

Friday 28 July 2023



To whom it may concern
Department of Customer Service



by online portal only

Departmental consultation on improving NSW's rental laws

Digital Rights Watch welcomes the opportunity to submit comments to this consultation.

For your consideration, we enclose two recent submissions to other inquiries that touch on the digital rights of renters—namely third party payments and automated decision-making—and a recent report from CHOICE on the pervasiveness of RentTech.

These enclosures are:

Appendix 1: Our submission to the Victorian Legislative Council's inquiry into the rental and housing affordability crisis in Victoria; dated 7 July 2023

Appendix 2: Excerpts from our submission to the Senate Economics Committee's inquiry into the influence of international digital platforms—chapter 1 "*The problem with tech*", chapter 2 "*What good is data?*" and chapter 5 "*Finance, insurance and real estate*"; dated 14 March 2023

Appendix 3: A report from CHOICE titled "*At what cost? The price renters pay to use RentTech*"; dated 18 April 2023

In these submissions, we emphasise the role digital technologies play in exacerbating the renter-landlord power imbalance and making the economic relationship between a landlord and a renter more opaque and distant, in exchange for at best marginal improvements in service delivery for renters.

In particular, we address sections 5 and 9.2 of the consultation paper.

Sincerely,

Lizzie O'Shea

Chair

Samantha Floreani

Program Lead

Travis Jordan

Board Member

Who we are

Digital Rights Watch was founded in 2016 to fight for a digital world where all humanity can thrive, and where diversity and creativity flourishes.

Our vision is for a digital world underpinned by equality, freedom and human rights. Its evolution and future must be guided and driven by the interests of all people and the environments we live in.

Digital Rights Watch exists to defend and promote this vision – to ensure fairness, freedoms and fundamental rights for all people who engage in the digital world.

Our key areas of focus are information privacy, digital security, online safety, the social impact of emerging technologies, and enhancing democracy online.

As Australia's leading rights-focused digital and technology advocacy organisation, we engage with government, industry and community organisations on issues, legislation and policy related to the internet and digital rights.

We conduct research on best practices in protecting privacy, limiting surveillance overreach, improving digital security, monitoring government use of data and technology and new digital economies and governance systems.

Contact

Lizzie O'Shea | Chair | 

Acknowledgement of Country

Digital Rights Watch acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land and community. We acknowledge the Aboriginal and Torres Strait Islander peoples as the true custodians of this land that was never ceded and pay our respects to their cultures, and to elders past and present.

APPENDIX 1



Submission to the Legislative Council Legal and Social Issues Committee

regarding the

Inquiry into the rental and housing affordability crisis in Victoria

07 July 2023

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LIST OF RECOMMENDATIONS

1. Ensure the regulatory framework for RentTech preserves renters' digital rights—in particular to privacy, non-discrimination and digital security.
2. Mandate data minimisation for landlords and real estate agents.
3. Ensure fee-free options, either directly or through third-party platforms, are made available and promoted to prospective and existing renters.
4. Ensure that renter use of third party property management or rent payment apps are strictly opt-in.
5. Prohibit technology designed to evade existing regulation, such as editable rental amount fields in third party application platforms which circumvent prohibitions on solicitation.
6. Implement robust safeguards regarding the use of any third party platforms and the use of automated decision-making in the management of tenancies.
7. Investigate public alternatives to private tenancy application processes that prioritise data minimisation and protect renters' privacy and rights.
8. Investigate developing a publicly accessible database of rental information to better inform policy making and correct the informational imbalance between renters and landlords.

01 / **TECH DISRUPTION IN THE HOUSING SECTOR**

The real estate industry is often overlooked in conversations about data privacy and security—but it is one of the most data invasive industries, accumulating huge amounts of personal information on homebuyers, renters and people wanting to inspect homes. Digital technologies and automated systems are increasingly being integrated into the housing sector, with little public scrutiny. Given the ubiquity of the industry, this creates significant risks for almost everyone in Australian society.

Last year, one of Australia's fastest growing rental application platforms—Snug—attracted public criticism for using renters' data to algorithmically generate a score for renters, scraping data from Facebook, Airbnb, Uber, LinkedIn and more.¹ Snug was subsequently contracted by Homes Victoria to develop a bespoke application portal to facilitate a ballot for the allocation of the Victorian Government's new affordable rental housing scheme², exposing some of the most vulnerable people to significant data risks.

This sits uncomfortably with increased public concern for, among other things, digital privacy, following the major data breaches at Optus and Medibank.

More than ever, renters are aware of the privacy and security risks that come with providing their personal information to digital intermediaries.³

As such, as part of any measures designed to address the current housing affordability crisis in Victoria, we urge the committee to consider the ways in which "RentTech" is exacerbating pre-existing issues of accessibility, fairness and affordability.

In particular, we want to highlight the existing power imbalances between renters on the one hand, and on the other, landlords and real estate agents—and how such imbalances are being exacerbated by digital technology. This occurs as a result of a move towards more integration of digital processes in our housing ecosystem—and especially in the context of the informational deficit renters have compared to their landlords.

¹ Convery, Stephanie. "[Imperfect match: Australian renters in the dark over use of data by tech company Snug](#)". *Guardian Australia*. 17 November 2022.

² Convery, Stephanie. "[Advocates criticise Victoria's decision to allocate affordable housing by ballot rather than need](#)". *Guardian Australia*. 20 February 2023.

³ Kollmorgen, Andy and Bowers, Kate. [RentTech platforms such as Ignite, 2Apply, Snug, tApp and others are making renting even harder](#). *Choice*. 18 April 2023 and Tsolidis Noyce, Eirene. [RAHU Win Against Third Party App Kolmeo](#). *Renters and Housing Union*. 2022.

Defining PropTech and RentTech

We define “PropTech” to be any application of digital processes or economics to property transactions or housing relationships. This industry operates on the basis that housing should be treated as an asset, rather than a human right.

Broadly, PropTech’s universe covers:

- “Smart Home” surveillance technology—especially problematic when these are installed by a homeowner and expected to be retained by a renter—like Google’s Nest or Amazon’s Ring services
- Valuation and brokerage systems which use algorithmic decision-making to automate valuations and accelerate transaction rates like PointData
- Novel fractional property investment instruments like BrickX
- Lending and transaction streamlining like PEXA
- Short-term accommodation providers like Airbnb

“RentTech” is a subset of the broader “PropTech” ecosystem that is primarily concerned with relationships between a residential renter, a landlord, their real estate agent and property manager, and third party intermediaries.

RentTech intervenes in almost every step of a renter’s housing experience—from searching for a property, applying for a rental, being assessed, submitting bonds and deposits, connecting utilities, paying rent, logging maintenance requests or complaints, and contacting their property manager.

This industry includes:

- Property management platforms including digital dashboards or apps for like Ailo and Simple Rent
- Scoring systems that use machine learning, data scraping and analytics in order to automate assessing risk or suitability of renters like Snug
- Payment processing platforms like Kolmeo and Rental Rewards
- Listing services, advertising platforms and application systems like those owned by the REA Group, and
- Novel insurance instruments that claim to “smooth” deposits and bonds while functioning effectively functioning like landlords insurance paid for by the renter, with such a product offered also by Snug

RentTech is becoming increasingly ubiquitous in Australia's rental landscape, with a 2023 CHOICE report detailing the prevalence of these platforms and how renters feel pressured into using them—often to their detriment.⁴

Disruption or intensification?

While the integration of digital intermediaries is generally framed as a “disruption”—or comes with a promise of social change for the better—often it can result in an intensification of existing problems, rather than changing them.

For example, research into the “disruption” caused by Airbnb across North America, showed that it created a rent gap and led to a loss of housing in the city.⁵

BrickX, which facilitates fractional property investment, also uses the language of disruption while claiming to address social inequality as a “*low cost way to enter the property market.*” However, similar financial practices underwrote the subprime mortgage implosion that preceded the Global Financial Crisis.⁶

In 2019, Landau-Ward and Porter examined the emerging PropTech market in Melbourne within the context of rising housing insecurity and unaffordability in Australia. They questioned the presumption that PropTech creates “*exciting opportunities to enable greater access to housing services,*” and highlighted that such technology can increase insecurity, and fosters greater discrimination.⁷

Australia has positioned itself as a testbed for companies to trial new forms and applications of technologies, like through the “Enhanced Regulatory Sandbox” which imposes few requirements to consider human rights or the impacts upon social or economic inequality.⁸ This creates a low risk, low regulation environment in which FIRETECH companies are encouraged to experiment.

Without proactive regulation, intensification of social inequality is the likely outcome of technological disruption by the RentTech industry.

⁴ Kollmorgen, Andy and Bowers, Kate. [RentTech platforms such as Ignite, 2Apply, Snug, tApp and others are making renting even harder](#). Choice. 18 April 2023.

⁵ Wachsmuth, David and Weisler, Alexander. [Airbnb and the rent gap: Gentrification through the sharing economy](#). *Environment and Planning A: Economy and Space*. 50:6. 2018 and Wachsmuth, David, Kerrigan, Danielle, Chaney, David and Shillolo, Andrea. [Short-term cities: Airbnb's impact on Canadian housing markets](#). McGill University School of Urban Planning's, Urban Politics and Governance research group. 10 August 2017.

⁶ Rogers, Dallas. *The Geopolitics of Real Estate: Reconfiguring Property, Capital and Rights*. London: Rowman & Littlefield International. 2017.

⁷ Landau-Ward, Ani and Porter, Libby. [Digital Innovations, PropTech and Housing – the View from Melbourne](#). *Planning Theory & Practice*. 20:4, 2019. Page 13.

⁸ Entities must meet a ‘net public benefit test’ which requires them to explain why the exempted activity will be likely to result in a benefit to the public.

Data collection and surveillance

As is the case in the broader tech sector, the service being delivered by digital intermediaries in the RentTech space is only one part of the picture. The data generated by these platforms and how that data is shared, connected, and analysed is often just as valuable as the service being provided.

RentTech companies rely upon and incentivise the ever-increasing collection, use, storage, analysis and sharing or selling of data to remain profitable.

In this sense, they have two functions. A surveillance function, involving predatory and invasive collection of data, which allows profiling and policing of individuals and communities; and a speculative function, which aims to strengthen market power and undermine fairness and equality in the longer term.

Surveillance functions encompass technology that is designed to hand over more personal information about renters, more control over what renters can and cannot do with their home, and more automation in landlord-renter relationships.

Speculation functions include technologies to screen prospective renters, automated eviction notice systems, and predictive technologies built using data collected about renters. It also includes using predictive financial systems to facilitate the wide-scale cartel-like rent increasing, as reported on in the US.⁹

While there appears to be little evidence of this happening in Australia, this speculative approach to accelerating the financialisation and commodification of housing is concerning, and regulators need to be proactive in preventing these behaviours being replicated here. This is especially important in the context of state government moves towards more build-to-rent projects and a greater presence of institutional landlords in the private rental ecosystem.

⁹ Vogell, Heather. "[Rent Going Up? One Company's Algorithm Could Be Why.](#)" *ProPublica*. 15 October 2022 and Fields, Desiree. "[Automated landlord: Digital technologies and post-crisis financial accumulation](#)". *Environment and Planning A: Economy and Space*. 54:1, 2019.

Towards a rights-based RentTech framework

To better regulate RentTech, an improved regulatory regime governing residential tenancies overall needs to be created. There is significant scope to improve the existing regulatory framework with respect to oversight, enforcement and minimum expectations of landlords and their intermediaries.

Real estate agents and landlords—especially smaller ones—appear to have a dangerously unsophisticated understanding of digital technology and cybersecurity, as demonstrated by comments from industry members following last year’s major data breaches.¹⁰

The unrestrained introduction of tech intermediaries to already unequal relationships, especially opaque automated decision-making processes, exacerbates the dysfunction. This is why a rights-based framework for regulating tech is important and why a tech-conscious policy for rental reform is essential.

Better articulating relationships and duties between renters and their landlord and their intermediaries will help prevent clouding—where an ever-increasing number of digital middlemen make these relationships more opaque and less tractable—all of which has a chilling effect on a renter’s capacity to exercise their rights.

Recommendations

1. Ensure the regulatory framework for RentTech preserves renters’ digital rights—in particular to privacy, non-discrimination and digital security.

¹⁰ Canetti, Tom. “[Real estate sector data breach could be worse than Optus hack, digital rights advocates say](#)”. *SBS News*. 22 October 2022.

02 / REGULATING THIRD PARTY PLATFORMS

The proliferation of digital middlemen and the ecosystem of third party platforms that sit between a renter and their landlord should be concerning to all regulators.

