Australian Capital Territory

Residential Tenancies (Databases) Amendment Act 2011

A2011-31

Contents

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An Act to amend the *Residential Tenancies Act 1997*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1	**Name of Act**

This Act is the *Residential Tenancies (Databases) Amendment Act 2011*.

2	**Commencement**

This Act commences on a day fixed by the Minister by written notice.

Note 1   The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2   A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3   If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3	**Legislation amended**

This Act amends the *Residential Tenancies Act 1997*.

4	**Tenancy databases** **Part 6A**

omit

5   New part 7

insert

Part 7   Residential tenancy databases

87   Definitions—pt 7

In this part:

agent, of a lessor, means a person employed, or otherwise authorised, by the lessor to act as the lessor's agent.

database means a system, device or other thing used for storing information, whether electronically or in some other form.

database operator means an entity that operates a residential tenancy database.

inaccurate, in relation to personal information in a residential tenancy database, includes information that is inaccurate because—

(a) the information shows that the person owes a lessor an amount that is more than the rental bond; and

(b) the amount owed was paid to the lessor more than 3 months after the amount became due.

Note   If the amount is paid to the lessor within 3 months of the amount becoming due, the information would be out of date.

list, in relation to personal information in a residential tenancy database—

(a) means—

(i)   enter the personal information into the database; or

(ii) give the personal information to the database operator or someone else for entry into a database; and

    (b)   includes amend personal information in the database to include additional personal information about a person.

out of date, in relation to personal information in a residential tenancy database, means the information is no longer accurate because—

    (a)   for a listing made on the basis that a person owes a lessor an amount that is more than the rental bond—the amount owed was paid to the lessor within 3 months after the amount became due; or

    (b)   for a listing made on the basis that a court or the ACAT has made an order terminating the residential tenancy agreement— the order has been set aside or revoked by a court or the ACAT.

personal information—

    (a)   means information or an opinion, whether true or not, about—

        (i)   an identified individual; or

       (ii)   an individual whose identity can reasonably be worked out from the information or opinion; and

    (b)   includes an individual's name.

rental bond, for a residential tenancy agreement—

    (a)   means the amount (however described)—

        (i)   paid by or for the tenant under the agreement to the lessor under the agreement, the Territory or another entity at the direction of the lessor; and

       (ii)   intended to be available for the financial protection of the lessor against the tenant breaching the agreement; and

    (b)   does not include rent paid in advance.

residential tenancy database means a database—

(a) containing personal information—

  (i) relating to, or arising from, the occupation of premises under a residential tenancy agreement; or

  (ii) entered into the database for reasons relating to, or arising from, the occupation of premises under a residential tenancy agreement; and

(b) with an intended purpose of use by a lessor or lessor's agent for checking a person's tenancy history for deciding whether a residential tenancy agreement should be entered into with the person.

88 Application—pt 7

(1) This part does not apply to a residential tenancy database kept by an entity for use only by the entity or its officers, employees or agents.

(2) In this section:

entity includes the housing commissioner.

89 Notice of usual use of database

(1) This section applies if—

(a) a person (the *applicant*) applies to a lessor, or a lessor's agent, to enter into a residential tenancy agreement; and

(b) the lessor, or the lessor's agent, usually uses 1 or more residential tenancy databases for deciding whether to enter into a residential tenancy agreement with a person.

(2) The lessor, or the lessor's agent must, when the application is made, give the applicant written notice of the following:

  (a) the name of each residential tenancy database the lessor or agent usually uses, or may use, for deciding whether to enter into a residential tenancy agreement with a person;

  (b) that the reason the lessor or agent uses a residential tenancy database is for checking the applicant's tenancy history;

  (c) for each residential tenancy database mentioned in paragraph (a)—how the applicant may contact and obtain information from the database operator.

(3) Subsection (2) applies whether or not the lessor, or the lessor's agent, intends to use a residential tenancy database for deciding whether to enter into a residential tenancy agreement with the applicant.

(4) However, the lessor, or the lessor's agent, is not required to give notice under subsection (2) if written notice of the matters mentioned in that subsection was given to the applicant not more than 7 days before the application is made.

Example—s (4)

Serena is a lessor's agent. When Sam collects an application form for tenancy of a residential property, Serena gives Sam the written notice required under s (2). If Sam lodges the completed form 5 days later, Serena does not need to provide notice under s (2) again.

Note   An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

90   Notice of listing if database used

(1)   This section applies if—

(a)   a person (the ***applicant***) applies to a lessor, or a lessor's agent, to enter into a residential tenancy agreement; and

(b)   the lessor, or the lessor's agent, uses a residential tenancy database to check whether personal information about the applicant is in the database; and

(c)   personal information about the applicant is in the database.

(2)   The lessor, or the lessor's agent, must, as soon as possible but within 7 days after using the residential tenancy database, give the applicant written notice of the following:

(a)   the name of the residential tenancy database;

(b)   that personal information about the applicant is in the database;

(c)   the name of each person who listed personal information in the database and is identified in the database;

(d)   how and in what circumstances the applicant can have the personal information removed or amended under this part.

