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Tenants Queensland

Review of Queensland's Tenancy Database Legislation

in partnership with
Tenants Queensland

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Executive Summary

The number of Australian residents living in private rentals increased from 20% to 26% between 1999 and 2020. Given that in 2019-2020, there were approximately 1.9 million households in private rental properties, this rate is only likely to have increased further.¹ For the millions of Australians privately renting, housing stress has continued to increase as rental costs skyrocket and vacancy rates hit record lows.² In the context of the challenging rental market, the issue of tenancy database listings continues to contribute to housing insecurity for many Queensland tenants.

This report draws upon collected survey data and literature to assess Queensland's regulation of tenancy databases under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (**RTRA Act**).³

The *RTRA Act* defines a 'tenancy database' as a database containing information that is:

1. 'personal information relating to, or arising from, the occupation of residential premises under a residential tenancy agreement'; or
2. 'used for the purpose of relating to a past, current or future occupation of residential premises under a residential tenancy agreement.'⁴

Staff of Tenants Queensland completed an online survey concerning the use of tenancy databases in Queensland. By analysing these surveys and conducting further consultations with Tenants Queensland, we identified four key issues of concern related to the use of tenancy databases in Queensland:

1. access to information related to tenancy database listings;
2. inaccuracy of tenancy database listings;
3. unregulated use of internal tenancy databases, including Tenancy Information Centre of Australia (TICA) Virtual Manager; and
4. barriers to tenants challenging their database listings.

This report illustrates the significant difficulties that clients of Tenants Queensland are experiencing in accessing and disputing tenancy database listings, with staff at Tenants Queensland reporting high rates of unlawful and unjust listings. Supported by literature, this report identifies the need for legislative reform. By enhancing the oversight of those who publish database listings, this should reduce the number of unlawful and unjust database listings. The findings suggest most Tenants Queensland's clients are reluctant to challenge listings. As such, it is recommended that Tenants Queensland prioritise educating tenants about the legal pathways they can access to support services through QSTARS, to ensure that tenants are able to take full advantage of the legislative protections available to them.

¹ Australian Bureau of Statistics, *Survey of Income and Housing, User Guide, Australia* (Catalogue No 6553.0, 25 May 2022).

² 'National vacancy rates hit record low as affordability starts to impact rent hikes' *CoreLogic* (online, 10 October 2022) <<https://www.corelogic.com.au/news-research/news/2022/national-vacancy-rates-hit-record-low-as-affordability-starts-to-impact-rent-hikes>>.

³ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ('*RTRA Act*').

⁴ *RTRA Act* (n 3) s 457 (definition of 'tenancy database').



Legislative Background

1.1 Access to Information

1.1.1 Costs

The *RTRA Act* includes provisions to ensure that tenants are first given the opportunity to review their information prior to it being listed on a database. The *RTRA Act* requires lessors and agents to provide a tenant with notice of the listing and an opportunity to dispute the listing. A tenant must not be listed unless they have been provided with a free copy of the information to review at least 14 days before the agent or landlord publishes the listing. Landlords and agents cannot list information that they are aware is inaccurate, incomplete or out of date. Additionally, landlords, agents and databases are required to give tenants a copy of the information listed on a database within 14 days of the tenant's request and payment of any relevant fees after a listing has been made.

Agents and database operators can charge tenants a fee for providing the information about the tenant's database listing. The *RTRA Act* only provides that such fees 'must not be excessive'.⁵ Charges vary between database operators.

Costs charged by databases for access to information

Database	Cost
National tenancy database (Equifax)	Offers a free copy of information within 10 working days; or, instant access through a partner site for \$38.50.
TICA	Offers a single copy of a listing for \$19.80 or yearly access under a 'fraud preventing and monitoring' service for \$55 which includes a free initial full report.
Trading Reference Australia	Offers a free copy within 21 business days or instant access for \$23.80

Jurisdictional Comparison: The Imposition of Costs

When comparing requirements under Queensland legislation with other Australian jurisdictions, it appears that the costs imposed on tenants are similar between states. Most states allow agents and tenancy database operators to charge a reasonable fee for giving tenants a copy of their database listing. Queensland, Western Australia, Victoria, South Australia, Northern Territory and the Australian Capital Territory permit database operators to charge such fees.⁶ However, under Victorian legislation for example, a tenant cannot be charged for the first time they access personal information within any 12-month period.⁷ New

⁵ *RTRA Act* (n 3) s 459C(3).

⁶ *Ibid* s 459C; *Residential Tenancies Act 1997* (Vic) s 439I; *Residential Tenancies Act 1995* (SA) s 99J; *Residential Tenancies Act 1997* (ACT) s 95; *Residential Tenancies Act 1999* (NT) s 132; *Residential Tenancies Act 1987* (WA) s 82I.

⁷ *Residential Tenancies Act 1997* (Vic) s 439I(4)(c).



South Wales tenancy law prohibits database operators from charging tenants for accessing tenancy records.⁸

1.1.2 Notice of Tenancy Database Use

In regard to prospective tenants applying to enter a new tenancy agreement, if agents and lessors regularly use tenancy databases or intend to use a tenancy database, the *RTRA Act* requires that tenants are given notice of this use in writing.⁹ Additionally, in the event that a person applies to a lessor or lessor's agent to enter into a residential tenancy agreement, and the lessor or agent identifies personal information in the database when reviewing the applicant's information (if any), the lessor must, within seven days of using the database, provide the applicant with notice under s 458B.

Case study¹⁰

James paid for a “*Rentcheck service*” through one tenancy database under the impression that this would give him access to all listed information about him. However, the database only listed a notation which indicated that there had been an enquiry made. James was only then made aware that the service only included information from one database and that a listing concerning him had been made on a different database. As a result, James was required to pay for information on a second database to access substantive information that had been listed about him. Miscommunication between lessors/agents and listed tenants can lead to tenants paying unnecessary fees to multiple database operators.

1.1.3 Temporal Requirements

Lessors/agents and tenancy database operators must adhere to statutory timelines when providing tenants with access to their information. There appears to be no recourse for tenants who do not receive their information within the 14 days of requesting the information to contest time delays. As a result, tenants who do not receive their information within the 14-day period do not have the ability to rectify this issue and are limited to emailing the database in response. Timely communication is necessary to ensure that agents, lessors and databases are not withholding information for extended periods of time. It is also necessary that tenants receive information in a timely manner in order to understand and dispute their listing where necessary, particularly in the event that tenants are applying for new tenancy agreements.

1.2 Accuracy of Tenancy Database Listings

1.2.1 Content of Database Listings

The *RTRA Act* regulates the contents of tenancy databases to ensure the private information of tenants is being shared lawfully and within the criteria stipulated in the Act.¹¹ In particular, the Act sets out specific circumstances and actions that must be taken by listing agents and lessors to ensure that the private information is being listed in the correct circumstances and is accurate and clear.

⁸ *Residential Tenancies Act 2010* (NSW) s 216(3).

⁹ *RTRA Act* (n 3) ss 458A and 458B.

¹⁰ These case studies are based on real clients. All clients' names have been changed, and any identifying information has been removed, to protect their privacy.

¹¹ *RTRA Act* (n 3).



An individual can only be listed on a database if they were named as a tenant under the tenancy agreement, the tenancy agreement has ended, there is a reason prescribed under the legislation for listing the information and an order has not been made under s 245(6) by QCAT.¹² A person must not list personal information about another person if the person is aware that the personal information is inaccurate, incomplete, ambiguous or out-of-date.¹³ Fulfilling this obligation requires that agents and lessors are complying with processes explained above and within s 459(2) by ensuring that the information that is being listed has been approved by the tenant.¹⁴ Additionally, if a tenant submits objections, the listing person must consider any submissions made to ensure that the information they eventually list is accurate.¹⁵

Sometimes, listings are found to be unlawful. A listing is unlawful if it is not made for a lawful reason or procedural requirements are not adhered to (e.g., where the listing is not 'proposed' to the tenant before it is made). Lawful reasons for listing personal information on a tenancy database are prescribed by Part 4 of the *RTRA Act* and include: where the tenant has failed to pay an amount of money owing to the lessor that is higher than the amount of the bond; termination of the tenancy on the ground of objectionable behaviour; and termination of the tenancy due to repeated breaches of the tenancy agreement.

1.2.2 Quality of Database Listings

Section 459A seeks to ensure the quality of listings by agents and lessors on tenancy databases by requiring agents and lessors to provide databases with written notice if they become aware that the personal information listed about a tenant is inaccurate, incomplete, ambiguous or out of date. If the agent or landlord is made aware of this, they will have 7 days to inform the database for the information to be amended or removed.¹⁶

Section 459B regulates the role played by database operators in ensuring the quality of listings.¹⁷ Database operators are required to amend information that is inaccurate, incomplete or ambiguous, or remove information that is out of date within 14 days of notice being given.

1.2.3 Jurisdictional Comparison: Content and Quality of Database Listings

Legislation regarding the veracity of listings is similar across Australian jurisdictions, however it is not uniform. There are key differences regarding the time in which lessors are required to amend unlawful or inaccurate listings, as well as the penalties for a breach of the relevant legislation.

The time allowances within which lessors are obligated to amend unlawful listings are more lenient in Queensland than in other states and territories. In Victoria,¹⁸ New South Wales¹⁹ and South Australia,²⁰ lessors and lessors' agents are given seven days to amend unlawful or inaccurate database listings, compared to 14 days in Queensland. By allowing lessors and agents a longer amount of time to amend incorrect database entries, false and inaccurate information is accessible for a longer period of time and places a more significant burden on

¹² Ibid ss 459(1), 245(6).

¹³ Ibid s 459(5).

¹⁴ Ibid s 459(2).

¹⁵ Ibid s 459(2).

¹⁶ Ibid ss 459A(2)(a) and 459A(2)(b).

¹⁷ Ibid s 459B.

¹⁸ *Residential Tenancies Act 1997* (Vic) s 439G.

¹⁹ *Residential Tenancies Act 2010* (NSW) s 213.

²⁰ *Residential Tenancies Act 1995* (SA) s 99G.



the tenant.