A national survey conducted by CHOICE showed that 41% of renters report being pressured into using a third party platform—like Ignite or Snug—that demand personal data from tenants who are given little choice but to provide it.¹¹

60% of renters reported feeling uncomfortable with information being collected and 21% of young renters reported the experience of having a “score”—usually the result of an opaque automated decision-making process—used to assess their application.

Even where renters may feel uncomfortable with providing their personal information to third party platforms, anecdotal evidence suggests that they have felt coerced to use them.¹² For example, renters have shared stories of real estate agents framing fee-paying apps as the only available payment option or withholding an alternative option until explicitly asked for it, and ultimately offering burdensome no-fee options such as making them hand-deliver cash payments to an office on the other side of the city.¹³ Any regulation needs to take into account malicious compliance and how to safeguard against it.

These platforms shift costs previously borne by landlords onto the renters, while profiting from on-selling the data they collect—without doing nearly enough to guarantee the security of this personal information.

Such fees range from fees to pay rent, penalties for failed payments, the costs of conducting your own background checks—or even, in the wake of the Harcourts and LJ Hooker data breaches, additional fees for “enhanced data protection”.¹⁴

¹¹ Kollmorgen, Andy and Bowers, Kate. [RentTech platforms such as Ignite, 2Apply, Snug, tApp and others are making renting even harder](#). *Choice*. 18 April 2023

¹² Mowbray, Jemima. [Privacy, data and discrimination in renting](#). *Tenants Union of New South Wales*. 24 March 2023.

¹³ McGowan, Michael. [“Pay the rent, and the rest: tenants hit back at the rise in third-party processing”](#). *Guardian Australia*. 19 June 2021. and McGowan, Michael. [‘It starts to add up’: renters charged fees to pay rent as real estate agents outsource collection](#). *Guardian Australia*. 17 June 2021.

¹⁴ Malo, Jim and Dib, Abbir. [A rental application service is selling extra data protection for \\$20. Not everyone is sold](#). *Sydney Morning Herald*. 1 March 2023.

Renters personal data is unsecure

Australia has a culture of over-collection of renters' personal information. The personal information collected often includes identity documents, employer and tenancy references, and proof of income—and increasingly, biometric data like face-scans conducted on phones like Mastercard's Identity Check platform.

In October 2022, Harcourts had a data breach where significant amounts of renters' personal information was compromised, putting renters at risk of identity theft and scams.¹⁵

The more information real estate agencies collect and hold about renters, the more severe the consequence will be in instances of a data breach.

It is worth noting that many real estate agents—and third party RentTech companies—are functionally exempt from privacy regulation by the small business exemption, and those that are covered stretch the definition of “reasonably necessary” when it comes to data collection and handling.

Collecting too much personal information from renters not only undermines their right to privacy and freedom of association, it also creates significant digital security risk. Mandating data minimisation would provide clarity to real estate agents who may opt for over-collection in the absence of clear rules, and reduce their risk profile regarding privacy, cybersecurity, and information management.

Many of these apps include terms and conditions that allow for renter data to be used in ways they may not want, such as for marketing purposes, or for it to be shared with or sold to other parties. The privacy and digital security protections of these platforms is not always clear, leaving many renters unsure what they are being asked to sign up to, and if it places them at additional risk of misuse of their personal information.

It is not acceptable for real estate agents to put the privacy and digital security renters at risk by coercing them to sign up to a third party platform as a condition of renting a home, either explicitly, through omission or informally.

¹⁵ Hall, Amy. “[Advocates had warned of the dangers of a real estate data breach. It just happened](#)”. SBS News. 3 November 2022.

Opting out of third party platforms

The experience of using RentTech digital intermediaries is often unappealing for renters. Such platforms routinely ask renters for personal information far beyond what would be considered reasonably necessary, and ask a vast amount of ostensibly-optional questions about lifestyle or personal relationships irrelevant to the application.

Many renters feel they have no choice but to comply with whatever real estate agents ask of them, out of fear of being passed up for another applicant and securing a place to live.

Landlords and real estate agents should not be able to require renters to use third party platforms—nor suggest by omission or inference that a renter would be somehow penalised for not using their preferred platforms. Regulations must stipulate third party property management or payment processing platforms are truly optional—that is, *opt-in*, rather than *opt-out*.

Landlords and real estate agents should be required to offer a realistic and accessible alternative to such apps.

Real estate agents should be required to communicate clearly with renters that signing up to any such app is optional, that there is no downside or risk of penalty for choosing not to use it, outline the risks related to using a third party platform, and provide an explanation of alternatives should the renter decide not to sign up.

Regulatory evasion by design

In Victoria, real estate agents are not allowed to require any information that relates to a protected attribute without telling you why in writing.¹⁶ This includes age, gender, race, disability, sexual orientation, religious belief and marital or parental status, or ask for bank statements that contain daily transactions.

And yet, real estate agents continue to ask for this information—relying on renters not knowing their rights or being unwilling to exercise them.

Similarly, the requirement for agents to make available a fee-free payment option to renters is circumvented by real estate agents not listing the fee-free option as a payment option. Instead, renters are required to proactively ask for it. This could be tightened by imposing a duty on landlords and their agents to proactively promote fee-free options to renters.

¹⁶ [Residential Tenancies Regulations 2021](#) (VIC), § 15.

Another example is when real estate agents suggest renters must use a third party payment platform to lodge maintenance requests, even when this results in fees payable by the tenant.

Another is rent bidding. Online application forms with an editable “rental amount” field circumvent prohibitions on soliciting rental bids by the nature of their design. A simpler solution would be to prohibit rent-bidding in excess of the amount advertised and require that rent payable is no more than as the amount advertised.

Too often, RentTech involves user experience design which serves to circumvent existing regulations.

Recommendations

2. Mandate data minimisation for landlords and real estate agents.
3. Ensure fee-free options, either directly or through third-party platforms, are made available and promoted to prospective and existing renters.
4. Ensure that renter use of third party property management or rent payment apps are strictly opt-in.
5. Prohibit technology designed to evade existing regulation, such as editable rental amount fields in third party application platforms which circumvent prohibitions on solicitation.

03 / **TOWARDS A STATE REGULATORY FRAMEWORK**

While the previous section was concerned with reforms to existing regulation of residential tenancies, the scale of the problems associated with RentTech necessitates major regulation.

Any rental regulatory framework should seek to address that fundamental power imbalance between a renter and a landlord—and in particular where that is exacerbated by the informational imbalance between the end-users of RentTech and those who facilitate or mandate its use.

State governments need to take a more proactive approach to regulating third party platforms. These reforms should aim to not only alleviate that informational imbalance but create new data inputs that can be used to better understand the housing ecosystem.

Improved and expanded public infrastructure to facilitate rental relationships could reduce the risk of non-compliance by industry, as well as cybersecurity breaches. It could also potentially create new revenue streams and useful data inputs for the state government while giving renters security and certainty that their rental journeys are being managed fairly.

Regulating automated decision-making

The underlying digital architecture that underpins many third party platforms, especially the algorithmic models they use and the data those models were trained on, are intentionally opaque and resistant to outside scrutiny.

Without these relationships and systems being transparent and scrutinised—not least by regulators—renters should not be compelled by landlords or real estate agents to hand over their personal information to these platforms, especially in circumstances where landlords or real estate agents have not done appropriate due diligence to ensure that the application is meeting appropriate standards.

By creating a mandatory code of conduct for the management of renters' data, and building an enforceable safeguard framework around it, the Victorian Government could be a leader in regulating third party RentTech platforms and the use of automated decision-making.

Such a framework could include:

- requiring risk and compliance assessments of any third party platform,
- a pre-approval mechanism with algorithmic models lodged with a regulator for assessment against anti-discrimination and privacy regulations,
- strict liability with respect to any unlawful discrimination in decision-making,
- proactive disclosure of the data used to train the model,
- ensuring renters are provided with an appropriate privacy collection notice, as well as Plain English communication regarding how the app or platform works, and an explanation of any decision made,
- a requirement to provide an analogue alternative to digital platforms, and,
- ensuring there are appeals mechanisms for automated decisions.

If landlords and their intermediaries are unable to do these kinds of compliance checks—and third party platforms are unwilling to be scrutinised in this way—renters are not able to provide informed consent to use them.

A public database for residential tenancies

Digital Rights Watch has previously called for standardised application questions to address the culture of over-collection of data by real estate agents, to mitigate possible consequences in the event of a data breach, and to reduce the risk of irrelevant data being used in assessing applications.¹⁷

We believe the Victorian Government should implement a standardised set of application questions, strictly limiting the amount of personal information that a real estate agent can request from prospective renters—with special consideration given for privacy, digital security, discrimination, as well as community expectations of fairness. This requirement should flow on to any third-party online application platforms or services.

Alternatively, the state government could consider developing an application platform, managed by state rental regulators. This would ensure consistent and fair application of regulations, and also create a new revenue stream for regulators. It would also generate a powerful public dataset for understanding the state of the sector. Similar schemes are under consideration in NSW and ACT.¹⁸

¹⁷ Digital Rights Watch. [Submission to Consumer and Business Services, South Australia regarding the Residential Tenancies Review](#). 30 November 2022. 3-4.

¹⁸ Cassidy, Caitlin. [NSW brings in controls on how renters' data can be stored and used](#). *Guardian Australia*. 17 December 2022.

Building on these new data inputs, the Victorian Government should investigate developing a public database for residential tenancies to track and display market information as well as breaches and compliance issues. In effect, this would be renters' equivalent to the existing residential tenancies database—more commonly known as the renters' blacklist—that landlords and real estate agents use, but aimed at equipping renters with the information necessary to determine the appropriateness of their prospective tenancy.

Public databases of rents and landlords have been advocated for in other jurisdictions as preconditions to more substantial tenancy reform—recognising that a lack of consistent, unbiased data on the state of the private rental market is a substantial barrier to good policy decision-making.¹⁹

This would also equip the state government with clear information on which platforms are being used and where, enabling a regulator to track whether algorithms were having different effects in the market.

In the meantime, the Victorian Government should investigate using existing inputs like the standard rent increase form to create a real-time public database of rents, alongside reasons for increase and size, type and location of homes. By managing applications and the public database in-house, the Victorian Government would be better equipped to protect users' data and minimise data risks from breaches and protect the identity and reputation of individuals.

Recommendations

6. Implement robust safeguards regarding the use of any third party platforms and the use of automated decision-making in the management of tenancies.
7. Investigate public alternatives to private tenancy application processes that prioritise data minimisation and protect renters' privacy and rights.
8. Investigate developing a publicly accessible database of rental information to better inform policy making and correct the informational imbalance between renters and landlords.

¹⁹ Wheatley, Hanna, Arnold, Sarah and Beswick, Joe. [Getting Rents Under Control](#). New Economics Foundation. July 2019.

APPENDIX 2



Select excerpts from

Submission to the Senate Economics Committee

regarding the

Inquiry into the influence of international digital platforms

14 March 2023

01 / THE PROBLEM WITH TECH

Futures are always arriving. They are never evenly distributed.

- Ben Tarnoff and Moira Weigel²⁰

The internet and digital platforms are critical social infrastructure.

Almost everything we do is now mediated through one of these platforms, from socialising with friends, connecting with our communities, accessing culture and working. It is nearly impossible to apply for a job, navigate to another city, talk to your family, access social security or pay your bills without using the internet — and more specifically, a handful of devices, pipelines and platforms owned and designed by a handful of multinational corporations.

The universality of platforms in our daily lives — even more so the inability to escape them — means our capacity to access them needs to be treated as a right and a public utility, not as a market subject to the vicissitudes of commercial entities and the speculative whims of tech CEOs.

The internet is woven through the fabric of modern life. There is no disconnection from technology without disconnecting from society altogether.

This has given companies who own and control this infrastructure an enormous amount of power to shape our society and democracy.

The growing power of big tech companies has been coming under increased scrutiny both in Australia and internationally. Internationally, there have been calls for regulation of big tech companies, with a focus on issues such as privacy, the spread of misinformation, and the need for greater transparency and accountability. The growing power of big tech has led to increased scrutiny and calls for regulation in an attempt to get these companies to operate in the public interest.

In Australia, introduction of the News Media Bargaining Code and its attempts to distribute a share of big-tech profits to support local journalism, the establishment of the eSafety Commissioner in response to concerns about safety online, and the recently announced local content quotas for streaming platforms demonstrate a willingness by the Commonwealth to take bold actions to regulate or reform big tech.

