

Your Ref: RTRA.11.02  
Our Ref: LGN.09

29 July 2011

Mr Paul Hoolihan MP  
Chair  
Community Affairs Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

**By email: [cac@parliament.qld.gov.au](mailto:cac@parliament.qld.gov.au)**

Dear Mr Hoolihan,

### **Residential Tenancies and Rooming Accommodation Amendment Bill 2011 (the Bill)**

We refer to your letter dated 12 July 2011 inviting the Real Estate Institute of Queensland Limited (REIQ) to provide its comments on the *Residential Tenancies and Rooming Accommodation Amendment Bill 2011* (the Bill) to the Community Affairs Committee.

As the peak association representing real estate professionals in Queensland, the REIQ was pleased to be involved in the consultation on the draft Bill in 2009 and 2010.

Although amendments have been made to the Bill subsequent to our last comments on the consultation draft, many of the provisions we previously commented on remain in the current version of the Bill. In view of this, we consider it is appropriate to provide you with a copy of our previous submission dated 14 December 2009 in response to the consultation draft *Residential Tenancies and Rooming Accommodation Amendment Bill 2009*. We remain committed to the comments outlined in that correspondence.

Our additional comments follow.

#### **General comments**

The Bill seeks to introduce the national uniform law on residential tenancy databases adopted by the Ministerial Council on Consumer Affairs (MCCA) in December 2010. The model provisions adopted by the MCCA closely resemble the existing provisions in Chapter 9 of the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act). This is acknowledged on page 2 of the Explanatory Notes accompanying the Bill:

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*"The new provisions are similar to the existing provisions on tenancy databases in the Act".*

Any review and amendment to the existing laws governing tenancy databases must be carefully considered and include an analysis of the competing needs and rights of property investment owners and tenants.

The REIQ is particularly concerned about the provisions contained in Part 4 of the Bill. These provisions propose a number of new provisions which create additional obligations for lessors and lessors' agents (property managers). The Explanatory Notes state that the purpose of these provisions is to *"strengthen and offer additional safeguards and protections for tenants"* (page 3).

The REIQ considers that the Act currently provides sufficient protection against incorrect and unfair listings on tenancy databases. The additional statutory obligations the Bill proposes to impose on lessors and property managers will only add to the already onerous raft of statutory obligations and requirements property managers must comply with when managing properties on behalf of owners.

In recent years, membership feedback overwhelmingly indicates that there is a high level of frustration and stress amongst property managers largely due to the volume of legislative burdens they are required to bear. Real estate businesses are commonly reporting difficulties retaining property managers due to the stressful nature of property management and the overwhelming workloads.

The REIQ is concerned that further proposed legislative requirements and obligations will create additional administration, risk and expense for real estate businesses. A rise in property investment related costs can have a detrimental impact on property investment leading to a possible decrease in rental property levels.

Although the proposed amendments may be characterised as consumer protection measures, a decline in the supply of rental properties will ultimately be detrimental to consumers.

### **Proposed new sections 464E and 464F**

The REIQ is strongly opposed to the proposed new sections 464E and 464F.

We refer you to our previous comments in relation to section 464E in our 14 December 2009 correspondence. We maintain this proposed section is impractical and unreasonably onerous. Our preference is that the proposed section be deleted entirely. Alternatively, the section should be amended to allow the specified information to be "given" in the manner recommended in our December 2009 correspondence.

The proposed section 464F requires that in the event a lessor or a property manager finds that an "applicant" is listed on a tenancy database, they must provide written notice to that applicant detailing the specified information. Notably, the level of information to be provided extends to how and in what circumstances the applicant can seek to have their name removed from the database. Failure to do so attracts a significant penalty.

It is unreasonable to require a property manager (or a lessor) to give an applicant the specified information simply because in the course of conducting their due diligence, they have discovered the applicant's listing on a database. Existing laws are, in our view, sufficient to protect tenants and former tenants against the likelihood of unknown and/or inaccurate listings.

We strongly recommend the removal of the proposed section 464F.

### **Education and information campaign**

We understand that a public information campaign will be conducted on the amendments to the Act.

We consider that it is critically important that this information campaign extends to providing comprehensive and plain English training material for all real estate business' effected by the legislative amendments.

REIQ is committed to supporting real estate agents to understand their legal obligations. To this end, we would be pleased to provide any necessary support and assistance in relation to the proposed information campaign.

### **Commencement of the Bill**


It would be extremely beneficial to our organisation and the real estate profession generally, if the date proclaimed for the commencement of the Bill was made known with sufficient time for the necessary transition to be effected. We consider that a notice period of two months would suffice provided that the information campaign is implemented as soon as practicable following the passing of the Bill.