Penalties for lessors or agents who contravene provisions relating to unlawful or inaccurate listings also differ between States and Territories. In Queensland, the maximum penalty is 20 penalty units for lessors under s 459A (equivalent to a fine of \$2,875)²¹ and 40 penalty units for database operators under s 459B.²² South Australian fines for breaches of unlawful or inaccurate listings amount to \$5,000, while Victorian legislation is far more punitive, with maximum fines of \$137,940.²³ Victorian legislation attempts to redress the balance between lessors/agents and listed tenants. Failure to include accurate and up to date information can detrimentally affect tenants by presenting misleading accounts of a person's character, finances and tenancy history.

Unlawful and inaccurate listings made by lessors persist on a national level and continue to affect tenants. A 2020 article comparing the tenancy database laws between states established that evictions by unlawful means continue to be a consistent issue in each state.²⁴

1.2.4 Legislative History

Concerns regarding the misuse of tenancy databases have been long-standing. In 2002, a Residential Tenancies Authority report identified significant concerns regarding the use and operation of tenancy databases, including inappropriate listing practices.²⁵ Amendments to the *Residential Tenancies Act 1994* (Qld) were recommended to regulate database listings and the practices of lessors.²⁶ Under the current *RTRA Act*, it was anticipated that legislative compliance would be monitored and enforced.²⁷ In 2016, further amendments were made to protect listed tenants,²⁸ including changes to the circumstances in which personal information could be published on tenancy databases.²⁹ Specifically, a tenant could not be listed on a database where they owed an amount less than or equal to the rental bond paid.³⁰ Despite these amendments, issues of enforcement and compliance regarding provisions of database listings continue to persist.

A host of issues arise from inaccurate, incomplete, or ambiguous database listings. Such listings are unfair and emerge from the power imbalance between lessors and agents on the one hand and tenants on the other. An example of an inaccurate (and out-of-date) listing is where the tenant had repaid their debt more than three months earlier but there was a failure to correct the listing. An example of an unjust listing is where a tenant has left a property to escape domestic violence and a remaining tenant was responsible for damage after they left. The existence of such listings poses significant obstacles for individuals seeking new tenancies. This is because, based on the information they are provided, prospective lessors deem such tenant as 'difficult' or a risk, irrespective of whether the listing is correct. Therefore, listed tenants will face significant challenges finding a rental property. This means that such database listings can impact tenants' chances of finding rental properties for a longer time period. These challenges are magnified for tenants living in Queensland cities facing rental

²¹ *RTRA Act* (n 3) s 459A.

²² *Ibid* s 459B.

²³ *Residential Tenancies Act 1995* (SA) s 99G; *Residential Tenancies Act 1997* (Vic) s 439G.

²⁴ Chris Martin, 'Australian Residential Tenancies Law in the Covid-19 Pandemic: Considerations of Housing and Property Rights' (2021) 44(1) *UNSW Law Journal* 197, 220.

²⁵ Renee Gastaldon, 'Towards National Regulation of Residential Tenancy Databases: the Queensland Perspective' (Research Brief, Parliamentary Library, Queensland Parliament, 10 May 2011) 1.

²⁶ *Ibid*.

²⁷ *RTRA Act* (n 3) s 5(2)(d).

²⁸ See *Residential Tenancies and Rooming Accommodation Amendment Regulation (No 1) 2016* (Qld).

²⁹ Michael Gapes, 'Do you know about new requirements for residential tenancy databases?' (2016) (June) *REIQ* 42, 43.

³⁰ *Residential Tenancies and Rooming Accommodation Amendment Regulation (No 1) 2016* (Qld) 2.



crises, such as Brisbane.³¹ This is because the number of applicants for rental properties are high, resulting in a more competitive application process. As a result, tenants may be forced to ‘couch surf’ or rely on other forms of insecure housing.

Case studies³²

Jasmine sought advice after her former real estate agent left a message on her phone regarding a tenancy database listing. Despite the listing having been added six years ago and no longer being listed when Jasmine searched for it, the real estate agent informed her that the information was still available to agents who searched her. Tenants Queensland suspected that this is because the information was made available internally through TICA Virtual Manager. The real estate agent notified Jasmine that they would inform any prospective agent of the debt Jasmine owed.

Carmen sought advice regarding a tenancy database listing. The listing displayed Carmen’s current address, which was a women’s shelter. Including such information can pose a risk to the tenant’s safety and may imperil their future housing security.

Declan sought support after he received confusing results from tenancy database searches he carried out for his information. In particular, Declan received an Equifax report that included a ‘notation’ stating ‘enquiry’. After QSTARS contacted Equifax for clarification, Equifax replied that this was a notation and not a blacklisting. At the time, Declan and his two children were homeless.

Joseph sought advice after experiencing difficulties associated with a “notation” in his listing which related to a property owned by his mother’s house which she had owned for 20 years. Joseph believed that this notation related to a police incident which had occurred at the property 12 months prior despite the incident not occurring that the address relevant to the listing.

1.3 Regulating Internal Tenancy Databases

Section 458 provides that tenancy database regulations do not apply to ‘a tenancy database kept by an entity for use only by that entity or its employees or agents. Similar provisions are found in NSW,³³ Victoria,³⁴ South Australia,³⁵ the Australian Capital Territory,³⁶ Western Australia,³⁷ and Tasmania.³⁸

There are neither notice requirements nor time limits for information held in internal databases. Therefore, tenants are unlikely to be aware that their information is held by such agencies. Furthermore, there is no way for tenants to dispute the accuracy of these internal database listings. Meanwhile, there are no regulations that govern internal database listings (at least on TICA Virtual Manager). This means that internal database listings are not subject to alteration

³¹ See, eg, Core Logic, ‘The Brisbane Rental Crisis in Five Charts’ (online, 7 September 2022) <<https://www.corelogic.com.au/news-research/news/2022/the-brisbane-rental-crisis-in-five-charts>>.

³² These case studies are based on real clients. All clients’ names have been changed, and any identifying information has been removed, to protect their privacy.

³³ *Residential Tenancies Act* (NSW) s 210.

³⁴ *Residential Tenancies Act* (Vic) s 439B.

³⁵ *Residential Tenancies Act 1995* (SA) s 99B.

³⁶ *Residential Tenancies Act 1997* (ACT) s 88.

³⁷ *Residential Tenancies Act 1987* (WA) s 82B.

³⁸ *Residential Tenancy Act 1997* (Tas) s 48V.



or removal even if, for example, there is proof that a database listing is false or that there has been a case of mistaken identity.³⁹

Internal databases enable real estate agents and lessors to bypass regulations imposed on external databases. Mission Australia⁴⁰ and the Victorian Law Reform Commission⁴¹ have identified attempts by real estate agents and/or agencies to avoid complying with existing legislation by selling information deleted on external databases so that agents can add such data to their internal databases. While TICA has claimed that it complies with the Australian Privacy Principles, the use or disclosure of personal information is not restricted by the *Privacy Act 1988* (Cth) where consent has been provided by the tenant. Prospective tenants generally give consent because that authorisation is a prerequisite to lessors/agents seriously considering their tenancy applications. Failure to consent may appear to signal to the agent and/or lessor that the applicant has something to hide or is 'trouble' and should therefore be excluded from further consideration. This represents a market failure deserving of intervention.⁴²

Case studies⁴³

Amy sought advice regarding a real estate agent she had dealt with regarding a property six years ago. The real estate agent was still regularly contacting Amy to inform her that the agent had listed her on TICA's Virtual Manager. The agent told Amy that they were contacting all agents who searched for information about Amy to advise them that Amy still owed them a debt. A complaint was made to the Residential Tenancies Authority (**RTA**) regarding the real estate agent's conduct, particularly on the basis of section 459D of the *RTRA Act*, which provides that database operators must not keep personal information about a person in a tenancy database for longer than three years. However, because the *RTRA Act* does not apply to internal databases, no action could be taken.

Immediately after John's tenancy commenced, John received a letter from the real estate agent warning him that he had been listed on TICA Virtual Manager. The letter stated:

[W]e advise that we have recorded your details in our TICA Virtual Manager program which will monitor your tenancy applications as part of our Risk Management procedures to protect our landlord's exposure. ... When you apply to another [property] TICA member will be advised of your tenancy application.

This case study demonstrates the eagerness of some agencies to use TICA Virtual Manager, and how it can be used to intimidate tenants from the beginning of their tenancies. Unlike external databases, there is no limit on how long information can be kept in an internal database. This could indefinitely hinder an individual from acquiring another tenancy.

³⁹ 'Tenants', *TICA* (Web Page, 2022) <<https://www.tica.com.au/tenants.php>>.

⁴⁰ Mission Australia, *Residential Tenancy Database Study* (2004) 7–8.

⁴¹ Victorian Law Reform Commission, *Residential Tenancy Databases* (Report, March 2006) 38.

⁴² Bruce Arnold, 'Those Who Won't be Missed?: Questions about Tenant Profiling and Privacy' (2011) 7(4) *Privacy Law Bulletin* 50, 53.

⁴³ These case studies are based on real clients. All clients' names have been changed, and any identifying information has been removed, to protect their privacy.



1.4 Challenging an Unjust, Unlawful or Inaccurate Listing

1.4.1 Option 1: Notifying the lessor agent of deficiencies in the listing

If a lessor or agent has listed personal information about a person and becomes aware that the information is inaccurate, incomplete, ambiguous or out of date, the lessor or agent must, within seven days of becoming aware, either amend the listing or provide written notice to the database operator of these deficiencies.⁴⁴ Within fourteen days of receiving a written notice of deficiencies, the database operator is required to make all necessary amendments to the listing.⁴⁵ These provisions are mirrored in legislation across New South Wales,⁴⁶ Western Australia,⁴⁷ the Northern Territory,⁴⁸ South Australia,⁴⁹ Tasmania,⁵⁰ and the Australian Capital Territory.⁵¹ In Victoria, lessors and agents are also required to remove listings if they become aware that the information relates to an act or circumstance of family violence or personal violence experienced by the person whose personal information is listed.⁵²

1.4.2 Option 2: Making an application to QCAT

The *RTRA Act* allows tenants to apply to QCAT to challenge an actual or proposed listing in three circumstances:

1. The listing violates section 459(1) of the *RTRA Act*, meaning either:⁵³
 - (a) The subject of the listing is not named on the lease;
 - (b) The agreement has not ended;
 - (c) The listing was not made for an approved reason (e.g. unpaid rent, objectional behaviour); or
 - (d) QCAT has made an order relating to domestic and family violence pertaining to the tenancy; or
2. The listing includes personal information about the tenant which:
 - (a) Is inaccurate, incomplete, ambiguous or out-of-date;⁵⁴ and
 - (b) It would be unjust to include in the listing in light of the reason for the listing, tenant's involvement in acts or omissions giving rise to the listing, likely adverse consequences of the listing for the tenant, and any other relevant matter;⁵⁵

⁴⁴ *RTRA Act* (n 3) s 459A(1)–(3).