But these reforms alone will not succeed in addressing issues of privacy, disinformation and protecting local industries unless we address ownership and power in the digital economy.

²⁰ Ben Tarnoff and Moira Weigel. "[Power Curve](#)". *Logic Magazine*. Accessed February 28, 2023.

Our democracy is too important to leave in the hands of far flung billionaires. But as long as we leave the internet in private hands, that's exactly what we are doing.

Democracy relies on the free exchange of ideas and information. It relies on our ability to make decisions about our lives, organise our communities and stay informed and involved in our government. All of these things are threatened by a privatised internet.

These companies are in the business of capturing our attention and selling it for a profit. Their algorithms favour outrage and misinformation because they know it keeps us online longer. They turn every interaction with a friend into a transaction to be analysed. They use unimaginable computing resources to train models that predict our behaviour because it's valuable to advertisers. Those same models are weaponised by politicians and scammers alike to spread misinformation and sell merchandise. The surveillance-based model is hugely inefficient and environmentally harmful because of the huge amounts of data upon which it relies. The storage and processing power devoted to the consumer data that feeds the targeted advertising model far outstrips that devoted to providing the actual service being used.

As long as the internet is constructed as a tool to make a profit, the people who use it will be treated like a product to be packed up and sold to investors and advertisers.

Unless we take a real ownership stake in the critical infrastructure of our times, we risk losing our democracy. We risk losing control of our culture as local institutions and creative scenes are squeezed out by multinational streaming and algorithmic curation. We risk losing control of our national story, as news and culture is produced to maximise clicks on social media. We even risk losing control of other critical infrastructure as more of our electricity, water and transport become controlled by hardware and software designed, built and owned by international companies.

People have been building community, sharing art and discussing ideas online since the very beginning of the internet. It's been our creativity, our desire for connection and community that has populated the internet and made social networks what they are.

But we deserve better spaces to exist in than virtual shopping malls.

We deserve online spaces that are built for us. Our communities deserve real connection in a space that encourages creativity and enables civic engagement. For-profit digital products are failing to deliver this, and only by taking ownership over online spaces can our communities truly connect.

Competition policy on its own will not achieve a more democratic, people-centric internet. The internet at every level is captured by corporate interests; from the

physical infrastructure like deep sea cables and massive data warehouses to the applications and platforms that people interact with. As long as these parts of the internet continue to be dictated by the profit motive, it will remain incompatible with democracy.

This paper is designed to prompt conversation and encourage readers to think deeply about the complexities and intersections tech policy embodies by its expansive nature.

The private internet isn't working for our democracy and it's past time the Australian people took a proper stake in its future.

02 / WHAT GOOD IS DATA?

As we spend more time online and interacting with networked devices, tech companies make record profits through data creation, collection, analysis and disclosure.

If we consider data as a form of capital, it's clear that its collection — or more accurately, extraction — is driven by the perpetual impetus of growth and accumulation.²¹

Every aspect of our lives are increasingly subject to a process of 'datafication' in which our social actions, interactions and sentiments are transformed into data.²²

In turn, this data fuels a shadowy data broker industry, in which data is bought and sold, for use in targeted advertising, personalisation, and as inputs to algorithmic systems such as machine learning models. Behavioural data combined with ongoing experimentation provide commercial platforms with unprecedented resources for learning how to manipulate consumers according to their imperatives – which often run counter to democratic goals. While the majority of this data is extracted from people, people receive little benefit while major corporations rake in astounding profit.

The way that data is harvested has evolved over time.

What once may feasibly have been considered in discrete, transactional terms of *collection* — in which a company asks for information and individuals actively provide it — has transformed into a persistent, pervasive and continuous *extraction*. Much of this happens without the active participation or even awareness of the people from whom the data is being extracted from.

The commodification of data, or 'spying for profit' has been described by Shoshana Zuboff as "surveillance capitalism", which she notes "*is not technology; it is a logic that imbues technology.*" Surveillance capitalism is a political and economic ideology, and *not* an inevitable byproduct of digital technologies themselves, despite efforts made by tech companies to conflate commercial imperatives with technological necessity.²³

²¹ Sadowski, Jathan. "[When data is capital: Datafication, accumulation, and extraction](#)". *Big Data & Society*. 6:1, 2019.

²² van Dijck, Jose. "[Datafication, dataism and dataveillance: Big Data between scientific paradigm and ideology](#)". *Surveillance & Society*. 12:2, 2014.

²³ Shoshana Zuboff, *The Age of Surveillance Capitalism*. London: Profile Books, 2019. 15.

By selling the idea that undermining privacy is the inevitable cost of technological progress, tech companies have succeeded in shrinking the window of political debate.

The public debate about technological futures has been constrained by the idea that technical progress is inherently invasive and exploitative, and helped foster an environment in which policymakers are willing to forego privacy protections in the interest of “innovation”.

Companies across virtually every sector are increasingly reconfiguring their business models to become “data intermediaries” — those who act as mediators between those producing data and those seeking to leverage it.²⁴ Even sectors that previously had no real interest in the digital economy are getting into the business of creating and selling data. These intermediaries — often major digital platforms, but increasingly other everyday products and services — position themselves as the necessary go-between, giving them the ability to maximise extraction of data from the information lifecycle.

This shift of focus away from the service or product itself and towards the commodification of data enables and encourages a data-gluttonous logic in which data is collected for the sake of it, rather than to meet a specific functional necessity.

In turn, this amplifies invasion of privacy, broadens the risks associated with compromised digital security, and, critically, creates a dynamic in which people are data subjects but never data agents.

By and large, people generate an immense amount of data to the benefit of a handful of corporations, which is in turn used to fuel further profits by way of targeted advertising and the manipulation of attention, as something to be bought and sold in the data broker industry, or used to build more products divorced from the underlying wants and needs of the people from whom the data was extracted.

In order to realise the potential public good of technology and data, it is necessary to disentangle the corporate imperative of data extraction for profit from the nature of digital technologies and the internet.

The current motivations for collection, use, storage, and disclosure of data are dominated by impetus for private financial growth and profit, or, in some cases, for the purpose of policing. While the underlying motivations behind data surveillance in the public and private sectors may diverge, they are functionally

²⁴ Janssen, Heleen and Singh, Jatinder. “[Data intermediary](#),” *Internet Policy Review* 11:1, 2022.

intertwined—they facilitate and support each other in a mutually beneficial relationship.²⁵

Collection and use of data is not inherently bad, but the profit motive acts as a corrupting force that prevents the collection and use of data from being in the public interest.

The data that companies see as worth accumulating are those that are seen as valuable by immense, inscrutable and often invisible data brokers — data that feeds targeted advertising, attention capture, or risk management.

Researchers Jathan Sadowski, Salomé Vijoën and Meredith Whittaker emphasise that the current model of corporate data gatekeeping, *“in which the digital traces of our lives are monopolised by corporations, threatens the ability of society to produce the rigorous, independent research needed to tackle pressing issues. It also restricts what information can be accessed and the questions that can be asked.”*²⁶

Big tech companies are not interested in data at an individual level. Its value lies in the aggregate — in the analysis of relations and patterns.

This is in part why our understanding of privacy regulation must go beyond a focus on individual rights of data protection, control, access and deletion. We must address the collective aspects of privacy related harms such as mass privacy invasion having a chilling effect on public discourse, political organising, and other democratic processes.²⁷

Strong privacy protections are a key ingredient in combating many of the harms of surveillance capitalism and the more expansive these reforms are, the more effective they will be at protecting our individual and collective rights.

It is not enough to only respond to the ‘surveillance’ part of surveillance capitalism. Without addressing the underlying motives and business models that encourage mass invasion of privacy, technologies will continue to be designed for profit, not people.

Take for example the Digital Platforms Inquiry, conducted by the Australian Competition and Consumer Commission. While many useful recommendations emerged from this inquiry, the fundamental premise of it is that privacy is important because it enables market competition and consumer protection objectives.

²⁵ Cory Doctorow, [“How to Destroy Surveillance Capitalism,”](#) *Medium*, 26 August 2020,

²⁶ Sadowski, Jathan. [“Everyone should decide how their digital data are used — not just tech companies,”](#) *Nature*. 1 July 2021.

²⁷ For more on the relational nature of privacy, see Molitorisz, Sascha. *Net Privacy*. Sydney: Newsouth Publishing, 2020.

As noted by privacy expert, Jordan Wilson-Otto, *“the idea goes that by empowering consumers to make informed choices about how their data is processed, we can correct bargaining power imbalances and information asymmetries and so increase competition and encourage innovation.”*²⁸

Aside from this saying nothing of privacy’s innate value as a human right, it’s ineffective when it comes to tackling any challenge greater than that of individual choice.

Digital Rights Watch has consistently called for stronger privacy protections firmly grounded in a human rights framework.²⁹ In order to dismantle the stranglehold that major companies have on Australians and our economy, strong privacy reform is necessary — but one of many regulatory interventions required for meaningful change.

While a significant amount of attention has focused on protecting individuals’ privacy and addressing (or not) anti-competitive behaviour, less focus has been directed toward questions of ownership and control of data and digital assets. There is however, a growing scholarship in this space exploring the potential for public, collective or distributed ownership and control of data.³⁰

Alternative models for collective data ownership and governance

The current dominant motivations for data collection, use and sharing are not conducive to public good. So what alternative approach to data governance could ensure the social value of data is collectivised for public interest, rather than commodified for private profit? And what might large-scale interventions into infrastructure and institutions seeking to reign in ‘data intermediaries’ look like?

Scholars and researchers are beginning to explore possible alternative models for data governance, often referred to as a ‘public data trust’ or ‘data commons’.³¹

Such a model could involve collective data stewardship, subject to democratic oversight and accountability, while also conferring additional requirements

²⁸ Wilson-Otto, Jordan. [“The blind spot in Australia’s approach to privacy reform,”](#) *InnovationAus*. 10 December 2022.

²⁹ See, for example [“Submission: Privacy Act Review - Discussion Paper,”](#) *Digital Rights Watch*, January 2022; [“Getting privacy reform right,”](#) *Digital Rights Watch*, October 2022; [“Submission: Privacy Legislation Amendment \(Enforcement and Other Measures\) Bill,”](#) *Digital Rights Watch*, November 2022.

³⁰ See for example: Tarnoff, Ben. *Internet for the People*. London: Verso, 2022.

³¹ See, for example: Sadowski, Jathan. [“The political economy of data intermediaries,”](#) *Ada Lovelace Institute*, 1 June 2022; Shkabatur, Jennifer. [“The Global Commons of Data,”](#) *Stanford Technology Law Review*. 22, 2019; Miller, Katharine. [“Data Cooperatives Could Give Us More Power Over Our Data,”](#) *Stanford University Human-Centred Artificial Intelligence*, 20 October 2021.

including anti-discrimination, due process, and public scrutiny by way of public transparency mechanisms. While it is possible to impose similar requirements upon private companies, these remain limited, and do not address the issues of purpose and motivation, as highlighted above.

A public governance model with a commitment to serving the public interest is crucial. There are already some proposals for privately managed data trusts³² but such models do not disrupt the power of private interests.

While current approaches to privacy regulation focus on the rights of individuals, public data trusts could go further — to also represent the interests and values of groups affected by the downstream use of their data.³³

This is not to say that public stewardship of data is without its own challenges.

Governments have demonstrated the ability to use data to inflict serious harm, including targeting marginalised groups or misuse of algorithmic systems.³⁴ Governments attempting to use such a public data trust for surveillance, policing, or military purposes must be prevented in order for it to serve the public interest.

This is why any public data trust must be designed for democratic governance from the outset—legal restrictions and protections are not enough on their own, there must be technical safeguards built into the very system to prevent misuse or abuse.

Questions you could be asking

How can governments create democratic structures to empower people to actively participate in the governance of essential digital services?

What are the policy levers, regulatory frameworks, and legal and institutional interventions required to support the development of public data trusts?

³² For example, the discontinued Sidewalk Toronto project was based on a partnership between the Canadian Government and Sidewalk Labs - a subsidiary of Google. Communities were not adequately involved, leading to backlash over privacy and data governance. For more details see Kariotis, Timothy, "[Civic Data Trusts: An opportunity for participatory data governance](#)," *The University of Melbourne School of Government*, 16 October 2020.

³³ Sadowski, Jathan. "[Everyone should decide how their digital data are used — not just tech companies](#)". *Nature*. 1 July 2021.

³⁴ The Australian Government's Online Compliance Intervention, more commonly known as "Robodebt," is a prime example of harms that can arise when algorithmic systems are implemented without appropriate laws, risk assessments, oversight and safeguards.