We look forward to the public hearing on the Bill next month and the outcome of your review.

We appreciate the opportunity to comment on this important matter.

If you wish to discuss any aspect of this letter, please contact Ms Antonia Mercorella, Executive Manager Policy and Legal on (07) 3249 7325 or via email: [execpolicy@reiq.com.au](mailto:execpolicy@reiq.com.au) .

Yours faithfully,



**Ian Murray**

ACTING CHIEF EXECUTIVE OFFICER

LGN09



14 December 2009

National Regulation of Tenancy Databases  
Residential Tenancies Authority  
GPO Box 390  
Brisbane Q 4001

Via Email: [russell.morgan@rta.qld.gov.au](mailto:russell.morgan@rta.qld.gov.au)

### Residential Tenancy Databases – Model Provisions

The Institute welcomes the opportunity to submit a response to the Residential Tenancy Databases – Model Provisions consultation package. Tenancy databases, as recognised in the paper, have long been a credible, reliable risk management tool for investors and real estate agents in Queensland, and across Australia.

Since 2003, Queensland has had a regulatory regime that regulates the way that databases are used. There is anecdotal evidence to suggest that there may have been decrease in database usage due to confusion about the legislation and uncertainty by some of the industry as to over-prescribed minimal reasons for listing a defaulting tenant. It must be said, that it is only a minority of tenants who generally warrant a consideration by lessor/agents of listings on a database. This mechanism has forewarned other investors and real estate agents in Australia of potential risk for tenancy, and has also provided a mechanism of accountability for a small number of people who may do the wrong thing.

Our submission on the model provisions is made by reference to the Chapter 9 provisions of the consultation draft of *Residential Tenancies and Rooming Accommodation Act Amendment Bill 2009*. References are to the proposed sections of the principal act.

#### Section 459 – Particular breaches by particular persons

The proposed amendment to section 459 of the *Residential Tenancies and Rooming Accommodation Act 2008*, will provide some certainty for the real estate profession. The proposed section 459 provides two reasons for listing a person; that being monies owing above the bond or a tribunal order terminates the agreement.

#### Section 460 – Further restriction on listing

A key word is 'given' in section 460. It is assumed that given will extend to mean given to the person either at their forwarding address (if provided) or their last known address, email or fax as per the tenancy agreement. The posting or transmission of the copy of the personal information may be deemed to be 'given'. This may need some clarification in the draft amendment. The inclusion of an example is recommended.

Section 464E – Notice of database and listing

The introduction of new section 464E is of great concern to the Institute. The implications for agents and lessors are far reaching. The provision is impractical.

Subsection 2 provides that the lessor or agent must give the applicant written notice of particular information regarding the database usage. We recommend an example be provided in this provision, such as 'written notice may be provided as part of a document such as a tenancy application form'. Given that the document universally recognised is a 'tenancy application form' this should suffice as written notice to the tenant. Failure to have such example in the legislation may provide unnecessary burden, confusion, paper waste and cost to industry and investors. If it part of an agency's application form to be completed by prospective tenants, this is a benefit to all.

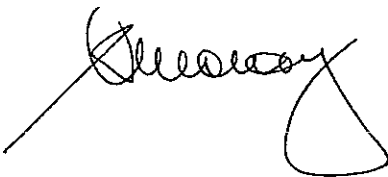
Subsection 5 provides that the lessor/agent must as soon as possible, but within 7 days after using the database, give the applicant written notice stating whether personal information about the applicant is on the database etc.

Many agencies receive multiple application forms (5-10) per property. Given that only a minority of people in Queensland and Australia would be listed on a database, this draft provision makes for an unreasonable outcome. The introduction of such a provision imposes a significant burden on lessors and agents with no demonstrated benefit for consumers. The provision should be amended to provide for the lessor or agent to provide information only to a listed person, not an unlisted person.

Section 464I – Keeping personal information listed

New provision 464I allows for a three year listing period unless another period stated by the national privacy principles. Currently in Queensland, the *Residential Tenancies and Rooming Accommodation Act 2008* allows for one year for tenancy records and *Property Agents and Motor Dealers Act 2000* mandates a five year retention for records. The Institute supports consistency of record keeping for the industry and proposes that three years in the draft provisions be changed to five years. While this provision relates directly to database providers, the need for consistency for record keeping is recommended.

Yours sincerely,



Dan Molloy  
MANAGING DIRECTOR AND  
CHIEF EXECUTIVE OFFICER