⁴⁵ *Ibid* s 459B(1)–(3).

⁴⁶ *Residential Tenancies Act 2010* (NSW) ss 213A–214.

⁴⁷ *Residential Tenancies Act 1987* (WA) ss 82G–82H.

⁴⁸ *Residential Tenancies Act 1999* (NT) ss 130–131.

⁴⁹ *Residential Tenancies Act 1995* (SA) ss 990–991.

⁵⁰ *Residential Tenancy Act 1997* (Tas) ss 48ZA–48ZB.

⁵¹ *Residential Tenancies Act 1997* (ACT) ss 93–94.

⁵² *Residential Tenancies Act 1997* (Vic) ss 439G–439H.

⁵³ *RTRA Act* (n 3) ss 459(1), 460(1); *Residential Tenancies and Rooming Accommodation Regulation 2008* (Qld) div 2.

⁵⁴ *RTRA Act* (n 3) s 461(3)(a).

⁵⁵ *Ibid* s 461(3)(b).



and/or

- The tenant is aware of a proposed listing which, if made, would fall into one or more of the criteria outlined above.⁵⁶

Despite efforts to introduce uniform regulation of tenancy databases across Australia, the grounds upon which database listings can be challenged varies between jurisdiction (see the table directly below). Given that approximately 100,000 people move interstate each quarter, it can be difficult for tenants wishing to challenge a listing to navigate the differences between tenancy statutes.⁵⁷

Comparative overview of legislative grounds available to challenge tenancy database listings

	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
Listing includes personal information about the applicant that is inaccurate, incomplete, ambiguous or out-of-date	✓ ⁵⁸	✓ ⁵⁹		✓ ⁶⁰		✓ ⁶¹		✓ ⁶²
Unlawful reason for listing	✓ ⁶³		✓ ⁶⁴		✓ ⁶⁵			✓ ⁶⁶
Listing is unjust	✓ ⁶⁷	✓ ⁶⁸	✓ ⁶⁹	✓ ⁷⁰		✓ ⁷¹		✓ ⁷²
Listing has been on database for over 3 years		✓ ⁷³			✓ ⁷⁴			✓ ⁷⁵
Specific grounds relating to domestic, family or personal violence	✓ ⁷⁶		✓ ⁷⁷	✓ ⁷⁸				

⁵⁶ Ibid s 462.

⁵⁷ Australian Bureau of Statistics, *Regional internal migration estimates, provisional* (Latest Release, 3 August 2021).

⁵⁸ *RTRA Act* (n 3) s 461(3)(a).

⁵⁹ *Residential Tenancies Act 2010* (NSW) s 217(2)(a).

⁶⁰ *Residential Tenancies Act 1987* (WA) s 82J(2)(a).

⁶¹ *Residential Tenancy Act 1997* (Tas) s 48ZF(3)(a).

⁶² *Residential Tenancies Act 1997* (ACT) ss 99–100.

⁶³ *RTRA Act* (n 3) ss 459(1), 460(1).

⁶⁴ *Residential Tenancies Act 1997* (Vic) ss 439L(1), 439E.

⁶⁵ *Residential Tenancies Act 1995* (SA) s 99L(2), 99F.

⁶⁶ *Residential Tenancies Act 1997* (ACT) ss 91, 98.

⁶⁷ *RTRA Act* (n 3) s 461(3)(b).

⁶⁸ *Residential Tenancies Act 2010* (NSW) s 217(2)(b).

⁶⁹ *Residential Tenancies Act 1997* (Vic) s 439L(2A). Specific consideration is given to whether there is a real likelihood that the listing would have a disproportionate impact on the ability of the renter to access future rental accommodation.

⁷⁰ *Residential Tenancies Act 1987* (WA) s 82J(2)(b).

⁷¹ *Residential Tenancy Act 1997* (Tas) s 48ZF(3)(b).

⁷² *Residential Tenancies Act 2010* (NSW) s 217(2)(b).

⁷³ Ibid ss 217(2)(a), 218(1).

⁷⁴ *Residential Tenancies Act 1995* (SA) ss 99L(2), 99K.

⁷⁵ *Residential Tenancies Act 1997* (ACT) ss 97–98.

⁷⁶ *RTRA Act* (n 3) ss 459(1), 460(1); *Residential Tenancies and Rooming Accommodation Regulation 2008* (Qld) div 2.

⁷⁷ *Residential Tenancies Act 1997* (Vic) s 439L(2A).

⁷⁸ *Residential Tenancies Act 1987* (WA) s 82J(2A).



Method

This project was carried out in two phases.

2.1 Phase 1: Survey

2.1.1 Developing and administering the survey

In the first phase of the project, student researchers Hannah Woodfield and Georgia Marler designed a survey, so we could collect, analyse and identify key issues relating to tenancy database legislation. To develop the survey, we undertook preliminary research on issues associated with tenancy database legislation (using such databases as LexisAdvance and Westlaw). Our team also participated in a round table discussion with Tenants Queensland to identify and explore key issues their clients were facing regarding tenancy databases. Based on preliminary findings, we developed an online survey in Google Forms, comprised of 16 optional questions. The questions were either form multiple-choice, short-response or long-response.

The survey was distributed to all Tenants Queensland staff and QSTARS team (managed by Tenants Queensland) in July 2022. The survey closed at the end of August 2022. The survey was completed by a total of 35 respondents and all responses were anonymous. Using the raw data collected, our researchers generated tables and graphs to identify key trends and issues. These results were presented to Tenants Queensland. In consultation with Tenants Queensland, we identified four key issues for analysis. A copy of the raw survey data collected can be viewed in the Appendix of this Report.

2.1.2 Limitations

The survey was limited to Tenants Queensland staff and was answered by only 35 respondents. Accordingly, the key issues selected by the researchers may not be reflective of the primary issues affecting tenants in Queensland generally.

A limitation of the survey design was that all survey questions were optional. This was intended to accommodate staff who did not have time to commit to answering all the questions. As such, some questions were not answered by all respondents and so there was a smaller pool of data. However, it should be noted that some respondents may have chosen not to answer specific questions if they did not have experiences relevant to a specific question.

Real estate agents and lessors did not participate in this survey. As the operation of tenancy databases relies on these stakeholders, this report does not present potential alternative viewpoints.

2.2 Phase 2: Review

In the second phase, our expanded research team—Hannah Woodfield, Georgia Marler and Emily Leggett—reviewed legislation, literature, case law and other relevant resources relating to tenancy databases in Queensland (and Australia more broadly). Other relevant resources included de-identified material from Tenants Queensland. Our team used these resources to support our analysis of issues adversely affecting Queensland tenants, including the veracity of database listings, internal tenancy databases, accessibility to databases listings, intimidation and other barriers to tenants challenging database listings.

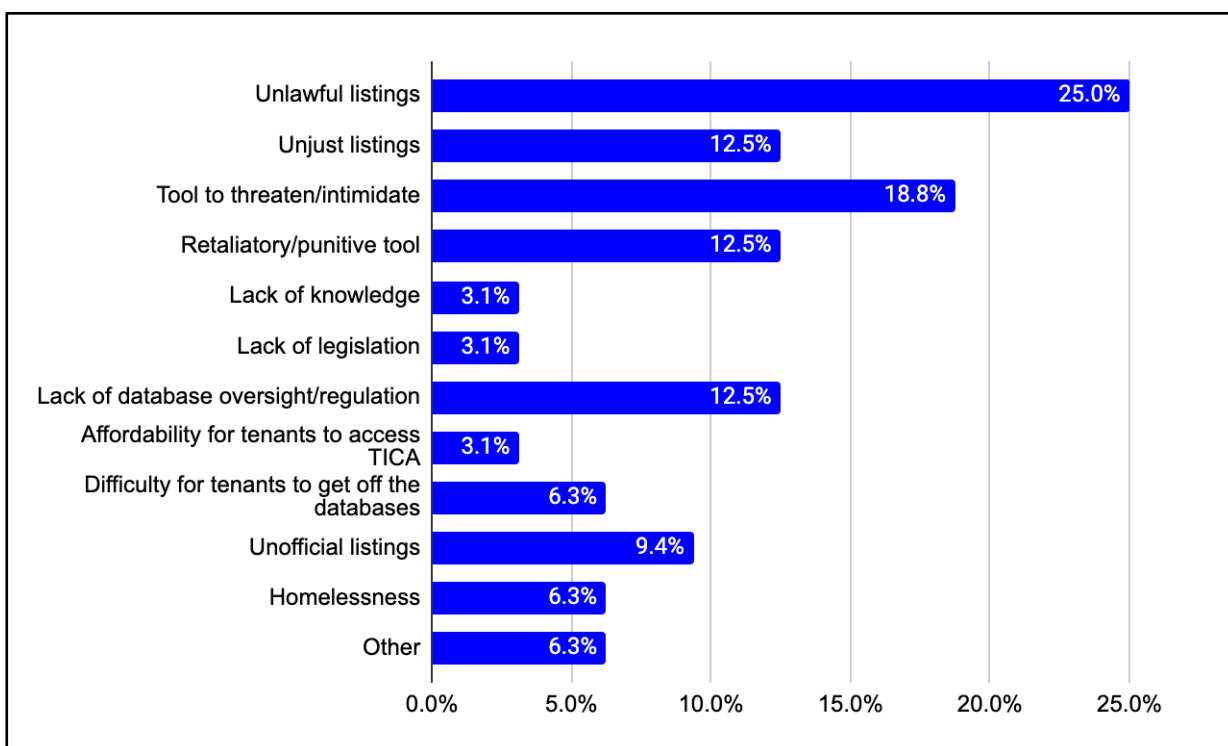


Results

The following results were obtained from a survey of a total of 35 staff members of Tenants Queensland across Australia.

Respondents identified several issues they currently face when assisting clients with tenancy database concerns. It was reported that the most significant issues experienced by clients relating to tenancy databases were: unlawful listings (25%), the use of databases as a tool to threaten or intimidate (18.8%), unjust listings (12.5%), the use of listings as a retaliatory or punitive tool (12.5%), and lack of oversight of listings (12.5%). Less common responses were lack of knowledge (3.1%), affordability for tenants to access TICA and lack of legislation (3.1%).