How might public data trusts grapple with questions of who gets to determine how data is made, what it means, and when and why it is used or shared?

What mechanisms would need to be established in order to prevent inappropriate use of data contained in a public data trust?

How might other regulatory avenues, such as 'The Right to Repair' assist in the transfer of data control away from companies and toward the public?

What role could established public institutions such as libraries, museums and archives play in developing and expanding public capacity for data governance and democratic information management?

Potential solutions to explore

Implement the Attorney-General's Department's review into the Privacy Act.

Better align Australia's privacy laws with the European Union's General Data Protection Regulation - and extend it by making devices, software, and online interactions subject to privacy by default and design, and banning data sharing and selling between companies and within the same company family without the explicit and informed consent of users.

Investigate the potential for 'public data trusts', including the requisite public infrastructure and participatory governance models.

Expand governance of public data by way of creating and supporting public institutions that have the capacity to steward data in the public interest.

Implement policy and regulatory tools that can constrain or dismantle the secondary market for data.

05 / **FINANCE, INSURANCE & REAL ESTATE**

The impact and influence of digital platforms and other technology intermediaries — and their underlying ideology and business models — is not merely occurring as a result of large ‘big tech’ companies, nor is it limited to social media platforms.

It is also not limited to companies based overseas, as there are a growing number of Australian tech platforms that are also negatively impacting people in Australia.

It is not enough to only turn our attention to major international corporations. We need to look in our own backyard.

Digital technologies and automated systems are increasingly being integrated into essential services like housing, finances, and insurance, having material impacts on people’s ability to access services and opportunities.

The promise of predictive technologies in ‘InsurTech’, for example, is to be able to personalise insurance policies premiums on the basis of individual behaviour and risk. They promise the ability to pay the ‘right price’ for insurance based on an individualised prediction of risk, but these calculations *“do not change the future uncertainty into certainty. Instead, they provide insurance companies with a sort of ‘substitute for certainty’ that can be bought and sold.”*³⁵

Financial, insurance and property service providers have long made decisions based on an assessment of creditworthiness and risk. While the integration of digital intermediaries, often including automated decision making, is often framed as a “disruption,” or comes with a promise of social change for the better, more often than not they result in an *intensification* and *amplification* of pre-existing issues, problems and inequalities, rather than meaningfully changing them.

For example:

- ‘FinTech’ startups such as ‘Buy Now, Pay Later’ schemes, insert themselves as micro credit loan brokers between individuals, banks and retailers. These apps often do not perform the same level of credit check to meet the standard of

³⁵ Cevolini, Alberto and Esposito, Elena. [“From pool to profile: Social consequences of algorithmic prediction in insurance.”](#) *Big Data & Society*, 7:2, 2020

responsible lending laws, which can result in trapping people in cycles of debt as they use 'Buy Now, Pay Later' for essentials like food and fuel.³⁶

- 'PropTech' startups are facilitating the accumulation of capital through property investment, in turn undermining housing affordability amidst a housing crisis. For example, some promote fractional property investment in which users can buy a portion of a property and receive a portion of rental income.³⁷ Others use machine learning and analytics to automate property and development valuations in order to extract the most financial value.³⁸ These companies exacerbate the problems created by treating housing as an asset, rather than an essential service and human right.
- Other uses of 'PropTech' in the rental industry use machine learning, data scraping and analytics in order to automate the process of assessing risk or suitability of tenants, operating in ways and making decisions that are opaque to those impacted by the system.³⁹
- Automated decision making systems used in recruitment can exacerbate pre-existing biases, in turn hindering people's economic opportunities. For example, research has shown that recruitment algorithms favour male applicants.⁴⁰
- Overseas there is already evidence of how the use of AI-assisted decision-making in assessing credit scores or predicting an individuals' suitability for a loan results in biased outcomes, further locking historically marginalised groups out of opportunities.⁴¹

Many of the uses and outcomes of algorithmic systems in these areas are speculative, however the economic and regulatory incentive to experiment exists, despite the risk of exacerbating social problems, which is propelling an increasing number of companies toward digital "disruption" under the guise of "innovation."

Australia has positioned itself as a 'testbed' for companies to experiment with technology in a low risk, low regulation environment. For example, the Australian Securities and Investments Commission has established an "Enhanced

³⁶ Beazley, Jordyn. "[Australians turning to buy now, pay later schemes for groceries' stuck in a 'revolving door' of debt](#)," *The Guardian*, 8 November 2022,

³⁷ See, for example, [BrickX](#)

³⁸ See, for example, [PointData](#)

³⁹ See, for example, [Snug](#)

⁴⁰ Hanrahan, Catherine. "[Job recruitment algorithms can amplify unconscious bias favouring men, new research finds](#)," *ABC News*, 2 December 2020.

⁴¹ For example, mortgage approval algorithms rejecting Black applicants at higher rates. See: Martinez, Emmanuel and Kirchner, Lauren. "[The Secret Bias Hidden in Mortgage Approval Algorithms](#)," *The Markup*, 25 August 2021.

Regulatory Sandbox” that allows persons and businesses to test certain “innovative financial services” without first obtaining relevant licensing requirements.⁴²

There are very few requirements placed on these businesses to consider human rights or the possible impacts upon social or economic inequality.⁴³ Entities do have to meet a ‘net public benefit test’ which require them to explain why the exempted activity will be likely to result in a benefit to the public, however the examples of benefits provided include “increases consumer choice”, “reduces cost”, “better user experience” or “enhanced efficiency.”⁴⁴

In their 2021 Report on Human Rights and Technology, the Australian Human Rights Commission suggested that regulatory sandboxes could possibly be used not just to encourage technical innovation, but also to encourage better governance, accountability, transparency, and to test models of regulation. In particular, they present recommendations for developing a “regulatory sandbox for responsible AI,” including “the development of one or more regulatory sandboxes focused on upholding human rights in the use of AI-informed decision making.”⁴⁵

Regulatory sandboxes can be a dangerous experiment, even those for good reasons. A better approach might be pre-emptive regulation or co-governance frameworks, like those suggested by Fairwork in their model standards for the fair implementation of artificial intelligence.⁴⁶

The technology and data companies operating and emerging in the fields of insurance, housing and finance rely upon and incentivise the ever-increasing collection, use, storage, analysis and sharing (or selling) of data.

In this sense, they have both a surveillance function—predatory and invasive collection of data, allowing profiling and policing of individuals and communities—as well as a speculative function—facilitating capital accumulation in ways that undermine fairness and equality in the longer term.

For too long tech companies have been able to operate under the green light of “innovation”.

⁴² Australian Securities and Investment Commission. [Enhanced Regulatory Sandbox \(Information Sheet 248\)](#). August 2020.

⁴³ Entities must meet a ‘net public benefit test’ which requires them to explain why the exempted activity will be likely to result in a benefit to the public.

⁴⁴ Australian Securities and Investment Commission. [Enhanced Regulatory Sandbox \(Information Sheet 248\)](#). August 2020.

⁴⁵ Australian Human Rights Commission. [Human Rights and Technology Final Paper](#). 2021, 97.

⁴⁶ Fairwork. [AI Principles](#). 2022.

Politicians, policymakers and regulators appear to be reluctant to intervene out of fear of being perceived as anti-innovation, anti-tech, and anti-progress. There needs to be significantly more scrutiny into these platforms, services and products, and for them to be regulated accordingly.

There is a huge opportunity for Australia to be a world leader in proactive regulatory approaches to technology that operate not just on for economic gain, but also for the public good.

Questions you could be asking

How might we prevent the logic of extraction and accumulation that is currently persistent in private tech companies from seeping into essential government services and public administration functions?

How might publicly-funded technology projects be designed to better facilitate innovation in the public good in the realm of finance, insurance, and housing?

What alternatives to regulatory sandboxes might be used to safely pilot technologies with wide-ranging social implications?

How can people's privacy and human rights be better protected on commercial third party application platforms, for example in recruitment, tenancy and finance?

Potential solutions to explore

Develop and mandate the use of a fairer and privacy preserving replacement for invasive tenancy application and property management platforms through a public-commons partnership with state governments and tenants unions.

Establishing a clear legal standard for algorithms — including an individual right to know when someone is interacting with an algorithm, secure, verifiable and transparent audit trails which would record the queries submitted and data used to process the query, and a right to an explanation.

APPENDIX 3



A recent report conducted by

CHOICE

titled

At what cost? The price renters pay to use RentTech

18 April 2023

AT WHAT COST?

The price renters pay to use RentTech



APRIL 2023

CHOICE

ABOUT US

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

To find out more about CHOICE's work visit **www.choice.com.au**

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INTRODUCTION

In recent years, a new industry has emerged in the Australian real estate market – for-profit renting technology businesses ('RentTech'). People who rent are increasingly pressured to use these technologies to apply for properties, make rental payments, request maintenance and communicate with real estate agents or landlords.

The current rental market crisis and growing risks of data misuse have amplified the risk of harm that these technologies pose to consumers. The national median rent increased by 10.2% in 2022, and there was a 27% increase in renters seeking homelessness services in the past four years.^{1,2} In this context, renters have even less ability than normal to shop around or refuse to use RentTech. Meanwhile, data privacy and the rise of automated decision-making have also become pressing concerns, from high-profile breaches at Optus³, Medibank⁴, and the real estate agencies Harcourts⁵ and LJ Hooker⁶, to the harmful algorithms used by the Robodebt scheme.⁷

Access to renting – an essential service – is becoming more digitally mediated. People who rent should expect assurance that their personal data is secure, that their cost of living doesn't unfairly increase, and that their data isn't being used to exploit or harm them.

This report explores the consumer experience of these business practices using a national survey of renters and landlords; testimonials from renters; academic and media reports; and CHOICE's original investigative and editorial work. It examines what additional protections renters need from rental technologies.

Consumer problems

CHOICE has found four major areas of concern in RentTech for people who rent that require action from policymakers and business:

1. Lack of choice: Renters are increasingly forced to use third-party rental platforms instead of conventional methods to apply for rental properties, pay rent, or request maintenance or repairs.



2. Data insecurity: Third-party rental platforms can collect and store more data than traditional methods such as paper forms and online forms hosted by real estate agencies. This data is not only prone to data breaches, but can also be monetised and used in surveillance.



3. Added costs: RentTech is being used to force or encourage tenants to pay additional fees. These include fees for paying rent, penalties for failed payments, and the cost of their own background checks.



4. Invasive technologies: Advances in RentTech have introduced automated decision-making systems in rental application assessments and surveillance of people who rent. Without regulatory oversight, both of these functions may increase barriers and discrimination for consumers.



Our findings



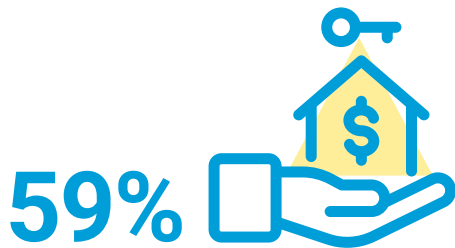
41%

of renters were pressured to use a third-party platform by their agent or landlord.



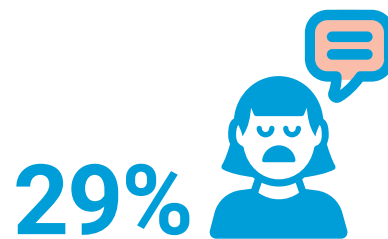
60%

of renters were uncomfortable with the amount and type of information collected.



59%

of landlords who used RentTech said it was required or recommended by their agent.



29%

of renters have opted not to apply for a rental because they didn't trust the RentTech platform.



25%

of people who rent have paid for a tenancy check.



21%

of young renters (aged 18–34) reported a tenant score was used to assess their application.

Recommendations

CHOICE recommends federal and state governments take the following steps to ensure that renters are appropriately protected from the risks created by RentTech:

- 1. Reform the Privacy Act:** Australia's privacy laws are outdated and not fit for purpose. Work is currently underway to address these through the Attorney-General's Department's review of the Privacy Act. In order to protect renters from poor conduct, the *Privacy Act 1988 (Cth)* should be amended to include:
 - a. Clearer rules on how data is collected and used, ensuring fair and safe outcomes for consumers;
 - b. A new definition of "personal information" that is fit for purpose in today's digital environment;
 - c. Mandatory Privacy Impact Assessments for businesses engaging in practices with high privacy risks;
 - d. Removing the small business exemption from the Privacy Act, so that it applies to all RentTech businesses, regardless of size.
- 2. Federal inquiry into automated decision-making (ADM):** Australia requires more regulations and enforcement on the use of automated decision-making and artificial intelligence (AI). A federal inquiry should consider how businesses use ADM and AI to determine prices and consumers' access to their services.
- 3. Economy-wide ban on unfair trading:** People who rent need legal protections from unfair trade practices. CHOICE is calling for a new economy-wide prohibition of unfair trading practices in the Australian Consumer Law, as recommended in the ACCC's Digital Platforms Inquiry report.⁸
- 4. Modernise state and territory residential tenancies acts:** State and territory residential tenancies acts have weak and inconsistent laws that fail to adequately protect people from third-party rental platforms. State and territory governments should enforce fee-free rental payment options and fee-free access to tenants' information in databases, and prohibit invasive application questions.

