

**RESPONSE TO RESIDENTIAL TENANCIES AND ROOMING ACCOMMODATION
AMENDMENT BILL 2011**



WHO ARE WE?

We are the Tenant Advice & Advocacy Service for Brisbane's inner north. We are a community based organisation which provides advice, advocacy and housing referral to tenants and prospective tenants within central Brisbane and the inner northern suburbs. We are funded predominantly from the interest on tenants' bonds held with the Queensland Residential Tenancies Authority and our funding is overseen by the Department of Communities.

We daily deal with tenants and prospective tenants who are listed on tenancy databases and we have expert knowledge of the current legislation as a paralegal service. We welcome the opportunity to respond to this important amendment.

TICA

Our experience in this submission is with the tenancy database TICA (Tenancy Information Centre of Australasia). This organisation has a massive market share in Queensland and our dealings with them have been extensive.

Dealing with this organisation over the years has established their unwillingness to abide by legislation and their arrogance in believing they are not required to do so. While claiming to align with federal privacy legislation they clearly flout it by time and again failing to comply. Examples of this include, but are not limited to, the following:

1. Failure to remove tenants at time review. Some tenants have been listed for more than ten years.
2. Failure to respond to tenant's request for information on listings.
3. Failing to keep costs reasonable when tenants are contacting for information. It is not uncommon for tenants to end up with a phone bill of over \$90 from contacting their 1900 number. Tenants report that operators are deliberately obstructive when dealing with tenants putting them on hold for long periods and being generally unhelpful, rude and aggressive.
4. Failure to state any reason on the database for the listing and including such unlawful directions as "please call agent" so as to avoid scrutiny.
5. Failure to remove tenants after a Queensland Tribunal Order stating they are to be removed. This includes leaving the tenant's details up on the database with a notation "Tribunal order for listing to be removed".
6. Relisting Queensland tenants themselves where real estate agents have been ordered to remove them. TICA state that they 'review' the details and if they don't believe that the tenant should have been removed they list under their own banner to ensure the agent isn't penalised but that the listing remains.

7. Using an 'Enquiries' Database where they simply list people who have asked if they are listed. This is a clear breach of Queensland legislation which requires a list of reasons for listing and asking if you are listed if not one of them. What is also disturbing is that this Enquiries Database is available to anyone who is a member of TICA. So, for example, a woman escaping domestic violence who flees from Queensland to Western Australia and applies for a place in Perth is then easily locatable by her ex-partner if he is a real estate agent. There is no valid reason for any person to know where and when people are applying for properties. This is not a tool for managing tenancies it is a tool for stalking and abuse of privacy.
8. Trying to reposition themselves as a 'Tenancy History' database where they don't just list 'bad' tenants but all tenants. As stated in #6 this is not a valid reason for listing.
9. TICA in a rather clumsy attempt to avoid legislation is selling a special "internal database" that allows real estate agents to track their tenants are see if they are about to "do a runner". This means that it is clearly not an internal database as it is linked to other TICA members. So if a tenant has the audacity to apply for another property then their existing agent is informed. This is clearly a breach of their right to privacy and of the current Queensland legislation. In what other context is a consumer monitored when they are shopping around? Imagine if you put in an application to change your phone company and get a better deal on a mobile phone and then your existing telephone company was informed? Imagine now that this company has the ability to make you homeless because you have put in this application and also to then contact this new vendor and give you a bad reference whether you listed them as a referee or not?

These are some examples of their actions which clearly indicate that they are rogue traders seeking to undermine and circumvent the law.

OVERVIEW

We are gratified that the state government has been such a strong force for the regulation of tenancy databases. We would also like to congratulate the government for their groundbreaking action of being the first state to implement such regulation which has set the bar for other states.

It is very timely that the government is taking these steps to review the tenancy database regulations as this is becoming a significant contributor both to homelessness and to keeping homeless people from becoming housed. As is recognised by the White Paper on Homelessness – The Road Home:

'Some private tenancy management practices contribute to homelessness.'

We believe that the operation of tenancy databases is clearly the most obvious form of tenancy management practice that contributes directly to homelessness.

As further stated in the White Paper on Homelessness – The Road Home:

'While residential tenancy databases are a legitimate tool for reducing the risk of rent loss and damage to a rental property, they can create barriers that prevent people from accessing the private rental market. Databases are privately owned and store data about an individual's tenancy history.'

We do not agree that tenancy databases are a legitimate tool for reducing the risk of rent loss and damage to rental property. Most prospective tenants must go through a rigorous application process which always includes rental references from previous lessors or agents.