Common issues clients face in relation to tenancy databases



From the survey results, we identified four key issues of concern related to the use of tenancy databases in Queensland:

1. access to information related to tenancy database listings;
2. inaccuracy of tenancy database listings;
3. unregulated use of internal tenancy databases, including TICA Virtual Manager; and
4. barriers to tenants challenging their database listings.

Results related to each of these findings are discussed in turn below.



3.1 Access to information related to tenancy database listings

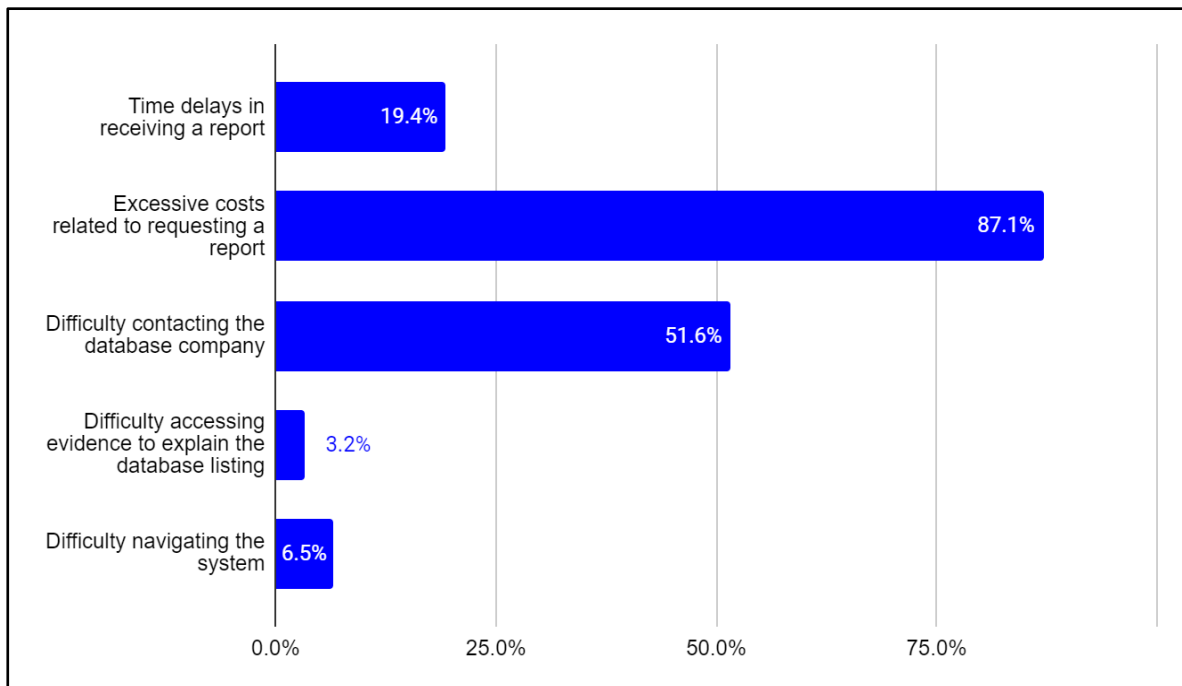
All 35 respondents reported they had assisted clients who had concerns about a tenancy database listing and were seeking access to the listing in the past 12 months.

The majority of respondents stated that clients only sought access to tenancy database listings on TICA (62.9%), while 37.1% of respondents reported that their clients sought access to databases other than TICA. The most common database respondents' clients sought access to in the past 12 months, other than TICA, was TICA Virtual Manager. A variety of other databases were also used by respondents' clients including realestate.com.au, Equifax, National Tenancy Database and Rent Check.

When asked to estimate the number of clients who had experienced issues with tenancy database listings in the past 12 months, most respondents reported around 11-30 clients had experienced such issues in this timeframe.

Survey respondents expressed that their clients faced several barriers in obtaining access to information on listings about them. Excessive costs associated with requesting a listing (87.1%), difficulty contacting the databases for information (51.6%) and time delays in receiving requested information (19.4%) were the most significant barriers to accessing information on tenancy databases. Only one survey respondent states that none of their tenant clients had experienced any of the issues listed.

Issues experienced by clients accessing information held about them on a tenancy database in the past 12 months



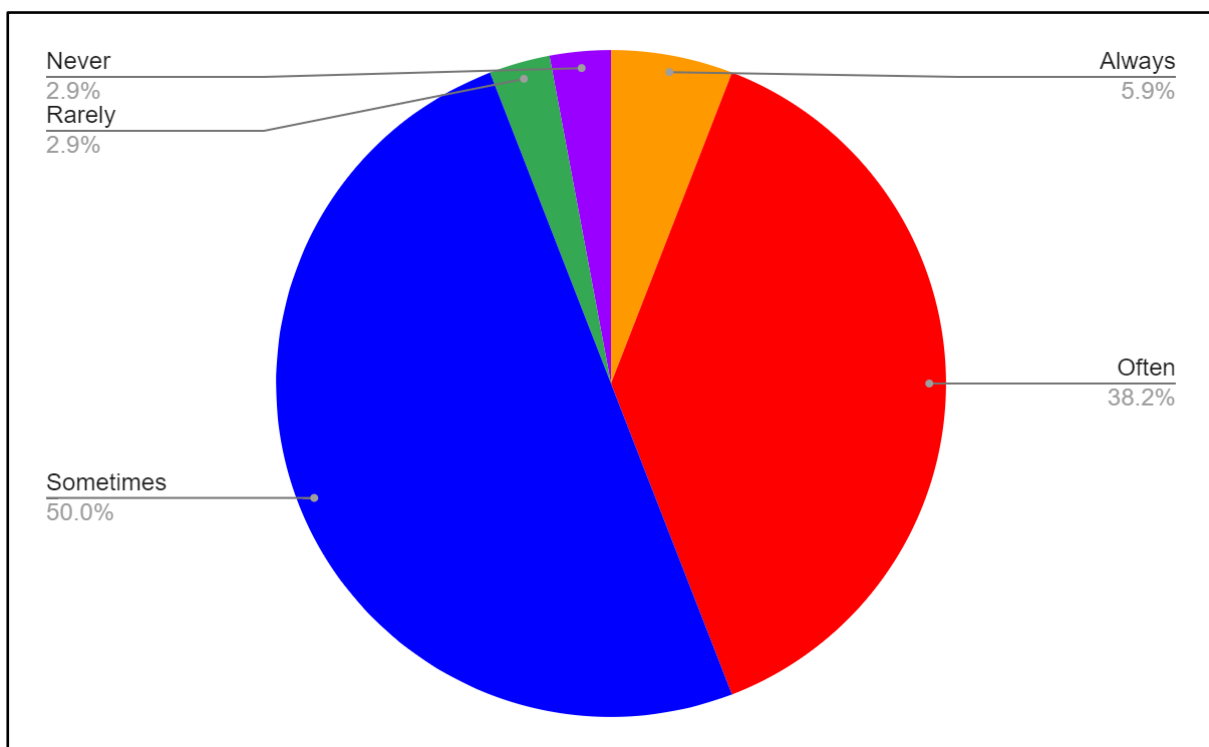
3.2 Accuracy of tenancy database listings

Inaccurate database listings may due to a lack of substance (e.g., the database listing is inaccurate or out-of-date), incompleteness or ambiguity..

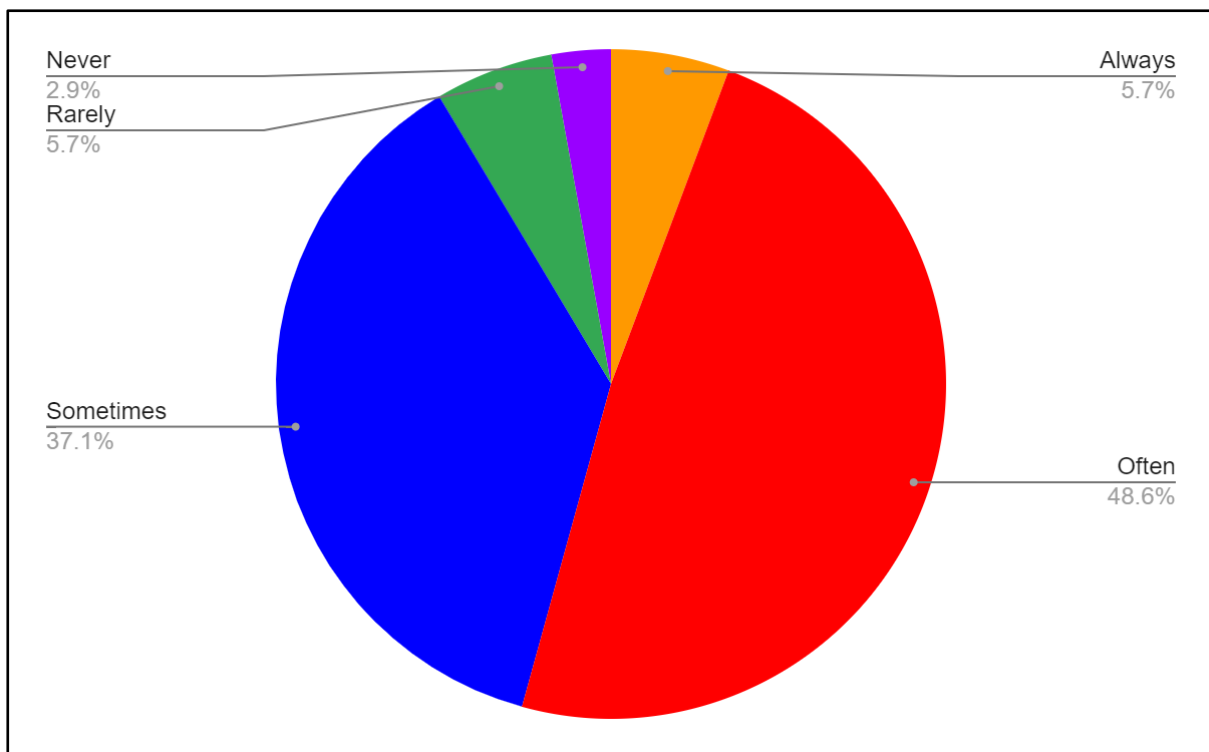
Half the respondents (50%) reported that their client tenants' database listings were 'sometimes' inaccurate, whilst 38.2% of respondents said they 'often' were. Only 2.9% of respondents had never found that their tenant-clients' database listings were inaccurate.

