COMMUNITY AFFAIRS COMMITTEE

Members present:

Mr P.A. Hoolihan MP (Chair)
Ms F.S. Simpson MP
Mr M.W. Choi MP
Mr P.J. Dowling MP
Mr A.P. McLindon MP
Mr J.D. O'Brien MP

Staff present:

Dr K. Munro (Research Director)
Ms E. Pasley (Principal Research Officer)
Ms S. Cash (Executive Assistant)

HEARING-EXAMINATION OF THE RESIDENTIAL TENANCIES AND ROOMING ACCOMMODATION AMENDMENT BILL 2011

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 24 AUGUST 2011

Brisbane

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Committee met at 9.36 am

CHAIR: Good morning all. I declare this hearing for the examination of the Residential Tenancies and Rooming Accommodation Amendment Bill 2011 open. Thank you for your interest and for your attendance here today. The committee has resolved to allow television and media coverage of today's hearing. The committee has advised the public of the inquiry by advertising in the print media and also by writing directly to a number of individuals, organisations and government departments.

The Community Affairs Committee has a responsibility under section 93 of the Parliament of Queensland Act 2001 to examine bills in its portfolio areas. Under the act, the committee is to examine the policy to be given effect by the legislation and the application of fundamental legislative principles.

Before proceeding further, I would like to introduce the members of the committee present today: Ms Fiona Simpson, the member for Maroochydore and deputy chair of the committee; Mr Michael Choi, the member for Capalaba; Mr Peter Dowling, the member for Redlands; Mr Jason O'Brien, the member for Cook; and Mr Aidan McLindon, the member for Beaudesert, who has been held up in traffic. My name is Paul Hoolihan, the member for Keppel, and I am the chair of the committee. The committee has resolved to allow non-committee members to attend and ask questions during the hearing.

The Community Affairs Committee is a committee of the Queensland parliament and as such represents the parliament. It is an all-party committee which adopts a non-partisan approach to its proceedings. Although the committee is not swearing in witnesses, I remind all witnesses that these hearings are a formal process of the parliament. As such, any person intentionally misleading the committee is committing a serious offence. I also remind witnesses that Hansard will be making a transcript of the proceedings. I therefore ask you to please identify yourself when you first speak and to speak clearly and at a reasonable pace.

It is the committee's intention that the transcript of the hearing be published. The findings of the committee will be the subject of a report to the parliament. The committee is to provide a report to parliament by 19 December 2011. A copy of the committee's report will be forwarded to all witnesses.

The committee will suspend proceedings for a break today from 10.40 am to 11 am. Before we commence, I ask that mobiles and pagers be turned off or switched to silent mode. From 9.30 am to 10 am we have a briefing from the Minister for Community Services and Housing and Minister for Women, the Hon. Karen Struthers. She has with her ministerial officers from the Residential Tenancies Authority and her executive managers. I now call the first witnesses, the Minister for Community Services and Housing and Minister for Women and officers of the Residential Tenancies Authority.

STRUTHERS, The Hon. Karen, Minister for Community Services and Housing and Minister for Women

BREEN, Mr David, Executive Manager for Policy and Education Services, Residential Tenancies Authority

SMITH, Mr Fergus, Chief Executive Officer, Residential Tenancies Authority

ZAKHAROV, Ms Robin, Director, Private Housing Programs, Department of Communities

CHAIR: I welcome the minister. Would you like to make a brief opening statement?

Ms Struthers: Thanks, Mr Chairman. Thank you to all of the committee for a further opportunity to explain the provisions of the bill and hear from both you and members of the public and members of organisations about your issues and concerns. For the benefit of members of the audience who have joined us today, I have had one presentation before the committee already. This is the brave new world of parliamentary democracy in Queensland. A few weeks ago the committee, after having pursued your submissions and material in relation to the bill, asked me a series of questions. I am keen to address those and give responses to those this morning. So it is a really good process. It is a good process to hear about how these sorts of proposed changes to the legislation will be operationalised and what you see as issues around that.

Firstly, I thank the committee. They raised four or five key issues that I am happy to respond to today, and a number of those were in your submissions to the committee, and I thank you for that. You have raised very constructive issues around the application of enforcement provisions in other jurisdictions

given that the tenancy database operators are generally operating nationally. The committee asked questions about time limits around listings being listed and also issues around the safety of people who were seeking information about listings.

It is a positive move in terms of natural justice that we are trying to achieve here to have their names removed and have the situation remedied so that tenants will not have the sorts of provisions like the bad old days of being listed and then having no recourse. But one of the unintended consequences that the committee raised with me was to do with issues around safety for people who were seeking information about listings. Could that lead to retribution for people who were seeking to have their details changed? Could agents or others be at threat of retribution from people who were aggrieved or from people in situations of domestic violence? Could TICA be used as a way of tracking down someone who has moved and fled interstate or to another location within Queensland? So I am keen to go through those issues. Are you anticipating in this first block that I would receive questions? I am happy to do that.

CHAIR: I think in terms of those matters that we had discussed with you, if you could deal with those first, Minister.

Ms Struthers: Great. That might cover some of the issues raised in submissions by organisations represented here today. Again, just by way of introduction for the benefit of the committee and the record in relation to this hearing, the Residential Tenancies and Rooming Accommodation Amendment Bill implements the national uniform laws on residential tenancy databases adopted by the Ministerial Council on Consumer Affairs. For those of you who are using these sorts of processes in your daily work, you are very familiar with the fact that the residential tenancy databases are privately owned. They are electronic databases that contain information about a person's tenancy history. Most real estate agents subscribe to one or more of the databases, such as TICA or the National Tenancy Database, and use them to screen prospective tenants.

In Queensland we have regulated listings on tenancy databases since 2003 and provided a process for people to dispute listings if they were inaccurate or unfair. In fact, it is pleasing to note that Queensland has really led the way in relation to supporting tenants with their listings and in trying to assist people so that they do have recourse when they are subject to a negative listing. Again, that has come about because of the advocacy of many of your organisations, and I commend the work of the Residential Tenancies Authority. We have a world-leading Residential Tenancies Authority, I might say, which is very responsive to these issues, and we have a government that was keen to act on this a number of years ago. So we have been leading and contributing to the national process, and bringing this legislation to the parliament at this point in time ties all of those loose ends off in relation to what we want to achieve nationally.

The amendments to the Queensland act will assist applicants for rental properties to understand the use of the tenancy databases and to obtain information on databases. The amendments also clarify the existing restrictions for listing on a database and introduce new obligations to ensure the quality of listings over time and to ensure listings are removed within a reasonable time. This bill is part of a process of ensuring equal treatment of applicants for rental properties and for tenants across the country. It recognises the rights of lessors to take reasonable steps to manage the risk of rental investments by checking tenancy histories. However, it also ensures and balances the rights of tenants to have their personal information handled fairly and protected so that they are not jeopardised from securing rental housing into the future. Those of you who are working in this area know that many people have been left in significant housing stress or displaced as a result of an unfair listing and you have taken appropriate steps and advocated on behalf of people to clarify and remedy that.

I just wanted to go through the specific issues raised by the committee at our last meeting. You raised the issue of the lack of a penalty for a database operator keeping a listing for longer than three years. I noted in going through the submissions that that was raised by Shelter and some of our tenancy advocacy groups and others as well. A person whose personal information has been listed on a database can either ask the database operator to remove it on the grounds that it is out of date or, alternatively, apply to the Queensland Civil and Administrative Tribunal to seek its removal. It is an offence for a database operator not to comply with a tribunal order to remove or amend a listing. It is considered that this is a reasonable consequence, but I am happy to pursue the issue of a penalty. I have discussed this with David and others at the RTA. Fergus has given advice that we certainly can look at introducing an amendment to the bill to introduce a penalty. I think what we are finding, though, is that this is likely to be a difficult area to prosecute, but we are keen to be as rigorous in relation to this as we possibly can. I am not sure if you wanted to respond to that, but that is certainly what we have considered since we last met.

Mr O'BRIEN: So what would be your process to do that, then—to bring in the penalty? Would you have to go back to cabinet to get that approved or would it be a minor, inconsequential amendment?

Ms Struthers: I am presuming it would be an amendment that we can deal with between now and the debate on the legislation.

Mr O'BRIEN: Have you thought much about at what level you would set the penalty?

Ms Struthers: Not the specific detail.

Mr O'BRIEN: I would not imagine that it is going to be a large fine.

Ms Struthers: If you want David to respond to that, he may have given that some consideration.

Mr Breen: No. We have not considered the specific amount of the penalty. In the act currently, penalties range from about 10 penalty units to a maximum of 50 penalty units. We would consider in relation to similar offences where to strike. It is probably something like 20 to 40 penalty points.

Ms SIMPSON: In relation to the answer that was provided in writing yesterday and following on from the minister's explanation, it is currently left up to QCAT if someone offends or fails to respond to a QCAT order. So are there penalties within QCAT's provisions for failing to respond to one of their orders?

Ms Struthers: My letter to you basically said that it would be hard to prosecute and therefore a penalty may not add much at all. We have had further meetings and agreed that it would be useful to introduce a penalty by way of amendment, even knowing that it may be hard to prosecute. But at least it sets a standard in law that we are serious about this—that it is an offence and we are not going to muck around with this. But we know—and there are many areas of law like this where you set a community standard—that the practicality of pursuing the prosecution can be difficult. But people have the opportunity to take it to QCAT to get a decision out of QCAT and to get a remedy through QCAT.

Ms SIMPSON: Can I just clarify QCAT's provision so that I understand how that particular process interfaces currently with the legislation that is still on the table but subject to possible amendment. So if someone fails to follow an order of QCAT, what are the penalties that QCAT is able to put in place?

Mr Breen: There is a specific offence in the act now that says it is an offence not to comply with a tribunal order about a tenancy database listing. That is also included in the bill. That is 50 penalty points. So currently in the act, and in the bill, it is an offence that the RTA can prosecute as a summary offence if somebody does not comply with a tribunal order about a tenancy database listing.

Mr DOWLING: In your response, for those of you who are not privy to it, you basically said that it was difficult to prove when the listing was originally made. Can there be some form of recommendation that any lists that are kept from here on actually have a disclosure as to when that information was provided? The second part of the problem in regulating it or with enforcement appears to be when the person who made the complaint is no longer being cooperative—will not support their own story et cetera—and so, by default, the person must be removed from the list. So if someone is not prepared to maintain their position on the complaint then it is no longer a valid complaint and they should be expunged from the list. Can those provisions be put in?

Mr Breen: Sorry, what was the first question?

Mr DOWLING: The first one was about determining the date of the listing, because there is a three-year window within which they must remove the listing. If you do not know when it started, you cannot possibly enforce an end.

Mr Breen: The difficulty in proving it is a technical one. If we are prosecuting in court we have to prove to a criminal standard when the listing was made. Often you will have hearsay information about when the listing was made and you will have, for example, potentially a copy of a listing. Someone could get a copy of the listing from the database operator. Again, you have to prove that that is the information contained in the database if you are prosecuting in the Magistrates Court. That was the issue that we are referring to. It is the technical difficulty potentially of proving what is in the electronic database despite the fact that you have the paper listing and evidence from the person about when they were listed or from a real estate agent about when they made the listing.

There is a provision in the bill that reverses the onus of proof on listings. So a copy of the listing is taken to be evidence of the listing unless the party being prosecuted proves to the contrary. So that is a legal device essentially, as I understand it, to make it easier to prove offences. So there are issues around just the technical difficulty you have of proving to a criminal standard what is in an electronic database. But we believe that we have some measures in the bill to actually be able to do that.

Your second point is that if somebody is not prepared to stand by the listing then it should be able to be removed. At the moment in the act, and certainly in the bill, what a person can do is go to the tribunal, which has the flexibility to deal with a wide range of those sorts of situations. I would think that if nobody is prepared to actually support the listing the tribunal will make an appropriate order. But there is that provision through the use of the tribunal to deal with those sorts of circumstances.

Ms SIMPSON: With regard to the current enforcements through QCAT, what tracking have you done in respect of how timely that is and what penalties are currently being applied in the existing legislation through the QCAT process?

Ms Struthers: That might be a question that I need to take on notice because you have asked for detailed information. I do not know whether Fergus or David would have anything on hand. We have certainly looked at that in the development of the bill. It is data that we can provide, but I do not know that we can provide it today. Would that be correct, Fergus?

Mr Smith: I am sure David will comment, but generally QCAT will be about rectifying things. Rather than penalising people, it is actually about rectifying the situation—asking for a listing to be removed or corrected. Where we come in is when it is an offence to not do what QCAT required and then we can prosecute. So generally the penalty is when we might prosecute because the database operator did not do as required. I suspect that is a very rare occasion. But, no, we would have to talk with QCAT about what information they could provide us.

Ms SIMPSON: If I could just ask a supplementary on that, because it is important to understanding how legislation is practically implemented. As QCAT is a fairly important part of this process still, I would be interested to know that information about the timeliness and the sorts of penalties that are currently being applied, because there have been concerns that QCAT has had substantial delays, and that becomes important if we are talking about timeliness with respect to people who may have significant disadvantage in accessing accommodation.

Ms Struthers: That is an important area of information. We will do what we can to get information on that and when I am discussing the bill in the House—or even prior to that I can write to you formally—it would be useful to know. The trends—how long it is taking for matters to be heard and that sort of thing—are what you are asking about. We will take that on notice and work with Justice and Attorney-General to get that information. Can I go to those other issues that were raised?

CHAIR: Yes, thanks, Minister.

Ms Struthers: You asked about protections against retribution for a person making a listing. I am not sure if this was raised in the submissions by other organisations, but we certainly had a lengthy discussion when we met a couple of weeks ago. As we discussed then, under the principles of natural justice a person has the right to know of any adverse information. That is the core of what we are trying to do with these amendments.

We currently have provisions under our existing act that require a lessor or agent who is creating a listing to inform the former tenant so that the former tenant has the opportunity to dispute the listing. This bill also introduces a requirement for any lessor or agent using a tenancy database to vet tenancy applications to advise an applicant they find listed on the database of the information that they should have been given at the time of the listing and to advise the prospective tenant how they can have this information amended or removed. This additional requirement will serve to ensure that natural justice is met. You raised an important issue. Your concerns were about the possibility of retribution against a person making a listing on a database or against a party where there might be a domestic violence issue. It might be a real estate agent whose partner is feeling aggrieved and insecure about how that person in his or her role as a real estate agent may use their subscription to TICA.

