

Tenants Union ACT  
PO Box 8  
Civic Square ACT 2608  
Ph: 02 6247 1026  
Fax: 02 6257 4801  
E-mail: Deb\_Pippen@fcl.fl.asn.au

Karen Curtis  
Privacy Commissioner  
Human Rights and Equal Opportunity Commission  
GPO Box 5218  
Sydney NSW 2001

***RE: Review of Privacy Act private sector provisions***

Dear Ms Curtis

Thank you for the opportunity to respond to the paper *Review of the private sector provisions of Commonwealth Privacy Act 1988 – October 2004*. You will find our contribution attached.

As already indicated in our submissions throughout the process around this legislation, privacy protection has been an area of growing concern in the tenancy sector throughout the country. Moreover, the Tenants' Union (ACT) maintains that the implementation of legislation protecting tenants privacy and the use of personal information is vital to ensure that tenants' rights are not abused.

In light of the changes since the review, the Tenants' Union recognises the importance in contributing in this form to the development privacy practices in the private sector. However it must be acknowledged that we hold strong reservations as to the effectiveness of self-regulation and maintain our firm belief that legislation is the most desirable and effective form of protection for tenants (and consumers as a whole).

Yours sincerely

Deborah Pippen  
Executive Officer  
23 December 2004

# Review of the private sector provisions of Commonwealth Privacy Act 1988

## Tenants' Union (ACT) Response

### 1. Introduction

- 1.1. The Tenants' Union ACT Inc. (TU) is a community-based, non-profit, organisation. TU membership consists of public and private tenants, as well as individuals interested in tenancy issues. The TU represents ACT residential tenants (private and public), works to protect, promote and improve the rights and interests of all tenants.
- 1.2. The TU provides support to tenants through access to legal advice, information and resources about residential tenancy law and tenants' rights. It represents tenants views and concerns to government, industry groups, the media and the ACT community; and campaigns for better tenancy laws and improved housing conditions for all tenants
- 1.3. Since 1994 the TU (in conjunction with Welfare Rights and Legal Centre) has operated a part-time telephone advice service (TAS), offering advice, information, and limited advocacy assistance to tenants. It also provides community legal education to community groups, and has direct contact with many tenants on a range of issues.
- 1.4. The TU and TAS respond to approximately 4,500 enquiries from ACT tenants over a year. The issues raised here have been identified through direct contact with tenants.
- 1.5. The situation for ACT tenants reflects that experienced in other states and territory. In the ACT approximately 28% of residential properties were rented properties; the national average was 26.4%<sup>1</sup>. Canberra has the highest median rent across the country, and vacancy rates for affordable properties remain high<sup>2</sup>, ACT tenants face many difficulties and much competition accessing properties. This means they are rarely in a bargaining decision when it comes to seeking accommodation.

2. At the outset the Tenants' Union (TU) acknowledges that in relation to tenancy issues the regulation of Tenancy Databases is currently being looked at by the joint Standing Committee of Attorneys-General/Ministerial Council on Consumer Affairs Working Party. Issues raised here may not have been considered particularly in relation to database operators because they concern real estate agents, and tenants awareness and assertion their rights.
3. In the interest of brevity this response will be using dot points to discuss significant issues raised in the issues paper.

### 4. The rights of business:

*Other interests that compete with privacy including the 'right' of business to achieve its objectives efficiently* (p11).

In relation to the type of information collected by Real Estate Agents (REAs) on the pretext of it being necessary for the determination of whether an applicant is suitable, in 2002<sup>3</sup> the TU undertook a brief project examining application forms (see Attachment 1). Many REAs (approximately 50%) would only supply forms to applicants, however based on the sample it was disturbing to see the number and types of details applicants were required to provide. Many of these details did not supply information at all relevant to whether a person would be

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<sup>1</sup> Australian Bureau of Statistics 2001 Census of Population and Housing.

<sup>2</sup> Real Estate Institute of Australia, Market Facts , for June Quarter 2004

<sup>3</sup> We acknowledge that this occurred in 2002, however continued contact with tenants over this time leads us to conclude that there has been no change in REA practice.

a 'good' tenant. Additionally, there is no information supplied regarding what will happen to the information, either where the applicant is successful or not. These details are not at all relevant to a REA's ability to achieve its objectives efficiently

## **5. Recognising individual rights**

*The privacy provisions require organisations to give an individual information about their information handling processes so that he or she can make a decision about whether or not to give their personal information*

As noted above, it is our experience that REAs do not provide details to applicants about what will happen to the information they provide, beyond some references to the use of tenancy databases. No information is supplied about what happens with the information prior to the use of databases, or why such details are believed to be necessary.