Approximately 48.6% of the respondents reported that their clients' database listings were 'often' unlawful, and 5.7% of respondents reported that the listings were 'always' unlawful. Very few respondents (2.9%) reported never finding their clients' database listings to be unlawful.

Frequency of Inaccurate Database Listings



Frequency of Unlawful Database Listings



3.3 Use of tenancy databases and internal databases

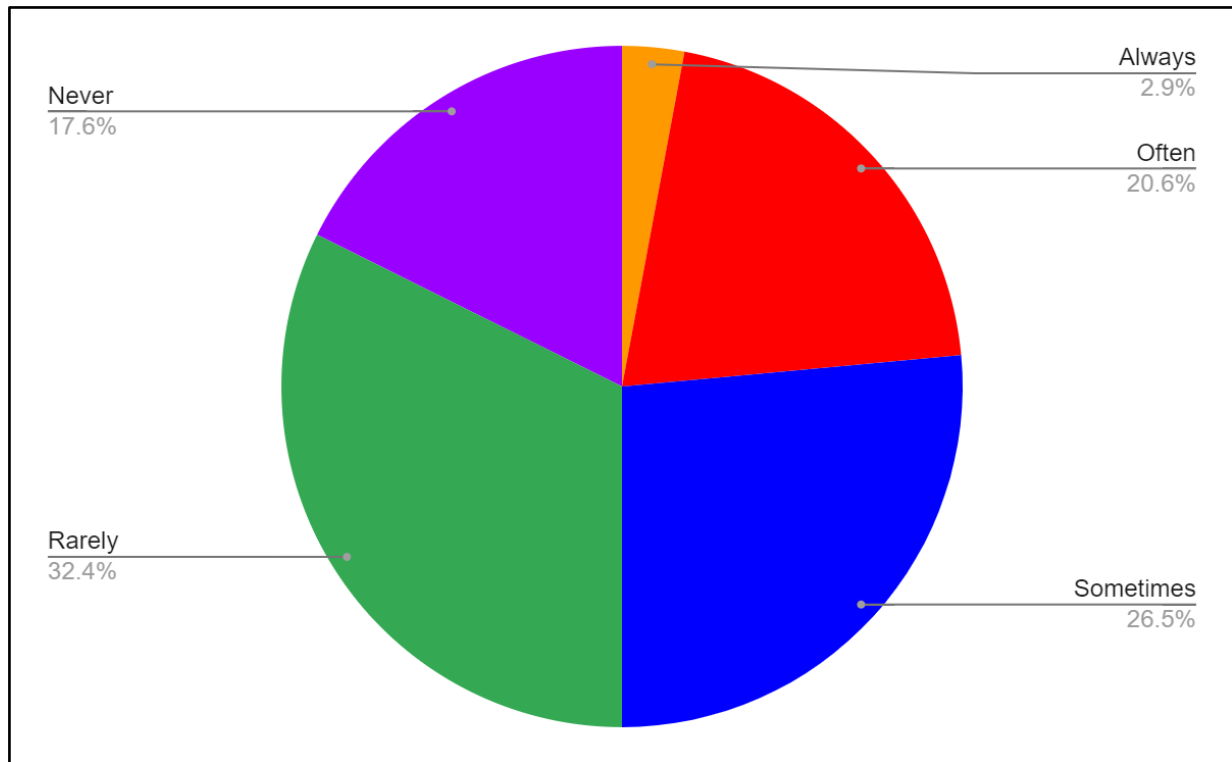
There is evidence that from agents sometimes relay tenants' information to one another. This is done by utilising external and internal tenancy databases. Internal databases are not subject to the *RTRA Act*, and so tenants are unable to rely on protections that would otherwise be available to them.

Other information that can be obtained through internal databases, or unlawfully passed through external databases includes: that the tenant has been a party to QCAT proceedings, the tenant's bankruptcy status, relevant company records, and the tenant's current address.

As to whether clients had found listing on external databases that contained information beyond what the *RTRA Act* envisaged, approximately half of the respondents reported that their clients had always (2.9%), often (20.6%) or sometimes (26.5%) found that their database listings contained other information. However, half the clients never (17.6%) or rarely (32.4%) found that their database listings contained such information. The *RTRA Act* only permits external databases to record a tenant's name, the address of the property and the tenant's breach. This restriction does not apply to internal databases. While responses were mixed in reaction to this question, the data suggests that many listings in external tenancy databases included information not prescribed within the *RTRA Act*.



How often do clients find their information has been passed on to other agents?



3.4 Challenging database listings

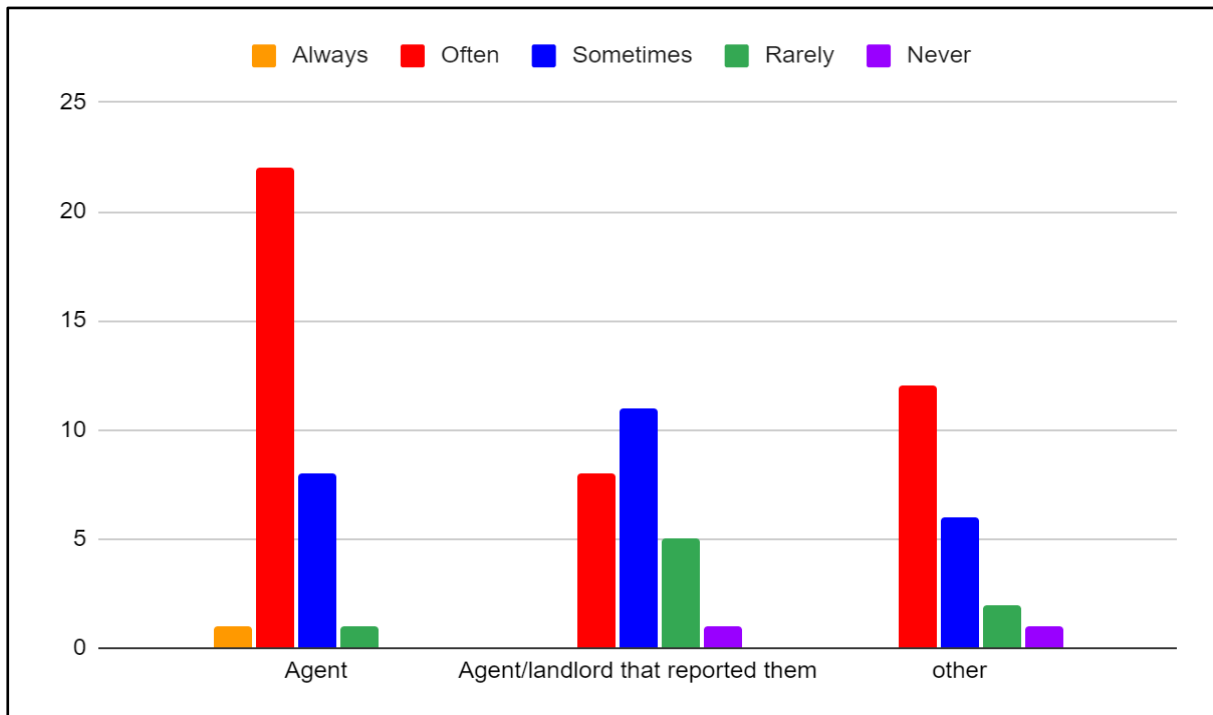
The majority of respondents (54.5%) reported that in the past two years they had experienced an increase in clients seeking legal assistance with concerns relating to database listings.

While some respondents (42.9%) indicated their clients 'sometimes' disputed a listing, many said their clients would rarely challenge a listing (14.3%). Only 11.4% said their clients would 'always' challenge a listing.

Of course, a key barrier to challenging database listings is the tenant knowing they have been listed in the first place. Respondents said that their clients most often learned about their database listings from agents. This can occur when a tenant submits their rental application. Sometimes clients learned about their database listings from the agent or lessor that made the listing. However, some respondents said their clients never learned about their database listing from the agent that listed them.

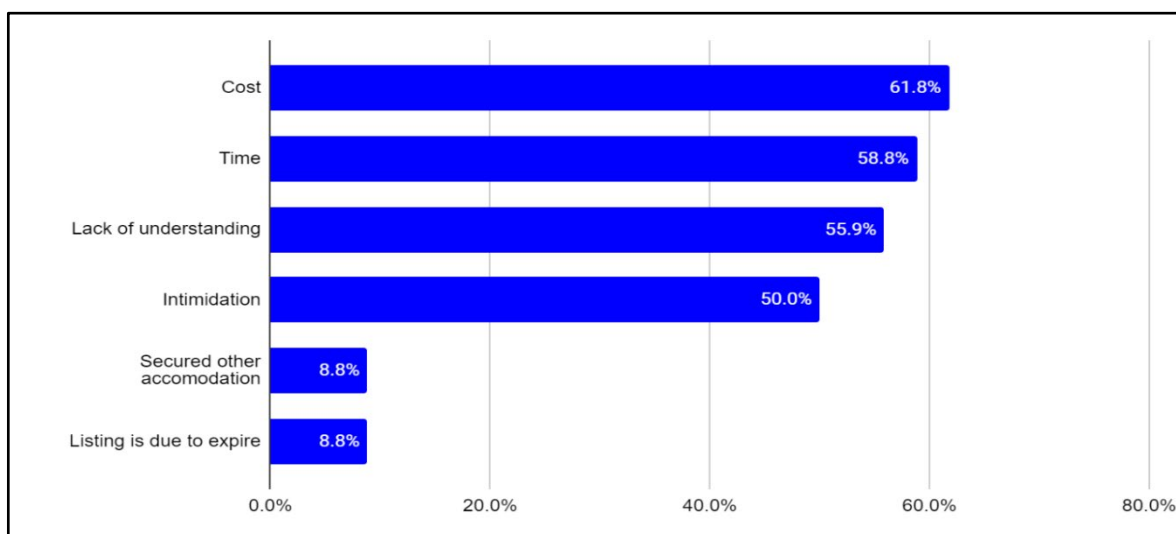


How do clients discover they have been listed on a tenancy database?



