

Friday 7 July 2023



Committee Secretary
Legislative Council Legal and Social Issues Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

by online portal or email to lsic.council@parliament.vic.gov.au

Submission to the inquiry into the rental and housing affordability crisis in Victoria

Digital Rights Watch welcomes the opportunity to submit comments to the Legislative Council Legal and Social Issues Committee for its inquiry into the rental and housing affordability crisis in Victoria.

Digital Rights Watch was founded in 2016 with a mission to ensure that all people in Australia are equipped, empowered and enabled to uphold their human rights as realised in the digital economy.

We write this submission in response to the growing FIRETECH (finance, insurance and real estate technology) sector—and in particular the PropTech or RentTech ecosystems that are becoming commonplace or even mandatory in many aspects of our housing market.

We focus on the digital rights of renters—namely rental bidding, application processes, third party payments and automated decision-making.

We are focusing on this in recognition of 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.

Digital Rights Watch welcomes the opportunity to discuss this submission further with members of the Committee over the course of the Inquiry.

Sincerely,

Lizzie O'Shea

Chair

Samantha Floreani

Program Lead

Travis Jordan

Board Member

**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



**DIGITAL
RIGHTS
WATCH**

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

Samantha Floreani | Program Lead | samantha@digitalrightswatch.org.au

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.

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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.