Essentially, the advice I have received is that it is extremely unlikely that a listing will occur where, from the tenancy information included in the listing, the former tenant would know the name of the lessor or agent who made the listing, even if those names were not disclosed, and any measures designed to conceal the names of the lessor or agent would impede the principles of natural justice without providing any additional protection for the lessor or agent. Where the names of the lessors or agents who created the listing must be disclosed, other personal information such as a lessor's or agent's current address or telephone number does not have to be disclosed. Any additional measures are really unlikely to prevent the former tenant being aware of the lessor's or agent's contact details which were provided during the tenancy. The lessor or agent has existing protections under criminal and family law if a former tenant attempts to exact retribution. So that is the advice that I have received in relation to the concerns you raised. I just wondered what your thoughts on that might be.

CHAIR: I am quite satisfied as to that set of circumstances. I do not think we will have the opportunity to cover all possible occurrences, but as long as it is balanced so that both parties have recognition that they are entitled to that detail. That certainly will be a matter that the committee will consider in terms of our report.

Ms Struthers: Okay. I think it is important that you raised those sorts of safety issues. I guess human nature is such that anyone intent on tracking down someone will go to all sorts of lengths and it is very hard to have this legislation being a catch-all for every possible circumstance, but with the Privacy Act nationally and the provisions within this bill I guess at this stage we feel like there is an adequate balance there. We need to monitor these sorts of issues over time to see whether there is any problem. I accept what people have said, both in submissions and to me in various forums, that some tenancy database operators have been operating in not-so-desirable ways on some occasions and we need to make sure there are the appropriate checks and balances, but it is very difficult to make this legislation the catch-all to protect people in all of those complex situations, particularly anything where it might be a personal relationship that has broken down and someone is intent on tracking someone down.

CHAIR: I am cognisant of the time but we did start a couple of minutes late and, as I said, I will adjust that time. The third matter that was of concern from a couple of the submissions was in relation to enforcement action against interstate database operators or interstate based operators.

Ms Struthers: Yes, I can address that. Again, that was raised in submissions and raised by you and we had some discussion on it. Since our meeting the Residential Tenancies Authority has obtained preliminary crown law advice about the enforcement of the penalty provisions in this bill. Where the tenancy database operator is located interstate, we feel that this could be addressed by minor amendments that insert the terminology extraterritoriality—an ET provision in the bill. Such provisions identify connection with the state—that is, the rental properties and tenancies are in Queensland—and would state that the provisions applied in relation to Queensland tenancies and listings even if the person to whom they applied was in another state. So the lawyers in the room will have a better understanding of extraterritoriality than I may do. If you would like David to pursue that a little further, I am happy for that to occur. There are examples of that in other areas of legislation.

Ms SIMPSON: I would be interested to understand whether this is some delegation of powers to the Australian Privacy Commissioner or how that actually practically works in law.

Mr Breen: Our preliminary advice is that there is a current penalty provision in the act which is replicated in the bill, and that is the failure to comply with a tribunal order. That is actually enforceable now in Queensland and always has been. But, as the minister said, the advice in terms of the proposed penalty provisions against database operators where they are located interstate was that we would need to include the extraterritoriality provisions. An example of legislation where that is included, for example, is the Legal Profession Act. Essentially, in those provisions you identify what the connection to Queensland is—and in this case it would be that the residential tenancy and the rental premises are in Queensland—and then you provide that the bill would apply then to persons located interstate where there is that connection. That would mean that we can actually prosecute those people in a Queensland court even if they are located in Sydney or Melbourne, for example.

CHAIR: Can I follow through with that. There is a disconnect, because under the Legal Profession Act anyone practising law in Queensland has mutual recognition and mutual admission. We are dealing with the possibility of a proprietary limited company which is registered, say, in New South Wales or Victoria which does not have any registration in Queensland and, consequently, I think there may be some difficulty with extraterritoriality in that instance, wouldn't there?

Mr Breen: No. The crown law advice was quite clear. That was an example of legislation that they gave, but basically they were clear that what these provisions would do is identify the connection to Queensland and on that basis you can then provide that it applies to the parties, regardless of where they were. So you do not need mutual recognition or similar penalties in other states to actually enforce it. That is a way to do it with some uniform legislation where, as I understand it, say, the states would have the same provisions with the same penalty provisions and you could get your interstate counterparts to prosecute interstate. Given that with this legislation each state will probably have different penalty provisions, it is possible, if you have these provisions that make the connection, to actually prosecute somebody who is based interstate in a Queensland court.

Ms SIMPSON: So that is the prosecution. But with regard to the actual investigation, given that you have already indicated some difficulties currently as far as getting that evidence, does the issue of it being an interstate operator create a difficulty?

Mr Breen: Yes, good point. Potentially it does, because it does make it more difficult to get the evidence together. We are getting further advice about this from crown law, but these provisions would, if applied appropriately, allow us to use our investigative powers interstate as well. In terms of collecting evidence, one way to collect the evidence is through the real estate agents potentially who are based in Queensland who make the listings in Queensland. Again, we can use papers such as copies of listings. So there are a variety of techniques that we can use but, yes, it will be more difficult to actually pursue the investigation simply because the organisation is interstate. We have had some experience of that because under the current act it is an offence not to comply with a tribunal order and we have had some complaints about noncompliance with a tribunal order, so we have dealt with interstate parties who have cooperated essentially with the investigation in that process. But there is no guarantee that they do.

CHAIR: The time for questioning has expired. I thank the minister and Mr Breen. I hope that Mr Smith and Ms Zakharov did not feel rejected, but thank you very much for your input. Certainly the committee will, along with the submissions of all of the submitters, be considering those aspects in terms of our report. Thank you, Minister.

Ms Struthers: Can I just clarify: is the expectation that I can leave now? Please may I leave the table?

CHAIR: Yes, Minister. Thank you very much.

Ms Struthers: Did you need me to be around for other submissions?

CHAIR: No, I do not believe so.

Ms Struthers: Great. Thank you.

CHAIR: To those about to give evidence, I know that we did have the minister and I appreciate the concerns of people with their back to those in the public gallery. Most inquiries of this nature have the person speaking with their back to the audience, so I do apologise for that. That is easier from our point of view and to make sure that we have everything recorded correctly.

HUDSON, Ms Noelle, Senior Policy Adviser, Queensland Shelter

CHAIR: Ms Hudson, would you like to make an opening statement?

Ms Hudson: Yes, we would like to make a statement about why we responded to this inquiry. Firstly, I would like to thank the committee for recognising our submission and asking us to appear here. Queensland Shelter is a community based peak organisation that promotes improved access to housing for all Queenslanders. We have branches across Queensland. They are geographically and special-interest based and we are an independent voice on housing rights and provide a link between the government and community through consultation, research and policy advice. We specifically look at the interests of low- to moderate-income housing consumers and others who struggle to meet their housing needs in Queensland. Our commitment to improving housing access is the reason we responded to this inquiry.

Australia and Queensland have a housing undersupply. There are huge queues for housing in Australia. There are low vacancy rates and there are people who wait and queue to access private rental. According to the national housing council, there is an undersupply of 493,000 affordable rental properties. That is not the actual undersupply of housing; that represents the concept of what we call 'renting under', which is people who have higher incomes and could afford to rent more but rent lower, usually in the aspiration to buy a property. But unfortunately in this market, and especially with job instability and low wages, that is not happening. So we actually have the people who are on the lower wages renting properties that are far too expensive for them because they cannot access it.

It is this shortage of accommodation and the competition that has us concerned about the rental tenancy databases, because any listing on that will scuttle their chances. So even if they meet, go through the intense process of filling in the lease application, having their referees contacted and meeting that income ratio which is used by the property managers, it will be scuttled if they have a listing. So it is based on this that we have done our submission. What we have asked for is a recognition that the incidence of people destroying properties is low and there are many avenues to intervene before you put someone on a rental database, but what we have advocated for is a fair and transparent system where people can access their listed information for free, penalties can be applied to interstate operators—and I appreciate the minister's response earlier—and people will be protected from misuse of the database. Thank you.

CHAIR: In your submission you certainly raise those concerns, but would you like to elaborate on some of those concerns, particularly how you believe it could strike a balance between optimising tenants' access to their personal information and lessors', agents' and database operators' legitimate entitlement to recover costs in a commercial environment?

Ms Hudson: So you are asking us to confirm why—

CHAIR: How would you suggest that an appropriate balance be struck? You are saying that they should be able to access that information free of charge, but you are dealing with a commercial operator and there is a charge. Ultimately, it will either flow through to what the cost of rental will be or there is an ongoing charge for that information.

Ms Hudson: When the tenant would like to access their information—and, yes, we do recognise it is a commercial transaction—people charge property management fees. It could be included as part of that. The people we are most concerned about are those who are the low-income and disadvantaged, so that additional charge is above and beyond what they can afford normally. While we appreciate there is a commercial transaction, those fees could be recovered in another way from existing fees that are already charged or recovered.

Mr CHOI: In terms of the fee charged by the tenancy database, are you aware of any other agency that has done any work on the cost of that database? If you think it is too expensive, what would be a fair cost and how did you derive that cost?

Ms Hudson: We have not done work on that. I think the tenants union has looked at that. So I cannot comment on those costs.

Mr CHOI: We will go back to that. In your submission you mention that you believe the definition of the databases under 457 should be expanded. Can you please explain to us what benefit it would give to the tenants if that is expanded?

Ms Hudson: I note it is within other submissions. I think the TAAS of the inner north have raised this issue as well, possibly not under this section. But basically we have asked for that section to be expanded so it is not only the people who have a lease but also those who are applying. It is not dissimilar to a commercial arrangement where people are shopping around for loans. When people are looking at that commercial loan arrangement they say, 'Well, geez, there's a lot of applications for debt. This is a risk situation.' That apparently applies in the rental situation as well. So when people are going around they are putting in applications, people see there are a lot of applications and then are worried. But as I explained, there is intense competition so you might put in 10 applications but you might not get that property. So what we are saying is that the fact people have applied for various properties should not be used against them unless they have got that actual lease arrangement. What we have heard is that when people are looking at properties and putting in applications for various properties they might not be successful, but unfortunately going and applying for many properties is being used against them.

Mr CHOI: The mere fact that you apply for a property somehow gets on to the tenancy database? Is that what you are saying? How would other agencies realise that Ray White down the road has actually received a request from a specific applicant that they are also applying for tenancy?

Ms Hudson: I am not sure how it is reaching the database specifically. These are stories that we have been told by our members and our stakeholders. But they are using another type of database as well to do this, to shop it around, so that is why we have asked for that application to not be put in as well.

CHAIR: You have concerns about the definition of 'tenancy database' in section 457?

Ms Hudson: Yes. I think what we specifically ask for is it to be expanded so where the tenant and the lessor have no commercial relationship and have not entered into a lease.

CHAIR: That they not be included on that database if there is no previous legal obligation between the parties?

Ms Hudson: Yes.

Ms SIMPSON: This is a legal question which you may not be able to answer, but it raises the question in my mind: how does that get triggered with the privacy provisions of information being shared with others where people have not authorised it to be shared? Is that a matter that has been brought up before as to how it sits with privacy laws?

Ms Hudson: I am not sure about that legally. Unfortunately that is not my background.

Ms SIMPSON: That is not mine either, but we might check out how that interfaces with that jurisdiction.

CHAIR: The databases that we are dealing with are usually a database that people have been put on because they are a problem tenant. You are saying to expand it so that it prevents people who make multiple applications, say, for a property from going on it. What other concerns do you have about using an inquiries database? Bear in mind that someone like, say, Ray White may well have an internal database which deals with inquiries. Now, that might not be available to anyone other than Ray White franchisees, but what is the concern about the inquiries database? Is it the inadequacy of the databases? We do have a database operator coming later to give evidence and we will be asking them also about the types of databases, where they are operated and how they are operated, but is your suggestion that the restriction on use of the database be expanded even to internal databases?

Ms Hudson: I think we are concerned that internal databases are being shared externally.

Ms SIMPSON: Can I just clarify? So at this point this is anecdotally what your clients are saying?

Ms Hudson: Yes. We deal with policy issues and therefore are not an individual advocate for people.

Ms SIMPSON: It is a valid issue to raise publicly. I guess it is helpful to be able to validate some of the complaints and substantiate some of the complaints. Obviously where there is smoke there is the potential for fire, but it has to be something that can be validated to see how extensive it is and whether it is an isolated event with certain operators. I would say again that we need to also understand how that breaches existing laws.

CHAIR: Section 458 sets out at (1)(a) that the chapter does not apply to tenancy databases kept by an entity for use only by that entity or its officers, employees or agents. Are you suggesting that there should be some consideration for an amendment to that to say that that database cannot be used outside?

Ms Hudson: If it is to be used within the organisation itself, yes, it is to stay within the organisation itself.

CHAIR: What has been your experience—I asked the minister this question and it concerns me—in terms of cross-jurisdictional enforcement issues, bearing in mind this is template legislation for a national scheme? What has been your experience with cross-jurisdictional enforcement issues in the use of databases?

Ms Hudson: Our personal experience as the peak is that we are concerned that people at the databases, if they are administered externally, might not be prosecuted, as was discussed with the minister. We are concerned that if it is housed out of the state then people do not have their fair recourse and then when people are trying to access it, it is not going to help them. So our main aim is to try to make sure that people have a fair chance in there. So therefore if the database operator is external and that practice continues and there were no penalties then we are not going to get further ahead.

CHAIR: I am not an IT specialist and I do not think very many people on the committee are, but it strikes me as being very difficult to try to put something in place that would prevent a database from being shared externally. How would you ever prove it is being used externally?

Ms Hudson: I guess there are firewalls that you can have to prevent it from coming into your system. Maybe there are ways to stop people from taking it out.

CHAIR: That seems to be the problem. It is not the getting in.

Ms Hudson: Yes, it is the sharing out.

CHAIR: It is the sharing out.

Ms Hudson: I guess when we enter an organisation we sign confidentiality agreements. We sign things that when we leave the organisation what we know does not go and in various organisations you have to sign those. So maybe that could be included as part of it.

Mr CHOI: I just do not know how you could prevent information that is collected by a legal entity at their own cost from being shared with a third party. I just do not know how you can do it legally—if that is happening. Anyway, it is probably something we need to think about.