Aside from not knowing they have been listed, there are several other reasons why a client might not challenge a listing. According to the survey respondents, the most common factors that led clients not to dispute their unlawful database listings were cost (61.8%), time (58.8%), lack of understanding of the dispute process (55.9%) and intimidation (50%). Less common factors were that the tenant had secured other accommodation or that the listing was due to expire (8.8%).

Primary factors prompting clients to decide against challenging an unlawful listing in the past 12 months



Discussion

4.1 Accessibility of Tenancy Database Listings

4.1.1 Overview

Although the *RTRA Act* aims to ensure that tenants are given adequate access to information listed about them, our results suggest that accessibility issues persist. Providing tenants with access to the information shared about them is a necessary safeguard against parties sharing information that is inaccurate or improper under the *RTRA Act*. Additionally, the ease to which tenants can access their listings affects their ability to undertake dispute resolution processes in a timely manner.

4.1.2 Problems with accessibility

Our findings indicate that agents are generally compliant with sections 458A and 458B regarding notice of the use of database searches. These sections require agents to inform tenants of any personal information that is listed about them when searching for information about the tenant. However, the lessor or agent that lists a tenant is less likely to inform that tenant of their actions. As discussed above, the *RTRA Act* prohibits an individual from listing personal information without having provided a copy of that personal information free of charge or having taken steps to disclose this information.

Our results suggest that agents may not be providing tenants with notice that the tenant is going to be listed nor with the information that the agent intends to list about the tenant. In depriving tenants of the ability to challenge information that is being listed prior to the listing being made, agents are failing to comply with section 459(2) of the *RTRA Act*. If tenants are listed without their knowledge, they may only discover that they have been listed after their tenancy application is rejected on the basis of a listing. This creates a risk of homelessness and adverse effects on tenants' mental health upon discovering the listing when in the process of applying for new tenancy agreements. It also creates additional challenges for tenants wishing to dispute a listing as the tenant will generally need to lodge an application to QCAT for removal, as discussed below.

Despite safeguards that are outlined in the *RTRA Act* regarding time and cost requirements, the survey results indicate that some tenants still face difficulties obtaining access to information that is listed about them. Our survey results revealed that tenants continue to face excessive costs when seeking access to database information (87.1%). Other challenges to accessing information included difficulties in contacting databases (51.6%) and receiving information after the 14-day requirement imposed by the *RTRA Act* (19.4%).⁷⁹ While penalty units do apply, the survey responses suggest that, at least in some cases, penalties are failing to deter lessors, agents and databases from non-compliance, indicating the possible utility which could come from adopting a deterrent framework already applied in another Australian jurisdiction.

Our survey responses suggest that the vast majority of tenants listed by TICA had issues accessing information from TICA. The TICA website appears to be difficult for tenants to

⁷⁹ See Appendix.



navigate and conceals the ability of tenants to request a copy of their personal information for \$19.80. Instead, the company first presents tenants with the 'Fraud Preventing and Monitoring' service which provides tenants with their full initial report for free when registering as a subscriber for \$55. While this service is listed on the page, the website guides tenants to and has various highlighted orange price points stating that the service is \$55.⁸⁰ If a tenant wishes to access the information through a one-off request for data, this requires is more difficult for tenants to find and requires them to follow a link into a secondary webpage. As a result, it is less likely that tenants will become aware of the less costly option, which imposes a greater burden on tenants wishing to access their information.

Cost

Eighty-seven per cent of respondents indicated that cost was a main challenge for tenants navigating database entries. The ability for databases to charge tenants to access listings potentially imposes a significant burden on tenants on low incomes, especially when landlords and agents fail to give the tenant the opportunity to review the listed information. After a statutory review recommended that databases should be restrained from charging fees to tenants, in 2020, changes to New South Wales tenancy law were implemented to improve disclosure and transparency of database listings.⁸¹ Many low-income households are reliant on the private rental market for a place to live. By limiting access to tenancy information through the imposition of financial burdens, low-income tenants will be most affected by excessive charges for information. This is especially problematic when considering the relationship between tenancy database listings and homelessness.⁸² Confusion around how to access listings means that some tenants unnecessarily pay fees to multiple databases.

Difficulties contacting databases

Respondents reported that they and their clients experienced difficulty contacting database operators.⁸³ Database operators offer little assistance to listed tenants information, such as the implications of database listings.

The TICA website offers little to no means of contacting the database operator for tenant enquiries. While phone numbers and emails are listed for both the TICA head office and TICA commercial services, there is no dedicated phone number or email for tenants. Instead, the website directs tenants in need of assistance or additional information to various webpages, which are aimed at persuading tenants to purchase their data from the database operator. Tenants needing to enquire about access or delays in receiving information are offered no assistance by database operators. As discussed above, the lack of ability to contact databases perpetuates the burden of time constraints when databases fail to provide listing information within the necessary timeframe. As tenants cannot directly access databases through a contact number or email in some cases, the ability to rectify issues is oftentimes protracted and limits the accountability of databases to comply with regulation in some cases. While it appears that respondents and their clients have had some success with emailing databases, this form of communication draws out issues that listed persons are experiencing.

4.1.3 Reflections and Reform

The challenges tenants face with accessing listed information reflects the disproportionate

⁸⁰ TICA, Tenant Services (Web Page, 2022) <<https://www.tica.com.au/tenants.php>>.

⁸¹ *Residential Tenancies Amendment (Review) Act 2018 No 58* (NSW); NSW Fair Trading, *Residential Tenancies Act 2010*, Statutory Review 17 June 2016.

⁸² Jo Hamilton, 'Homelessness and Residential Tenancy Databases: Is There a Link?' (2005) 18(1) *Parity* 49, 50.

⁸³ See Appendix.



power that lessors, agents and database operators enjoy. Many tenants are not being informed that their agent intends to list them on a database and as a consequence, are not being given the opportunity to negotiate or dispute the listing. Additionally, tenants face costs access their information and delays receive reports. While it appears that regulations do provide guidelines for agents and database operators, the lack of enforcement of these regulations means that lessors, agents and database operators can act without consequence.

Suggestions for reform

Changes to the *Residential Tenancies Act 2010* (NSW) requiring that tenants be provided with a copy of their listing without charge provide an example of possible legislative changes that are necessary to protect tenants' rights.

4.2 Accuracy of Tenancy Database Listings

4.2.1 Non-Compliant Listings

A key issue highlighted in the survey was the high proportion of listings referred to Tenants Queensland which were non-compliant with the *RTRA Act*.

The survey suggested that an alarmingly high percentage of the listings encountered by Tenants Queensland staff are inaccurate, ambiguous, out-of-date, or otherwise unlawful. The majority of respondents reported that they 'always' or 'often' find their clients' database listings to be unlawful (in the sense that the agent had not first 'proposed' the listing, or the listing was not made for a lawful reason). A further 37.71% of respondents indicated that they sometimes find clients' listings to be unlawful. Half of the respondents indicated that they 'sometimes' find that their clients' listings lacked sufficient substance in the sense that the database listing was inaccurate, out-of-date, incomplete, or ambiguous. A further 44.1% of respondents reported that listings are 'always' or 'often' lacking in substance.

Of the 34 Tenants Queensland staff who responded to the survey question regarding whether their clients' database listings contain 'other' information,⁸⁴ half indicated that this 'always', 'often' or 'sometimes' occurs. While responses were limited, those who did provide further information confirmed that information regarding previous QCAT proceedings, court proceedings, the clients' current addresses, and bankruptcy status have been included in listings of their clients.⁸⁵ Example listings provided by Tenants Queensland further confirmed that database operators such as Rent Check and Equifax include information pertaining to bankruptcy, court proceedings, and visa details as standard features of their reports. As one respondent noted, including information that the tenant has been party to QCAT proceedings, even when the tenant was not at fault, is problematic as it suggests to prospective lessors that the tenant was in default.⁸⁶ Responses highlighted the dangers posed by the inclusion of tenants' current addresses for survivors of domestic violence as listings could be used to effectively track those fleeing dangerous residences.⁸⁷ Respondents also noted that agents sometimes include comments inviting other agents to call them to obtain information,⁸⁸ which

⁸⁴ Examples of "other" information were given, including whether the client has been party to prior QCAT proceedings, client's bankruptcy status, client's company records, and client's current address.

⁸⁵ Survey response 5, 9, 14, 16, 18, 20, 23.

⁸⁶ Survey response 16.

⁸⁷ Survey response 11.

⁸⁸ Survey response 4.



exposes tenants to similar risks as those associated with virtual TICA further discussed later in this report.

4.2.2 Reform

Suggestions for reform

If operated properly, tenancy database listings may be used as legitimate tools to regulate prospective tenants.⁸⁹ For example, tenants may be lawfully listed on a tenancy database if they have failed to pay rent to a lessor or a tribunal without legitimate cause.⁹⁰ However, they are clearly susceptible to error and misuse. Therefore, provisions relating to the veracity of tenancy database listings are ripe for reform. Proposals for reform could include reducing the timeframes in which lessors and agents are required to amend unlawful, inaccurate, ambiguous or out-of-date listings. Not only would this reduce the time in which listings may adversely impact tenants, it would also contribute to the uniformity of legislation across Australian jurisdictions. Fines could also be increased to act as a further deterrent against unlawful and inaccurate listings being made or retained.

4.3 Use of Internal Tenancy Databases

4.3.1 Overview

So-called ‘internal tenancy databases’ are becoming an increasing concern for tenants. All respondents in our survey reported that in the past 12 months, their clients had experienced issues with the internal database, TICA Virtual Manager. Several other respondents reported issues with other databases. Of course, this does not account for all tenants in Queensland given our limited survey pool. Nonetheless, it reflects an increasing trend of new technologies being used to report on tenants and bypass tenancy database legislation.⁹¹

A pertinent example of an internal tenancy database (and the most prominent according to the survey results) is TICA’s Virtual Manager, an online database accessible through a Gold Membership with TICA.⁹² The data contained within TICA Virtual Manager is available only to the users who set up the internal database and cannot be accessed by any other member, company or corporation. The database is available to real estate agents and other property managers to use as a local database in which they may enter their own tenancies, with a facility to ‘flag’ them to receive an email alert whenever the tenant’s details are searched against TICA’s tenancy history database.⁹³ Although not identified by our survey results, another example of an internal database is Barclay MIS, which, in addition to its ‘Tenancy Track’ database, includes a ‘Property Track’ database allowing subscribers to enter information about addresses currently leased. The database generates an email alert if a listed address is searched against the Tenancy Track database.⁹⁴ In each case, the search alerts real estate agents that a tenant has applied for a new rental property, and the real estate agent

⁸⁹ Bruce Arnold, ‘Those Who Won’t be Missed? Questions about Tenant Profiling and Privacy’ (2011) *Privacy Law Bulletin* 51.

