



RESIDENTIAL TENANCIES

Mr PICCOLO (Light) (16:14): One of the more vexed relationships in our society it is the one between landlord and tenant. While most of the relationships are uneventful, a minority are quite difficult because either the tenant or the landlord or, in some cases, their agent, have behaved badly.

Over the years, laws have been introduced by parliaments in an endeavour to achieve a relationship that is fair for all the parties involved. Naturally, there exists a range of views as to whether the existing laws achieve a fair balance. Today, I wish to bring to the house's attention one case in my electorate that highlights the need for further reform of the laws, in particular those regulating the creation and use of residential tenancy databases.

At the outset I wish to put on record my view and, I think, that of the government that landlords should have the right to access data about potential tenants to minimise the risk of a bad tenancy. Equally, though, tenants should have the right to know that information kept on the database about them is accurate, fair and accountable. Information kept on databases can have an immense impact on the lives of people, namely, their ability to access accommodation. I believe that it is an outrage when databases are used for improper purposes and unfairly attack and abuse the most vulnerable in our community.

In February 2008, my office met with a constituent who was distressed at the treatment she had allegedly received from the managing agent of a property she was renting. It was alleged that the managing agent had threatened to list her on the TICA database—TICA is probably Australia's best known tenancy database system—if she did not cover the outstanding rent for her son's tenancy. The son was an adult and the mother was not a signatory to the tenancy agreement. At law, it appears that the mother was in no way responsible for the son's debt. However, the managing agent was allegedly able to use the threat of listing the tenant—that is, the mother—on the TICA database as leverage allegedly to try to extort additional payment from her.

The shortage of housing stock available for renting and the threat of listing has enabled some managing agents to treat some tenants very badly. I should say that the overwhelming majority of agents act fairly and reasonably, and my office has only received numerous complaints about one particular agent.

The constituent was concerned about whether she had been listed. My office contacted TICA to find out whether she had been listed using the procedures outlined on their website. TICA charge for that information. Under federal privacy laws, TICA is required to keep such requests confidential. In a serious breach of the Privacy Act, TICA disclosed the correspondence from my office to the managing agent. I can say with confidence that a breach of privacy occurred, as the Privacy Commissioner has recently found in favour of a complaint lodged by my office on behalf of the constituent.

TICA has a number of adverse findings against it by the Privacy Commissioner, yet it continues to behave in a way that offends the law without, it appears, any serious consequences. Accordingly, earlier this year, I was pleased to hear the Minister for Consumer Affairs announce that South Australia would move to regulate privately held residential tenancy databases (often thought of as tenant blacklists) to maximise fairness to all parties. At the time of the announcement, minister Gago stressed that the state government wants to maximise useful information for real estate agents and landlords, while also protecting people from false reporting.

Some states already have laws relating to residential tenancy databases and others do not specifically regulate these databases. Currently, South Australia applies fair trading legislation that is limited in scope. In my constituent's case, her only meaningful remedy was to lodge a complaint with the Privacy

Commissioner on the grounds that TICA had breached some of the 10 national privacy principles. While her complaint has been upheld, it has taken almost 20 months for the investigation to be completed. It has been a somewhat pyrrhic victory. Not only do the tenancy database laws need to be reformed but so do the penalty provisions in the Privacy Act for breaches of the law.

The current laws, in my view, are inadequate as a deterrent to future breaches by database owners. The current laws do not protect the most vulnerable in our society from those who wish to exploit them, and I look forward to those laws being introduced in this state. I understand that the Office of Consumer and Business Affairs is working with other jurisdictions to prepare nationally consistent regulations on how real estate agents and the like can utilise records about individual tenancy histories. I think the current practice by some agents to misuse that information is an attack on the most vulnerable in our community and should be resisted.