CHAIR: Does anybody else have any questions? I do not have any further questions, unless you have got anything further that you wanted to cover?

Ms Hudson: No. We appreciate the bill amendment and we look forward to it coming into place.

CHAIR: Thank you very much.

BROWN, Mr Nick, Best Practice and Compliance Adviser, Real Estate Institute of Queensland

MOLLOY, Mr Dan, Managing Director and Chief Executive Officer, Real Estate Institute of Queensland

CHAIR: Thank you very much for your appearance. Would you like to make an opening statement at all?

Mr Molloy: Thank you, Mr Chairman. I appreciate the opportunity to meet with the committee today just to expand on some issues that we have raised in our previous submissions. Certainly tenancy databases are a tool that has been used by real estate agents for the last 15 or so years, at least in terms of assessing applications for tenancy, but of course they are not the only tool. As the minister mentioned, there has been regulation around this since 2003. I think as a broad statement we feel that the existing regulations have been sufficient.

I think just to look at a couple of the comments that have been made by the committee and the questions already asked, one of the issues when we look at things like extraterritoriality et cetera is that our big concern with those types of problems is that lessors and particularly our members as real estate agents do not become the convenient compliance—

CHAIR: Whipping boys.

Mr Molloy: Whipping boys, if you like, but the areas where a compliance can be achieved because of an overriding issue in terms of boundaries between states et cetera. In terms of the databases themselves, our submissions have drilled down to two areas in particular in relation to the proposed new sections 464E and 464F. I suppose as a general theme our concern would be around the additional compliance costs that are imposed on agents—obviously, without being too trite about it, the additional paper and compliance that is involved in processing tenancy applications et cetera. We think these sections at best should be removed, but if that is not to be the case then there are some areas where we think there needs to be some improvement.

With respect to 464E, that really goes to notices et cetera that need to be given to tenancy applicants at some stage of the process. We think that in agency practice generally the application process works quite well. In fact, a lot of agents are quite proactive in terms of disclosure about the use of the tenancy databases at the current time. Certainly in terms of the application process, some of the provisions in 464E which go to the issue of when a notice has to be given we think, as per our submission, can be covered off quite efficiently in the application itself. We are a little concerned that there is a seven-day time frame there that could easily see, through innocent omission, an agent fall foul of that provision because a notice may have been given to a prospective tenant 10 days before at an open house—open for inspection—only to have to be given again at the point where the application is made because it fell outside the seven-day time frame. So we see that as a problem.

We think the application process generally works well in practice and there is enough transparency there for those notices to be given. Our larger concern, though, relates to proposed section 464F, which really throws, we think, an unreasonable burden on real estate agents to assist with compliance. That is the section that talks about if an applicant for a tenancy's name is on a particular database then there are a series of obligations on the agent to provide, as the bill outlines, the name of the database, the personal information, the name of each person listed and how and in what circumstances the applicant can have the personal information removed or amended.

That is not just for the successful applicant who becomes the ultimate tenant; that is really around all applicants. In a worst case scenario, that would bear a fair level of burden and compliance on an agent who ultimately is working as an agent for the lessor and incurring what we think would be a fairly unreasonable set of additional costs to meet that compliance, which ultimately has to be recouped either from the lessor directly or indirectly in terms of the additional costs of lessors owning properties ultimately passed on in rent.

With specific reference, though, I would like to draw out 464F(2)(d) which is the provision that states—

how and in what circumstances the applicant can have the personal information removed or amended under this chapter.

I think the key words are 'under this chapter'. We think at best that goes beyond the scope of a real estate agent's obligations. At worst, we think that it borders on the agent having to get into the realm of giving legal advice because of the way that provision has been framed.

CHAIR: How do you qualify it as legal advice?

Mr Molloy: Our own legal advice from our internal counsel is that the provision generally, but the use of the words 'under this chapter', put the agent in the position of giving specific information about what is prescribed in a piece of legislation and that could quite easily see them fall foul of the legal profession and the more broader issue of giving legal advice. It is not an area that we would want our members to go to. In terms of the specifics, that expands on what we have raised in our submission that we wanted to bring to the committee's attention. Both myself and Mr Brown, who is very well versed in these matters, would be happy to take any questions that you have.

Ms SIMPSON: I wanted to follow up on that point that you are making and the fact that agents are essentially being asked to clean up, almost by default, a database that is held by somebody else. This issue of the legal advice given: what would be a practical way to address that? Is it to simply refer people to tenancy advice provisions?

Mr Molloy: I think the existing provisions of the legislation, if they are working effectively, the notice to a prospective tenant that they are listed on a database should not come as a surprise because there were steps that had to be taken at the outset for them to be listed. Really, the notification that they are on the database and what database they are on, I do not think we really need to go much further than that in terms of agents having to provide all the reasons, particularly when we are talking about the people who ultimately do not become the tenant of the agent's client. It is really through that application process.

I suppose there is an overriding point, we have made the point consistently right through, for many, many years and certainly when the Residential Tenancies Act was reviewed in 2006, that legislation has to work in all markets. We see, from time to time, examples where we had a tight rental market, then there is a bit of a loosening in the rental market in different parts of the state and sometimes the flaws in legislation are exposed. If you have a situation with a tight rental market and lots of applications being made for rental properties, that burden of compliance on agents and lessors escalates unnecessarily, we would say.

CHAIR: Every time you put a contract before people as a real estate agent, every time you give them a notice that is required under legislation, you are virtually giving them advice in relation to the legislation that you are acting under. With the five days' notice after signature of a contract cooling-off period, you are virtually giving advice in every one of those, are you not?

Mr Molloy: I think we would argue that we are complying with the specific obligation on the agent under the law.

CHAIR: That is what this is doing, isn't it?

Mr Molloy: I take a different view that it is worded a bit too generally.

CHAIR: I can appreciate your concern about having to give, perhaps, multiple applicants that notification. I guess you may have to explain to me how an applicant who does not get the property should be dealt with differently to the person who may get the property. I can understand the point about a number of people appearing on a database and you have to give all of them that information. However, under this chapter in that wording, how does that differ from the requirement that you have to give notice to people about a variety of other things? Certainly by legislation you have the environmental certificate and all of that. You are, in fact, giving detail and information under legislation.

Mr Molloy: As prescribed by the legislation, but this is—

CHAIR: This is prescribed.

Mr Molloy: This wording, we would say, is a bit more general in terms of the way it says, '...how and in what circumstances the applicant...'. I think that there is no prescription about how the written notice would look. Our concern would be we would not want to see agents unwittingly step over that mark.

CHAIR: I can appreciate that concern.

Ms SIMPSON: Can I ask a question, Paul. There are a few parts to this. If we were to say instead if a tenant is going to be advised that they have been listed under the TICA and if they are wanting to follow TICA or another company, for them to be able to follow that up at least there is a referral point rather than giving advice as to how the law actually applies in that regard. Should it be something that is actually provided by government in a more prescriptive format and people are referred to that site, rather than your staff having to interpret how and under what circumstances that person can have that information referred? In other words, making it clear what the circumstances are and you simply refer to a government website?

Mr Brown: I believe something along those lines would be more practical in the fact that the agent is not stepping outside their expertise and bordering on that legal context of it. To be able to refer someone or point them in the right direction of how to seek advice would be much more preferable.

Ms SIMPSON: From a practical point of view, we might be dealing with the laws and questioning how they are going to apply today, but this provision may end up referring to an act that changes in the future, with future parliamentarians and future amendments. There is always that challenge you have with people in any operation being aware of the case law or changes in the legislation. From a practical point of view, if that information was able to be given to people or was in a constant format by government but you were to refer them, that would satisfy some of your concerns?

Mr Molloy: I think it would, yes.

CHAIR: You mentioned in your submission about creating additional risk. You have dealt with the risk and you also had an expense. Have you done any quantification of costs in relation to any additional requirements about this notification? Can you give those costs or an estimate of what those costs would be?

Mr Molloy: Not specifically, Mr Chairman. We have seen, though, in recent years significant general imposts in terms of compliance costs over a whole range of areas, even within this legislation itself. It may sound very simplistic but there is a lot of documentation and paper being generated to comply with the existing requirements of this legislation. The fundamental issue, though, is that we have obligations in here

to a broader audience, if you like, than the lessor and their ultimate tenant. Whilst application processes for the rental of residential property in itself means dealing with the applications of a number of interested parties, I think there has to be a line drawn between what the obligations are to all applicants versus the ultimate applicant who becomes the tenant and has the longer-term relationship with the agent.

CHAIR: But you have done no modelling of those costs?

Mr Molloy: That is correct.

CHAIR: And what the impact is. You did mention that it could have a detrimental impact on property investment. Really, I was trying to work out what level of costs would have a detrimental impact on property investment, bearing in mind that you are only acting as an agent for a lessor in most cases.

Mr Molloy: Eighty per cent of residential property in Queensland is managed by real estate agents. Certainly again, as I said previously, the levels of compliance that are required versus where we were, say, 10 years ago is quite significant. Agents run their businesses to business models as they see fit, but it would be fair to say that the costs in terms of commissions and fees paid to agents now have risen, because of the additional compliance and risk. Lessors, ultimately, in 80 per cent of cases, are happy to pay those costs because there is a transfer of risk involved and it relieves them of a lot of those management issues. That is why they engage real estate agents. As a general rule, you would find that agents, to maintain profitability in their property management divisions, could not offer the same service for the types of fees and charges that they were doing even 10 years ago.

Mr DOWLING: Mr Chairman, may I follow on from that?

CHAIR: Yes.

Mr DOWLING: You drew some comparisons between the environmental sustainability forms that have recently been enacted and probably they have been in force for the best part of six or eight months. Have there been any costings done on those? I am imagining you are drawing comparisons between the two. You have had that in place. Has there been some cost modelling done as to what that environmental sustainability form has cost the industry in the rental market? Keeping in mind that that sustainability is on every property, but with the rental market what have the costs been for that and do you see them being replicated in a similar fashion?

Mr Molloy: Currently the sustainability declaration is only related to property for sale. I think it is on the COAG agenda and there has been a fair bit of publicity about that issue in the last couple of weeks. We expressed deep concern about that sustainability declaration. It is problematic, in our view, in the sales environment. We think it would be a huge cost in terms of compliance for very little return. I cannot give you a practical example. In the sales environment, though, there was a lot of early compliance because there was very little transition opportunity, but research indicates it is not widely valued by the buying public.

Mr DOWLING: Going back to the legislation at hand and the current requirements of an estate agent in an office, day to day, with a rental property, going through all the checks and balances, including the checks with the various registries. What sort of investment is there in an estate agent's office currently, just to meet the existing demands of those databases and doing the quality control checks and things of that nature?

Mr Molloy: I might ask Mr Brown to respond to that, if he would not mind.

Mr Brown: In relation to that, there is a fairly intense onus on a property manager as part of their role within an agency with the database provision of the tenant selection criteria. A fair bit of time would be invested for one application let alone, as in Dan's previous comment, multiple applications for a single property to then turnaround and increase that for one element of it. Whilst it is important that the database is part of the tenant selection criteria, it is only one aspect of finding whether a tenant would be suitable for their client or not.

Mr DOWLING: I imagine every agent is different. Some specialise in rental properties and they have specific divisions. You would see that being impacted, obviously, fairly significantly?

Mr Brown: Absolutely. Even if there is an agency that is general real estate, involving not just the rental aspect, they have usually a specialised staff or adequately trained staff in that provision of requirements.

Mr O'BRIEN: So what will it be practically? Do we have to come up with a whole new form? Will there be another question on the form that you ask? If it is so onerous, how much work is it going to be for you, do you think?

Mr Brown: The way you look at it at the moment with the way the bill is currently drafted, our interpretation would be that if the tenant is lodged on a database, the inquiring agent—not the lodging agent; the inquiring agent—is going to have to develop some type of procedure as a follow-up to that application process to notify each positive listing as it may be, the way it is currently drafted. If you are looking at 464E—and Dan raised in a comment about incorporating perhaps that notification within the application process—they are already making that acknowledgement that they may be listed on the database. Turn it back to the lodging agent and the provisions say that you have to provide the tenant with a 14-day time frame to acknowledge or, for lack of a better term, dispute whether the lodgement is fair or

not. Going back to that stage, there the tenant or the applicant has been notified at that stage, because there would have to be a fairly intense follow-up procedure to make sure that an agent is adhering to notifying an applicant of a positive ID.

Mr O'BRIEN: So it is a letter.

Mr Brown: It would be a letter or a form, but it is also a procedure to follow up that that is being done on a risk management strategy on the agency's behalf to make sure that they are adhering to that particular piece of the legislation.

Mr O'BRIEN: But you could see why I think it would be a jump to think that a letter that you would have to do as an additional responsibility of your obligations under the bill is somehow, what you have put in your submission, going to undermine investment in rental properties in Queensland. It is a bit of a jump.

Mr Molloy: I think our point is that these things continue to change incrementally. We are facing again the spectre, as I said before, of further issues in relation to the sustainability declaration and look at some of the other compliance issues that have come in over the past 10 years or so. It is that incremental—that ultimately people say, 'Is it all getting too hard?' because there is just so much compliance. At the end of the day, whether it is this legislation or other legislation, I think it is about maintaining an appropriate balance between the commercial realities of people holding residential investment property and obviously respecting the rights of occupiers and potential occupiers in the process. We think historically the legislation has achieved a reasonable balance but, again, it has to be responsive to all types of market conditions, particularly in the current market where we have a patchwork of conditions across the state

Ms SIMPSON: I have a follow-up question, if I may. On the issue of new section 464I, titled 'Providing copy of personal information listed', it states—

A lessor or lessor's agent who lists personal information about a person in a tenancy database must, if asked in writing—

Essentially, they have to give the person a copy of the information within 14 days after the request is made. Has there been an issue around previously being able to get information legally into the hands of people after they have left the accommodation—they are no longer there—in order to comply with such a provision?

Mr Brown: Not that I believe in a common-practice issue. With most agents who have liaised with us on these types of matters, generally the agency would have a file or a procedure or policy in place as far as ensuring that whoever is lodged on a database they have access available to that particular file when requested to adhere to it. Similar to the privacy provisions that are implemented currently, if requested for a file you have to produce it within a timely manner. So I think it would probably follow suit under the privacy provisions more so than this particular section on the practice side of things.