## **6. Awareness of rights**

It is our experience that very few tenants are aware of the full extent of their tenancy rights, many assume a standard based on information provided by REAs and landlords, and this information is often far short of what rights actually are. Based on this long-term experience we would assume that the vast majority of tenants are in fact unaware of rights associated with their situation as a tenant.

## **7. Community confidence that rights are protected**

We note that the level of confidence in REAs is 26%.

There is community confidence if there is promotion of action being taken against breaches of codes and regulations, and if they see a change in behaviour. We have not experienced a change in tenant confidence.

## **8. Individuals able to exercise their rights**

### *8.1. Access to information:*

It is our experience that it remains very difficult for tenants to access their tenant files (this is in contrast to public housing we tenants can FOI files to check for accuracy) being held by REAs.

### *8.2. Exercising rights*

Applications figures from the ACT Residential Tenancies Tribunal demonstrates tenants reluctance to exercise/enforce rights:

**2003 – 2004**

<b>Applications by Lessors</b>	<b>2061</b>
<b>Applications by Tenants</b>	<b>151</b>
<b>Applications by ACT Housing</b>	<b>196</b>

These figures are the same throughout the country and they show that while tenants may access help lines and advice in their thousands, indicating many sometimes very serious issues, very few of them take the step of enforcing those rights. Tenants often relay fear of retaliation as a reason for not taking action, for tenants this can mean listing on a database, a bad reference, harassment or even eviction (since all jurisdictions provide for no cause terminations). Even if some of these fears are unfounded this is the common perception.

### *8.3. Resolution of complaints by conciliation*

As noted on in the Issues Paper “Individuals may not be in a position to negotiate their interest effectively in conciliation” (p300). The fear of retribution referred to above clearly indicates the power imbalance between REAs and tenants, this is the reason that mediation/conciliation is rarely used in other tenancy disputes.

## **9. Individuals’ control over personal information**

The most important aspect of this issue for tenants is that they have very little control for the reasons noted above.

### *9.1. Consent*

At the beginning of a tenancy the prospective tenant fills in an application form, they are generally told if they fail to fill in the form completely they will not be considered for the property. This is a particularly difficult situation where there is high demand (i.e. a low vacancy rate). The options are to fill in all details and agree to all questions (including permission for how information is to be used) or miss out on accommodation.

The notion of consent as used within the NPPs is based on the assumption that people are customers with choice. Often tenants have no choice, either they use the REA or they miss out on housing.

### *9.2. Extent to which organisations are adopting a bundled consent approach to their information handling practices*

It is our experience that this is common practice.

### *9.3. Collection practices that limit an individual’s control over his or her personal information*

This is noted above

### *9.4. Extent to which current practices are essential to business efficiency that outweighs the impact on individual privacy interests*

This was addressed above. In relation to the type of personal information being required, there is no justification for information not at all related to whether an individual will pay rent on time and look after a property.

### *9.5. Effectiveness of NPPs in ensuring consent to use and disclose*

Our organisation and advice service has not observed any changes in practices and behaviour as a result of the NPPs in relation to consent.

## **10. Small business exemption**

*The issue paper notes that the basis for the exemption is that not all small private sector organisations pose the same risk to privacy*

The TU is concerned that there is a significant number of REAs that demand irrelevant info that cannot be justified. We maintain that when considering the need to balance the right to privacy against the need to avoid unnecessary costs on small business, consideration must be paid to the vulnerability of the customers.

**Attachment 1**

**REA Application forms**

Phoned:

