Ailo

Submission in response to the:
Improving NSW rental laws consultation paper

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To:
Residential Tenancies
Policy & Strategy, NSW Fair Trading,
Better Regulation Division
Department of Customer Service
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About Ailo

This submission has been prepared by Ailo Holdings Pty Ltd (**Ailo**), and is in response to the NSW Government's Consultation Paper in relation to improving NSW's rental laws, dated July 2023 (**Consultation Paper**).

Ailo is a proptech as defined in the Consultation Paper, servicing property management businesses, landlords and renters. Ailo is also a fintech and facilitates payments, and is regulated under Commonwealth legislation as a financial services provider.

Ailo's mission is *to make every investment a good home, and every home a good investment*. We believe that there are a range of initiatives that can be pursued to improve the renter, landlord and agency experiences so that each person has a better outcome.

We have a range of capabilities and experiences that we believe can contribute to the achievement of the policy goals set out in the Consultation Paper.

This submission is directed to the questions set out in the Consultation Paper that we believe we have an informed perspective on.

10. Do you support limiting the information that applicants can be asked for in a tenancy application? Why/Why not?

As a general principle, we agree with limiting the information that applicants can be asked for during the tenancy application process.

As set out in our response to question 11 below, we recommend that consideration be given to other requirements that will soon be imposed on agents and landlords under changing Commonwealth laws.

We are also aware of landlords and agencies that use publicly available information to evaluate an applicant. This information is not asked for, and not included in, the tenancy application, but may be considered in the decision making process.

An example is the use of social media posts or a LinkedIn profile. Consideration may be given to setting out principles on how an agent and landlord may use publicly available information, and whether viewing that information would be considered "collecting" information about the applicant in the context of the changes being considered.

To be clear, Ailo does not and is not considering using social media profiles as part of its platform.

11. Do you have any concerns with landlords or agents only being able to collect the information set out in the table above to assess a tenancy application? Please explain.

In relation to *identity information* as defined in section 5.2 of the Consultation Paper, we recommend that consideration be given to the requirements set out in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**, or **AML/CTF regime**).

The federal government has stated an intention to extend the AML/CTF regime to real estate agents (tranche 2). That will require agents to operate as a designated service provider (as defined in the AML/CTF Act) and as a result will need to have comprehensive AML/CTF policies, processes and procedures inclusive of either collecting identity and financial information from renters and landlords and to process that information against a range of sanction, politically exposed persons (**PEP**) and identity databases. It will most likely involve agents engaging third party AML/CTF solution providers to satisfy their compliance requirements.

In either case, the agent or landlord will likely be required by the AML/CTF regime to collect more information than is set out in the "proof of identity" column on page 10 of the Consultation Paper. To comply with the AML/CTF regime, the applicant's full name, date of birth and address will be required, along with copies of government issued identification that can in turn be used to verify that information against sanction, PEP and identity databases.

Depending on the circumstances, an agent may also need information to form a view on the source of funds used to pay rent so that the agent can be satisfied that there is no suspicion of money laundering.

This process will be burdensome on agents and applicants, and clarity and alignment in the law from both State and Commonwealth governments will be important to avoid confusion and unnecessary expense.

In relation to *ability to pay agreed rent*, consideration should be given to the new open banking standards, where proptechs can obtain the contemplated information in a way that respects the privacy of the renter and also avoids some of the discrimination concerns as contemplated by section 5.3 of the Consultation Paper, and questions 19 and 20.

In relation to *suitability*, consideration may be given to information that can be provided through systems used by the agency that are what we call 'positive references' that go beyond the scope of the items listed. A positive reference might be an annotation that the property was well maintained as verified in a routine inspection. An applicant may wish to include that information in the application.

Consideration may also be given to allowing landlords, either directly or through their agents, to also provide positive references to applicants.

These positive references would be voluntarily shared by the relevant party.

As a general principle, we believe there is considerable scope to recognise and encourage positive behaviour from both renters and landlords, and to allow each party to voluntarily provide that information to the other party.

We have workshopped a number of these principles and would welcome the opportunity to share and explore them with policymakers.

It is also worth noting that the concepts set out assume that applicants are natural persons. Consideration may want to be given to ensuring that applicants that are companies or trusts are also covered by the new provisions.

