



Real Estate and Housing Policy  
Regulatory Policy, NSW Fair Trading  
Better Regulation Division  
Via email: residentialtenancy@customerservice.nsw.gov.au

18 August 2023

### **Improving NSW rental laws — consultation paper**

People in New South Wales deserve a home which is safe, secure, healthy and affordable.

CHOICE welcomes the New South Wales Government's commitment to improve consumer protections for people who rent. Renters across the state are experiencing acute pressures, which can limit the ability of people to exercise their existing consumer rights. Removing 'no grounds' evictions will give people who rent greater confidence to exercise these rights.

The rise of the for-profit renting technology businesses (**RentTech**) has caused new and unprecedented harm to people who rent in NSW. CHOICE's research found that RentTech companies 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. We recommend the NSW Government introduce stronger consumer protections to address this important issue.

### **Remove 'no grounds' evictions**

CHOICE welcomes the NSW Government's commitment to remove 'no grounds' evictions. This is a common-sense reform which will provide greater security for people who rent. Research by CHOICE, National Shelter and National Association of Tenant' Organisations found that 8% of Australians who rent have been evicted one or more times without being given an explanation or reason.<sup>1</sup> Our research found that people are afraid to request repairs or negotiate fair rent increases for fear of being hit with a no-grounds eviction.

The ban on no grounds evictions should apply to periodic and fixed-term leases. All people who rent deserve strong consumer protections, irrespective of whether they are on a fixed-term or periodic lease. This would align NSW with best practice in other states and territories. In April 2023, the Australian Capital Territory prohibited no-grounds for both fixed term and periodic

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<sup>1</sup>CHOICE, National Shelter, NATO, 2018, 'Disrupted: the consumer experience of renting in Australia', <https://www.choice.com.au/money/property/renting/articles/choice-rental-rights-report-dec-2018>

leases.<sup>2</sup> Recently, South Australia has also committed to prohibiting no grounds eviction for both periodic and fixed term leases.<sup>3</sup>

The removal of no grounds evictions will make the prescribed reasons ('grounds') for evictions more important. CHOICE is concerned the NSW Government's proposed new reason to evict people due to repairs or renovations may be used as a loophole for real estate agents to unfairly evict people. The proposed new reason should be expanded to say a tenancy can be ended if a home "will go through *major* reconstruction, repair, or renovation that requires it to be vacant, *for a significant period of time.*" Landlords must provide evidence to be able to substantiate this claim. This will ensure that people are not evicted for minor repairs, or repairs which may take a brief period of time.

## Recommendations 1 - 2

The NSW Government should:

1. prohibit no-grounds evictions for periodic and fixed-term leases.
2. expand the proposed eviction ground to state a tenancy can be ended if a property "will go through major reconstruction, repair, or renovation that requires it to be vacant, for a significant period of time."

## Renters' personal information

People who rent expect that their personal data is secure, and their data is not being used to exploit or harm them. However, real estate agents, RentTech platforms, and landlords regularly require rental applicants to hand over extensive and often unnecessary amounts of personal information. This data is being monetised by data brokers and third-party platforms, often without the express knowledge of people who rent.

In April 2023, CHOICE released a research report into for-profit renting technology businesses.<sup>4</sup> We found that people are being forced to use these platforms and give over vast amounts of personal information. Our nationally representative research found that 60% of renters were uncomfortable with the amount and type of information collected. We found 41% of renters said they were pressured into using a third-party service to apply for their rental. Over a quarter of renters reported not applying for a property due to the information that was demanded.

CHOICE strongly supports reforms to limit the information that can be asked of prospective tenants. This will help to prevent the unnecessary collection of personal data. The NSW Government should specify that only certain types of information can be requested in a rental

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<sup>2</sup>ACT Government, 2023, 'Fact Sheet - Overview of 1 April 2023 tenancy law changes'

[https://www.justice.act.gov.au/\\_\\_data/assets/pdf\\_file/0016/2200444/Fact-Sheet-Overview-1-April-2023-tenancy-law-changes.pdf](https://www.justice.act.gov.au/__data/assets/pdf_file/0016/2200444/Fact-Sheet-Overview-1-April-2023-tenancy-law-changes.pdf)

<sup>3</sup>SA Government, 2023, "'No cause' evictions to be banned in South Australia",

<https://www.cbs.sa.gov.au/news/no-cause-evictions-to-be-banned-in-south-australia#:~:text=Tenants%20will%20no%20longer%20be,proposed%20by%20the%20State%20Government>

<sup>4</sup>CHOICE, 2023, At what cost? The price renters pay to use RentTech,

<https://www.choice.com.au/consumer-advocacy/policy/policy-submissions/2023/april/renttech-report>

application. People applying for rental properties should be able to choose the type of information which best suits their needs and so there should be flexibility in the prescribed information types (e.g. accommodating culturally appropriate ways to prove identity). However, this flexibility should not make it possible for applications to ask for large amounts of personal information. CHOICE supports an approach similar to that outlined in the table on page 10 of the Consultation Paper where the maximum number of pieces of information that can be required is specified.