Mr CHOI: On the one hand I am prepared to accept the argument that the compliance costs for real estate agents in terms of their rental business have increased in the past 10 years. I am prepared to accept that fact. But on the other hand, although the percentage of income that is based on rental income to your clients has remained the same, the rental has increased far higher than CPI in the past five to 10 years. How that marries up with your compliance costs is a bit of a mystery to me. You argue that it has increased substantially against your income. I am not at this point convinced. I invite you to do some homework on that and maybe, if you would like to, send information to us to validate some of your comments.

Mr Molloy: We would be happy to do that, Mr Choi.

Ms SIMPSON: I want to follow up in respect of the fee issue. I appreciate that it is a cost to business, but what might be a reasonable cost to recoup for a business might be an unreasonable cost for somebody else. For example, I have constituents who are being asked to pay $40 a year for direct debit arrangements with their rental. I understand that is legal as an administrative measure when the tenancy might end up paying $40 for something, which is an electronic transfer arrangement. Is there any idea what would be considered by agents to be the fee that is likely to be incurred for these new provisions?

Mr Molloy: Are you asking this under 464I?

Ms SIMPSON: Yes.

Mr Molloy: I do not think so and it would not be our intention to be suggesting any fees to our members. We would respect the fact that this is essentially a deregulated type of charge and that it would need to fit within the business model that agencies run. Obviously, different agencies in different areas run their models differently, depending on the size of the rent roll, the geographical spread of their rent roll and the types of rent roll and, I guess, the demographic of both the lessors and their tenants in terms of what their exposure to likely default listings may be. So it would certainly not be our intention—and I would not want to estimate what any type of fee might be from our members, because in our situation we have to be extremely careful not to be setting some sort of scale fee when no scale fee is required.

CHAIR: Thank you very much for that input, Mr Molloy and Mr Brown. We certainly will take on board the detail that you have provided and we have to factor that in. Thank you very much for your input.

Mr Molloy: Thank you very much.

Proceedings suspended from 10.53 am to 11.07 am

BARTLETT, Ms Julie, Legal Services Solicitor, Tenants' Union of Queensland Inc.

CARR, Ms Penny, Statewide Coordinator, Tenants' Union of Queensland Inc.

CHAIR: The hearing is resumed. Our next witnesses are from the Tenants' Union of Queensland, Ms Julie Bartlett and Ms Penny Carr. I invite you to come forward. Would you like to make a brief opening statement?

Ms Carr: We would like to thank the committee for the invitation to appear today and also for the ability to make a response to the bill. We would like to point out that the Tenants' Union of Queensland is a state-wide organisation that has been going for about 27 or 28 years. We act and operate in the interests of tenants, and we work directly with tenants and with other tenant advocates around the state, training them in tenancy law and providing resources for them to give to tenants as well.

We have worked on the tenancy database issue—I started at the Tenants Union in 1998—at that time we had done at least two years work prior to that around the issues of tenancy databases, which at the time were very difficult to deal with and excluded people from the rental market in circumstances that were very, very unfair. We have been involved with this issue from the very beginning of it in Queensland. We have worked through the processes with the RTA in the development of the database coverage in Queensland in 2003. We have worked at the national level. I am involved with the National Association of Tenant Organisations, and through that body we have worked with the MCCA and the Standing Committee of Attorneys-General in the development of the national uniform legislation since that process started in I think 2005. I cannot remember off the top of my head. So we have a fair depth of history and knowledge about this issue.

You will see from our submission that we think that the bill is quite good. We think that there are a few things in it that are very beneficial for tenants—in particular, the limitation of how long listings can remain. This actually is an issue that we have been raising since before the original Queensland database legislation was developed and we were told that that would be subject to the national process. Now we are back here and we have that in the bill. So we are very pleased with that. There are a couple of things we would probably like to see tweaked and we have outlined them in our submission.

CHAIR: Specifically section 459 was your major focus.

Ms Carr: The potential to expand the legislation, yes. We have set that out in our written response. The other thing is the debt being a confirmed debt. We often see that a tenant leaves a bond, does not dispute it and subsequently finds out that there is a large claim for the carpet cleaning that they did not get done and a couple of bits and pieces that they thought were probably reasonable. They claim on the bond thinking that it is all settled to find subsequently that they have this unclaimed debt in a database listing. We thought it would be good to have that claim tested early in the piece rather than have to wait for a couple of years to find out that you are listed.

There is a penalty section in the bill for someone if they list a person who is not a tenant on a database. So if they list a person who is not named as a tenant on an agreement, there is a penalty provision. The issue is more that people, usually tenants, get listed but they are listed outside of what the law says the circumstances are in which they can be listed. That is the main issue, and the bill is not capturing that issue.

CHAIR: Can you give us an instance of being listed outside the criteria?

Ms Carr: The current legislation states that you can be listed on a database and it has very specific situations. The agreement has to be terminated on objectionable behaviour or on repeat breaches or you have to have been given a notice to remedy a breach of rent arrears, not remedied in the remedy time, given a notice to leave and left and you owe more than the bond in rent, or you have a tribunal order to pay something and you do not satisfy that or a conciliation order and you do not satisfy that in the time given. They are very specific circumstances.

CHAIR: They are specific circumstances though. Where it is a listing for the balance of bond for rent outstanding, that does not have to be a debt proven. Is that what you are saying?

Ms Carr: It does not have to be proven at the moment. There are circumstances in which people get listed and it does not have to be proven. That is often the issue that comes back to the tribunal for adjudication some time later on. So what will happen is that the tenant has a claim against them for not just the carpet cleaning that they left the money for, three days rent that was in the next rent period in which they left and maybe a couple of other items, but it could be this claim, that claim and another claim and it is $2,500 over the bond that was taken.

CHAIR: So that situation is presently being listed on databases without any confirmation of the amount that is actually owing.

Ms Carr: That is right.

Ms Bartlett: Sometimes it actually goes to debt collectors. We have received a few phone calls where tenants have debt collectors and they have had no notice of an order or any letters of demand prior to this debt collector trying to collect some monetary amount over and above the bond some months after the tenancy had terminated.

Ms Carr: The other issue—and we did put in a subsequent submission very briefly to the committee—is to make it clear that tenancy databases are captured by the legislation. Our understanding is that they are already, but our experience is that particular database companies will do all they can to make it look like they are not captured by the legislation. One particular database company, when we were operating under the Small Claims Tribunal, sent a letter to every single tribunal in the state—there were 78 or so at the time—with an argument about why they should not be named on orders because they are not captured under the legislation. Whilst we think they might be captured, there might be ways to make it really explicit in the legislation that they are definitely captured.

I wanted to make some comments about the inquiries database, which has been discussed a little bit, and Virtual Manager and some issues that were raised by Queensland Shelter. Virtual Manager is a database that TICA run, and they try to claim it is an internal database when in fact it interacts between agents. I did bring a couple of documents that I hope are appropriate to hand to the committee. These are TICA documents where they explain these products.

CHAIR: You will need to seek leave of the committee to table those.

Ms Carr: I seek leave to table the documents.

Leave granted.

Ms Carr: There are just two documents. They are both bits of information from TICA. One is about their Virtual Manager database where they claim that that is an internal database.

CHAIR: Which takes it outside the terms of this bill.

Ms Carr: That is right. I think the issue that Queensland Shelter were raising was not necessarily that there should not be an internal database exclusion. I think the issue was that some of the database operators try to circumvent the legislation by using products that prima facie are external databases by trying to argue that they are internal databases.

The way that the inquiries database for TICA works, which was the other issue raised, is that, when an application for tenancy is processed by an agent who is a member, they put the name into the database called the tenant history database. TICA run a number of databases on their site. You log in as a member. You open up the tenancy history database. You type the tenant applicant's name in and, by virtue of doing that, it leaves a footprint on another database called the inquiries database.

CHAIR: Who runs that?

Ms Carr: TICA. Member organisations can still go into that database and have a look. So they can also go in and have a look at the person who has made the application and if they have made applications anywhere else over however long that listing remains active—and I suspect it probably has never had any names removed.

CHAIR: Under this bill it is proposed at three years. But that does not apply, I would have thought, to an internal database, which is supposedly not caught by the act. If this inquiries database or this Virtual Manager is claimed to be an internal database, then that could be a different kettle of fish.

Ms Carr: There are two databases that I am talking about at the moment. One is a product called Virtual Manager, which TICA do claim to be an internal database. There is one piece of paper about that included in what I have just passed to you. The other database that I am talking about now is one that was raised by Queensland Shelter called the inquiries database. This is a database that they do not claim to be an internal database; they do claim it is an external database. That database would basically have thousands upon thousands of names of people who have applied for a property—some of which never would have been a tenant, some of which might be children, for example. In our view, it probably is captured under the legislation now, but as advocates you just do not have time to run those matters. You run the matters on the history database. That is pretty much the database that is stopping people getting a tenancy. So if you think it is an unlawful or unjust listing, you take a matter to QCAT under that. But there is a whole list of names under the inquiries database, and some of those people would never even have been tenants because it is just a footprint database of when a tenant applicant's name is checked.

A tenant gets a list of those when they ask the database company for what information they hold. It might say something like, 'In January of 2007 there were three listings.' They might have tried for four properties with different agents and got one of them but they did not get the other three. Then in 2009 there might be two or three others because they tried for tenancy in some other place. Whilst it has not been a huge problem, it is potentially a problem for tenants because we have had clients come to us about it. Agents can look at what properties have been applied for. So if a tenant applicant has applied for 10 properties and not got one over the last five years or something, agents may think, 'There's a reason they are not getting them. We're not going to take them on.' So there is an implication in that database.

CHAIR: So that database carries nothing at all other than the name and the time, and that is the inquiries database?

Ms Carr: That is the inquiries database. TICA run three databases. Sorry to talk about TICA, but that is the main database company in Queensland and that is the company that we have interaction with via our clients.

CHAIR: They will be appearing before the committee.

Ms Carr: They run three databases. There is the public inquiry database, which is an internal database. It is a list of all the people who have asked them if there is information held about them. By virtue of writing to them or calling them you get listed on it. There is the tenant history database, which is what some people might refer to as a black list. So once you are on that database you will pretty much not get a tenancy. That is where you get listed if you fall into the category of lawful listings at the moment under the current listing criteria. Then there is the inquiries database, which is this footprint database of all the people who are checked up in the tenant history database.

I wanted to make a comment on the cost of information as well. There have been some comments this morning about how much it is going to cost to provide information and how much TICA or other database companies might charge. I think the cost to provide that information to a person who is listed is extremely minimal. The database is set up for easy access. Simply by putting in a name you can bring up the information and print it out. If someone had to send that to them, I guess there is the cost of postage involved as well. But the cost of access, because of the way the databases are set up, is extremely minimal.

I think we have to be clear that the database operators as well have set up a business based on the fact that they are holding individual people's names on it. So those individuals really have to have access to that information for any reason but especially if they think it is incorrect or not up to date. Do you want to add anything?

Ms Bartlett: The cost issue usually affects people at the lower end of socioeconomic status. Organisations such as Micah used to buy access to these databases for homeless people so that certain individuals can check if they are on the database. I know of an individual tenant who I have assisted who goes into the Department of Communities and Centrelink and they may have access to assist certain people. Essentially what I am saying is that, if there is not ultimately free access, maybe some organisations should have free access to assist those people lower on the socioeconomic scale.

CHAIR: Bearing in mind, though, that these database operators operate as a commercial entity, what are you suggesting? That some community service obligation be imposed on them?

Ms Bartlett: Possibly.

Ms Carr: Their commercial interest is based on holding the information of the individuals who are trying to seek their information.

CHAIR: Their commercial interest also relates to the fees they charge to provide that information.

Ms Carr: Our organisation took four representative complaints in 2004 and had four determinations. One of them was about costs to access. The federal privacy laws say you can charge but it has to be a reasonable fee. I guess our argument has always been that the cost to access information from a database is so small. It takes such a small amount of time. The whole system is set up so members can access it really quickly. If they have a person sitting in front of them making application for tenancy, they can look them up straightaway. So in terms of the cost-to-access argument, the actual ability to get the names and provide people with information does not take very much time and it is not a very hard process.

CHAIR: Bearing in mind that the person who puts that information into the database is already paying the fee, which is a commercial fee, to the supplier of the information. Under normal circumstances you are saying that they should pay. I do not want to debate the definition of 'reasonable', but the definition of 'reasonable' is very open to interpretation. It is pretty subjective in most cases. It should be objective, but who can be objective about reasonability?

Ms Carr: As a lawyer, Julie has a much clearer view on it. But it is obviously subject to the circumstances, and the circumstances are that it does not take you very long to get the information. It is easy to type the name into the database.

Mr DOWLING: When you said that certain organisations should be allowed to access this material with no charge for those most disadvantaged—I think that was the term you used—for what purpose do you need to access the database? Presumably there is an agreement or a consensus that the person you are dealing with is struggling to meet commitments and may have defaulted on their tenancy and therefore be on the list, and your role then primarily is to try to help them into the marketplace again. Why do you need access to the list when they are already on the list and quite legitimately, if I can put it that way, for defaulting on rental agreements, absconding without paying rent et cetera? What purpose does it serve you having access to the database?

Ms Carr: I do not think we were actually arguing that certain organisations should have free access. What we are trying to do is counteract an argument by the industry about the cost of giving people information if they find they are listed at the time they make an application. We are trying to counteract that argument. Individuals who are listed should be able to access their information for free or at a very small cost because it is a very small cost to actually get the information to people. That is our position on that issue. The reason people need that information is that, if they think they have been unlawfully or unjustly listed—which is why they can go to the tribunal—they usually need to have it in writing, otherwise the tribunal has no evidence that they are listed and will sometimes not make an order.

Mr DOWLING: I understand. Thank you.

Mr CHOI: Your submission suggested that in terms of listing it should be proven. What is your definition of 'proven'? Do you mean a decision by the tribunal? Is that what you mean by 'proven', because not all cases go to the tribunal?

Ms Carr: No. I guess it could a tribunal order, a conciliation order through the Residential Tenancies Authority or an agreement in writing between the parties.