Tenancy databases are not a legitimate tool as the information held is of questionable content and are often inaccurate and/or unjust. It is in fact a hindrance to the market itself where good tenants are being turned away because of inaccurate, unjust and/or out of date information. This must be of detriment to lessors seeking to tenant their properties. Operators such as TICA are rogue operators who continually ignore the existing laws and have publicly mocked those who sought to regulate them within their own TICA newsletter. They referred to the Residential Tenancies Authority as "Those idiots in Queensland think they can regulate us."

To give an example of their seeking to circumvent the law they refuse to accept that tenants can only be listed if they are in default which is currently Queensland law. To illustrate this below is an extract from their website under frequently asked questions found at <http://www.tica.com.au/ifaq.php>

**Is TICA a
Tenancy
blacklist?**

- A** No TICA is not a blacklist. TICA does not like being referred to as a blacklist. A blacklist is defined as:
1. A list of persons under suspicion, disfavor, censure, etc
 2. A list privately exchanged among employers, containing the names of persons to be barred from employment because of untrustworthiness or for holding opinions considered undesirable.
 3. A list drawn up by a labor union, containing the names of employers to be boycotted for unfair labor practices.
- Simply put TICA is a Tenancy History Database. TICA merely reports on information that should be contained in a truthfully completed tenancy application form, being which member the tenant had previously rented through and the members contact details

HOMELESSNESS SERVICE/CARAVAN PARKS

Our service is managed by the New Farm Neighbourhood Centre an inner city community centre. This centre has drop-in and provides services for homeless people. The New Farm Neighbourhood Centre also manages our sister service the

Homeless Assessment & Referral Service (HART 4000). This is a homelessness hub based in Brisbane city.

We consulted with this service to assess tenancy database listings and their impact on their homeless clients. We have been advised that tenancy database listings are a huge barrier for clients seeking to rent privately. HART 4000 invests time and money in undertaking "TICA checks" for clients to see if they are listed. This costs money to the service and due to the lack of effective regulation of tenancy databases results in a simple yes or no on listing. This is because TICA believes that it is not required to give reasons for the listing.

Another issue raised by HART 4000 Coordinator Charlotte Hodges is that they are seeing more clients listed through caravan park managers. Caravan park stays are often short term and can end abruptly due to issues arising from communal living such as use of shared facilities like shower blocks, playgrounds, pools etc. There can often also be issues arising from children in close living quarters such as the noise of crying infants and restrictions on room to play.

This can often lead to arguments and disputes between residents and disputes with managers. It is all too common for tenants to leave due to these disputes and then find out long afterwards that they are listed for "abandonment" or "damage" which they were completely unaware of and did not have the opportunity to dispute.

It is certainly unjust and unreasonable for a tenant to be put on a tenancy database which excludes them from private rental due to a dispute in a caravan park during a short or long stay.

CONCLUSION

Tenancy database regulation is vital to preventing homelessness and in providing justice to tenants who are both in and who are seeking to enter the private rental market. We commend the state government for their proactive action in this area and are pleased to welcome the bill with our recommendations attached.

SEE TABLE ON RESPONSES TO SPECIFIC SECTIONS AT END OF THIS SUBMISSION

RESPONSES TO SPECIFIC SECTIONS

SECTION	RESPONSE
Section 457(b)	This is an excellent inclusion and it gives tenants the opportunity to redress an issue that may have arisen due to an unexpected circumstance e.g. illness, loss of employment or relationship breakdown. We believe that three months is both fair and reasonable.
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 is a need for third party scrutiny from an independent source with knowledge of the legislation. A Tribunal order is the obvious solution.
Section 464H(2)	We strongly approve of this section which places the obligation upon a database operator to remove a listing. We are concerned though about enforcement against interstate operators such as TICA. How, for example, will the Investigations Unit in Queensland be able to prosecute TICA staff in Sydney? TICA staff have already stated in their newsletters that they are immune to Queensland legislation and are out of their reach. We recommend a beefing up of the maximum penalty units from 40 to 60 and would also recommend some strategic prosecutions by the Investigations Unit in Queensland to set an example that the law does in fact apply to TICA.
Section 464J	This section is to be applauded. Tenants should not be listed for longer than three years. However, we note that there are no apparent penalty units for this section. It is recommended that it be a

	<p>fineable offence under this legislation not to remove a tenant. Without this provision the federal privacy principles are inadequate to enforce a tenant's rights. If the intent of the legislation is to regulate tenancy databases then this is a vital issue that failure to remove in a timely fashion MUST be prosecutable. This is an area where TICA has continually failed to comply. Without such a penalty the legislation will be not effective.</p>
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