

MANAGING THE NEW GOLD: DATA PROTECTION AND RESIDENTIAL TENANCY APPLICATIONS IN THE NT

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I INTRODUCTION

Data is the new gold. That is, with the rapid development of technology and the creation of a global digital economy, the collection of information about individuals has taken on significant economic value.¹ As outlined in the Australian Government report, *Australia's Tech Future*, technology occupies an essential role in the Australian economy and is set to increase substantially over the years.² The digital economy has been defined by the Australian government as “the global network of economic and social activities that are enabled by information and communications technologies”.³ Within the private residential rental market, the increased role of technology has resulted in a greater capability to collect and process large quantities of personal information, heightening the magnitude and scale of security risks.

This paper argues that in light of data increasingly being treated as a commodity, the NT requires legislation that protects personal information and reflects a principled approach based on privacy. This paper argues that the principle of data minimisation should be applied to private residential tenancy applications in the NT, outlining the ways in which unacceptable levels of intrusion and risk via tenancy application practices can be avoided, and how a stronger enforcement mechanism can be established.

II RISE OF THE DATA ECONOMY

Personal information is defined by the *Privacy Act 1988* (Cth) as a broad range of information that could can be used to identify a person, such as name, signature, date of birth and address.⁴ This term

¹ Anne de Hingh, 'Some Reflections on Dignity as an Alternative Legal Concept in Data Protection Regulation' (2018) 19(5) *German Law Journal* 1269, 1271.

² *Australia's Tech Future* (Australian Government, December 2018), 7.

³ 'The concept of the digital economy', *Australian Law Reform Commission* (Government Publication, 04 June 2013) <<https://www.alrc.gov.au/publication/copyright-and-the-digital-economy-dp-79/3-policy-context-of-the-inquiry/the-concept-of-the-digital-economy/>>.

⁴ *Privacy Act 1988* (Cth) S 6(1) and 'What is personal information?', *Office of Australian Information Commissioner* (Government Publication) <<https://www.oaic.gov.au/privacy/your-privacy-rights/your-personal-information/what-is-personal-information/>>.

includes sensitive information, comprising information such as political beliefs and opinions, health information, sexual orientation and more.⁵

The digital economy has generated a paradigm in which, in order to gain access to goods and services, people are being demanded to give up more of their personal data.⁶ Data has become a source of power and income,⁷ as it can be used to manipulate and anticipate the preferences of individuals for commercial, and in some cases political, gain.⁸ Furthermore, personal information represents a lucrative commodity for cyber criminals; a personal ID pack is estimated to be valued at \$30-100 million USD on the black market.⁹ The growing economic value of data thus incentivises multiple players to attempt to gain access to the personal data of individuals.¹⁰

In the digital economy, commercial parties have proven increasingly opportunistic in their engagement with the customers, utilising methods to extract high amounts of personal information with minimal notification.¹¹ In particular, the use of clickthrough contracts, signed simply by clicking on a link, are presented in a way that discourages readership and results in users agreeing to terms without properly understanding or being made aware of them.¹² According to a study conducted by Plaut and Bartlett, this discouragement of readership comes from clickthrough agreements being too long, too time-consuming and providing no choice but agreement.¹³

In Australia, presenting agreements that discourage readership is not necessarily illegal. The general rule of contracts, laid out in *Surfstone Pty Ltd v Morgan Consulting Engineers Pty Ltd*,¹⁴ is that, should a reasonable person expect specific conditions to be part of an agreement, those

⁵ *Privacy Act 1988 (Cth) S 6(1)*

⁶ Alexandra Wedutenko and Nick Topfer, *Clayton UTZ* (Blog Post, 02 August 2018) <<https://www.claytonutz.com/knowledge/2018/august/click-wraps-the-way-of-the-future-but-make-sure-theyre-legal>>.

⁷ Anne de Hingh, 'Some Reflections on Dignity as an Alternative Legal Concept in Data Protection Regulation' (2018) 19(5) *German Law Journal* 1269, 1271.

⁸ Andrew Braun, 'Why does everyone want your data?', *MakeTechEasier* (Web Page, 04 October 2018) <<https://www.maketecheasier.com/why-does-everyone-want-your-data/>>; 'Cambridge Analytica: Investigations Point to Additional Instances of Unlawful' (2019) 3(2) *International Journal for the Data Protection Officer, Privacy Officer and Privacy Counsel* 7, 8.

⁹ Neel Lukka, 'How to Secure Your Tenant's Data and Prevent Data Breaches', *rentsync* (Information Page, 3 January 2020) <<https://www.rentsync.com/fr/resources/blog/how-to-secure-your-tenants-data-and-prevent-data-breaches>>.

