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## **Submission to the Review of the Private Sector Provisions of the Commonwealth Privacy Act 1988**

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## **The Tenants Union of Victoria**

The Tenants Union of Victoria Ltd (TUV) welcomes the opportunity to contribute to the review of the private sector provisions of the Commonwealth Privacy Act 1988. The Tenants Union of Victoria (TUV) is a specialist state wide advocacy organisation and community legal centre, established in 1975, that provides free information, advice and advocacy to residential tenants, rooming house and caravan park residents across Victoria. In the year 2003/2004 the TUV assisted more than 27,000 private and public tenants and residents in Victoria.

The vision of the TUV is for genuine housing choice without social or economic disadvantage. Our mission is to promote and protect the rights and interests of all residential tenants in Victoria.

The TUV also promotes community awareness of tenancy laws and issues, lobbies for tenancy law reform and provides accredited training on a statewide basis for tenant and housing workers. The TUV produces a number of publications throughout the year including multilingual information in 11 community languages, a journal on tenancy issues entitled 'Tenancy Quarterly' and a broadsheet publication for tenants entitled 'Tenant News'. In previous years TUV has been a member of a number of State Ministerial Advisory Committees related to housing and tenancy issues and currently has a seat on the Victorian Ministerial Housing Council.

This submission will focus specifically on the private sector provisions as they pertain to residential tenancy databases (RTDs). In particular it will limit itself to addressing issues of national consistency as outlined in Chapter 2 of the issues paper and also rights of redress and compliance as outlined in Chapters 4 and 5. The TUV believes that the private sector provisions are not the best vehicle to adequately regulate RTDs and further regulation is needed to support the provisions.

## **Compliance and Rights of Redress**

The Privacy Commissioner's approach to compliance has emphasised information/advice and conciliation over legalistic determinations. In the case of RTDs however, the Commissioner has made four complaint determinations in relation to the tenant database company, TICA. However the determinations can only make recommendations to TICA and cannot compel them to do things in a certain way.

Evidence suggests that the determinations have failed to achieve compliance and to this date we are unaware of any cases where tenants have received compensation. The next step for the Privacy Commissioner in seeking compliance is an application to the Federal Court. This process is both time and resource intensive and unlikely to be effective in the awarding of small amounts of compensation to individual tenants. A determination also only applies to the individual complaint, in this case in relation to TICA and has no binding influence over other RTDs.

In an industry that has the potential to effectively lock tenants out of the private rental market and create homelessness, there is a need for greater regulation than what can be provided by the current operation of the Privacy Act. In relation to RTDs tenants need access to a timely method of redress and greater protections than that currently offered by the Privacy Act. The exemption to small business operators who have an annual turnover of less than \$3million may also mean that some RTDs fall outside the Acts jurisdiction.

## **National Consistency**

With regard to RTDs the Privacy Act applies to the validity of listings and the means by which tenants can access the information that is kept about them. Both Queensland and more recently NSW have amended and enacted legislation that attempts to regulate the way real estate agents use RTDs. The Queensland experience suggests that a regulatory system is needed to further strengthen the rights enshrined in the Privacy Act by providing a vehicle by which individuals can exercise their rights. In states without legislation, RTDs operate within a system of self-regulation.

The Tenants Union of Victoria believes that a national regulatory framework is needed that has jurisdiction over tenant databases and is consistent with the Privacy Act. The Tenants Union of Victoria recommends the establishment of an industry funded ombudsman for RTDs. An independent dispute resolution mechanism should comply with the Federal Governments benchmarks for Industry-Based Customer Dispute Resolution Schemes. In particular, listed tenants should have free access to the scheme and its decisions should be binding.

Failing the establishment of an industry funded ombudsman the Tenants Union of Victoria advocates reforms to the respective state/territory residential tenancies legislation to regulate RTDs.