CHAIR: But how do you get that when very often if a tenant owes money they will not go anywhere near a landlord? How do you get any sort of conciliation? I agree with the debt being proven because just to pluck a figure out of the air is totally abhorrent, I would have thought. But how do you get that when you cannot very often get a tenant to go back and discuss that? Even with groups like the Residential Tenancies Authority, it is very, very difficult. Even notification—and this is a little bit off track—to a tenant from a real estate agent saying, 'You owe us money and we want you to deal with it,' is usually only sent to the address where the tenant used to live and does not now live. Consequently, how does a tenant even know—obviously they would know that they owed money or that some problem was caused.

Ms Carr: I guess the agent or the self-managing lessor can take the issue to the tribunal. They use reasonable steps to inform the tenant of the issue. The difference that that would make is that under QCAT, even in absentia of the tenant, they would still make an order based on the evidence in front of them rather than just a claim by one party.

CHAIR: Does anyone else have any further questions for either Ms Bartlett or Ms Carr?

Ms Carr: Can I make one last comment about section 464F(2)(d), which is about information to tenants about how they might be able to have their listings removed. We have a number of forms and information that the Residential Tenancies Authority already produce and are required to be given to tenants at the start of the commencement of a tenancy. That could take the form of a standard form or a standard piece of information produced by the authority.

Ms SIMPSON: Thanks. It is good to have that practical advice.

CHAIR: Thank you very much for your input. We will give due consideration to all of your submissions. Thank you.

Mr DOWLING: Mr Chairman, I should probably clarify that there is no relationship whatsoever between Penny Carr, who has just addressed this committee, and Penny Carr, who was my assistant electorate officer in my office. There is no connection whatsoever.

CHAIR: I was not even aware of it.

Mr DOWLING: The spelling of the name is entirely consistent, but that is where it ends.

CHAIR: Thanks very much for that. I was not aware, but that keeps things on the straight and narrow.

McBRYDE, Mr Bruce, President, Property Owners Association of Queensland

CHAIR: Our next submitter is the Property Owners Association with Mr Bruce McBryde. Are you alone, Mr McBryde?

Mr McBryde: Yes.

CHAIR: I had Ms Roslyn Wallace as the secretary also appearing.

Mr McBryde: She is here, but I do not think she was expecting to speak.

CHAIR: That is fine.

Mr McBryde: Ms Wallace is actually a member of the board and we thought it was inappropriate for her to provide evidence.

CHAIR: It is entirely up to you. Would you like to make a brief opening statement?

Mr McBryde: Thank you very much and thank you for inviting us. The Property Owners Association of Queensland is a not-for-profit organisation which promotes the interests of property investors in Queensland. In particular, we promote a fair dealing between investors and other agencies such as government, real estate agents, tenants and suppliers of services. Our income is derived almost exclusively from subscriptions from our members. We receive no funding at all from the government. Our membership is open to anybody who owns an investment property in Queensland. What do we want? Basically we want a level playing field in dealing with tenants pursuing the matters of tenancy databases. To us, a level playing field means that all parties to the negotiations have accurate information about previous history and about what is being offered. So that is really what we are after—a level playing field and open history.

What are the issues? We have quite a few issues. One of them is that some of the other submissions claim that tenant databases cause homelessness. I will just go through the issues and then I will talk about them. The second one is that good tenants are often rejected simply because they are listed on a tenancy database even though they are good tenants and that tenants are often unaware of the fact that they are listed on databases. One thing that we do agree with the other parties on is that incorrect and vexatious information that might be stored on databases has no place in the industry and we totally agree that that information should be expunged and that matters should be taken to ensure that that sort of data is not there, so we certainly have no objection to that.

One of our major concerns is that the information is proposed to only stay on databases for three years. We believe that it is inappropriate that past tenant rent arrears and other misbehaviour while they were a tenant should be totally disregarded after three years, which is what happens if the databases can only last three years. We think it should be five years as an absolute minimum for that. A major part of being a property investor is selecting tenants, so at the point where we are selecting tenants we believe that agents and property investors need accurate information about the tenant's past history, and this is a fairly difficult task. One of the submissions claimed that it was a very easy task and that we had plenty of other avenues. We see tenant databases as one of the many ways of getting accurate information about previous tenant history.

CHAIR: I do not want to interrupt you unduly, but does your association have access to the databases that have been mentioned this morning?

Mr McBryde: Yes. Recently—only in the last couple of years—we now have access to the TICA database in particular, yes. Previously that was only available to real estate agents, but we have negotiated that our members can access the databases so that does now happen and we do it. As I said, collecting accurate information is difficult. Tenant databases are only one of the many bits of information we use. Other information relies on information tenants give us, which is not always accurate, and information from past referees, and sometimes tenants actually give false referees in that they give a friend who claims that they were a previous landlord when they were not. So we have these sorts of things to have to deal with. A listing does not necessarily automatically preclude a tenant from getting a tenancy. It is simply one of the pieces of information. If we get a listing and we are interviewing the tenant, we can talk to them about the listing. So it allows us an opportunity to explore why they were listed, so it does not necessarily preclude them, particularly if they have since remedied the problem. So generally a tenant is given that opportunity.

The claim that tenants are often unaware that they have been listed on a database actually reflects the fact that they probably left the property without giving a forwarding address. It is a requirement under the current act I think that we have to advise them when we are listing them on the database. Most of the people whom we list have absconded without leaving a forwarding address, usually left rent arrears far in excess of the bond and damage as well, and we cannot contact them. We try to but, as somebody else said earlier, the only address we usually have is the address of the residential property that they have left.

CHAIR: That was my question.

Mr McBryde: Yes, we cannot advise them. We have to wait until they are listed or they come back to us at a much later time. The residential tenancy act does require that tenants do leave a forwarding address if they are asked to by the landlord. Most people do ask for it if the tenant gives them notice to leave, but for tenants who abscond obviously we do not get time to give them notice so it does not always happen. We believe that one of the remedies is to try to tighten up the requirement that tenants do leave forwarding addresses. Most of our members have orders against former tenants that have never been satisfied that cannot be recovered because we cannot find them. Tenants who leave a forwarding address are advised of their listing. We believe that the listing should continue for at least five years. They are the major issues that we want to raise.

So our recommendations basically are that the tenant databases should be current for at least five years. With regard to the issue of having debt verified, often a tenant leaves leaving damage and rent arrears far in excess of the bond. We do not believe it would be reasonable for that landlord to have to go to a tribunal to have that amount verified because that costs money and it costs time and we know that there is no chance of ever retrieving it. We believe that if we can contact the tenant we obviously negotiate with them. If the tenant is not available, we believe that we should just be able to record that as a debt and when we notify the tenant database that simply becomes a debt that we believe is appropriate.

CHAIR: How would that meet the demands of natural justice?

Mr McBryde: The tenant has not made himself available to negotiate. So they have disappeared and the debt is there. Clearly—

CHAIR: How does that make the debt proven though in terms of amount?

Mr McBryde: It is not proven.

CHAIR: If it is not proven, how is it a debt?

Mr McBryde: It is certainly an amount that could be proven if somebody was prepared to go to a tribunal and present all of the evidence, and that could presumably happen at a much later time if the tenant ever challenged it. I guess at that point it is not proven.

CHAIR: So you are saying that you do not go on a database until it is then proven at a later time?

Mr McBryde: No. If a landlord or an agent believes that the tenant has left—absconded—leaving damage and debt beyond the bond, it is reasonable to have that person listed somewhere so that other people can become aware that the person has left under adverse circumstances.

Ms SIMPSON: Paul, I suppose the question is that that criteria is no different from someone having a debt listed against them for a bad credit rating. So the criteria that is used to list a bad credit rating would probably be fairly similar in these circumstances.

Mr McLINDON: The credit rating is definitive. It is a figure. It is a record. Where you might have a landlord saying that a tenant has done $10,000 worth of damage when really it is probably $1,000, there is a dispute. They try to negotiate. If the tenant says, 'It's not $10,000; it's $1,000,' and the landlord says 'No, it's not $1,000; it's $10,000,' there is nothing definitive, and that is the chair's point. I think to tighten that is going to be a little bit harder than a credit agency.

Mr CHOI: It is probably not possible to do what you suggested without not affecting natural justice provisions because it is a unilateral opinion by the landlord, notwithstanding that the landlord may have in his or her mind other reasons to do so. That is why unfortunately I think a third party such as QCAT is important in determining whether a tenant has breached their contract. The same thing goes for your proposal in terms of your submission to the committee with regard to the notice of listing if a database is used. Again, what you have suggested unfortunately in my view precluded natural justice to the tenant as well. Again it is a unilateral opinion on behalf of the landowner. I am not suggesting that the landowner is wrong all of the time, but I have seen cases where the landlord is not always right. By the same token, the tenant is not always right also. So that is why you have third-party involvement to make the determination of those issues.

CHAIR: I take on board what you say about the cost of going to the tribunal. But in terms of any sort of regulation and to be able to even lodge the documentary proof before the tribunal with some interim amount of debt, would you believe that that satisfies what you are suggesting to be able to rationalise that with what we are saying about the amount of debt and how it is proven?

Mr McBryde: Yes, I think so. So we are claiming a debt and we are certainly giving an opportunity for the tenant, if they can be located, to challenge that and then on the basis of our claim we lodge.

CHAIR: What I am referring to is some method whereby even if you cannot contact the tenant—and I know there are various ways that you can still go to QCAT and have a decision made if you cannot contact the tenant—your documentation could be lodged, perhaps with the Residential Tenancies Authority or with QCAT, as to 'This is the actual cost incurred and this is the debt less any bond,' so that it is on record; it is not at a later date brought to light when the tenant suddenly gets found.

Mr McBryde: That would be fine. So normally we lodge for the balance of the bond—usually the whole bond—and we are claiming more. I think our members would be more than happy to list a full account of what we believe are the costs in lodging for the bond. So if the bond is, say, $1,000 and we believe there is $2,000 we could give a list of rent arrears and damage in terms of actually itemising it and

actually putting that in. If we used the RTA as the body through which we did this, I think our members would be more than happy to make a claim on the bond. Obviously the RTA can only pay the bond, but we could make a claim in addition to that and say, 'We believe the rent arrears are this,' and we can then claim the full bond.

CHAIR: Yes. You could then say, 'But we've also had to make these repairs which are in excess of the bond.' What I am saying is that there would be at an early date some documentary evidence as to the amount that it has cost the landlord.

Mr McBryde: That is totally reasonable and I totally agree with it. Yes, I think that is an excellent idea.

CHAIR: Yes. I have a bit of a difficulty with three years and five years, because there is another submission which says that it should be seven years.

Mr McBryde: I would agree with that one, too.

CHAIR: Can you outline for the committee why you believe that five years would be a more effective deterrent than a period of three? I will ask the same question of the seven year one.

Mr McBryde: It is not so much the deterrent. I believe that if a landlord has suffered extensive loss—and it is usually many thousands of dollars—it is unreasonable that the tenant should be sort of given a clear bill of health after three years. I think that in terms of natural justice to a property investor the tenant should suffer a longer period. I guess in a sense it is a bit like a jail term or a sentence. I am suggesting that a tenant should be held responsible for their bad behaviour for five years rather than three.

CHAIR: Do you feel it would be a deterrent, because some of these are serial problems? Often it is only a very small minority of tenants who are a problem, but they cloud those good tenants who have fallen on some hard times.

Mr McBryde: That is my thought initially. I would like to see a situation in that, where a former tenant who had a black mark against them applied, their details were actually given to the landlord whom they have defaulted against so if they did have court orders outstanding they might be able to actually pursue them for debts that were owing, particularly once it had already been proven in court. So that would be one of my reasons for wanting a longer time span so that the debt could be recovered at a later time.

Mr McLINDON: Bruce, just say that someone owed $1,000 and they went off into the horizon and got black-listed for five years. If they then came back after six months, got their life sorted, got the money and in good faith gave the $1,000 back, would you be happy to relieve them from the five years and maybe make it one or two years?

Mr McBryde: Absolutely, totally, yes. I believe that if any tenant paid the moneys that were owing they should actually be removed from the database. Under the current legislation they can continue to be there, but I think if somebody has actually satisfied the debt they should not be listed there.

Mr McLINDON: Which could be something that is encapsulated in this legislation.

Mr McBryde: Yes, certainly. This is a database for people who have done the wrong thing. If somebody has corrected their misdemeanour, I think they should not be listed there. There should be no black marks. I totally agree.

Mr CHOI: Your submission also states that the act in its present form allows the tenants to have their names removed from the database if they feel the listing is unfair and unjust. My understanding is that it is not that easy. Can you explain that to us?

Mr McBryde: If a tenant believes they have been unfairly listed—and I take it you are talking about for reasons other than damage and rent arrears; in other words, reasons other than dollars—I think that would be a case where the best solution would be for them to apply to the tribunal and for the tribunal to make a decision whether the thing was done in a way that was fair or unjust. Depending on the tribunal decision, they should be removed or otherwise. If I can clarify, I think the vast majority of listings—certainly the ones that I am aware of—have been for rent arrears in excess of the bond or damage so we are talking about dollars here, not bad behaviour and those sorts of things.

Ms SIMPSON: I would like to ask you a question in regard to QCAT. I did ask the minister earlier in the day as they are an important part of the existing law, let alone the future law. There have been quite considerable public concerns about the delays of QCAT and their process which affects everybody in the system. Is this something that your members also have experienced in regard to QCAT's operations?

Mr McBryde: Yes. We believe that QCAT is causing our members a lot more grief than the previous Small Claims Tribunal, partly because it is a more formal jurisdiction so it takes longer and it often involves more hearings. One of the advantages to us of the Small Claims Tribunal—what we call the 'quick and dirty' tribunal—is that at least a decision was made almost immediately and it was unchallengeable so it got the issue resolved, even if it was not resolved the way we wanted. I understand there are some benefits of QCAT but, certainly from our members' perspective, QCAT is a problem.

Only 20 per cent of property investors in Queensland self-manage while the other 80 per cent use agents, and we heard that figure from the real estate people. Of the 20 per cent who self-manage, most own only one or two properties. They are accidental landlords in many cases. They have owned a property and they have bought a different house but they have kept their previous one and have rented it out. So

they did not choose property investment as a career; it was an accidental thing. They get tenants in and most of them do not have any problems. They might go for years without a problem, and then when they come up with a problem it is the first time they have dealt with us. So they have got this problem of having to deal with court procedures that they are not familiar with.