⁹⁰ LexisAdvance, *Australian Tenancy Law and Practice* (July 2022) [4.6.101].

⁹¹ See, eg, Victorian Law Reform Commission, *Residential Tenancy Databases* (Report, March 2006).

⁹² ‘TICA Tenancy Database System’, TICA (Web Page, 2020) <<https://www.tica.com.au/ten-check.php>>.

⁹³ *Ibid.*

⁹⁴ ‘Tenant Track’, *Barclay MIS* (Web Page, 2022) <<https://www.barclaymis.com.au/products-and-services/tenant-track/>>.



may contact the searcher and disclose information about the tenant.

4.3.2 Problems with Internal Tenancy Databases

Claims of inappropriate behaviour by individual lessors and their representatives, including through the operation of internal databases are a historical feature of the domestic residential market in Australia.⁹⁵ Internal databases are biased in favour of property managers and lessors; no protections are provided to the tenants listed. Internal databases inherently lack transparency and fairness, and do not allow tenants the opportunity to disprove any representations made about them.

TICA Virtual Manager presents several risks to listed tenants, particularly where a real estate agent or lessor is notified that a new tenancy application has been made by the tenant. For example, it may pose a risk to tenants who are victims of domestic violence. If a real estate agent uses the contact number provided on the tenant's application to confirm they have applied for a new tenancy, this may alert domestic violence perpetrators that the victim is trying to flee. Additionally, if the current lessor/property manager contacts the prospective lessor/property manager to 'warn them off' the tenant, it may result in that tenant being excluded from consideration of the lease. Or it force the tenant to continue to reside with their domestic violence perpetrator⁹⁶ or face possible homelessness.⁹⁷

Tenants listed on internal tenancy databases are more at risk of becoming homeless. The statements of previous property managers/lessors regarding a list tenant are likely to carry significant weight when considering a prospective tenant. While some parties may conduct due diligence, in terms of checking the veracity of such statements with the prospective tenant, others may wish to avoid any inconvenience and simply exclude the tenant from consideration altogether. Furthermore, if a tenant is unsuccessful with their new rental application, they may be subject to repercussions from current lessors and property managers. This may include treatment that persuades the tenant to terminate the lease (including intimidation, failure to remedy defects, etc), or the lessor terminating the lease. In the context of Queensland's current housing crisis,⁹⁸ even more tenants are at risk.

As it stands, the lack of regulations and oversight regarding internal tenancy databases creates a concerning power imbalance between property managers and their tenants which is vulnerable to misuse and can have serious consequences for tenants. However, subjecting internal tenancy databases to laws under the *RTRA Act* is unlikely to be straightforward. Internal tenancy databases have been likened to word-of-mouth. To correct misleading information, a tenant would have to commence defamation proceedings. However, such a course of action would be ineffective for tenants as it would involve extensive costs to bring a claim and by that time, significant losses will have already been suffered. Furthermore, it would not be an option for those who are economically disadvantaged.

⁹⁵ Arnold (n 58) 50–1.

⁹⁶ See, eg, Sonja McDowell and Erin Field, 'Access to Housing for Women Escaping Violence: A Question of Balance' (2015) 28(4) *Parity* 45, 45–6.

⁹⁷ See, eg, Marissa Dooris and Cameron Lavery, 'Tenancy Blacklistings and Real Estate's "Big Brother"' (2015) 28(5) *Parity* 18, 18–19; Hazel Blunden and Kathleen Flanagan, 'Housing Options for Women Leaving Domestic Violence: The Limitations of Rental Subsidy' (2022) 37(10) *Housing Studies* 1896, 1904–5.

⁹⁸ See, eg, Joe Hinchcliffe, "'It's Just Not On": Queensland Premier Criticises Call for Landlords to Hike Rents', *Guardian* (online, 20 October 2022) <<https://www.theguardian.com/australia-news/2022/oct/20/its-just-not-on-queensland-premier-criticises-call-for-landlords-to-hike-rents>>; Jemima Burt, 'Queensland Tenants Under Pressure as Rents Rise Amid Calls for Compassion from Landlords', *ABC News* (online, 14 August 2022) <<https://www.abc.net.au/news/2022-08-14/qld-housing-rental-rises-crisis-rights-landlords-/101325474>>; REIQ, 'Queensland Rental Market Remains Under Squeeze' (Media Release, 21 July 2022) <<https://www.reiq.com/articles/queensland-rental-market-remains-under-squeeze/>>.



4.3.3 Reform

Suggestions for reform

One suggestion for reform is that regulations be imposed at a database level; that is, if databases such as TICA were to introduce regulations similar to or the same as those currently governing their tenancy databases. However, tenancy database organisations are unlikely to be compelled to do this. The change remove any value in the service for its consumers, given that it would then offer almost identical services as the general databases. Consequently, it would remove a revenue source for those businesses.

4.4 Barriers to Challenging Listings

4.4.1 Are Tenants Challenging Listings?

Many respondents (42.8%) reported that their clients would always or often dispute unlawful database listings. These results are consistent with a 2018 survey of Australian women experiencing domestic violence which reported that around 47% the respondents who had been unlawfully listed on a tenancy database, sought removal of the listing.⁹⁹ However, a 2005 survey of individuals at risk of homelessness reported that only 27% of respondents would challenge an unlawful listing.¹⁰⁰ Although the 2005 survey reported a lower percentage of tenants willing to challenge listings, this result is consistent with the feedback from our respondents who noted that clients facing homelessness were less likely to challenge a listing.¹⁰¹ The willingness to challenge unlawful listings reported by Tenants Queensland's staff may be a reflection of the legislative reforms which have occurred since the 2005 survey. It may also reflect greater availability of supports available to clients who have engaged with Tenants Queensland. While the number of respondents who reported that their clients would dispute unlawful listings was unexpectedly high, this still meant that the remaining 57.2% of respondents reported that their clients would only sometimes or rarely dispute unlawful listings.

4.4.2 Barriers to Challenging Listings

The first barrier faced by tenants wishing to challenge an unjust, inaccurate, or unlawful listing is identifying whether they are the subject of such a listing and accessing a copy of said listing. As outlined in section 4.2 of this report, this is often a significant challenge. Respondents cited numerous reasons why their clients have elected not to challenge an unlawful listing in the past twelve months. While tribunal proceedings are designed to be quicker, more cost-effective and less formal than traditional courts,¹⁰² the most common responses were:

1. Costs associated with challenging a listing (61.8%);

⁹⁹ Eileen Webb et al, *Impact of Tenancy Laws on Women and Children Escaping Violence* (Final Report for Department of Social Services, March 2021) 51.

¹⁰⁰ Jo Hamilton, 'Homelessness and Residential Tenancy Databases: Is There a Link?' (2005) 18(1) *Parity* 49, 50.

¹⁰¹ Refer to survey response 26.

¹⁰² Chris Martin, 'Australia's Incipient Eviction Crisis: No Going Back' (2021) 46(2) *Alternative Law Journal* 134, 136.



2. Time required to challenge a listing (58.8%);
3. Lack of understanding of matters such as process and documentation (55.9%); and
4. Intimidation (50%).

Data on the financial (in)security of many tenants explains why respondents overwhelmingly reported cost to be a barrier to disputing listings. The application fee for tenants applying to QCAT for an order pertaining to a residential tenancy dispute is typically \$28.60.¹⁰³ The cost of finding listings, which must be attached to applications, and taking time out of care responsibilities or paid work to prepare for and attend a QCAT application, further contribute to the cost of disputing a listing. In 2019-2020, 58% of Australia's lower income households housed in private rentals met the threshold for housing stress.¹⁰⁴ A 2019 study further revealed that 30% of low-income tenants did not have \$500 in savings.¹⁰⁵ Between June 2021 and June 2022, the average weekly rent across Queensland rose by 10–40% for apartments and 7.5–45% for houses.¹⁰⁶ In the context of increasing housing unaffordability, tenants in Queensland are likely to have even less funds available. Given the increasingly precarious financial position of many private tenants, it is unsurprising that cost is a common barrier to disputing listings.

Time required to prepare for an application and lack of understanding of law and procedure were reported as significant barriers to challenging a listing. While QCAT proceedings are designed for self-represented parties, lessors are generally entitled to be represented by their agent while most tenants are unrepresented.¹⁰⁷ Although many tenants benefit from the support of organisations like Tenants Queensland, tenants who wish to pursue an application to QCAT may be required to take on the time-consuming and complex burden of preparing for an application without legal representation.

Time spent preparing for a QCAT application is time that cannot be dedicated towards securing new housing, which the Tenants Union of New South Wales estimated takes an average of 42 hours.¹⁰⁸ Disputes relating to tenancy databases are classed as 'non-urgent' in the *RTRA Act*: the average waiting time for an application to be heard is currently 16 weeks in Brisbane and 4 weeks across the rest of Queensland.¹⁰⁹ Tenants may also be fatigued from other ongoing legal proceedings, making them reluctant to take on another legal battle.¹¹⁰ Several respondents noted that tenancy database listings often contain information such as whether the tenant has been a party to a QCAT proceeding, which may increase hesitancy to dispute a listing due to fear of being perceived as a troublemaker when applying for future

¹⁰³ 'Fees and allowances', *Queensland Civil and Administrative Tribunal* (Web Page, 1 July 2022) <https://www.qcat.qld.gov.au/resources/fees-and-allowances#minor_civil_disputes>.

¹⁰⁴ Australian Bureau of Statistics, *Housing Occupancy and Costs* (Latest Release, 25 May 2022).

¹⁰⁵ Australian Government Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (Productivity Commission Research Paper, September 2019) 54, cited in Chris Martin, 'Australia's Incipient Eviction Crisis: No Going Back' (2021) 46(2) *Alternative Law Journal* 134, 137.

¹⁰⁶ Residential Tenancies Authority, *Residential Tenancies Authority Annual Report 2021–22* (Annual Report, 9 September 2022) 12.

¹⁰⁷ Martin (n 125) 136.