12. Do you support the use of a standard tenancy application form that limits the information that can be collected?

Our view is that the policy objectives would be better achieved by focusing on defining how application decisions may be validly made, and the protocols for how information is shared and validated to help support those decisions.

We support the adoption of a standard set of policies and protocols, but we are concerned that reducing this issue to a standard application form will not address the practical issues being experienced and will prevent the adoption of technology solutions that can achieve those goals more effectively.

Our view is that policy objectives can be achieved by the use of existing technology platforms that offer better solutions for applications, agents and landlords. These platforms leverage open banking and identity verification technologies and they can be configured to ensure policies determined by policymakers are complied with in every case.

These solutions would mean the amount of personal information shared with the agency and landlord is greatly reduced, and would also ensure that there is a level playing field for applicants in the application process.

We believe there are two distinct questions:

1. What are the relevant criteria to consider when considering *identity*, *ability to pay*, and *suitability*; and
2. What protocols are best followed that allow these questions to be answered with the minimum amount of personal information being shared with the agent and landlord?

For example, when considering the *ability to pay*, policymakers may consider what the relevant test is for this issue. For example, should the criteria be that an applicant's income must be a certain multiple of rent? These are questions for policymakers to decide. Today they are left to each agent and landlord.

With that determined, the process could leverage the open banking standard to allow a proptech intermediary to determine this question with a simple yes or no answer.

In practice, the intermediary platform would access the applicant's banking details and, using the defined formula, determine whether the criteria is met. At the end of that process, the agent and landlord would have a yes or no answer, and all of the applicant's information can be then deleted.

This is a safe and secure method for determining whether or not an applicant has the ability to pay the agreed rent. The agent and landlord have no data to secure, and there is no prospect of a data breach.

Further, policymakers could have confidence that their policies are being complied with.

We are concerned that with a standard application form as contemplated, sharing the information set out in the table involves applicants' highly personal information about their job and salaries being shared broadly. It is inherently insecure, and, as outlined in our response to question 13, inherently open to bias and discrimination.

Platforms that allow solutions for *identity*, *ability to pay* and *suitability* are available today.

Ultimately, the practice of providing agents and landlords with the information contemplated in the table is no longer required. The underlying intent of these practices can safely be achieved through technology platforms that are available today and offer better safeguards than current industry practices.

We recommend that policymakers consider stating what the appropriate criteria is for each of the three columns, and develop protocols for how information is shared and used in that process.

We believe this approach would serve renters, agents and landlords, and would represent a new tenancy application process that is safer and fairer for everyone.

We would welcome the opportunity to discuss this concept further with policymakers.

13. Do you think that limiting the information that may be collected from rental applicants will help reduce discrimination in the application process?

Yes.

We believe that there is wide scope to change how information is defined, categorised and shared to reduce discrimination in the application process. We believe proptechs can play a productive role in that process.

For example, as contemplated in the *Ability to pay agreed rent* column of page 10 of the Consultation Paper, it is common practice that applicants can be asked to provide information about their wages and employment status.

This practice is designed to ensure the applicant can meet the rental obligations, but in effect the information also acts as a ranking mechanism by stealth. By seeing all of this information, the landlord will have a preference to take higher income applicants over lower income applicants, even if all applicants have the financial means to meet the rent obligations.

The practice, although well intentioned, favours high income applicants over lower income applicants, those with more esteemed careers over others and so on, even when all have sufficient financial resources to meet the rent payments.

Unless this is addressed we consider any effort to reduce this implicit bias will struggle to meet the policy objectives as we understand them.

Our view is that consideration may be given to a different set of practices where the agent or landlord is limited to only determining if, in the case of wages, the applicant has sufficient income to meet the rental obligations, so that the information collected is ultimately only a "yes" or "no" based on simple benchmarks.

This is easily done. New open banking standards allow proptechs to access the applicants bank accounts in such a way that these questions can be answered objectively, and also done in a way that respects the applicant's privacy and protects the applicant from discrimination. This is set out in more detail in our response to question 12.

Obviously, all of this would need to be done within the data security provisions as contemplated in question 16.

We believe that approaches like this would be more consistent with the intent of the policy changes being contemplated.

Consideration may want to be given to manage the information flow so that, for example:

(a) Agents and landlords only see whether or not the applicants wage is over a benchmark relevant to the rental amount;
(b) Agents and landlords only see the initials of the applicant, not the applicant's full name; and
(c) Agents and landlords only see whether the applicant has stable employment but not the employer's details.