Also, in terms of the legislation and the requirements, these people have no experience so they do not have a set of forms. Someone was suggesting that if we get asked why we have listed somebody—because we can now list people—there would be forms in the office and procedures. Private landlords do not have that. At most, they will have a filing system where they have their tenancy matters and it is fairly informal. The legislation over the past 10 years has put an enormous extra burden on people who self-manage and it has made it extremely difficult. This tenancy database legislation is just another element that is making self-managing even more difficult.

CHAIR: You mentioned in your submission the concerns about retaliation and dealing with section 464F. Can you explain the nature of those concerns and how you can see retaliation as a difficulty?

Mr McBryde: Most agents and people who own a business have a business address, business phones and all those sorts of things that are separate from their own personal household. Most self-managing landlords manage from home so their personal address is their home address and their personal phone number is their home phone number and the tenants know this from past history—the recent and last five years. Most landlords do not move every five years so that information is known. Some of the people who are listed are violent people. In fact, I have only ever listed two people and I would regard one of them as violent. If he knew that I had listed him for a particular property, I would be scared that he could come and do retribution because he knows where I live. So to me it is an issue.

Mr CHOI: Is a post-office box acceptable?

Mr McBryde: Yes, but what I was saying is that because most property investors who self-manage only own one property, they do not treat the business as a separate entity so they use their personal details as their contact details, as I do. Sure, you can use a post-office box but most private investors do not do it.

CHAIR: Our time for asking questions has expired, if there are no further questions. We are a bit over time now. I thank you very much for your appearance. We certainly will be taking on board those matters that you have raised. Some of them were raised by members of the committee as well.

Mr McBryde: Thank you very much for having me.

McDONALD, Ms Janice, Coordinator, Tenant Advice and Advocacy Service—Brisbane Inner North

CHAIR: We will now hear from Ms Janice McDonald from the Tenant Advice and Advocacy Service—Brisbane Inner North. Would you like to make a brief opening statement?

Ms McDonald: I would like to thank the committee for this opportunity to appear and briefly speak to the submission from our service. We are from the Tenant Advice and Advocacy Service of Brisbane's inner north, which includes the CBD. Our funding is overseen by the Department of Communities and our work is to provide a confidential paralegal service to tenants. I am the coordinator of the service and I have been the coordinator for nine years. I have worked as a tenant adviser and advocate for 20 years, beginning with the Tenants Union and moving on to TAAS, so I have seen the rise in the regulation of tenancy databases over that time.

I was also a member of the Tenancy Database Action Group which was spearheaded by the Tenants Union, which lobbied successfully for database regulation. I have assisted countless tenants with database issues over the years, including advising, writing letters on their behalf and assisting in disputing listings both in the Small Claims Tribunal and in QCAT. I have appeared with and for tenants in these tribunals and I have seen firsthand the problems that tenants have had with organisations like TICA. While we run a confidential service and we cannot name individual tenants, I am prepared to swear to the veracity of the content of the submission.

I would also like to congratulate the government for being the first state to bring in tenancy database regulations and for being a bit of a model for the rest of the country. It is great to see that this is being brought forward and we are very happy with the submission.

One issue which I would like to address is the fact that some time ago the tenancy database TICA removed the delete option for their members to remove people that they had listed. If this database is allegedly a management tool for lessors and agents, why remove the delisting option from them? As Bruce was saying, if a dispute can be resolved between tenants and lessors, why is there a need for a tribunal order?

Our service has been involved in dozens of TICA cases where agents have had no dispute with the tenant but have had to go to a tribunal to remove a listing, which seems to put an unnecessary burden on the public purse. At some of those hearings, agents have sent in faxes saying that they do not have any problem and the debt is paid, and it is just a fairly perfunctory process but still tenants have to go through that and it clogs up QCAT even more.

So the removal of the delete button and the refusal to remove listings without a tribunal order seems quite farcical to us. If parties can resolve the issues between themselves to their mutual satisfaction, why should a third party be able to overrule them? It is also an obstacle to lessors and agents, who cannot negotiate that they will remove listings if the debt is paid, so they do not have any power to come to an agreement between themselves.

One other issue I would like to very briefly mention before I speak about the recommendations is that tenancy databases have been recognised federally by their investigation and research on The Road Home as contributing to homelessness, so it is not something that we just came up with. It is something we have seen firsthand. It is quite a big issue and it will continue to be a big issue, we feel.

In terms of the recommendations, under section 459 we believe that tenants should only be listed where there has been a tribunal order. Without this, the amount owed due to alleged damages and/or arrears is subjective. There needs to be third-party scrutiny. I seem to be saying on the one hand 'why do we have to go to the tribunal?' but where there is debt and if something is serious enough for it to be listed on a tenancy database we believe it should be serious enough for the matter to have a tribunal order so that it can be clear.

We have seen over the years tenants suddenly having to leave at short notice because of relationship breakdowns, illness or something like that so they negotiate something like 'you take the bond and it will all be sweet' but then they find out a couple of years later when they try to rent another place that they are listed with TICA. So that is quite a frustration for people.

Also, with section 464J, we really applaud the reduction for tenants being listed to three years. Ideally, we would like to see one year but we think we can live with three. We also believe that it needs to be prosecutable if tenancy database operators are not removing the listings. I think that has been made clear by the unwillingness of certain database operators to act in accordance with legislation. Are there any questions?

CHAIR: What proportion of your clients approach you because they find themselves listed on a tenancy database?

Ms McDonald: This is difficult, because often we are approached by people who do not know if they are listed and then we have to give them advice on how to go through the process, what steps to take, what costs they can incur. I do not know but probably five per cent of the people who contact us might have a tenancy database issue but that can vary.

CHAIR: Only five per cent?

Ms McDonald: Yes. Or they believe that they have a tenancy database issue. Often they find that they are not actually listed but they are just having trouble renting a property.

CHAIR: What proportion of them do you find are unable to obtain a rental property because of that?

Ms McDonald: If they are renting through a real estate agent, it pretty much rules them out. Because of the demand for properties, if you are listed, that is it. And because it is Australasia, it is pretty hard to get away from it.

Mr CHOI: What is a reasonable cost, in your view, to get information from database operators?

Ms McDonald: We think the cost should be free. Failing that, it should be actually commensurate with what it costs the organisation to print something out and post it. Currently, when people write to TICA, for example, they charge $14.30. If they send a cheque or anything like that it gets sent back; it has to be a money order made out to TICA and they have to include a stamped self-addressed envelope. It seems like there are a lot of obstacles being put in the way of people just trying to find out information.

Mr CHOI: So you regard $14.30 as being too much?

Ms McDonald: I think a $10 fee for those who can afford it. Also, some of the people who are listed who are homeless or in danger of becoming homeless cannot afford it. In terms of what Julie was saying earlier about organisations like Micah, HART 4000, which is a homelessness hub, also purchases a number of TICA checks from TICA and then uses them for people who are homeless or in danger of becoming homeless to get that information, but the cost is borne by the government which funds these organisations.

Mr CHOI: Are you aware of any research being done on the cost of maintaining a database of this nature so that you can form an opinion on a reasonable cost?

Ms McDonald: No, I am not.

Ms SIMPSON: Can I ask a question with regard to QCAT, and I acknowledge suggestions before about streamlining those processes where agreements can be reached. In regard to those who do go into the QCAT process, are you getting much feedback about the delays and issues in that particular process at this time?

Ms McDonald: I guess the trouble with QCAT is it is getting clogged up with so many different cases—non-urgent and urgent applications. So urgent applications for Brisbane are taking quite a while to go through, even though they are classed as urgent. Just in terms of tenancy databases with QCAT and with the Small Claims Tribunal, there has been a great deal of success in getting listings removed through that process. So that has been gratifying.

Ms SIMPSON: Just on that aspect of urgent issues, how long have those matters taken in some circumstances?

Ms McDonald: Sometimes seven to 10 days.

CHAIR: In your submission, particularly at page 2—No. 7—you state, 'There is no valid reason for any person to know where and when people are applying for properties.'

Ms McDonald: Absolutely.

CHAIR: Does that not fly against the whole theory of what we are talking about—to protect landlords and tenants on an equal basis?

Ms McDonald: We do not believe that if you are putting in an application for a commercial operator, or anyone—a private lessor, a self-managing lessor—that it is the business of somebody else who is a real estate agent. Basically, it is mainly about the inquiries database that Penny Carr was addressing, where people can see, 'You have applied for all of these different properties. You did not get in.'

CHAIR: But you are only saying that that relates to the inquiries database. You are not saying that it should be out altogether?

Ms McDonald: I think in terms of applying for a property, but if there has been a tenant history, then certainly there are valid reasons for that to remain on somebody's record, arguably.

CHAIR: How do you determine which is which?

Ms McDonald: I think with the inquiries database the fact is that it is actually an unlawful listing in Queensland, anyway, because if you can only be listed on a database for the reasons set out under the legislation, then currently the inquiries database is outside that regulation and should be outlawed, anyway. There is no reason for there to be an inquiries database anywhere outside of the internal operations of TICA.

CHAIR: But if the inquiries database is an internal TICA database then it is not covered by this legislation.

Ms McDonald: That is right, but it is not. So currently, any real estate agent who is a member can get on to the inquiries database as well as the history database and say, 'I see that Janice McDonald has applied for a property in Darwin. I see that she has applied for six properties. Obviously, she has not been successful. She is still applying.' As I mentioned in my submission it could be that the tenant is escaping from domestic violence. It would be very easy to find someone under that process. When you are talking about applying for accommodation, there is such a big market share for TICA. It is not like an option. If somebody is escaping from domestic violence, then it is very difficult to not apply for a property from a real estate agent throughout Australasia.

Ms SIMPSON: This goes back to the issue again of how privacy laws currently operate, which we need to clarify. If someone has their information listed on a database, such as an inquiries database, where they have given no permission for that to go on that database when they made their application—

Ms McDonald: Most people are not aware that they are on an inquiries database and would probably be horrified. Even the prospective tenants who come in to see us, when they want to know if they have been listed they make an inquiry. No, they are not listed, but now they are listed because they are on the inquiries database.

Mr DOWLING: You may not be able to answer this. The number of rental properties in Queensland as compared to the number of people you believe are listed on TICA or similar databases across the state—

Ms McDonald: I really would not have access to that information.

Mr DOWLING: Would you hazard a guess? I am trying to get my head around it. There are four million people who live in Queensland, which equates to maybe two million households. Is there 100,000 of them in the rental pool or a million of them in the rental pool?

Ms McDonald: I really could not say. I am aware that it is about 31 per cent of Queenslanders who are tenants.

Mr DOWLING: Right.

Ms McDonald: Penny may have some more information about that.

Mr DOWLING: With the database, do you have any idea at all of the numbers of people who are kept on the database?

Ms McDonald: It is very difficult to actually ascertain that because one of the marketing tools that TICA used to use is, 'We have 300,000 people on here. We have all of these other people' and when regulation came in for Queensland that is when people who are real estate agents started saying, 'They did not comply. Let's take them off.' That is when the delete button suddenly got removed. So it is hard to say what the actual amount is.

Mr DOWLING: Thank you.

Mr McLINDON: I note that you said that you would like to see the three years reduced to one year. I am a great believer in giving people an incentive to do the right thing. If someone were to change their circumstances and come good, as I asked the gentleman before, would you be happy to see that captured in legislation in terms of them being absolved of that listing?

Ms McDonald: Definitely.

Mr McLINDON: So it means that it could be less than 12 months.

Ms Mcdonald: Absolutely. I think that would be a great thing. Often with tenants it can be that there is a change of circumstance—a relationship breakdown, illness, that kind of thing.

Mr McLINDON: I would like to have that noted in terms of something to look at in terms of something that this legislation could capture.

CHAIR: Yes. There are a few of them.

Ms McDonald: Can I just say one more thing briefly? I just want to say that I really appreciate the opportunity to be invited here. Also, controversially and sort of disappointingly, with the new TAAS program specifications we have lost our role in terms of systemic advocacy. So that is very difficult right across the state for TAAS. I just wanted to say thank you very much for the opportunity and probably we will not have the capacity to do it in the future. So hello and goodbye. Thank you very much.

CHAIR: Thank you very much.

STRASSBERG, Mr Matthew, Senior Adviser External Relations, VEDA Applied Intelligence

GANOPOLSKY, Ms Olga, Head of Legal, Compliance and Regulatory, VEDA Applied Intelligence

WHITE, Mr Mark, General Manager, National Tenancy Database, VEDA Applied Intelligence

CHAIR: Matthew, my name is Paul Hoolihan, I am the chair of the committee. We have Miss Fiona Simpson, the member for Maroochydore, as deputy chair; Mr Peter Dowling, the member for Redlands; Mr Michael Choi, the member for Capalaba; and Mr Aidan McLindon, the member for Beaudesert as members of the committee. We have Mr Jason O'Brien, who is currently not with us but he will be returning shortly. He had another appointment. When you speak, could you indicate who is speaking. Would you like to make a brief opening statement?

Mr Strassberg: Sure. I am the senior adviser external relations and with me I have Mark White, who is the general manager of the national tenancy database. We are still awaiting the presence of the head of legal and compliance at VEDA, Olga Ganopolsky. By way of an opening statement, VEDA took over the national tenancy database back in 2007. For the information of the committee, VEDA is Australia's legal provider of consumer credit reports. Consumer credit reporting is regulated by part 3A of the Privacy Act, which is a very prescriptive piece of legislation. So we are very well acquainted not only with the Privacy Act but also in dealing with consumers' rights of access, rights of correction and disclosure. Those sorts of aspects are very clearly prescribed by legislation. We are also an organisation that has never had an adverse finding by the Privacy Commissioner. By the way, with us is Ms Olga Ganopolsky, the head of legal and compliance, who can talk further on free credit reports. We are just doing an opening statement.

Ms Ganopolsky: Good afternoon.

CHAIR: Good afternoon. How are you?

Ms Ganopolsky: Very well, thank you.

Mr Strassberg: Members of the committee, you would have seen that we have basically three key areas that we have been concerned about. One of them relates to the internal databases and the exemption there. Of course, as a commercial enterprise we are most concerned to see that what we expressed as an earlier concern has come to pass. Basically, we pointed out that there is a loophole and that loophole is now being used by a database operator. We are also continuing to push the provision of free tenant reports, and Ms Ganopolsky can talk further to that. We have also been seeking a process on positive listings—the idea that if you are going to establish criteria for a negative listing then the correlation of that, to enable people who may have run into difficulties, is to enable criteria for a positive listing. Those are the three key elements that we have put in our submission.