¹⁰⁸ Tenants' Union of New South Wales, *Eviction, Hardship and the Housing Crisis* (Special Report, February 2022) 27.

¹⁰⁹ 'Timeframes: Average time to finalise an application' (Webpage, 24 October 2022) <<https://www.qcat.qld.gov.au/applications/timeframes>>; 'Residential tenancy disputes: Learn about residential tenancy disputes and the application process' (Web Page, 24 October 2022) <<https://www.qcat.qld.gov.au/case-types/residential-tenancy-dispute-process/residential-tenancy-disputes>>.

¹¹⁰ Survey response 25.



properties.¹¹¹

4.4.3 Outcomes in Challenging Listings

Outcomes are mixed for tenants who choose to challenge tenancy database listings. Upon an application to challenge a listing, QCAT is empowered to order a person to remove or amend personal information, remedy breaches of legislation, disallow listings, pay compensation to a tenant for breaching an order, or take other steps which QCAT views as appropriate.¹¹² Of those respondents who had been involved in QCAT applications to amend or remove a listing, approximately 54% reported mostly positive outcomes for their clients. The largely affirmative view of QCAT outcomes reported by Tenants Queensland staff is somewhat surprising, given the results of previous studies which reported a 0% success rate for tenants challenging tenancy database listings.¹¹³ The high rate of positive outcomes achieved by Tenants Queensland clients can likely be attributed to the level of assistance clients are receiving from Tenants Queensland. The importance of receiving support to facilitate positive outcomes was noted in survey responses.¹¹⁴ Respondents also noted that applications were less likely to be successful when there was a legitimate debt, even if the tenant was working towards paying off the debt under a payment plan.¹¹⁵ Additionally, one respondent expressed concern that even if a listing is removed, the tenant may still experience adverse outcomes due to “tenancy tracker” and “enquiry databases”, such as TICA, still enabling lessors and agents to obtain information regarding tenants.¹¹⁶

Even if a listing is removed the tenant may still experience significant hardship, such as risk of homelessness or domestic violence, while waiting for their application to be heard.¹¹⁷ Taking into account the many weeks it may take a tenant to find appropriate accommodation,¹¹⁸ tenants who are unable to immediately secure a new tenancy due to their database listing could be placed at risk of homelessness for months due to delays in the QCAT hearing process.¹¹⁹ These concerns are echoed across numerous studies which indicate that a negative residential tenancy database listing can have severe adverse effects on a tenant’s housing security and quality of life.¹²⁰ QCAT has the jurisdiction to make an order to compensate a tenant in cases where a QCAT order about a tenancy database listing has been contravened. However, despite significant hardship faced by some tenants as a result of unlawful listings, QCAT is unable to order payment of compensation for the mere making of an inaccurate, unjust or otherwise unlawful listing.¹²¹

Legislative provisions which compel lessors and agents to take steps once notified of listing deficiencies should also empower tenants to challenge listings as, upon receiving notice of inaccuracies, there is a clear obligation on lessors and agents to initiate the amendment

¹¹¹ Survey responses 5, 9, 14, 15, 16, and 23.

¹¹² *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ss 460(2), 461(2), 462(2), 463–464.

¹¹³ Jo Hamilton, ‘Homelessness and Residential Tenancy Databases: Is There a Link?’ (2005) 18(1) *Parity* 49, 50.

¹¹⁴ Survey responses 2, 29, and 35

¹¹⁵ Survey responses 8, 16, 18 and 20.

¹¹⁶ Survey response 11.

¹¹⁷ Survey responses 11, 14 and 33.

¹¹⁸ Tenants’ Union of New South Wales, *Eviction, Hardship and the Housing Crisis* (Special Report, February 2022) 27.

¹¹⁹ ‘Timeframes: Average time to finalise an application’ (Webpage, 24 October 2022)

<<https://www.qcat.qld.gov.au/applications/timeframes>>; ‘Residential Tenancy Disputes: Learn about Residential Tenancy Disputes and the Application Process’ (Webpage, 24 October 2022) <<https://www.qcat.qld.gov.au/case-types/residential-tenancy-dispute-process/residential-tenancy-disputes>>.

¹²⁰ See, eg, Victorian Law Reform Commission, *Residential Tenancy Databases* (Report, 2006) 21–24; Eloise Curry, ‘Residential Tenancy Databases’ (2005) February 63, 63–66.

¹²¹ See, eg, *Elfbest v Dynam* [2012] QCATA 7, [16]–[22]; *Costello v Ashworth* [2012] QCATA 143, [12]–[20].



process. Only one respondent reported that their clients were “sometimes successful” in getting agents to remove listings without the need for an application to QCAT,¹²² with a second respondent commenting that agents will sometimes remove listings after receiving notice of a QCAT application.¹²³ In Queensland, the penalty for breaches by lessors and agents is 20 penalty units, with database operators facing a penalty of 40 penalty units if they fail to amend or remove listings after receiving written notice of deficiencies.¹²⁴ The RTA is responsible for enforcing the *RTRA Act* and has recently undertaken some enforcement action and dispute resolution relating to listings;¹²⁵ however, ensuring the quality of database listings is not an enforcement priority to which the RTA intends to allocate resources between 2021 and 2023.¹²⁶ As such, whether a tenant is successful in petitioning their lessor or agent to remove a listing is largely at the discretion of the lessor or agent. Additionally, the *RTRA Act* does not require lessors or agents to remove a listing if they become aware of hardship, meaning that in cases where there is a genuine debt owed by tenants, the lessor or agent is not required to remove the listing if they become aware of circumstances such as domestic violence or risk of homelessness.

4.4.4 Threat of Listings

The vast majority of respondents (89%) reported that in the past twelve months their clients had experienced intimidation or economic duress from a lessor or agent who were threatening to make, or in the process of making, a tenancy database listing. Respondents reported that the threat of database listing contributes to the power imbalance between lessors and tenants, with some agents leveraging the threat of listing to compel tenants to pay funds which they may otherwise have disputed.¹²⁷ Such a power imbalance is particularly concerning in instances where the tenancy agreement is still on foot.¹²⁸ Despite clear legislation prohibiting the making of a tenancy database listing prior to the conclusion of a tenancy,¹²⁹ survey results and documentation provided by Tenants Queensland indicates that tenants still face threats of database listings during the term of their tenancy. Faced with the choice of complying with lessor demands or risking homelessness due to negative database listings, it is unsurprising that many tenants choose to succumb to intimidation.

Respondents reported that when making threats, some agents exaggerate their legal entitlements, threatening tenants with “indefinite” listings unless the tenant vacates the premises or forfeits their bond.¹³⁰ In particular, respondents noted that agents may threaten or initiate unlawful listings which, due to a lack of resources for the tenant to challenge the listing, remain active.¹³¹ One respondent suggested that database listings are in some cases retaliatory, with lessors or agents exercising their discretion in making listings without regard for the potential impact a listing can have on the tenant’s future housing security.¹³²

¹²² Refer to survey response 17.

¹²³ Refer to survey response 35.

¹²⁴ *RTRA Act* (n 3) ss 459A–459B.

¹²⁵ *Ibid* s 468(a); Residential Tenancies Authority, *Residential Tenancies Authority Annual Report 2021–22* (Annual Report, 9 September 2022) 18, 23.

¹²⁶ Residential Tenancies Authority, *Compliance and Enforcement Strategy 2021–23 (Summary)* (Strategy Summary, 2020) 4.

¹²⁷ Refer to survey responses 3, 6, 8, 11, 12, 17, 23, 25, 27, 28.

¹²⁸ Sophia Maalsen et al, ‘Understanding discrimination effects in private rental housing’ (AHURI Final Report No. 363, September 2021) 50.

¹²⁹ *RTRA Act* (n 3) s 459(1)(b).

¹³⁰ Refer to survey responses 28, and 33.

¹³¹ Refer to survey responses 4, 14, 17, 18, 24, 27, 29, 31, 32 and 33.

¹³² Refer to survey responses 3, 12, 24, 27, 34.



The difficulties faced by tenants in challenging listings and enforcing their legal rights are a major barrier towards operationalising previous legislative and regulatory reform, with many respondents identifying a gap between legislative requirements and practice. These challenges are encapsulated in the comments of one respondent:

*Whilst the Act & Regulation set out prescribed reasons and a process that must be followed before a lessor/agent can lawfully list a tenant on a database, many lessors/agents list tenants despite NOT having a prescribed reason or following the correct process (e.g. notice). Tenants then have to take steps to remove those listings. The cost of obtaining listings is often prohibitive to lower income tenants.*¹³³

In light of the lengthy application process, potential costs, level of intimidation, and perceived complexities of QCAT applications, it is unsurprising that many tenants choose not to dispute listings.

4.4.5 Reform

Suggestions for reform

An alternative pathway for dispute resolution could be to refer tenants to the free conciliation service offered by the RTA. The RTA reports that conciliation has a 76% success rate and may be more accessible and time effective for some tenants.¹³⁴ However, without the ability to compel lessors and agents to attend or without the threat of enforcement, conciliation would most likely be inviable in many cases, especially where intimidation is present. Importantly, the survey highlighted that in many cases even if the listing is removed relatively quickly, the harm is already done because tenants may struggle in the interim to secure housing.

Another option for reform would be to remove the six-month limitation period for applications to allow tenants to challenge any current listing.¹³⁵

Given the potential for significant potential for harm when a listing is made, legislative reform should prioritise making listings harder to create in the first instance.

¹³³ Refer to survey response 28.

¹³⁴ Residential Tenancies Authority, *Residential Tenancies Authority Annual Report 2021–22* (Annual Report, 9 September 2022) 17.

¹³⁵ Refer to survey response 28; *RTRA Act* (n 3) s 460(2).



Conclusion

Despite legislative amendments to improve the regulation of databases in the past, survey data collected by the research team revealed that Queensland tenants continue to experience difficulties with tenancy database listings. Most notably, tenants face challenges relating to unlawful and unjust database listings and issues accessing and challenging listings. Concerns pertaining to alleged internal databases and their lack of regulation and transparency were also cited. The report identifies a need for legislative reform, particularly to increase the regulation or oversight of lessors and agents using tenancy databases to prevent and reduce the number of unlawful and unjust database listings being made. We recommend that Tenants Queensland prioritise increasing tenant education in relation to applicable legal pathways and access to support services through QSTARS to ensure that tenants are taking full advantage of the legislative protections available to them.







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