All of these examples give a more objective basis to making decisions and reduce the risk of discriminatory practices, whether explicit or implicit.

All of this would need to be considered within the concept of the agent's future obligations within the AML/CTF regime as set out in the response to question 11. Under the AML/CTF regime an agent will be required to confirm the identity of the applicant, verify that the applicant is not registered on any sanction or PEP database and potentially verify the source of funds for the applicant.

Managing this balance will be a significant challenge to achieving policy goals. We believe that proptechs could play an important and useful role in managing these competing challenges and finding practical solutions that could deliver on all of the requirements.

We would welcome a discussion on what could be done in this area.

14. Do you support new laws that set out how landlords and agents can use and disclose renters' personal information? Why/Why not?

Yes.

The collective reputation of, and confidence in, the property management industry would be served by having clear rules relating to the use and disclosure of personal information.

It is worth noting that, as set out above, the AML/CTF regime will require agents or landlords to disclose applicants' personal information to various service providers to satisfy their obligations under that regime.

At no time in the application or tenancy process should applicant or renter information be used, disclosed or shared beyond the scope of the relevant process, subject to legal obligations.

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

The applicant should be told about how their information will be used, which companies the data will be shared with, and the identity of each proptech (or other tech company such as a payment gateway) that will be used by the agency in the management of the property.

This would include the software being used by the agency to collect and process tenancy applications, AML/CTF solution providers, rent payment gateways, credit agencies, property management systems and so on.

Ideally this should be made available on the agency's website so that time is not wasted in the open home and application process if the arrangements are not acceptable.

16. Do you support new laws to require anyone holding renter personal information to secure it? Why/Why not?

Yes.

The collective reputation of, and confidence in, the property management industry would be served by having clear rules relating to the security of renters' personal information (and similarly for landlords).

We recommend that consideration be given to ensuring that every entity involved in the process - agent, proptechs and payment gateways - be compliant with ISO 27001 or similar frameworks.

ISO 27001 and other similar standards are designed to ensure that appropriate practices are in place to properly manage risks associated with the handling of personal information. Without a commitment to independent standards we believe that it will be increasingly difficult to manage risks appropriately, which is to the entire industry's detriment, let alone the interests of renters.

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

The parties listed should be required to safely delete or destroy information as soon as possible after the information ceases to be relevant to the circumstances.

For example, once a leasing cycle has been completed, all personal information relating to an unsuccessful applicant should be deleted from systems or safely destroyed, other than basic information like the name and contact details of the unsuccessful applicant.

Information relating to a successful applicant should only be retained if it is necessary for the ongoing tenancy or to meet legal obligations such as the AML/CTF regime. For example, we believe that most of the information set out in the table on page 10 of the Consultation Paper should be deleted or safely destroyed at the start of the tenancy. A landlord or agent does not need to have access to pay records, identify documents or employment agreements once the application has been accepted. As described in our response to question 12, almost all of this information need not be given to the agency or landlord to begin with, and the agent and landlord can rely on certifications provided by a trusted intermediary.

In relation to a particular tenancy, at the end of the tenancy some information is still relevant and must be retained for various purposes such as tax reporting, audit requirement and the provision of information for a former renter's future application process to another agency. This information is generally not considered high risk personal information, and is more related to transactional data, such as a certain amount of money was paid at a certain time, which resulted in a paid-to-date of a certain day.

Consideration should be given to allowing the applicant or renter to control the deletion of their own personal information from proptech systems. For example, some proptech companies allow applicants to save a record of the information provided in a tenancy application. In that case, applicants should be able to control that process and remove information when they wish to. This would protect applicants from having to rely on other parties to delete their information in a timely way.

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?
Please explain your concerns (if any).

In principle, yes.

When considering proptechs, consideration should be given to the challenges associated with being required to "correct" personal information.

To illustrate the issue, assume in relation to a particular tenancy application a property manager receives a rental ledger from the previous agent. The property manager uploads that into the relevant proptech system. The applicant views that information and believes that the rental ledger that has been uploaded is not correct.

In cases such as these, the proptech is not in a position to mediate that dispute. The proptech cannot determine what is true and also cannot remove the information given the agent has uploaded it. Further, it is not always possible to confirm that the person on the phone is in fact the person in question without triggering a breach of privacy itself.