The NSW Government should also require that rental applicants fill out a standard tenancy application. This will make the process for applying simpler and more efficient for people. It will also prevent RentTech companies, real estate agents, and landlords from asking unnecessary questions of tenants. It will also help to mitigate the risk of unfair discrimination which can occur in the application process.

The amount of personal information collected and retained by the real estate industry makes it an attractive target for hackers. In 2022, Harcourts and LJ Hooker were subject to data breaches.<sup>5</sup> The Harcourts incident reportedly affected both tenants and landlords, with personal information potentially breached including names, addresses, phone numbers, signatures and photo identification. CHOICE is strongly supportive of the NSW Government introducing new laws which require anyone holding renters' personal information to keep it securely stored. This should apply to all holders of personal data, irrespective of the size of the data holder.

Consumers are concerned about the length of time which businesses, including real estate agencies, hold onto personal information. The personal data of renters' should be destroyed within a reasonable period of time. CHOICE is supportive of the South Australian Government's proposal which requires personal data to be destroyed:

- for the successful applicant, three years after a tenancy ends
- for the unsuccessful applicant: six months after collecting the information (with the applicant's consent), or 30 days after a lease was entered into.<sup>6</sup>

CHOICE supports limiting the purposes for which renters personal information can be used. This should include banning on-selling of personal data of tenants by real estate agents, RentTech, and landlords. Renter's personal data should only be collected to confirm an individual's suitability to commence a tenancy. This prohibition should apply to RentTech platforms, as they are increasingly being forced upon people looking for a home.

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<sup>5</sup> Sydney Morning Herald, 2022, "Wake-up call for real estate agencies": Harcourts hit by data breach', <https://www.smh.com.au/property/news/wakeup-call-for-real-estate-agencies-harcourts-hit-by-data-breach-20221103-p5bvaq.html>.  
Sydney Morning Herald, 2022, 'Real estate agency LJ Hooker hit with data breach', <https://www.smh.com.au/property/news/real-estate-agency-ljhooker-hit-with-data-breach-20221208-p5c4ss.html>.

<sup>6</sup>Residential Tenancies (Protection of Prospective Tenants) Amendment Bill 2023, Part 2, s 5 – new s 76B.

## Recommendations 3 - 7

The NSW Government should:

3. limit the amount and type of information that can be asked of rental applicants, particularly identity documents.
4. mandate the use of a standard tenancy application which limits the amount of information that can be collected and the kinds of questions that can be asked..
5. require holders of renters' personal information to keep it securely stored.
6. require holders of renters' personal information to delete data within a reasonable time-frame.
7. prohibit real estate agents, RentTech platforms, and landlords from otherwise monetising the personal data of rental applicants or tenants.

## Automated decision-making

CHOICE is deeply concerned about the use of automated decision-making (**ADM**) in the private rental market. Renters in NSW have few protections from exploitative and unfair automated systems. ADM can create and exacerbate existing discrimination, bias and market inequalities. It can result in harmful outcomes such as refusal or exclusion from essential services, higher costs and price discrimination.

Our report into RentTech found that Snug produces a "Match Score" for rental applicants which 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)."*<sup>7</sup>

Given the harms of ADM and lack of clear evidence of its efficacy, CHOICE supports a prohibition on the use of ADM to make suitability assessments for prospective tenants.

## Recommendation 8

The NSW Government should prohibit the use of ADM in making suitability assessments for prospective tenants.

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<sup>7</sup>CHOICE, 2023, At what cost? The price renters pay to use RentTech, p.20

You may contact Rafi Alam ([ralam@choice.com.au](mailto:ralam@choice.com.au)) to discuss this further.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Patrick Veyret". The signature is fluid and cursive, with a long horizontal stroke at the end.

Patrick Veyret  
Head of Policy and Government Relations  
CHOICE