



information
and privacy
commission
new south wales

SUBMISSION TO CONSULTATION PAPER ON IMPROVING NSW RENTAL LAWS

Submission by the Information and Privacy Commission NSW

3 August 2023

Samantha Gavel
Privacy Commissioner

Commissioner's signature has not been included in this submission to facilitate public access to the submission, manage security risks and promote availability in accordance with the *Redacting signatures on public facing documents Practice Guide* published on the IPC website.

The Information and Privacy Commission NSW (IPC) welcomes the opportunity to provide a submission to the consultation paper on improving NSW rental laws.

About the IPC

The Information and Privacy Commission NSW (IPC) oversees the operation of privacy and information access laws in New South Wales.

The Privacy Commissioner has responsibility for overseeing and advising NSW public sector agencies on compliance with the *Privacy and Personal Information Protection Act 1998* (PPIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act) and promotes awareness and understanding of privacy rights in NSW. The PPIP Act and HRIP Act establish the Information Protection Principles and Health Privacy Principles respectively, which govern the collection, security, use and disclosure of personal and health information by NSW government agencies and, in the case of the HRIP Act, private sector health providers.

Renters' personal information

The Privacy Commissioner supports proposals to amend the *Residential Tenancies Act 2012* to provide privacy protections for personal information collected for the purpose of assessing a tenancy application. This is particularly important given the sensitive nature of information collected during the tenancy application process, including financial information and copies of identity documents.

The consultation paper indicates that a significant proportion of real estate agencies are currently not regulated under the Australian Privacy Act 1988 and are not required to comply with the Australian Privacy Principles (APPs). Similarly, individual landlords who manage their own rental properties are likewise not subject to the Privacy Act and APPs. Implementing the proposed reforms would address this significant regulatory gap and ensure that all real estate agents and landlords are subject to consistent privacy compliance obligations when collecting, using, disclosing and storing the personal information of renters.

Please find below responses to selected questions from the Consultation Paper:

10. Do you support limiting the information that applicants can be asked for in a tenancy application?

Limiting the collection of personal information to that which is reasonably necessary to assess a tenancy application would be consistent with the approach adopted under the APPs and the NSW Information Protection Principles (IPPs). Adopting a data minimisation approach will ensure that renters' privacy is protected as well as reducing risk for agents and landlords.

In addition to the purpose limitation proposed in the consultation paper, consideration should be given to the inclusion of a requirement that agents and landlords may only collect personal information directly from the person concerned, unless they have authorised collection from someone else.

14. Do you support new laws that set out how landlords and agents can use and disclose renters' personal information?

The IPC supports the adoption of purpose limitations for the use or disclosure of renters' personal information. Applicants have a right to expect that the personal information they provide in a tenancy application will be used or disclosed only for that purpose. The exceptions proposed in the consultation paper are appropriate to enable flexibility in the tenancy process and ensure that both tenants and agents can re-use personal information with consent of the individual.

15. What should applicants be told about how their information will be used before they submit a tenancy application?

Consistent with existing privacy regimes and privacy best practice, tenants should be provided with the following information before they submit a rental application:

- the purpose for which their personal information is being collected
- what the agent/landlord will do with the information
- whether the information will be shared with another party and identify any third
- parties this information is usually shared with
- how the applicant can view and correct their personal information
- any consequences that may apply if they do not provide the information.

Section 10 of the PPIP Act provides a model for privacy notice requirements that apply to NSW public sector agencies.

16. Do you support new laws to require anyone holding renter personal information to secure it?

Noting the growing risks of cyber security attacks and the resulting data breaches an obligation to secure and protect personal information collected from renters should be adopted. Section 12(c) of the PPIP Act requires that a public sector agency ensure that information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse. This may present a useful model for consideration.

17. How long should landlords, agents, or proptechs be able to keep renter personal information?

As principles-based legislation, the PPIP Act does not impose a specific timeframe for retention of personal information. Rather section 12 provides that information should be kept for no longer than is necessary for the purposes for which the information may lawfully be used. In the case of a rental application process, it is unlikely that long-term retention would be required, except where the individual consents to their information being reused for future rental applications.

18. Do you support requiring landlords, agents, or proptechs to
(a) give rental applicants access to their personal information,
(b) correct rental applicants' personal information?

Access and correction rights are a standard feature of privacy regimes in all Australian jurisdictions. Sections 14 of the PPIP Act provides that agencies must allow people to access their personal information without excessive delay or expense. Section 15 requires an agency to allow people to update, correct or amend their personal information where necessary.

For further information about the IPC visit www.ipc.nsw.gov.au.