In this case, the appropriate course of action is with the agent to correct the record as it is the agent's record.

In our own experience, we have had engagement with renters that request Ailo to change data related to the renter, whether it be to change or delete information. Ailo is rarely in a position to directly do what the renter is requesting. The property manager is using the Ailo system to manage the tenancy and Ailo cannot just change information in the agent's system. Leaving aside maintaining the integrity of the agency's software system, Ailo also cannot determine the truth behind the issue.

Proptechs are however in a position to give renters and applicants a mechanism to annotate disputed information and we believe it is appropriate to require proptechs to facilitate that process. The process of annotating a record with either the applicant's comment or further documentation is, in our view, an appropriate role for a propertech.

We recommend that consideration be given to distinguishing between:

(a) the right of an applicant or renter to have the person responsible for entering and maintaining the information (typically the agent or landlord) to correct the record; and
(b) The right of an applicant or renter to add context to the information stored in a platform (proptech) so that the renter can have that information flagged as being in dispute and then given a right of reply or to have other information added in context so that viewers of the information (typically the agent or landlord) can see the renter's comments.

19. Are you aware of automated decision making having unfair outcomes for rental applications? Please explain.

We do not have any experience in this area although it is a topic that we have been observing. The comments in response to the following question are informed by some of our observations.

20. What should we consider as we explore options to address the use of automated decision making to assess rental applications.

Our view is that proptechs should limit the use of any opaque ranking mechanism to rank rental applications. Any ranking mechanism should be clearly set out so that everyone understands the process.

We believe some of the concepts set out in our response to questions 12 and 13 are an important part of this issue and are closely related.

We also believe that if paper-based or email-based processes are used, clearer guidelines should be established for how they are used, filed and destroyed.

26. Do you have any concerns about the NSW Government collecting information on rent increases and making it publicly available for renters? If yes, please provide details.

Not in principle.

There is a great deal of experience from the sales side of the industry with automated property valuation models. That experience shows that taking average rent increases in a particular area and applying those to a single property is a complex problem and even with the same data two reasonable people can form different views on what it means.

Notwithstanding that, we do think the further use of data would help further the policy goals.

27. What do you think is the best way to collect this information?

Proptechs are well positioned to make this information available, so long as the terms of service that the proptechs operate under are clarified and allow for the sharing of aggregate, non-identifiable data.

We would welcome a discussion on how Ailo could contribute to this effort.

34. What would be the best way to ensure that the free way for renters to pay rent is convenient or easy to use? Please explain.

We believe that the policy goals should be to:

(a) Have a convenient “free option”; and

(b) Encourage innovation to give more choice to renters and take advantage of innovation in the payments industry.

We are aware that some agents and landlords nominate inconvenient payment channels as the ‘free’ payment method. These practices are not within the spirit of the legislation and that should be addressed.

We are also aware of the use of rent payment gateway systems that do not give the renter control over their payments so that the ‘rent’ may continue to be paid even after the tenancy ends. The former renter must then negotiate with the former agency or landlord to get those payments refunded and future payments stopped. This is also unacceptable.

Similar challenges relate to renters that may wish to change their banking details during a tenancy, consent to automated changes in payments after a change in rent or where there are changes to a shared tenancy.

The payments industry is undergoing rapid change. While direct credits via internet banking (a ‘push’ transaction from the renter) into a trust account has been available for some time, there are significant costs in both time, transaction fees and errors borne by agencies which in turn affect renters and landlords. Direct debits (a ‘pull’ transaction from the renter by a rent payment gateway or bank) have also been implemented for over 20 years by rent payment platforms.

The steady introduction of the New Payments Platform (**NPP**) recently for direct credit and payer initiated payments (**PayID**) are giving more choice and fostering more innovation for the flow of payments. Similarly, the new direct debiting PayTo platform is also being rolled out through many banks.

Not every bank, building society and credit union supports all these platforms which limit their role as a universal solution for renters.

The result is a rapidly changing payments environment and we believe policymakers should not specify a particular payment technology or channel that must be used as the free option.

Nonetheless, we agree that the free option must be convenient and that it should be an online channel payment.