91   Listing can be made only for certain breaches by certain people

(1)   A lessor, lessor's agent or database operator must not list personal information about a person in a residential tenancy database unless—

(a)   the person was named as a tenant in a residential tenancy agreement that has ended; and

(b)   the person has breached the agreement; and

    (c)   because of the breach, either—

        (i)   the person owes the lessor an amount that is more than the rental bond for the agreement; or

        (ii)   a court or the ACAT has made an order terminating the residential tenancy agreement; and

    (d)   the personal information—

        (i)   relates only to the breach; and

        (ii)   is accurate, complete and unambiguous.

(2)   Without limiting subsection (1) (d) (ii), the personal information must indicate the nature of the breach.

Example—indication of nature of breach

Personal information in a residential tenancy database indicates the nature of the breach if it includes a reference to the following:

- 'rent arrears'—for a person who has breached a residential tenancy agreement by failing to pay rent; or
- 'damage to premises'—for a person who has breached a residential tenancy agreement by damaging the premises.

Note   An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

92   Further restriction on listing

(1)   A lessor, lessor's agent or database operator must not list personal information about a person in a residential tenancy database unless the lessor, agent or operator—

    (a)   has, without charging a fee—

        (i)   given the person a copy of the personal information; or

        (ii)   taken other reasonable steps to disclose the personal information to the person; and

(b) has given the person at least 14 days to review the personal information and make submissions—

(i) objecting to its entry into the database; or

(ii) about its accuracy, completeness and clarity; and

(c) has considered any submissions made.

(2) Subsection (1) does not apply if the lessor, lessor's agent or database operator cannot locate the person after making reasonable enquiries.

(3) Subsection (1) (b) and (c) do not apply—

(a) to information that, at the time of listing, is contained in publicly available court or tribunal records; or

(b) to a listing involving only an amendment of personal information under section 93.

93   Ensuring quality of listing—lessor's or agent's obligation

(1) This section applies if a lessor, or lessor's agent, who lists personal information in a residential tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out of date.

(2) The lessor, or lessor's agent, must, within 7 days, give written notice of the following to the database operator:

(a) if the information is inaccurate, incomplete, or ambiguous—

(i) that the information is inaccurate, incomplete, or ambiguous; and

(ii) how the information must be amended so that it is no longer inaccurate, incomplete, or ambiguous;

    (b) if the information is out of date—that the information is out of date and must be removed.

Example—par (a)

Darren owes his landlord Tabitha an amount that is more than the rental bond paid under the residential tenancy agreement. Tabitha lists the unpaid amount in a residential tenancy database. Darren pays Tabitha the amount owed more than 3 months after it was due to be paid. Within 7 days of becoming aware of the payment, Tabitha must give the database operator written notice of—

- the personal information being inaccurate; and
- the details of the payment to be included in the personal information so that it is no longer inaccurate.

Note   An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) The lessor, or lessor's agent, must keep a copy of the notice for 1 year after it is given.

94   Ensuring quality of listing—database operator's obligation

(1) This section applies if a lessor, or lessor's agent, who has listed personal information in a residential tenancy database gives the database operator a written notice stating that the personal information must be—

    (a) amended in a stated way to make it accurate, complete and unambiguous; or

    (b) removed.

(2) The database operator must amend the personal information in the stated way, or remove the personal information, within 14 days after the operator is given the notice.

95   Providing copy of personal information listed

(1) A lessor, or lessor's agent, who lists personal information about a person in a residential tenancy database must give the person a copy of the information if—

    (a) the person asks for the information in writing; and

    (b) if the lessor, or lessor's agent, charges a fee for giving the information—the fee has been paid.

(2) A database operator who keeps personal information about a person in a residential tenancy database must give the person a copy of the information if—

    (a) the person asks for the information in writing; and

    (b) if the operator charges a fee for giving the information—the fee has been paid.

(3) A lessor, lessor's agent or database operator who is required to give personal information under this section must give the information to the person within 14 days after the later of—

    (a) the day the person asks for the information in writing; and

    (b) if a fee is charged for giving the information—the day the fee is paid.

(4) A fee charged by a lessor, lessor's agent or database operator for giving personal information under this section—

    (a) must not be excessive; and

    (b) must not apply to lodging a request for the information.

96   Notifying relevant non-parties of tribunal order about listing

(1)   This section applies if—

(a)   the ACAT makes an order that a person must, in relation to a residential tenancy database—

  (i)   amend personal information in a stated way; or

  (ii)   remove all or some personal information about a person; and

(b)   the person against whom that order is made (the ***relevant person***) is not a party to the proceeding.

(2)   The ACAT must give a copy of the order to the relevant person, within 14 days after the day the order is made.

97   Keeping personal information listed

(1)   A database operator must not keep personal information about a person in the operator's residential tenancy database for longer than—

(a)   3 years; or

(b)   if, under the national privacy principles, the database operator is required to remove the information before the end of the 3-year period mentioned in paragraph (a)—the period ending when the information must be removed under the national privacy principles.