RENTER'S JOURNEY USING RENTTECH



METHODOLOGY AND SCOPE

Methodology

Data for this research was collected from a variety of sources, including:

- **Survey:** CHOICE conducted a national survey of 1020 people who rent and their experiences of and sentiments on renting and rental platforms, as well as a national survey of 502 landlords about their experience with rental platforms.⁹
- **Case studies:** CHOICE interviewed a number of renters, including CHOICE supporters, who have had issues with rental platforms. The Tenants' Union of NSW also provided some case studies that included details of the issues that arise from third-party rental platforms for some renters. These examples also provided insights into elements of RentTech not addressed in the survey. All renter case studies are de-identified.
- **Stakeholder consultation:** CHOICE interviewed a wide range of experts, including housing researchers, tenancy advocates, and privacy experts. CHOICE also contacted the top five commonly used third-party rental platforms according to our survey (2Apply, 1Form/Ignite, Snug, Rent.com.au, and tApp) with a list of questions about their practices, and all but tApp responded.
- **Investigative journalism:** This research was informed by CHOICE investigations into third-party rental platforms, including an analysis of RentTech privacy policies.

Scope

This report will use the terms 'RentTech' or 'third-party rental platforms' to encompass a wide variety of tools, services and businesses that are increasingly relevant to the tenant experience. This can include technology used for searching for a rental property, applying for a rental property, making rental payments, and logging maintenance issues and requesting repairs.

PropTech is a broader term used by industry to apply to areas such as property management, construction tech, smart cities, investment, and transactions.¹⁰ For a detailed explanation of terminology evolution, see the appendix.

Short-term accommodation digital platforms such as Airbnb are excluded from the study, as are online share house platforms (e.g. community-managed Facebook groups, Flatmates.com.au etc.) that aren't used to mediate an official tenancy. These are however areas of interest that CHOICE may explore in future work.

RENTTECH ECOSYSTEM



A NEW OBSTACLE FOR RENTERS

Prevalence

RentTech is increasingly involved in the process for applying for a tenancy in a rental property. Conventionally this process could involve paper forms, emails, or websites operated by the landlord or real estate agent/property manager. Now, the application process can also be externally managed online by a third-party rental platform.

CHOICE's national survey found that a significant number of renters were presented with the option to apply through a third party in their last application – either through a third-party website (27%) or a third-party app (18%). Older renters were also far less likely to have used a third-party rental platform than younger renters. This data suggests increasing prevalence of third-party rental platforms with newer renters entering the market, but also potential technological barriers or lower awareness for older renters.

The RentTech market is diverse, but mostly dominated by a few companies. In the CHOICE survey, the two biggest third-party platforms used were 2Apply and Ignite (formerly 1Form and owned by REA Group). Of those renters that had ever used rental platforms, more than a third (37%) had used 2Apply and 31% had used Ignite. The next most commonly used platforms were Rent.com.au (19%)¹¹, Snug (9%), tApp (8%), OurProperty (8%) and Tenant Options (7%).

RentTech in the media and academia

In the last few years, the immense amount of information required by real estate agents¹² and the potential for tenancy databases to be exposed has been under greater scrutiny.¹³ A report from the Australian Housing and Urban Research Institute addressed emerging apprehensions about PropTech, including its potential for furthering discrimination¹⁴. In the United States, an investigation by ProPublica alleged that PropTech software YieldStar was being used to unfairly increase rents across US cities with aggregated data and uncompetitive practices.¹⁵

Domestically, data breaches at Harcourts¹⁶ and LJ Hooker¹⁷ real estate agencies near the end of 2022 indicate the growing level of risk to renters from the use of digital platforms to collect and store personal information. The Harcourts incident reportedly affected both tenants and landlords, with personal information potentially breached including names, addresses, phone numbers, signatures and photo identification.

Of those renters who had ever used rental platforms:

37% had used 2Apply



31% had used Ignite



19% had used Rent.com.au



9% had used Snug



8% had used tApp



8% had used OurProperty



7% had used Tenant Options



PROBLEM 1

USE IT OR LOSE IT: RENTERS HAVE LITTLE CHOICE



While looking for rentals through local real estate agents in a regional town, Olivia identified a property that she wished to inspect before considering whether it was right for her. Olivia contacted the real estate agent to see if a time for an inspection could be arranged and was told that all prospective tenants must make an application through Snug before they can inspect the property. Olivia was told this was non-negotiable. She did not wish to create an account with Snug and provide extensive personal data only to inspect a property that she was not even sure was going to be suitable for her. She continued looking, but then discovered that more real estate agents in the town also had the same process in place with Snug and inspections, making it extremely difficult for her to find and inspect rentals without having to engage with Snug or similar requirements. Regardless, Olivia elected to avoid agents which imposed these requirements as she continued her search for a home.*

Olivia, Renter.
Story supplied by Tenants' Union of NSW*

Many renters are required to use third-party rental platforms

For renters looking to find a new home, applications via RentTech may be presented as the only choice. CHOICE found that for half of all renters who applied via third-party platforms for their most recent application, the main reason to do so was because it was a requirement. In comparison, renters who used other application methods were less likely to report being pressured to use one option – less than a third of respondents who used other methods reported their main reason for doing so was because it was a requirement.

Overall, many renters are feeling pressure to use third-party rental platforms when applying. 41% of renters

have felt pressured to use a third-party service to apply for their rental by an agent or landlord at one time or another, with 11% of renters stating this frequently occurred. This is despite renters finding third-party rental platforms the least preferable method to submit a rental application.¹⁸

41%

41% of renters were pressured to use a third-party service to apply for their rental by an agent or landlord, with 11% of renters stating this frequently occurred.

Landlords who have used a third-party service reported this was often due to real estate agents – 38% saying it was required by the property agent, and 21% saying it was recommended by the property agent. Just a quarter stated they had suggested or implemented it themselves.

Renters prefer conventional application methods

People who rent indicated that they considered conventional methods of applying for a rental as more convenient than newer methods provided by RentTech. 47% of renters who used paper forms in person and 40% of renters who delivered a digital version of a paper form reported convenience as a reason, compared to 29% of renters that used a third-party app for convenience. Just over one in five (22%) renters that used a third-party app or website also saw it as an easy way to apply for multiple rentals.

Renters were less likely to prefer third-party services over conventional methods to apply for a rental. Only 23% of renters reported preferring third-party services, compared to 67% of renters who preferred conventional methods.¹⁹

Renters frustrated and disadvantaged by user experience and design flaws

One CHOICE supporter said she found the maintenance app required by her agent, OurTradie (by OurProperty), a “nightmare”.



“My first winter in this property, my electric oven/stovetop just stopped working. I checked fuses and asked my builder neighbour to have a look, just to see if there was a simple issue. We couldn’t find any, so I contacted the agent, and was told to fill in a form via their “maintenance portal” to investigate the issue. I did so, and was accused of damaging the property, and that if it was found to be my actions that caused the problem, I would be liable in full. Meanwhile, my local agent had alerted the owners, who were distressed at my not having means to cook etc. – and approved a replacement appliance that was ordered online and delivered (during lockdown). The oven sat on the porch for over two weeks as I tried to contact the appropriate person via the “portal”, only to be told they had lost the initial request... Finally an electrician was sent to install the oven, and he discovered that there was a loose connection on the original, which could have been fixed in minutes, had my first contact been acted on. Three weeks of my not being able to cook, hundreds of dollars in unnecessary cost for the new appliance, fees spent on the electrician and portal access – no apology whatsoever.”

Doris*, Renter²⁰

Another renter reported that an app required her to make a false statement and agree to forego her legal rights in order to submit a request.



Louise is a renter in Dubbo whose real estate agent recently switched property management of all rentals they manage over to a rent management app. Louise felt forced to sign up for this app in order to maintain her rental. When the need for repairs arose, Louise was no longer able to contact her real estate agent through phone or email as she previously had – she instead had to put in a repairs and maintenance request through the app. In order to submit the request, she had to tick a box stating that if the damage were shown to have been caused by Louise herself, she accepted responsibility and would bear the cost of paying for the repairs. She did not want to tick this box, but the app would not let her submit a repair request without “agreeing”.*

Louise*, Renter.

Story supplied by Tenants’ Union of NSW

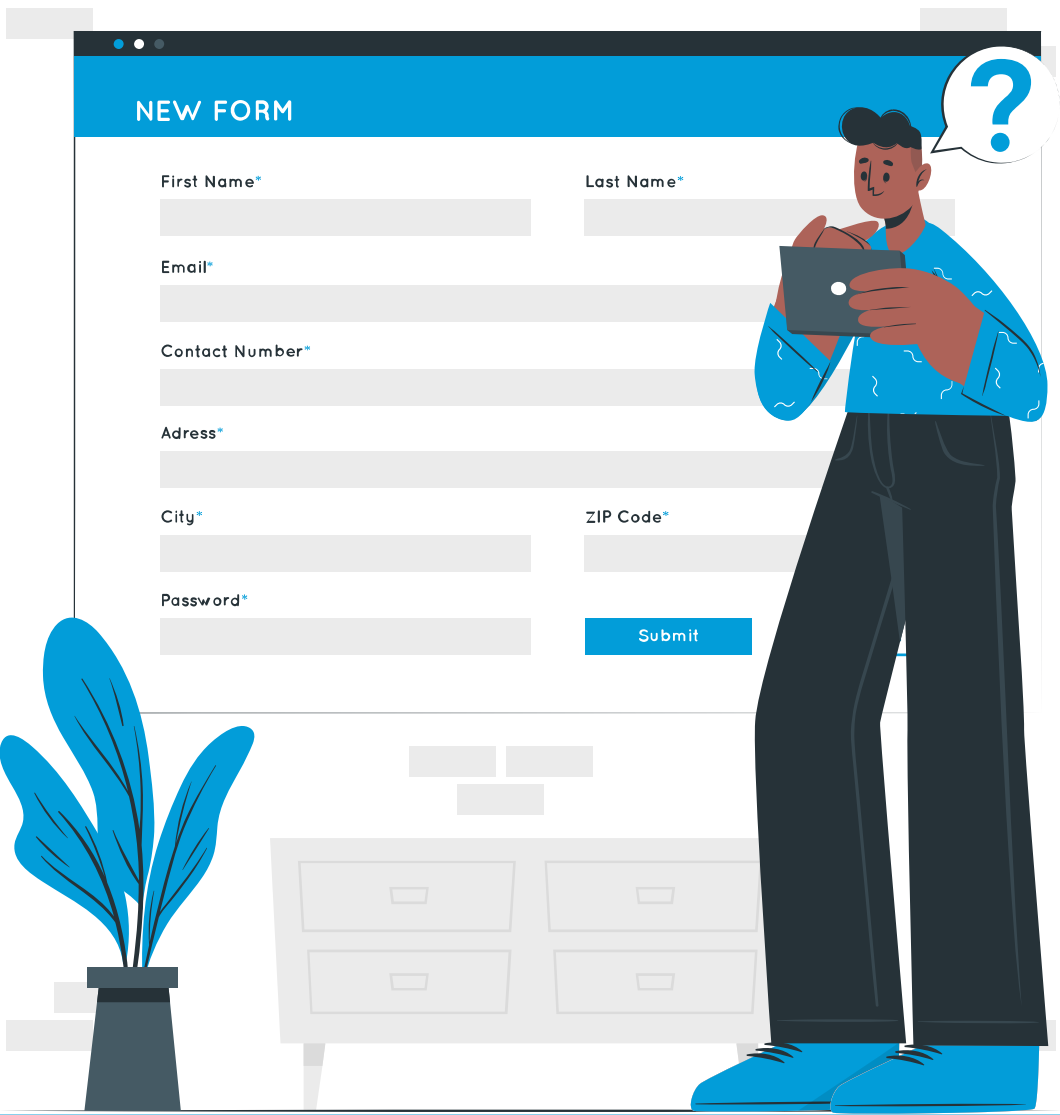
Applications through third-party rental platforms also provide little choice in which questions to answer, either because the questions are mandatory, or because completing fewer questions limits the “score” an application receives (discussed more in Problem 4). The rental platforms take differing approaches to the customisation they allow. For instance, 2Apply told CHOICE that questions are determined by each agency, agent, and property owner, whereas Ignite does not let agents customise or add to the form. Snug provided a detailed explanation of how they determined their standardised question set, but added:

“Agents are unable to customise the question wording, however [they] may include or exclude questions, and make mandatory or optional various sections of the Snug form based on their market dynamics, portfolio, policy and property owner preferences. For example, community housing providers in the affordable rental space can include the additional disclosures required for their program to assess eligibility.”