1.	Name	Response (sent form)	Form received
2.	Ainslie Real Estate (Brian Rumble)	No – only send forms after a tenant has viewed a property	n/a
3.	LJ Hooker (Dickson)	Yes	✓
4.	Asset Real Estate	Yes	
5.	Badenoch Real Estate	Yes	✓
6.	Peter Blackshaw	Yes	✓
7.	Bryan Rumble	No - only send forms after a tenant has viewed a property	n/a
8.	Ces Hodgkinson	No - only send forms after a tenant has viewed a property	n/a
9.	Elders Real Estate	Yes	✓
10.	Engel & Whitem First National	Yes	✓
11.	Ethics Real Estate	No - only send forms after a tenant has viewed a property	n/a
12.	Independent	Yes	✓
13.	Kashan	Yes	
14.	Philip Kouvelis	Yes	✓
15.	Leader	Yes	
16.	Lita McKell & Associates Realty	Yes	✓ page 1 only
17.	Maloneys	Yes	✓
18.	Ray White Northside	Yes	✓
19.	Richard Luton Properties	Yes	
20.	Sadil Quinlan	Yes	✓
21.	Wright Dunne Real Estate	No - only send forms after a tenant has viewed a property	n/a

### Notes re information required on application forms

In order to determine what type of information is being required by REAs the TU contacted 21 ACT REAs (of the 133 REAs listed in the Act Yellow Pages\*) at random requesting copies of application forms. Eleven forms were provided. Five REAs will not supply application forms unless the request is in relation to specific premises that a person has inspected.

The following table provides a collection of the types of information that is required that is not directly related to determining whether a person is suitable for a tenancy. Some of the questions applicants are asked and statements they are required to agree to are in direct contravention of a variety of legislation. The very existence of these points clearly indicates the importance of strong regulation of this industry. We have no idea what of this information is passed on to tenancy database operators.

Issue	Number of forms included on
Incomplete applications will not be processed	2
Separate application for each adult occupant	2
Citizenship – if no have you applied for a visa or do you hold a visa, if have a visa provide expiry date	1
Date of Birth	11
Marital status	5
Full-time/part-time	1
Position at work	1
Gross monthly wage (evidence must be attached)	6
Period of employment	10
Previous employment details	1
If self –employed – Name of business, ABN, how long self-employed, name of accountant	1 (Maloneys)
If student, unemployed etc, provide details of income	1
If under 18 years old, may require rental guarantor	1
Occupation	9
Drivers Licence number (plus photocopy) Independent requires this as for service of notices as per clause 98 of RTA	11
Photographic identification. 100 points – drivers license, passport, last 4 rent receipts, other photo ID, copy of birth certificate, pension card, previous rental reference, current rego papers, Telstra etc account	1
Car registration number	7
Next of kin (plus relationship - Independent, Maloneys)	5
Contact name for emergencies	4
Children names and ages	5
Names and ages of all people to occupy premises	1
Do you currently rent or own premises living in	2

\* Note: Of the 133 REAs 9 belong to one franchise, at least 3 to another (not all agents list the parent company in their phone listing/ad); 7 to another; 7 to another; 3 to another; and 6 to another. This means that at least 35 agencies are using 5 different standard application forms, of which we have 4 forms.

<b>Issue</b>	<b>Number of forms included on</b>
Current rent paid	7
Are you applying for other rental properties, is this property your first choice	1
Smokers	1
Previous addresses, plus contact numbers over past 5 years; last 2 tenancies	8
Bank and branch	1
Current liabilities (Hire purchase and credit accounts) Bank & branch, account no., current/finalised, type of account. Lita McKell	1
Reason for leaving previous tenancy	4
I give permission for the agent to carry out at its discretion any reference check that it considers to be necessary before allowing me to enter into a tenancy agreement (LJ Hooker)	2
We acknowledge we will make no claim or demand nor commence litigation against the lessor or his agent should the premises be found to be unavailable	7
I declare that I am not bankrupt or an undischarged bankrupt.....	9
I declare that I am at least 18 years of age	1
I will/will not be receiving rental assistance	1
I understand that this application is subject to owner approval and the present tenants giving vacant	1
I acknowledge that once my application has been accepted I must pay a cash holding deposit, being equivalent to 2 week's rent, to the agent as soon possible (Engel & Whitem)	1
I confirm that the rental to be paid is within my means	3
I am aware that all rent will be accepted by B-Pay only. My B-Pay card will be issued at the commencement of the tenancy and then it is my responsibility to arrange this with my bank	1
I accept the condition of the premises as at the date of application	1
I understand a National database check will be conducted (Barclay MIS and TICA – Maloneys)	2
The property will remain on the market until the lease has been signed and at least the first week's rent has been paid	1
Have you ever been evicted? Has any REA/LL ever refused you another property Are you in debt to another REA/LL? Was your last rental bond refunded in full, if no – what deductions were made: rent arrears \$, repairs & maintenance \$, cleaning \$	1 (Maloneys)