—
 - (i) is only about the breach; and
 - (ii) is accurate, complete and unambiguous.

Drafting note—

See general note 2.

5 Further restriction on listing

- (1) A lessor or lessor’s agent must not list personal information about a person in a residential tenancy database unless the lessor or agent—
 - (a) has—
 - (i) given the person a copy of the personal information; or
 - (ii) taken other reasonable steps to disclose the personal information to the person; and
 - (b) has given the person a reasonable opportunity to review the personal information and make submissions—
 - (i) objecting to its entry into the database; or
 - (ii) about its accuracy, completeness and clarity; and
 - (c) has considered any submissions made.

Drafting note—

See general note 2.

- (2) Subsection (1) does not apply if the lessor or lessor’s agent can not locate the person after making reasonable enquiries.
- (3) Subsection (1)(b) and (c) do not apply to information that, at the time of the listing, is publicly available.

Example of publicly available information—

information obtained from publicly available court records

6 Ensuring quality of listing—lessor’s or agent’s obligation

- (1) This section applies if a lessor or lessor’s agent who lists personal information in a residential tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out of date.

Examples for subsection (1)—

- 1 The lessor or lessor’s agent obtains new information, including, for example, from the person to whom the personal information relates, that shows that the personal information is inaccurate, incomplete, ambiguous or out of date.
 - 2 The lessor or lessor’s agent becomes satisfied the personal information is inaccurate, incomplete, ambiguous or out of date following the resolution of a dispute under section 9(3).
- (2) The lessor or agent must, within 7 days, give written notice of the following to the database operator who keeps the database—
 - (a) if the information is inaccurate, incomplete, or ambiguous—
 - (i) that the information is inaccurate, incomplete or ambiguous; and
 - (ii) how the information must be amended to make it accurate, complete and unambiguous;
 - (b) if the information is out of date—that the information is out of date and must be removed.

Drafting note—

See general note 2.

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- (3) The lessor or agent must keep a copy of the written notice for 1 year after it was given under subsection (2).

Drafting note—

See general note 2.

7 Ensuring quality of listing—database operator’s obligation

- (1) This section applies if a lessor or lessor’s agent who has listed personal information about a person in a tenancy database gives the database operator who operates the database a written notice stating that the personal information must be—
 - (a) amended in a stated way to make it accurate, complete and unambiguous; or
 - (b) removed.
- (2) The database operator must amend the personal information in the stated way, or remove the personal information, within 14 days after the operator is given the written notice.

Drafting note—

See general note 2.

8 Providing copy of personal information listed

- (1) A lessor or lessor’s agent who lists personal information about a person in a residential tenancy database must, if asked in writing by the person, give the person a copy of the information, without payment of a fee, within 14 days after the request is made.

Drafting note—

See general note 2.

- (2) A database operator must, if asked in writing by a person whose personal information is in the residential tenancy database kept by the operator, give the person a copy of the information within 14 days after the request is made.

Drafting note—

See general note 2.

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- (3) If a database operator charges a fee for giving personal information under subsection (2)—
 - (a) the fee must not be excessive; and
 - (b) subsection (2) applies only if the fee has been paid.
 - (4) Subsection (1) or (2) does not require a lessor, lessor’s agent or database operator to give a person personal information if the lessor, agent or operator has previously given the information to the person under this section.

9 Dispute about listing

- (1) This section applies if—
 - (a) a lessor or lessor’s agent lists personal information about a person in a residential tenancy database; and
 - (b) the person claims that the personal information is inaccurate, incomplete, ambiguous or out of date.
- (2) The person must notify the lessor or agent of the person’s claim.
- (3) If the lessor or agent disputes the claim, the lessor or agent and the person must make a reasonable attempt to resolve the dispute, with or without help from another person.

Example of another person for subsection (3)—
 a professional conciliator

- (4) Despite the [*law empowering the dispute to be brought before the tribunal*], the person may [*bring a dispute about the person’s claim before the tribunal*] only if—
 - (a) the person and the lessor or agent have complied with subsection (3) and have been unsuccessful in resolving the dispute; or
 - (b) the person has complied with subsection (2) but has been unable to comply with subsection (3) because the lessor or agent has been unwilling to comply with subsection (3); or
 - (c) the person has been unable to comply with subsection (2) or (3) because the person has been unable, after

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making a reasonable attempt, to contact the lessor or agent for the purpose of complying with subsection (2) or (3).

Drafting note for subsection (4)—

See general note 2.

10 Notifying relevant non-parties of tribunal order about listing

- (1) This section applies if—
- (a) under the [*law empowering the tribunal to make orders in relation to disputes about listings*], the tribunal makes an order that a person must, in relation to a residential tenancy database—
 - (i) remove all or particular personal information about a person; or
 - (ii) amend personal information in a stated way; and
 - (b) the person against whom the order is made (the ***relevant person***) is not a party to the proceeding for the dispute.

Drafting note—

See general note 2.

- (2) The tribunal must give a copy of the order to the relevant person.
- (3) The tribunal complies with subsection (2) if the tribunal orders a party to the proceeding to give a copy of the order to the relevant person.

Drafting note—

This section presumes that the law empowering the tribunal to make orders of a kind mentioned in subsection (1) includes a requirement to comply with the order that applies to all persons against whom it is made.

11 Keeping personal information listed

- (1) A database operator must not keep personal information in the operator’s residential tenancy database for longer than—

- (a) if the national privacy principles require the operator of the database to remove the personal information within a stated period of less than 3 years—the stated period; or
- (b) otherwise—3 years.

Drafting note—

See general note 2.

- (2) However, subsection (1) does not apply to a person's name if it is necessary to keep the name in the residential tenancy database for other personal information about the person in the database that is not required to be removed under subsection (1) or another law.
- (3) This section does not limit the operation of another provision of these model provisions or a provision of another law that requires the removal of the personal information.
- (4) In this section—

national privacy principles means the principles stated in the *Privacy Act 1988* (Cwlth), schedule 3.