(2)   However, a database operator may keep a person's name in the operator's residential tenancy database for longer than the periods stated in subsection (1) if—

(a)   other personal information about the person in the database is attached to the person's name; and

  (b) the other personal information is not required to be removed
  under subsection (1) or another law.

Example

Larry Tate is listed in a residential tenancy database in relation to two breaches of
residential tenancy agreements. The first breach occurred 3 years ago. The
second breach occurred 2 years ago. The database operator is required under
s 97 (1) to remove the reference to the first breach from the database. Larry may
still be listed in the database because the second breach occurred 2 years ago.

Note   An example is part of the Act is not exhaustive and may extend, but
         does not limit, the meaning of the provision in which it appears (see
         Legislation Act, s 126 and s 132).

(3) This section does not limit the operation of another provision in this
part or another law that requires the removal of personal
information.

(4) In this section:

national privacy principles means the principles stated in the
Privacy Act 1988 (Cwlth), schedule 3.

98   Application to ACAT about contravention

(1) A person who claims that personal information about the person has
been listed in a residential tenancy database in contravention of this
part may apply to the ACAT about the listing of the information.

(2) The application must be made within 6 months after the day the
person becomes aware of the listing of the personal information in
the residential tenancy database.

(3) If the ACAT decides there has been a contravention of a provision
of this part, it may—

  (a) order a person to take stated steps to remedy the contravention;
  or

(b)   make any other order it considers appropriate.

Note   If the ACAT makes an order under this part, it may also order compensation under s 101.

99   Application to ACAT about certain personal information listed in residential tenancy database

(1)   If personal information about a person is listed in a residential tenancy database, the person may apply to the ACAT for an order under this section.

(2)   The ACAT may order a listing person to—

(a)   remove stated personal information from the database; or

(b)   amend the personal information in the database.

(3)   The ACAT may make the order only if satisfied—

(a)   the personal information is inaccurate, incomplete, ambiguous or out-of-date; or

(b)   the listing of the personal information is unjust in the circumstances, having regard to—

  (i)   the reason for the listing of the person's personal information; and

 (ii)   the person's involvement in the acts or omissions giving rise to the listing of the personal information; and

(iii)   the adverse consequences suffered, or likely to be suffered, by the person because of the listing of the personal information; and

(iv)   any other relevant matter.

Examples—par (b)

1   Information about Endora is listed in a residential tenancy database because of damage caused to premises by Endora's domestic partner during a domestic violence incident. Because of the listing of the information, Endora cannot obtain appropriate and affordable accommodation.

2   Information about Maurice is listed in a residential tenancy database because rent remained unpaid by Maurice for 4 months after it was payable. During that period, Maurice was in hospital recovering from a serious accident and unable to make arrangements for payment.

Note   An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4)   In this section:

listing person means a lessor, lessor's agent, database operator or someone else.

100   Application to ACAT about proposed listing of personal information

(1)   A person who is aware that a listing person intends to list personal information about the person in a residential tenancy database may apply to the ACAT for an order under this section.

(2)   The ACAT may—

    (a)   order the listing person not to list the person's personal information in the residential tenancy database; or

    (b)   order the listing person not to list the person's personal information except with stated changes or on stated conditions; or

    (c)   make any other order it considers appropriate.

(3)   The ACAT may make the order only if satisfied that, if the personal information were listed as proposed, the ACAT could make an order in relation to the personal information under section 98 or section 99.

(4)   In this section:

listing person—see section 99.

101   Order for compensation

(1)   This section applies if the ACAT makes an order against a person under this part.

(2)   The ACAT may also make an order requiring the person to pay to a stated person, within a stated period, an amount the ACAT considers appropriate as compensation for the loss or damage caused by listing personal information in a residential tenancy database.

(3)   The amount of compensation must not be more than—

(a) $5 000; or

(b)   if another amount is prescribed by regulation—that amount.

6   Dictionary, note 2

insert

- housing commissioner

7   Dictionary, new definitions

insert

agent, for part 7 (Residential tenancy databases)—see section 87.

database, for part 7 (Residential tenancy databases)—see section 87.

database operator, for part 7 (Residential tenancy databases)—see section 87.

inaccurate, in relation to personal information in a residential tenancy database, for part 7 (Residential tenancy databases)—see section 87.

list, in relation to personal information in a residential tenancy database, for part 7 (Residential tenancy databases)—see section 87.

out of date, in relation to personal information in a residential tenancy database, for part 7 (Residential tenancy databases)—see section 87.

8 Dictionary, definition of *personal information*

substitute

personal information, for part 7 (Residential tenancy databases)—see section 87.

9 Dictionary, new definitions

insert

rental bond, for a residential tenancy agreement, for part 7 (Residential tenancy databases)—see section 87.

residential tenancy database, for part 7 (Residential tenancy databases)—see section 87.

10 Dictionary, definition of *tenancy database*

omit

Endnotes

1   Presentation speech

Presentation speech made in the Legislative Assembly on 23 June 2011.

2   Notification

Notified under the Legislation Act on 31 August 2011.

3   Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Residential Tenancies (Databases) Amendment Bill 2011, which was passed by the Legislative Assembly on 23 August 2011.

Clerk of the Legislative Assembly

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