Rent.com.au also added that most of their questions are optional:

“The information we ask (questions) is what is required for a rental application, [and] whilst exact content needed does vary between agencies (some want more), we follow the standard fields as used by other application processes and per the REI [Real Estate Institute] guidelines. We also make most fields optional (at the renter’s discretion) and allow renters to enquire on a property with just contact details.”

Renters are increasingly pushed to use third-party rental applications, with little or no choice on the application process they prefer. The types of questions and information required is at the discretion of real estate agents, landlords, and third-party businesses.



PROBLEM 2

OPEN FOR INSPECTION: RENTERS FACE DATA INSECURITY

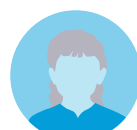


"We were given no choice with 1Form, because the property agent would not accept applications any other way. But I felt uncomfortable sending them details of our investments, cash in bank, more than one identity verifiers, utility bills, marriage certificate, motor vehicle registration details, tenant ledger report, references, copy of pension card, and so on. I felt we could easily be identified by simply showing our photo ID on driver's licences."

Jose*, Renter

Applying for a rental can require extensive amounts of personal information such as identity documents, employer and tenancy references, and proof of income. Data security and privacy are therefore central to conversations around renting and RentTech. High-profile data breaches at Optus and Medibank were followed by smaller but still harmful data breaches at the real estate agencies Harcourts²¹ and LJ Hooker.²² 2Apply's parent company InspectRealEstate suffered a minor data breach before closing security vulnerabilities in 2015²³, and allegations have been raised against REA Group for breaches of 1Form data.²⁴ The amount of data RentTech businesses hold has generated interest in the media on data security and privacy issues that could arise if more breaches occur.²⁵

Rental applications require uncomfortable levels of data



"I seek rental accommodation and this week one agent emailed me to say I needed to complete an application form (in full) on Tenant Options (a website) before she would even consider me to view a rental property ... (I called and asked for a paper application form and she refused on the grounds she had too many applications). Tenant options website asks for everything (including driver's licence number, and past addresses, proof of income, accountants details, next of kin and more). I am very concerned that this website could be hacked and my ID stolen. I am also concerned that finding a new rental is turning into a very onerous and demanding process – this is extreme..."

"I think it's data misuse/abuse of their power position – it's onerous, dangerous and unfair to tenants to have to provide so much detailed personal information ..."

Jane*, Renter

Most renters (60%) reported being uncomfortable with the amount and type of private information requested in their rental application. Over half did not understand why some private information was asked of them during the process, and over a quarter of renters reported not applying for a property due to the information that was demanded.

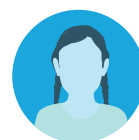
While renters have privacy concerns across all methods, third-party services appeared to be the least trusted. Renters who preferred paper form applications were more likely than renters who preferred third-party platforms to see their preference as a means to protect their private information. 29% of renters had opted at least once to not apply for a rental because they did not trust the third-party service involved.

Renters are accepting of the need to provide distinct pieces of personal information. Aside from bank statements, the majority of renters believed individual verifications of identity and employment were appropriate to request in a rental application. However, the total amount of information required concerns them.

Types of information that may be requested

- Driver's licence
- Proof of income / pay slip(s)
- Medicare card
- Bank statement
- Passport
- Contact details of a personal reference
- Employment contract / proof
- Employment history
- Utility bill – electricity, gas, phone
- Contact details of a current or previous real estate agent / landlord
- Reference letter from current or previous real estate agent / landlord
- Birth certificate
- Evidence of current and past living arrangements
- Reference letter from a personal contact
- Credit check
- Australian visa
- Credit / debit card history
- Proof of age card (government-issued)
- Australian Taxation Office notice of assessment
- Marriage certificate
- Certificate of Australian citizenship
- Tertiary student Identification card
- Council rates or land valuation with current address
- Change of name certificate
- Australian mortgage documents
- Medical history

Additionally, major power asymmetries exist between consumers and data collectors, including knowledge asymmetries on how the data is being used, what types of data are actually necessary for a service, and what the consequences of data misuse may be.²⁶



“When I was last applying for a rental (about a year ago) I found that some agencies required you to apply through 2Apply using the TenantApp or 1Form. Some agencies did not accept these and wanted you to use forms on their website. I found all of the apps and website forms required a lot of personal information. I think they require too much detail... Any application should just ask for the minimum required information (as legislated by the state) and if the owner/agent wants more info, then they should call and send an email CC’ing in all related parties to request that information and justify why they need it.”

Therese*, Renter

Renters have reason to be concerned about data security on third-party rental platforms. People who rent are not adequately protected by legislation regarding their privacy and the questions that are asked in rental application forms. While best practice standards exist, such as the NSW Fair Trading Commissioner’s recent guidance²⁷, property managers and third-party rental platforms are currently free to ignore these unenforceable guidelines.

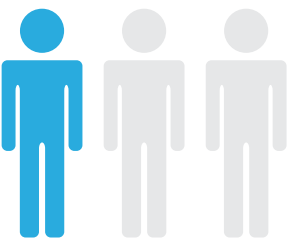


“Having our bank details on a third-party site is making us extremely nervous ... If a data breach happens through Simple Rent, what will happen to our account, especially when only one of us is currently working? ... With no way to change this, we are at the mercy of the real estate agent, their fees through Simple Rent, and the cyber security of Simple Rent itself. If anything happens to our data, we very much doubt the real estate agent will take any responsibility for it.”

Bill*, Renter

Most renters want legal protections – and many aren’t sure if they are protected

The CHOICE survey reveals a lack of awareness from renters about their legal rights around private information. Almost half of renters are unsure or undecided if Australian laws protect their private information that is given to real estate agents and the platforms they use. Almost all renters (85%) agree real estate agents should be legally required to ensure they never pass on rental application details, yet only 36% trust real estate agents to protect their private information.



Only 36% of renters trust real estate agents to protect their private information

CHOICE reached out to the five most commonly used platforms about their data and application practices. When asked “do you use any data gathered during the application process for either analytics or marketing purposes, including anonymised or aggregated data?”, REA, Snug, and Rent.com.au all said they used anonymised and aggregate data to improve their services. REA and Snug noted they shared information with utility providers if renters wished; Snug also suggested they use their data to “improve renting and encourage housing security and stability”, and Rent.com.au suggested they use their aggregate data as a “way to amplify the voice of our renting community” and understand broader renting trends. 2Apply simply said “no”, and tApp did not respond.

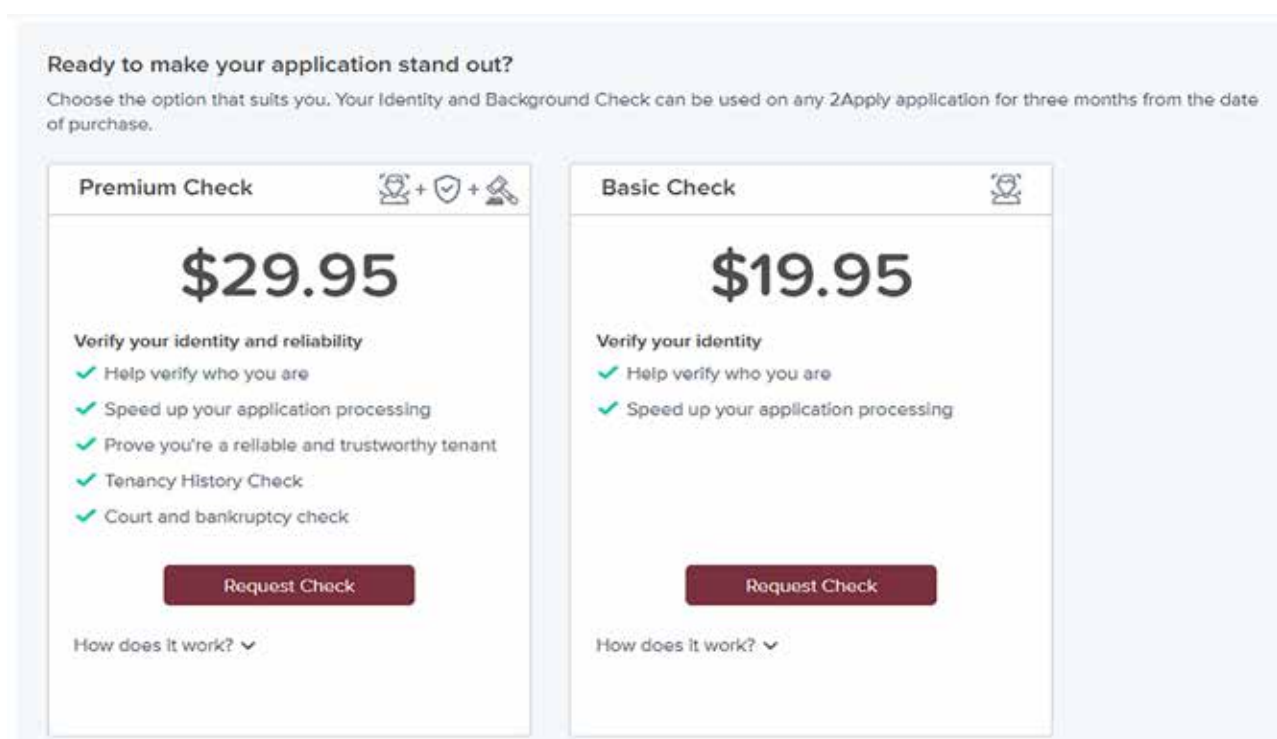
Snug and Rent.com.au also state that users can opt out of and into marketing emails. REA Group said rental applicant data wasn’t shared with any of their other internal products, services or commercial activities. Snug added that it redacts sensitive identity document information after 60 days and withdraws incomplete applications, while REA Group added that they remove sensitive attachments such as identification documents after 21 days, and remove the whole application 21 days after a property is leased.



PROBLEM 3

IS THAT YOUR FINAL OFFER?: RENTERS FACE ADDED COSTS

As for-profit businesses, RentTech companies are encouraged to find new avenues for generating revenue, and these have created further potential costs for prospective and current tenants. CHOICE found that costs could be added to the application stage and through rent payment systems.



Supplied screenshot of 2Apply background check.

Rental platforms reward renters for paying for their own background check

Some third-party rental platforms controversially allow applicants to pay for a background check to improve their chances of acquiring a rental property, with 25% of renters surveyed reporting they have paid for a tenancy check. Investigations into third-party rental platforms – particularly 2Apply – found renters felt pressured to pay for their own background check, spurring further investigations by state regulators into whether this breached laws that prohibited application

payments for rentals.^{28,29} Ordinarily, the cost of a background check would fall on a landlord or property manager.³⁰

Following these investigations, South Australia is reportedly outlawing charging for tenant background checks. 2Apply is removing their star system in response (discussed in section Problem 4), while REA Group has defended the practice as voluntary and Snug has stated its strong opposition to the changes.³¹

2Apply again made news more recently for a new product: 2Apply Verify. For \$20, applicants can authenticate their identity on applications for three months without disclosing identification documents to real estate agents.³² The previous section of this report demonstrates renters' desire for increased privacy over their data, but 2Apply's model monetises these basic protections.

Rental platforms reward renters who offer to pay extra rent

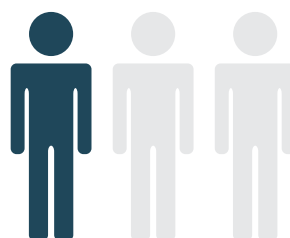


“Both tApp and 2Apply will invite you to specify how much rent you are willing to pay. This is essentially a blind auction, as you have no visibility into the bids which have been lodged by others and so you’re almost guaranteed to overpay if you decide to bid and you’re desperate. Rent bidding is technically legal³³ in New South Wales, although the government is trying to clamp down real estate agents listing prices as negotiable or explicitly asking people to bid. However, these forms allow people to specify whatever price they will pay, which is essentially an invitation to bid. Given that attending inspections and making applications is a chore, I’d prefer it if I was not having to waste my time attending inspections where someone else outbid me.”