CHAIR: Yes.

Mr Strassberg: We are open to your questions at this point.

CHAIR: All right. If we can deal with the matters raised. You are talking about nonapplication of internal databases.

Mr Strassberg: Yes.

CHAIR: We have had comment made this morning about internal databases. It is really just information, but it gives information right across the whole spectrum. How would you suggest that you term it? You have put in your submission that they can claim an in-house and, therefore, exempt database. How would you term it so that it cannot come under that?

Mr Strassberg: Okay. What we have further suggested to the committee is that, aligned with any definition of an internal database, there should be regulation-making powers. That way the whole question of disclosure, of access, of retention periods—all of those—can be addressed through regulation. At the moment, the view that I have is that there are three possibilities. One is that you could continue with the internal database exemption as drafted and keep in reserve the possibility of further changes when agreed with other states, thereby retaining nationally consistent legislation, which seems to me to be the view being taken by New South Wales and Victoria who have pretty clearly indicated that they are not moving to tighten that exemption. Two, you could attempt to redraft the exemption with a much tighter form of wording. What we are asking the committee to recommend today is the third option—that the legislation include provision for regulations relating to internal databases and that could reflect key elements required for the efficient control of data. How and at what point is it to be collected? Who can have access to the information and under what circumstances? Who can it be disclosed to? My first reaction on looking at the elements of a product that our competitor has is that they disclose internal information to other sources. I was somewhat surprised to see that New South Wales and Victoria have basically said, 'No, this is outside the legislation. It is exempt,' but, be that as it may, there is a problem.

CHAIR: That is the inquiries database.

Mr Strassberg: Yes, the internal database exemption.

CHAIR: But are you referring to the TICA inquiries database?

Mr Strassberg: Correct, their product called Virtual Manager.

CHAIR: We have had documentation tabled in relation to Virtual Manager. I understand from previous witnesses that TICA run three databases—public inquiry, tenant history and an inquiries database, and, in actual fact, just because they have made an inquiry of a database, they could be on a database.

Mr Strassberg: I think that goes to the point of the need to have regulation-making powers in the act, otherwise you will be stuck in a situation where people will find clever ways to do things and you will have to go back into parliament to amend it. Particularly if you have committed to national models, in other states things also move slower because there are two houses of parliament and you have to get on a big queue to get any amendments to legislation. That seems to be the attitude being taken in Victoria. They are saying they will see how this new database service from TICA operates in the market before they make any decisions to amend the legislation.

Mr CHOI: One of your submissions suggested that you provide free tenancy reports. Nothing is free. How do you recoup your costs?

Mr Strassberg: I will let Ms Ganopolsky explore the issue of free tenant reports.

Ms Ganopolsky: Thank you for the opportunity to address you. I know you have had the benefit of some correspondence from VEDA in respect of the free credit reports and the policy reasons why that would be desirable. I do not wish to in any way add to or depart from those, other than to say that obviously, from both a legal and a policy perspective, I agree that it would be a desirable step and that it is very much in line with both the existing tone and the nature of the data-protection provisions that we are seeing in jurisdictions across the land, giving individuals a right of access to their information and giving a meaningful meaning to that right. The ability to have a legally enforced right of individuals to have access to a free credit report is a very powerful visible meaning to that right.

I am happy to address the committee on any questions that arise, but the matter that I have specifically been asked to deal with—and please correct me if I am overstating or misrepresenting the views put so far—is that there is some concern that for the Queensland parliament to pass express provisions requiring operators of databases to provide a free tenancy report to individuals is somehow constitutionally invalid. I want to deal with some concerns around that question, if I may.

CHAIR: I have not heard the comment that that is constitutionally invalid, but certainly matters have been raised about the cost of actually running the database and any fee that would be charged being reflective of the amount of work involved, although sometimes that is only pushing a button. I interrupted Mr Choi, I do apologise.

Mr CHOI: On the surface we obviously welcome the possibility of a credit report being available free to the tenant. On the other hand, we do want to ensure the quality of the report and, secondly, whether that cost will be passed onto perhaps the landowner and, therefore, subsequently passed back to the tenants in one form or another. We want to think through those issues a little.

Ms Ganopolsky: I think we can collectively address that issue. Can I just quickly deal with a number of related issues here and then I will hand over to my colleague, Mark, to deal with more the database operational questions. I can certainly touch on that from my area of expertise and experience in this area. Firstly, by no means do I want to say that in any way VEDA is giving legal advice to the Crown about matters of its regulatory purview. But it is my understanding, based on research, just to put the question of prohibition aside so that it does not cloud our discussion, that there are no corresponding provisions in respect of just terms on compensation on property that are applicable under the Constitution of Queensland 2001 and that the Crown, under section 2 of the Constitution Act 1867, does not have that restriction. If the committee is minded that this is a good policy outcome, there is an no legal impediment to the drafting of those provisions.

Also flagged was the fact that there is a possible inconsistency with the current provisions of the Privacy Act. Similarly, I do not mean to belabour the point about section 109 of the Commonwealth Constitution questions about what is an indirect or direct inconsistency, but it seems to us that, once again based on good policy arguments for access by individuals without cost to information about them, a very specific and very powerful information human right and also a right that relates to their ability to get accommodation is actually quite a powerful provision. We would say that it is not inconsistent with any provisions of the Privacy Act, firstly because the Privacy Act is clearly a co-regulatory regime. It does not seem to cover the field in terms of how access to information is to be provided, and that is clearly set out in section 3 of the Privacy Act.

Similarly, when you then go to the National Privacy Principles that are the pertinent piece of regulation on accessing correction regime, the principles are pretty open to the suggestion that you would have a legislated right of access and that there is nothing inconsistent about providing additional colour and movement to how that access should be exercised. We are not saying that operators of databases should not have recompense for what is an obvious cost of running a database and the services that are related to the provision of information around tenancy databases. We are saying that incidental to that cost is the provision of a free credit report that forms part and parcel of the delivery of services that the operator conducts on a for-profit basis.

To turn our attention to an area that is slightly analogous, in the credit reporting environment similar provisions were recognised, once again noting the human right genesis of the right to privacy and noting also the fact that credit reporting sits within an economic environment. The way that those rights were balanced in very detailed, prescriptive legislation that deals with credit reporting specifically was to envisage a right of access and correction that is administered by private sector organisations such as ours and a number of our competitors. What is critical about the way that right is administered is that the credit reporting code of conduct, where the language used is quite specific on this issue, gives individuals a right in addition to what they would enjoy in other areas of the information economy and the rights that sit within that. I think the credit reporting environment, both in the current phase but also in the newly revised phase, gives a good example of how that right sits very comfortably with information economy rights that we see enacted in numerous legislation and, indeed, exercised by citizens and consumers alike.

I hope that addresses the questions that that has percolated. Firstly, we do not see it as a question of a legal impediment for constitutional reasons, for the reasons that I have just outlined dealing with section 109 of the Commonwealth Constitution and the fact that there is no direct or indirect inconsistency. Similarly, we are not aware of any Constitution of Queensland Act impediment to Queensland legislation giving meaning to that right. I want to close by saying that, from a practical and a commercial perspective, the right is complementary to all the other rights and duties that would sit on a database operator. If my colleague wants to address the day-to-day operational costs of providing a report once that is legislated, I am happy to hand over to my colleague for that purpose.

CHAIR: Before you give that outline, Mark, in what you are going to cover could you also deal with what your present fees are in relation to the provision of any information requested from the National Tenancy Database, who that is charged to and at what point?

Mr White: Certainly. I thank the committee for the opportunity to speak with you. For your information, I founded the National Tenancy Database back in 1987. I have a reasonably long history with it and, obviously, I have gone through a number of issues in relation to its growth over time. To answer your specific question in relation to the recovery of costs, how the database maintains its commercial elements and where it gains its revenue from: the way the National Tenancy Database is structured is that the inquiries are actually paid for by the real estate agents or their landlords. That will be determined on a different pricing scale depending on where those businesses operate from because there are, in fact, different costs across the different states.

Primarily, in relation to a general inquiry across the internet by an agent in Queensland, the current charge, I believe, just on the tenancy database is approximately $1. If they seek extra information—that is, additional information from the public record—it can be as high as $14. Those costs are actually borne by either the real estate agent or the landlord themselves. With regard to the tenants, when they request a copy of their file we give it to them in two different ways. They can apply for a free copy, which we give to them. We normally guarantee a turnaround of between seven and 10 days for the return of that file. It is a copy of their full file and it is free of charge. If they require it more urgently for any particular reason, we charge them $15.

CHAIR: So $15 is virtually an urgency fee rather than for the provision of the detail?

Mr White: That is correct. Since we started the tenancy database back in 1987 we have always had the ability for tenants to request a copy of their file and it was always provided to them free wherever we could give it to them. It was only when they required it more urgently and it impacted on operational business that we struck a fee of $15.

Ms Ganopolsky: Can I add to what Mark has outlined from an operational perspective. What Mark has just outlined sits very snugly with the provisions of the National Privacy Principles. I would like to take the committee specifically to National Privacy Principle 6.4, which specifically states—

If an organisation—

and I note the 'if'—

charges for providing access to personal information—

so it is a choice the organisation has—

those charges:

(A) must not be excessive; and

(B) must not apply to lodging a request for access.

The framework that has been developed has been developed in line with those prohibitions, which are quite specific. When we come back to the overlay of a free report, it would also sit very snugly with that operating model, both from the operational perspective that Mark has just described and from the legal perspective as cast in NPP 6.4.

Mr White: We charge nothing at all if someone makes an inquiry of us to see whether in fact they are listed on the database. There is no fee for that whatsoever. It is only if there is a file and they need it urgently that there is a fee applied.

CHAIR: I must be quite specific about this: even the draft credit reporting legislation seems to me to be somewhat ambiguous when it states—

The agency must not charge the access seeker for the making of the request or for giving access to the information.

It does not say anything about paying for the actual information. If you get access to the information but then you request a copy of it, a fee can be charged for that copy. I am not saying that that is what you do, but we are dealing not only with your own database; we are dealing with this across a whole spectrum of possible databases.

Mr White: Correct.

Ms Ganopolsky: I think it is open to the legislators. In my view, it would be open to the legislators if you feel it appropriate to put conditions around that, that it is not free access every day. I think that is the question of access. In other words, what is the appropriate period? That would give the type of protection that you are seeking to address.

Similarly, it does go back to the point that the Commonwealth is a little bit more sensitive about the question of property given the just-terms provisions in the Commonwealth Constitution. The comparison of the drafting style adopted in Commonwealth legislation is not always universally applicable because they are trying to deal with their own mandate and their own prohibitions and the drafting style of that legislation does not necessarily have the same factors to take into account. I am sorry, I will reiterate what I said: I am not here to give legal advice to drafters of Queensland legislation. But I think from a policy and moving-forward perspective, it is important to note those structural differences so that we can learn the Commonwealth lessons but at the same time not import some of the restrictions that apply to the Commonwealth that do not apply to the states.

Mr Strassberg: I think you made the point about databases generally. Certainly with tenant databases there is an example where the Queensland parliament has felt the need to regulate a private database. So there is some history. I cannot think of another example of a state that would be seeking to regulate privately held information. That was obviously in recognition that the federal Privacy Act was not sufficient to protect the interests of consumers. Continuing in that vein, what we are asking today is further recognition of that. I think you can also see from submissions and from the research of the committee some of the reasons state parliament felt the need to regulate tenant databases. It certainly did not get to the behaviour of the national tenancy database.

CHAIR: We are running out of time but we have a question from Mr Dowling, the member for Redlands.

Mr DOWLING: How many listings are you likely to have on a database nationally? Do you have a breakdown by state as to how many people might be listed for being bad tenants, being on a tenancy database generally?

Mr White: That is fairly commercially sensitive information I have to say. I apologise for the response, but I think it is the appropriate one.

Mr DOWLING: That is fine. I half expected that. What sort of integrity and audit processes do you have on your database to ensure that it is reliable and accurate and that it is a valid list?

Mr White: We make our databases available only to licensed real estate agents. That is point one. Point two is that we require them to actually list the information, and they have the ability to audit it and keep it up to date as well. That is in the members' side of the database. So they can go in and update the records as they change. If a person goes from perhaps owing some money from the tribunal and they actually repay the funds, that can actually be noted on the database as well. There is a reasonably stringent requirement in that part and also from an internal audit perspective, some of our operational staff are tasked with going through the records and just making sure that there are no anomalies or that incorrect data has been placed in there.

Mr DOWLING: As I hear it, the onus is entirely upon the real estate agent making the listing. So let us just say I am Trevor Smith, real estate agent. I have put a listing in on Mr Jones and Mr Jones has long since left my memory banks. He will remain on the database. Even if he does come back and make good, there is no requirement for me to remove him from the list or to ever remember him again?

Mr Strassberg: There certainly is under the Queensland legislation. You have to notify the person you are listing before you make the listing. To the question of accuracy—and there are also obligations on—

Mr DOWLING: Sorry to interrupt. You just said you have to make contact with the person you are listing. What happens if you do not hear back from them? Can you still list them? You might have written them a letter and sent it to them by registered mail or something. It is not a complete circle because, as I understand it, there is no requirement for them to come back to you and say, 'Yes, I got your letter.'

Mr White: The loop cannot be complete for that very reason, the fact that some people just do become uncontactable for one reason or another. We obviously have the ability once the listing is there and if the tenant becomes aware of the listing, they can go back to the member and make some inquiries in relation to it or, in fact, put their own record on the file if they believe that it has been inappropriately dealt with. The legislation in Queensland is fairly specific in relation to the times when data can be applied to a file. Those rules are strictly adhered to. The system does, in fact, generate a letter and allows a period of time to elapse before the listing goes live, so to speak, which hopefully allows sufficient time for the person to be contacted and I suppose have a discussion with the listing agent as to whether the listing is relevant or not.

Mr DOWLING: Sorry to interrupt you again, is there any opportunity to use alternative methods of communication such as email because no matter where a person goes their email goes with them?

Mr White: There is no reason that information cannot be passed on by email. It is really up to the contact details that the real estate agent has on their file in relation to that person. They are the ones actually doing the listing. We act as a repository for those records.

Mr DOWLING: If it were allowed as one of the communication vehicles in the legislative framework, you would not see that being a problem?