We recommend that the policy be to ensure that the free option nominated by the agent or landlord must:

1. Be accessible and manageable by the renter using an app or website;
2. Involve funds being pushed, or pulled, from a transactional or savings account in any Australian bank, Building Society or Credit Union;

3. Allow the renter to fully self-manage their payments, including the timing and amount of each transaction, and the ability to terminate those arrangements at will; and
4. Only use payments processors that are subject to the data privacy and security provisions contemplated by question 16 and appropriately regulated under the Commonwealth's AFSL regime.

As a related item, although not set out in the Consultation Paper, we recommend that consideration should also be given to ensuring that any bills, contributions or expenses paid by the renter - for example a water usage contribution - should also have a free payment option available on a similar basis.

35. Should the law require a landlord or agent to offer an electronic way to pay rent that is free to use? Why/why not?

Yes.

We strongly believe an electronic channel to pay rent is integral to the spirit of the concept of a free and convenient payment method.

As a related topic, we recommend that consideration be given to ensuring that all agents and landlords accept Centrepay payments. This is an invaluable government service and allows many renters to better manage their finances. This is a free service to renters and unfortunately it is not as widely used as it could be.

Further commentary

There are other topics that may be fertile ground for policy consideration in the context of improving NSW rental laws.

We have a significant range of experiences that we wish to share and would welcome further engagement with policymakers.

One area that is not considered in the Consultation Paper is the impact the rent cycle has on renters and changes that may be made to improve the renter experience.

All laws in Australia contemplate that a renter must pay a full rent cycle at the start of each cycle. So, if rent is monthly, a full month of rent must be paid at the start of the cycle.

This requirement places a significant financial pressure on renters and disproportionately affects renters who are financially insecure.

In relation to rent cycles, we believe there are two related areas that policymakers may wish to consider:

1. Allow a renter to nominate the timing and duration of rent cycles; and
2. Eliminate the concept of rent cycles.

Rent cycles were designed to simplify traditional paper-based accounting practices. In our view, the concept of rent cycles are antiquated and cause significant hardship on renters for no particular gain for agents and landlords.

Allowing renters to nominate and change their rent cycles would allow renters to align rent cycles with their wage cycles. If a renter is paid fortnightly on a Tuesday, then a monthly rent cycle starting on the 1st of a month may not be convenient and may cause financial hardship. The renter may prefer instead that the rent cycle be aligned to the wage cycle.

From our own data, renter research and industry experience, giving renters this option would deliver a real and significant benefit to renters. It is consistently one of our top feedback requests from renters. In practice, changing a rent cycle is rarely agreed to by agents and landlords.

While allowing a renter to change the cycle details would be a benefit to almost all renters, there is a smaller subset of financially stressed renters that cannot meet their obligations to pay the full rental amount on or before the start of each cycle.

For example, if rent is $700 per week, starting on a Monday, a renter may only be able to pay $300 on the Monday, and then maybe $200 on the Wednesday and the last $100 on the Friday. While the renter under this situation is always ahead of his or her obligations when looked at on a ‘daily rate’ basis, the law considers this renter to be in breach of the tenancy agreement.

This tenant will struggle to get a clean ‘rent ledger’ from the former agent and that will impact future tenancy applications. Further, the renter will also be subject to a termination notice under s87 of the *Residential Tenancies Act (NSW) 2010*.

Allowing renters to change their rent payment cycles, and even allowing them to remove the concept of rent cycles and adopt a daily rate model, would give a significant benefit to renters and disproportionately improve the experience of those renters suffering financial pressures. It would also allow otherwise good renters who have complied with the spirit of the obligations to pay rent to obtain a clean rent ledger from previous agents or landlords.

We would welcome any opportunity to engage policymakers on this topic and to share our insights and experience in this area.

Another area that policymakers may want to consider is requiring agents and landlords to accept Centrepay payments, as briefly mentioned in the response to question 35. Centrepay is a free and voluntary service that allows Centrelink customers to have payments made from Centrelink to agents and landlords directly.

Centrepay is a free service to Centrepay customers. It offers many benefits and allows people to more easily manage their finances. Unfortunately few agents accept this as a payment method. Further, applicants are also reluctant to enquire about whether the agent or landlord accepts Centrepay payments, fearing the question would reduce the applicant’s prospects of securing the property.

From our experience, we believe that encouraging or requiring this payment channel would represent a significant improvement to the

Our strong belief is that these two concepts - allowing renters to change their rent cycles and giving all renters the right to use Centrepay - would make meaningful contributions to improving NSW's rental laws.