Elijah*, Renter

Many renters already feel pressured to increase their offer to acquire a rental: more than a third of renters have increased their offer to secure a rental, a fifth of renters have been asked by a real estate agent to pay to apply for a rental, and 18% of renters have conceded to this request.

Rent bidding is now prohibited in NSW, Victoria, and Western Australia, but some third-party rental platforms still allow renters to offer a higher rent than advertised to boost their application.^{34,35} For instance, *The Guardian* found that a Snug user's “score” would grow as their rental offer increased.³⁶



A third of renters have increased their offer to secure a rental

“Renters are seeing their scores go up when they offer more for a property. Looking at this in the inverse, renters are unable to receive a higher score unless they offer more for a property. Practices like these threaten to drive up rents and worsen the housing crisis.

“Rent bidding regulations have been implemented across several states to prohibit the solicitation of higher offers. Unfortunately, these protections haven't stopped Snug from rewarding prospective tenants with a higher ‘Match Score’ when they have offered more for a property.

“There is a clear need for stronger regulation of technologies that mediate people's access to housing.”

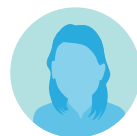
**Interview with Linda Przhedetsky,
Associate Professor at UTS**

Renters forced to use rental platforms that charge them added fees

Renters are also increasingly being pushed into third-party payment options with added fees, despite fee-free options being mandatory in NSW, Victoria, Tasmania, and South Australia. However, these fee-free options are sometimes unreasonable, outdated, or onerous, such as paying in cash or cheque in person at an office outside their own city.³⁷

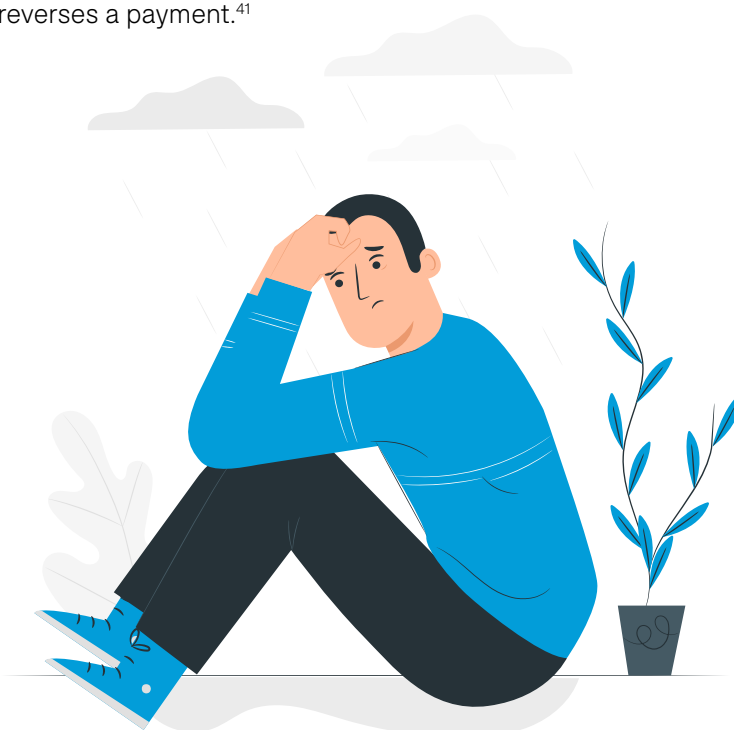
One renter, Stacy*, told CHOICE that she challenged her property manager's demand to use Rental Rewards after she reviewed the terms and conditions. After requesting the fee-free option she was entitled to, her property manager asked her to pay in cash at their office once a month, and then through cheques during lockdown, and finally accepted bank deposits when no one in the agency was available to process the cheques.

Many states also prohibit extra costs on top of rents, such as administrative or late fees, while Western Australia, for example, explicitly directs landlords and/or property agents to bear the cost of these fees if required by a payment platform.³⁸ Despite this, some third-party rental payment platforms charge fees. For instance, Ailo had payment fees ranging from 0.25% to 1.5% depending on the method (although these fees are currently waived while Ailo reviews their payment methods).³⁹ Reports from renters allege this fee is sometimes passed onto renters. Rental Rewards charges a "convenience fee" for rent paid through its system, and allows agents to select an "apply convenience fee" option to pass the surcharge onto renters.⁴⁰ Kolmeo's terms of use for tenants states fees will not be charged when prohibited under residential tenancies legislation, but does list standard BPay and credit/debit card fees as well as a \$38.50 chargeback fee when a card network reverses a payment.⁴¹



"I signed a new lease in June 2021 with a real estate agency that outsources their rental payments to a third party, Rental Rewards. The cheapest option was direct debit at \$1.50 per month, and even though I knew that they were required to offer a fee-free option, I didn't push it as it had been hard enough finding a new rental in a lockdown and that allowed pets. My rent is debited on the 30th of every month to match when I get paid, except in February when there is no 30th of the month. Rent in February 2022 came out on the 28th which I had anticipated, however I ended up noticing that in March and April a \$15 fee had been deducted along with my rent. I logged into the Rental Rewards portal to see that the system had automatically changed my future payment dates from the 30th of the month to the 28th without informing me, making me late on my rent payments two months in a row. There was a charge of \$1.50 to change the date back to the original. I know I should have challenged the late fees with my agent however effort and time-wise I decided it was easier to let it go."

Emma*, Renter





"I use an app/service called Ailo to pay rent for a house managed by Ray White. To put it mildly, it's a blatant money grab by the real estate agent ... Previously we paid rent by direct debit, with a fee for that 'privilege' – which always annoyed me. Then we were forced onto Ailo with an even bigger fee for simply having an automatic rent payment."

Ria*, Renter

Third-party payment platforms sometimes charge fees as a result of failed payments, including instances when the renter is not at fault or it was due to an administrative error. The automation of these penalties can cause stress and financial harm to renters who may see little in the way of redress. While late payment penalties are banned in many states, recovering the cost of failed payments are not, and therefore platforms can apply a functional penalty for late payments without a grace period.



Percy is a renter who was signed up to a third-party rent payment service. Each week, the day his pension money was paid into his bank account was one day after the third-party rent payment service sought the transfer of rent money from his account, meaning he often didn't quite have enough money in his account to cover his rent. This happened week after week, and each time Percy didn't have enough money in his account, he incurred a default fee. By the time Percy sought assistance from the Tenants' Union, he was owing more money to the third-party rent payment service in default fees than an entire week's worth of his rent.

Percy*, Renter.

Story supplied by Tenants' Union of NSW



PROBLEM 4

KEEPING SCORE: RENTERS FACE INVASIVE TECHNOLOGIES



“It’s that whole thing of when a computer [and] when algorithms are encroaching more and more in the lives of poor people. And these systems, whether they’re government systems or private systems, are being given decision-making power that in no way can comprehend the complexity of our lives or our capacity, whether that’s capacity to work or capacity to pay rent.”

Maria*, Renter

Third-party rental platforms provide landlords and property managers with tools to screen out or in prospective tenants based on their income and/or employment status, lifestyle, previous rental history, or other criteria. CHOICE’s survey showed 5% of renters have received a score, 6% haven’t received a score but were told that a score was used, 21% couldn’t recall or didn’t know. Interestingly, a tenth of renters aged 18–34 received a score, while another 11% of them were told a score was used.

The rapid rise of RentTech in an unregulated market raises concerns for how these technologies could create new and increased problems for some renters.

Automated tenant scoring can facilitate discrimination

“When [real estate agents] are assessing all the applications, they’re running a risk assessment over the whole group, and they’re deciding who represents the least risk, essentially. That usually means highest income, most stable employment and so on. But they’re getting so many applications that they’re finding more and more ways to cut down the pool of people who they actually have to consider.

“So the more they ask about different aspects of your life and get you to fill out the form, the machine can just ... say to the real estate agent, you don’t need to worry about looking at 80% of these people. That’s really what’s happening. The amount of information that’s asked for is used mainly for the purpose of excluding you from finding a home.

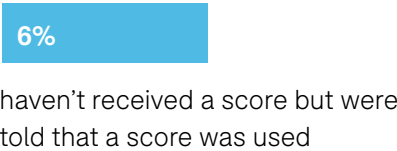
“The application process is an unregulated area. We have very light and ineffective discrimination laws that do apply, but they’re also laughably easy to get around. Essentially they’re not there...”

**Interview with Leo Patterson Ross,
CEO of Tenants’ Union of NSW**

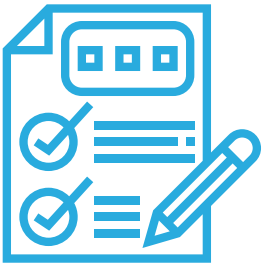
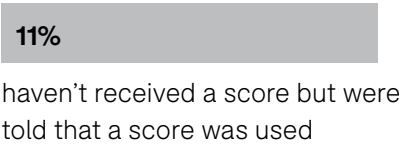
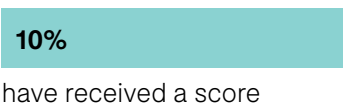
Renters in Australia have few protections from exploitative and unfair automated systems. A lack of regulations in RentTech gives landlords and real estate agents an immense power to gate keep housing. Renters need robust and contemporary regulations to ensure their right to housing is protected.

Renters' scores

All renters



18–34 year olds



The CHOICE survey showed that 5% of renters have received a score, 6% haven't received a score but were told that a score was used, and 21% couldn't recall or didn't know. Interestingly, a tenth of renters aged 18–34 received a score, while another 11% of them were told a score was used.

Snug produces a “Match Score” for rental applicants that indicates their suitability to the landlord and rental property. Property managers are able to see the scores and create their shortlist from there. Snug states they do not disclose the proprietary details of their algorithm, but told CHOICE the Match Score is based on:

...property owner preferences, property data, rental application attributes (start date, rent and term), renter profile completion (non-discriminatory, universal, platform-wide weighted contribution from the renter profile) and market conditions (not currently utilised in the Match Score).

Agents can then change the priority of attributes based on affordability or owner preferences.

The Match Score has been accused of being “potentially discriminatory” by Associate Professor Linda Przhedetsky, due to the attributes potentially used to generate it.⁴² Despite such concerns, Snug has recently been contracted by Homes Victoria to build a platform allocating social housing in a random ballot rather than in a needs-based process.⁴³ While Homes Victoria states the platform “does not include the aspects of Snug’s platform that have raised concerns, including the ‘match score’ function”, it’s unclear as yet what data Snug will store following a social housing application.

There is also community concern about Snug’s application process. For instance, one applicant reported Snug asked him whether any applicants identified as “Aboriginal or Torres Straight [sic] Islander”. This is despite questions about racial identification in private tenancy being prohibited under the law.⁴⁴ Snug responded to the concern stating this was in error as an agency selected a question meant for social and affordable housing required by governments. This raises further concerns about the role of private rental platforms in government service delivery.

2Apply does not use a scoring system like Snug’s, but does use a star system on the “completion” status of their application – this appears to include paying for features such as a tenancy check, according to an investigation done by the ABC:

“Ms Carmona could choose not to pay, but she would have to tick a box that says “no thanks, I don’t want to verify my identity” and her “star rating” as an applicant would be capped at four out of five stars.”⁴⁵

InspectRealEstate reached out to CHOICE in the final stages of this report to state it would remove the star rating system to improve “process flows” for tenants. InspectRealEstate also publicly stated this was due to concerns from regulators and the community.⁴⁶

REA Group and Rent.com.au both confirmed they do not provide a score to tenants, but Rent.com.au noted they do pass on whether an applicant completed a tenancy check.

“Opaque algorithms leave renters in the dark about how their data has been used in the analysis of their tenancy applications. This is especially true when it comes to technologies that use automated decision-making to score, rate, or rank applicants.

“The use of algorithms in housing markets is far more prevalent in the US and the UK. If we are to learn from these markets, we need to make sure that companies aren’t using algorithms that discriminate or treat renters unfairly.

“Discrimination can happen with or without the use of an algorithm. It is important to emphasise that technology can be part of the solution, and to establish guardrails that stop businesses using rental application technologies in ways that create [harm] or exacerbate existing harms.”