Mr White: I would not see that as being a problem at all.

Mr Strassberg: Just to the question of listings, the tribunal has a fair amount of power about hearing listings and ordering their removal. One thing we had sought in discussion was that the Queensland equivalent of the consumer or tenant tribunal publish or have available for a database operator where a finding has been made that a tenant has obviously caused more damage than the bond that was available. That way you would actually have a much greater reliable source for information. I understand that there are some technical IT aspects to that as well as the workload of the tribunal that made people reluctant to embrace that as a decision. In that sense we rely, with our consumer credit reports, on default judgements from the court both in putting them on and removing them. Similarly, we thought there might be a role for the tribunal in Queensland.

CHAIR: Thanks very much for that. Our time has expired. There were two other matters, though, that I will just mention. You mentioned positive listings—that has been mentioned by another submitter—and also your issue with proposed new section 464F(2)(c) in relation to the name of each person who listed the personal information on the database. As I understand your submission, the wording in the bill at the moment actually relates to a specific employee and you want to make sure that it is the agency or the lessor's agent rather than the specific employee.

Mr Strassberg: As someone with a distinct name like Strassberg—and we have Ms Ganopolsky in the room—having that sort of information, particularly if you are in the phone book, I think you would appreciate that if you have just listed someone that sort of thing can obviously cause unnecessary angst that someone is going to come knocking on your door.

Mr White: There is also a fairly high turnover of staff within the property management community. Often it is the staff who actually have the contact and they submit this information. It would be much better to go back to the agency than the individual to be honest.

CHAIR: I have noted that. I believe that is a matter for the committee to deal with. Thank you very much for your input. It has been of great assistance. The time for questions has expired. Our remit is to report on the legislation and we will be providing all witnesses with a copy of our report when it is prepared.

Mr Strassberg: Thank you for your time.

Mr White: Thank you.

CHAIR: Thank you for your time.

NOUNNIS, Mr Phillip, Managing Director, TICA Default Tenancy Control Pty Ltd

CHAIR: My name is Paul Hoolihan. I am the chair of the Community Affairs Committee of the Queensland parliament. I have with me the members of my committee, Miss Fiona Simpson, member for Maroochydore and deputy chair; Mr Peter Dowling, the member for Redlands; Mr Michael Choi, the member for Capalaba; Mr Aidan McLindon, the member for Beaudesert; and Mr Jason O'Brien, who is currently absent from the room but will be returning shortly. I do apologise. We are running slightly late. I trust we have not inconvenienced you. If you would like to make a brief opening statement, please do so.

Mr Nounnis: Firstly, I would like to thank you and the committee for allowing us the opportunity to come into this at such a late stage. We do apologise for any inconvenience caused to both you and the committee. With regards to legislative changes, it is something that TICA has dealt with for years now with Queensland being the first one to introduce it. The one thing we would want to ensure the committee is that, whatever the outcome of the legislative changes, TICA will work within those perimeters.

CHAIR: Thank you very much. At the outset, so that we can get our guidelines clear, could you please outline for the committee how many databases TICA currently maintains, their purpose, how they operate and the information available from each database to full members and casual members?

Mr Nounnis: TICA runs the tenancy history database, an inquiries database, an internal public record database and a public record database. To break those databases up, the tenancy history database is a database that allows members to report tenants' activities to us subject to any state legislation. So in Queensland for argument's sake, New South Wales, the ACT and Victoria as of next week, it will only hold default information. The tenancy history database for Northern Territory, Western Australia, South Australia and Tasmania still holds information on both recommended tenants and default tenants.

The inquiries database is a database that only shows where a tenant has previously applied. That is all that database does. The public record database—the internal one for us—is something that was established as a result of the Privacy Commissioner's determinations in April 2004 so that we could keep track of any person who inquired about being on the database themselves, where we were up to with that particular file. That public record database is not a database that is released to any member of TICA, whether they are a casual or full member. The only information that would probably be used out of that database for anybody else is if we were ordered by a court to supply that information or if a state or federal agency had the right to request information out of that database. It is not used by TICA for any other purpose other than to go back in and have a look at where we were up to on a particular file. The other public record database is something that TICA only started in the last 18 months or so and that records information that is available in the public domain such as bankruptcies, tribunal hearings, court cases—things like that.

CHAIR: Could you describe your Virtual Manager to me, please?

Mr Nounnis: I did not know I was going to be asked this one.

CHAIR: It is your database, I understand.

Mr Nounnis: No, I appreciate that. Sorry, the Virtual Manager is not actually our database. All we have done with Virtual Manager is create a system—a software package—and we allow the members to use that system as an internal database for themselves. At present, members can actually search the inquiries database and see where a particular tenant has applied and they can do that manually. All the Virtual Manager system does is do that automatically for the member.

CHAIR: Why should a member or even TICA want to know where a person has applied for tenancy?

Mr Nounnis: There are a number of reasons a person would want to know. We do not actually get involved in it. We do not derive an income from Virtual Manager. We have nothing to do with Virtual Manager. We do not look at any information contained within Virtual Manager. It is information that sits in cyberspace and it is only available to that particular member. What they would use it for would be if they were using it for a tracing tool to try to locate somebody. The other thing I should add is that Virtual Manager is only the beginning of a full integrated system for TICA as we move in. It also contains information on landlords, their address and the property address where TICA is actually looking at developing a software program for the property management industry in relation to accounting.

With regard to the Virtual Manager system itself the way it stands now, all it does is allow a property manager the ability to know that a tenant might be doing a runner. When a tenant goes out and applies for another property to another agent, they are required to submit a truthfully completed tenancy application form. That truthfully completed tenancy application form will contain details of their last two or three agents that they rented through. So in a truthfully completed application form that tenant is supplying no more information than what the Virtual Manager would actually supply if it was used by that particular member.

CHAIR: Mr Nounnis, I want to read something to you and I would like your comment on it, please.

Mr Nounnis: Yes.

CHAIR: It reads—

Benefits of using TICA Virtual Manager

Record all your tenants' details within the system which then allows you to flag tenants you wish to be tracked within the TICA system when they apply elsewhere

Receive automatic emails on flagged tenants when they have applied for rentals with other TICA members while they are your tenant residing in your management

Put a stop to your tenants having the ability to do the midnight run

Auto lodgement facility to list your default tenants on the TICA tenancy history database with the click of a button

You are asking this committee to accept that this is an internal database when with the click of a button every person who goes on this database will go into your tenant history database?

Mr Nounnis: No, not at all.

CHAIR: The words I read to you were a document put out by TICA.

Mr Nounnis: No, if you have the people lodged on the internal database—the Virtual Manager—and then that person was to default, instead of going into the TICA system and re-entering all of the information in the TICA system, the button allows the member to upload the information automatically into the TICA system only when the tenant is allowed to be listed on the tenancy history database—not for every tenant to automatically be uploaded. All it was was a system that allowed you to list all of your tenants on there and then if your tenant actually breached their tenancy agreement, and subject to legislation, all you had to do was click a button and that button would automatically upload that information onto the TICA tenancy history database. The reason I apologise to you over this is that I did not realise that I was going to be answering questions on this. I was not prepared, otherwise I would have sent information up and invited the committee to actually have a look at Virtual Manager. So I do apologise for that.

Mr CHOI: Are you saying to us that that is simply a software ability to avoid duplication of data entry? Is that what you are saying?

Mr Nounnis: Basically that is what it is—not even to avoid duplication of data entry but to save time in double-entering the information. One of the things that property managers around the country are concerned about with computer programs across-the-board is the requirement of all of these programs to type information in. A lot of property managers now are looking for systems that can basically integrate and transfer data from one system to another system at the click of a button, and that is all we did. Under no circumstances are we suggesting to people at all that you list everybody on the Virtual Manager and then put them all straight onto TICA.

Mr DOWLING: Just following up on that, you began in describing the Virtual Manager as just a service that you provide—it is a computer software program—for which you receive no remuneration and there are no costs associated with it and you have no real management or control over it. Did I hear that correctly?

Mr Nounnis: That is correct.

Mr DOWLING: All right. So presumably there was a catalyst for you inventing this system—this software program. What was the catalyst? Who called for it and why did you do it? Why would you go to such expense—and I presume it is a fairly comprehensive program and fairly expensive—and develop such a program for no return?

Mr Nounnis: We run our company different to some of the other database companies that are around. We have come from the property management industry. We look at adding value to the membership of TICA. One of the products that we are introducing shortly is a training program where members three times a week will be able to log into TICA and do a virtual training session with us, and we are adding that in as value added as well with no remuneration. The whole intention of TICA is to retain its membership and also to add value added services where we can add value added services. We employ our own internal programmers, so we are not subject to the cloth of going out and employing external programmers to write these programs.

Mr DOWLING: With the lists that you maintain—and I understand there are primarily the three lists as you explained them—are you able to disclose in round figures the sort of number of entries you have and the number of tenants you are talking about by state or nationally, or is that something that is commercial-in-confidence?

Mr Nounnis: No, there is nothing commercial-in-confidence. We do not really know what you mean by tracking, sorry, because we do not track anyone.

Mr DOWLING: You have a number of people's names on a database—that database is a tenant, good, bad or indifferent; there is a tenant black list; and there is a separate list of people who make inquiries. Is that the three lists as I understand it?

Mr Nounnis: With regard to the inquiries database and the tenancy history database—the public record database—that is only something that is in the public domain. In terms of the public record database, we advertise on our website that that has 500,000 public records, but bear in mind there could be duplicate records from individuals who have gone bankrupt and had court cases against them. The inquiries database has six million records on it. We have never gone in and had a look at how many of those are duplicated when you look at the fact that one tenant could apply for six different properties. With regard to the tenancy history database, that has around the 400,000 to 450,000 mark.

Mr DOWLING: What about the integrity of the database that you do assume responsibility for—the primary lists, I suppose, of TICA?

Mr Nounnis: The tenancy history database?

Mr DOWLING: Yes. What sorts of integrity and audit processes do you have in place to ensure the integrity of the information that you are providing for your members/customers?

Mr Nounnis: Prior to the determinations of April 2004 we did not have any. As a result of the Privacy Commissioner's determinations we had to set procedures up, which we did do. One of the things we do is run 50 random checks per week of lodgements that come in where we call upon the agent to supply us with a copy of the tenancy agreement, a copy of a tribunal order if that is what has been listed for, a copy of any quotes to substantiate the debt that might have been recorded, and a copy of a tenancy application form. We run 50 of those per week, separate to any public inquiries that come in on individuals to access their own information. We also use those as a reason to contact the member. I think by memory in our membership agreement or in the policies on our website we actually state that we carry out the random checks and that any member who does not supply us with the information as a result of a random check is suspended from membership straightaway and the record is removed straightaway.

Mr DOWLING: With regard to your random 50 audits that you do every week, what sort of inflow do you have or outflow do you have in a given month? Is there a rough ballpark? Do you get 100 listings a day or 1,000 listings a week? What sort of industry are we talking about?

Mr Nounnis: I have never really sat down and worked that out in terms of a daily or weekly basis. I know that the festive season is the busiest time for us. Because we have data cleansing going on at the same time, the database grows by 30,000 a year roughly but then you have records being deleted as a result of data cleansing as well.

Mr DOWLING: Thank you.

Mr Nounnis: With regard to the 50 random checks, we only adopted that practice of conducting 50 random checks as a result of the Privacy Commissioner's determinations. They recommended that we carry out 50 random checks, but that is 50 that we do off our own. With regard to public inquiries, we would probably do maybe 50 to 100 a week between the 190 number and the mail system. We check those out as well. So on random checks we do about 100 to 150 a week just depending on how many people have actually inquired on themselves.

Mr DOWLING: Thank you.

Mr CHOI: In terms of your costs, I think for a general inquiry by a tenant on their listing on your database it is $14.30; is that correct?

Mr Nounnis: That is correct.

Mr CHOI: Can you provide some information to the committee in due course about how you justify that cost, because there have been complaints about that cost being too high and we have no information to get a feel for whether that is a reasonable cost?

Mr Nounnis: With all due respect to your committee, if I had known that I was going to get a question like this I would have had something prepared, because we did actually prepare a break-up of everything for the Privacy Commissioner's office.

Mr CHOI: That is fine. You can send it to us. We would welcome any information.

Mr Nounnis: If you allow me the opportunity to break that up and send it to you, I could have that to you within probably three or four days.

Mr CHOI: That would be fine. Thank you.

Mr Nounnis: Just off the top of my head, what I can say to your committee is that TICA is predominantly an internet based company now. We handle very few phone calls in relation to membership inquiries or in relation to members doing inquiries on prospective tenants. It has all moved to online inquiries now. For me to offer the service or the mechanism for somebody to inquire on themselves I need people, desk space, telephones, computers, electricity with lights and air conditioning, and obviously staff. They are all built into that. If I do not use those staff for any public inquiries that week, then, to be quite frank with you, I am out of pocket. So I am more than happy to supply that. If you could get your secretary to forward us where to send it to, I am more than happy to provide that to you.

Mr CHOI: No problem. Thank you.

Mr Nounnis: I am even prepared to provide you with a copy that we actually submitted to the office of the Privacy Commissioner, who at the time determined the fees that we charged. Back then we were charging $11. We dropped that fee back, but we just could not afford it and then we put the fee back up again.

Mr CHOI: Thank you.

CHAIR: Our time for questions has actually expired, Mr Nounnis. One of the motions from this committee will be that the committee authorise publication of evidence given before it today. Have you got any objection to what you have outlined being included in that?

Mr Nounnis: No, not at all.

CHAIR: That is okay. It is just that some private evidence we can exclude. We just want to make sure that that is satisfactory. Thank you to everyone. There are still a number of people here who have attended today's public hearing. I believe the committee has gathered valuable information which will assist in its examination of the bill. Thanks to the Parliamentary Service staff and Hansard who have assisted during today's hearing. I would seek a motion from a member of the committee that pursuant to subsection 50(2)(a) of the Parliament of Queensland Act we authorise publication of the evidence given.

Mr DOWLING: I am happy to move that.

Ms SIMPSON: And I am happy to second that.

CHAIR: So that is moved by Mr Dowling and seconded by Ms Simpson. On the basis of that, once again thank you everybody for your assistance. Thank you, Mr Nounnis, for your input. I declare the hearing closed.

Mr Nounnis: Thank you.

Committee adjourned at 1.02 pm