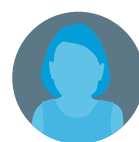
**Interview with Linda Przhedetsky,
Associate Professor at UTS**

Rental technology and the potential for surveillance of tenants

Renters also wrote to CHOICE about their concerns with reference checks being conducted through rental platforms. While reference checks with employers predate RentTech, real estate agents are now able to outsource the collection and handling of this personal data to third-party rental platforms. CHOICE received a photo of a 2Apply reference check that asked an employer whether their employee was “punctual/hardworking/reliable/responsible”.

2Apply reference check sent to employer of prospective tenant.

The information that was asked of employer referees was labelled as “invasive” and “completely unnecessary” by Secretary of Victorian Trades Hall Council Luke Hilakari.⁴⁷ One response we received from an employer noted the difficulty explaining the nature of their workers’ seasonal employment and income. This process also gives employers excessive and inappropriate power over their employees’ living situations.



“I haven’t had to use the apps to apply for rentals. But I have received reference requests for people I know... It is impossible to give a good snapshot of what the person applying is like. I employ seasonal workers and there is no provision in there to explain that. They earn great money, are hard workers and responsible. But the rent apps’ questioning is very black and white, therefore not giving a good chance at securing a rental. I had to ring a real estate agent once to explain one of my employees to them!”

Kira*, Employer

Australian renters should also be concerned by surveillance technologies used overseas and their potential use in Australia. Researchers of “landlord tech” in New York City found that the use of facial recognition biometric systems in residential complexes contributes to gentrification and discrimination against people of colour, and is used to surveil and disrupt organising efforts against landlord tech.⁴⁸ One of those researchers also investigated automated tenant screening processes and, amongst other issues, how they contribute to racial discrimination:

“Largely unregulated TSBs [tenant screening bureaus] deploy search algorithms and web scrapers to grab data available on court websites or purchase data directly from data brokers such as Lexis Nexis, which also profit from their use.”⁴⁹

While the state of automation and surveillance technologies in the United States is far advanced beyond its use in Australia, left unregulated there are few barriers to this type of RentTech being deployed in Australia outside of existing privacy regulations.

RentTech worsens power imbalances for people who rent

In a tight rental market, new technologies are increasing the power disparity between prospective tenants and the real estate agents or landlords they engage with. While this disparity exists regardless of RentTech, new screening and decision-making technologies make it easier for property managers to set difficult conditions for what is an essential service. Additionally, the opaqueness of the algorithms used to develop match scores and shortlists makes it difficult for prospective tenants to understand the rationale behind decisions and to improve their chances of being approved.

The use of RentTech by property managers and owners will likely increase in Australia. However, RentTech is likely to be more prevalent in rental businesses than with private landlords – including real estate agencies, corporate landlords, and build-to-rent complexes. While

still in relative infancy, build-to-rent developments are surging in Australia, and RentTech is most useful for corporations that manage large property portfolios like build-to-rent.⁵⁰ Housing academics have argued this necessitates “automated landlords” to select, monitor, and manage tenants across properties.^{51,52}

Renters on income support or with irregular incomes may also be negatively impacted by rental technologies. The automation of creditworthiness checks, semi-opaque tenancy databases, and income cross-checking can put applicants at a disadvantage. With very little human discretion available, these applicants will likely be looked over in favour of tenants who achieve an algorithmically determined criteria of a ‘good’ tenant.

“Part of the problem is that these platforms are primarily designed to help landlords rather than tenants ... So there’s no one from a renter’s perspective applying oversight or insight into how these apps actually determine your fitness as a renter. They also put up an extra barrier in terms of communication channels. You’re not having direct person-to-person contact. The website or form doesn’t give you any follow-up details, for instance, if you need to talk to a rental agent.

“The problem is that [both rent payment and online application platforms] creates a profile of you that can be stored for future use, and it doesn’t account for human factors. So one week you might be late on your rent because your employer had a problem with their payment system, but that penalises you as a bad tenant. They build a profile of you that may not reflect reality. And that same level of scrutiny isn’t applied to your landlord or agent. The power ratio is lopsided.”

**Interview with Dr Sophia Maalsen,
Australian Research Council DECRA Fellow and
Senior Lecturer at the University of Sydney**

RECOMMENDATIONS

Consumers are increasingly exposed to a range of risks when trying to rent via third party rental platforms. As property and renting continue to be “assetised”, it’s vital for policymakers to reintroduce care into housing infrastructure.⁵³ Australia’s data, privacy, and tenancy laws must change to meet these challenges and guarantee a baseline of consumer protections. Law reform is required to ensure that RentTech players who mediate access to an essential service operate fairly, safely and with greater transparency.

Federal reforms

1. Reform the Privacy Act

Australia’s privacy framework is outdated and failing to protect people from harm. Strong privacy protections for all people, as well as strong obligations on businesses, are needed to hold RentTech companies and real estate agents to account. The Attorney-General’s Department has recently completed its review into the Privacy Act, and the following recommended reforms could address renters’ concerns in the RentTech industry:

- a. Clearer rules on how data is collected and used, ensuring fair and safe outcomes for consumers:** This can be achieved by a new best interests duty that would require private entities to act in the interests of the people whose data they collect, use or disclose. Businesses should be required to only collect and use data for the purpose of providing consumers with a good or service, and remove unneeded data in a timely manner. For renters, this would mean that data collection would be restricted to identification and proof of income, and would only be kept until this is demonstrated. The Privacy Act Review’s recommendation for a “fair and reasonable use” collection of data would be a critical step in this direction.
- b. Align the definition of ‘personal information’ to renter expectations:** The current definition of ‘personal information’ in the Privacy Act refers only to information that explicitly identifies an individual. However, in a digital context, this creates loopholes for inferred data (new data generated through personal information, such as profiles of consumer behaviour) and technical data (e.g. location data, IP addresses, device IDs etc.). This reform is supported by the Privacy Act Review and will provide additional protections for renters who are concerned about the privacy of their inferred and technical data held by third-party rental platforms.
- c. Introduce a risk-based framework for private sector privacy impact assessments (PIA):** Currently, government agencies that undertake activities that risk privacy are required to complete a PIA. Private entities, however, are exempt. At a time when businesses are accruing and handling enormous amounts of consumer data, this is an oversight that has already failed to protect millions of consumers. The Privacy Act Review recommends empowering OAIC to request a PIA from businesses engaging in high-risk activities. Risky activities such as AI-informed creditworthiness and social scoring systems, rewards programs, and online tracking should be included in guidelines for when a PIA is required, while riskier activities should be prohibited altogether.
- d. Expand the Privacy Act to all businesses that hold tenant information:** Small businesses (businesses with an annual turnover less than \$3 million) are not currently subject to the Privacy Act. However, there are exemptions, including for residential tenancy databases. This reflects the enormous amount of personal data held by these databases and the impact it has on the lives of people whose information it holds. In order to protect renters from existing or future small RentTech businesses, the exemption for residential tenancy databases should be expanded to the property management and RentTech sector as a whole. CHOICE supports the Privacy Act Review’s recommendation that the small business exemption in the Act is removed.

2. Inquiry into automated decision-making

The findings in this report demonstrate the potential for renters to be negatively impacted through automated profiling, tenant scoring like Snug's Match Score and 2Apply's star system, and creditworthiness, as well as through automated and manual surveillance. Australia lacks strong laws needed to ensure consumers are protected from exploitative and unfair automated systems. The federal government should urgently commence an inquiry into the use of artificial intelligence and automated decision-making by businesses in determining prices and access to services. This inquiry should consider whether Australia requires legislation such as Canada's proposed *Artificial Intelligence and Data Act*.

3. Economy-wide ban on unfair trading practices

CHOICE is calling for the introduction of a prohibition on unfair practices in the Australian Consumer Law. This overdue reform could protect people who rent from unfair trading practices in the RentTech sector. Unfairness provisions already operate effectively in other jurisdictions, such as the United States, United Kingdom and the European Union. A ban on unfair trading could also limit the use of potential deceptive patterns on third-party rental platforms. (Also known as 'dark patterns', these are covert online design features that exist to manipulate user behaviour.)

State and territory reforms

4. Reform state and territory residential tenancies acts

Each state and territory has an equivalent of a Residential Tenancies Act (RTA)⁵⁴ that governs the rights and obligations of renters, landlords and real estate agents. Although each Residential Tenancies Act differs, each state and territory should adopt the following protections:

- a. The conduct of RentTech should be regulated by residential tenancy acts:** Unlike residential tenancy databases, RentTech that is used to apply, make payment, or request maintenance for a rental property is not captured by any RTA in Australia. Specific regulations will improve access to justice for people who rent. It will allow people to take RentTech platforms to their state or territory's legal and tribunal system for breach of the law.
- b. Restrictions on the collection of personal information:** State and territory governments should amend the RTA to limit the amount of personal information required by third-party rental services, real estate agent, and landlords. This will protect renters from discrimination, and reduce the risk of data breaches and misuse. Rental laws in Victoria have placed restrictions on the nature of information required for rental applications, prohibiting rental providers from requesting bank statements with daily transactions and sensitive information like ethnicity and gender identity without reason.⁵⁵ All states and territories should align their RTA to mirror Victoria's framework and ensure that it applies to all data collection methods, including social media and online tracking.

- c. Mandate fee-free payment options:** There is no requirement to provide renters with a fee-free payment option in Queensland, the Australian Capital Territory, the Northern Territory and Western Australia. However, in states that are required to offer such an option, renters can still be pressured to use third-party rental platforms that come with unavoidable fees, as they are given unreasonable fee-free options such as paying cash in person in real estate offices outside their city. State and territory governments should mandate that there should be at least one fee-free, genuinely accessible option to pay for rent. It should also mandate that renters do not have to pay administrative fees to access rental platforms. This will ensure that renters are not bearing the financial cost of the technology they are pressured into using. This is currently being discussed as part of rental reforms in South Australia.⁵⁶
- d. Close extra fee loopholes:** Tenants are being asked to pay extra fees in their application or tenancy. This includes paying for background checks to improve their application and penalties for failed payments, even when due to technical faults. Although some states and territories mandate that applicants must not be asked to pay to apply for a rental, and some states prohibit penalties for late payments, loopholes exist by way of tenancy background checks and dishonour fees, which are being used to charge extra money from people who rent. State and territory governments should update their residential tenancies acts to ban all fees and ensure renters are only paying their agreed rent.

APPENDIX: TERMINOLOGY AND THE CHANGING RENTAL INDUSTRY

PropTech is a new industry with various segments. A 2022 *Australian PropTech Industry Map* divides PropTech into property management, construction tech, smart cities, investment, and transactions.⁵⁷ Another report on the industry breaks it down into finance and investment, search platforms, brokerage and marketing, property management, construction, smart buildings, and visualisations.⁵⁸

The technologies used by renters span several PropTech segments including property management, transactions and search platforms. They are rarely recognised by the industry as their own category, but the term PropTech is not suitable to describe the tenant-centred experience. For this report, we refer to the technologies used by tenants as ‘RentTech’, or third-party rental platforms.

RentTech can also encompass older technologies that mediated the rental experience before the recent upsurge in RentTech technology and financing. An obvious example are search platforms for rentals (such as REA Group’s realestate.com.au and Domain Group’s domain.com.au), but another significant technology in Australia are tenancy databases. These databases hold records of tenants that have been marked as problems by their landlord or property managers.⁵⁹ Tenancy databases have a longer history in Australia and are regulated by residential tenancy laws, but are increasingly tied in with new RentTech. For instance, Trading References Australia runs a tenancy application service – tApp – as well as a tenancy database, and provides referrals to debt collection services.⁶⁰ TICA, the largest tenancy database, lists InspectRealEstate (owners of 2Apply and TenantApp) as partners on their website.⁶¹

There are also emerging applications of RentTech as a financial service, which have not been explored in this report but warrant further investigation. The clearest example of this is in rental bonds. How bonds operate differs state to state, but for the most part involves a renter lodging a lump sum before their tenancy (usually the equivalent of one month’s rent) as a security against future damage or issues with their property.⁶² These bonds tend to be lodged with a state-run rental bond authority. However, RentTech companies have sought to capitalise on the high costs of these bonds by offering guarantees – almost like insurance – for less than the cost of a rental bond, but without the possibility of a full refund at the end of their tenancy.⁶³

Two attempts at third-party bond guarantees were Traity’s TrustBond and Snug’s BondCover; however, both appear to have failed, with TrustBond’s website no longer accessible and Snug’s BondCover page transformed into a campaign pushing for the legalisation of bond sureties.⁶⁴

Terminology in this sector will continue to evolve as these technology companies seek to expand and innovate.

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