¹⁰ Anne de Hingh, 'Some Reflections on Dignity as an Alternative Legal Concept in Data Protection Regulation' (2018) 19(5) *German Law Journal* 1269, 1271.

¹¹ Alexandra Wedutenko and Nick Topfer, *Clayton UTZ* (Blog Post, 02 August 2018) <<https://www.claytonutz.com/knowledge/2018/august/click-wraps-the-way-of-the-future-but-make-sure-theyre-legal>>.

¹² *Ibid.*

¹³ Victoria C. Plaut and Robert P. Bartlett III, 'Blind Consent? A Social Psychological Investigation of Non-Readership of Click-Through Agreements' (2012) 36(4) *Berkley School of Law Research Paper* 293, 293.

¹⁴ *Surfstone Pty Ltd v Morgan Consulting Engineers Pty Ltd* [2016] 2 Qd R 194.

conditions are valid.¹⁵ Any condition of the agreement that could not be reasonably expected should be brought to the other party's attention.¹⁶ However, with clickthrough contracts, the expectations and understanding of consumers has become difficult to demonstrate due to a lack of understanding of data practices.¹⁷

The transfer of data to third parties risks data security further compounds the issue, as this makes information more accessible and, thus, less secure.¹⁸ There is no universal protection of data across the world, given the disparity in data law between different jurisdictions.¹⁹ This means that when data crosses borders, it can be exposed to inconsistent data practices,²⁰ with some jurisdictions falling below the standards of others.²¹

III RISKS OF IMPROPER DATA PRACTICES

The excessive collection and storage of data means that when breaches occur, there are serious impacts on individuals and businesses. A pertinent case study is the Cambridge Analytica scandal. A private data analytics firm based in the UK, Cambridge Analytica was enlisted by the campaign team behind Donald Trump to utilise the data of millions of people in an attempt to manipulate them for political gain.²² Hundreds of thousands of Facebook users downloaded an application called, *thisisyourdigitallife*, in which they took a personality test and gave the consent for this information to be used for academic purposes.²³ Little was it known that the information of the test-takers' friend network would also be collected,²⁴ including sensitive information like private messages.²⁵ In total, the data of approximately 87 million Facebook users was harvested and analysed.²⁶

¹⁵ Alexandra Wedutenko and Nick Topfer, *Clayton UTZ* (Blog Post, 02 August 2018) <<https://www.claytonutz.com/knowledge/2018/august/click-wraps-the-way-of-the-future-but-make-sure-theyre-legal>>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ 'Risks and challenges of data access and sharing', *OECD iLibrary* (Web Page, 2019) <<https://www.oecd-ilibrary.org/sites/15c62f9c-en/index.html?itemId=/content/component/15c62f9c-en>>.

¹⁹ Gómez-Mera, L., Morin, J., & Van de Graaf, T., 'Regime Complexes' in F. Biermann & R. Kim (eds) *Architectures of Earth System Governance: Institutional Complexity and Structural Transformation* (Cambridge University Press, 2020) 137.

²⁰ *Ibid.*

²¹ Paul Lambert, 'Complying with the Data Protection Regime' (2018) 2(7) *International Journal for the Data Protection Officer, Privacy Officer and Privacy Counsel* 17, 20.

²² Carol Cadwalladr and Emma Graham-Harrison, 'Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach', *The Guardian*, (News Post, 18 March 2018) <<https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>>.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Anne de Hingh, 'Some Reflections on Dignity as an Alternative Legal Concept in Data Protection Regulation' (2018) 19(5) *German Law Journal* 1269, 1271.

This information was then used to target and influence Facebook users, through methods such as generated news articles, to influence their political opinions and, eventually, their votes.²⁷ What added to this issue was the lack of clarity as to whether any laws had been violated by Cambridge Analytica's conduct, due to ambiguous legislation and disparity in US state laws.²⁸ This ultimately detracted from an efficient and effective reprimand of Cambridge Analytica²⁹ This is far from an isolated incident. Similar data practices have occurred in European jurisdictions, such as the Candidati app in Italy, which took Facebook user information for political purposes without obtaining consent.³⁰

Criminal behaviour also poses a data security threat, such as hacking, which is the act of compromising digital devices and networks through unauthorised access to an account or computer system.³¹ In 2021 alone, a wide array of Australian businesses and organisations have been impacted by illegal hacking activity, including institutions as diverse as LinkedIn, NSW Health and Ray White, impacting thousands, and in some cases millions, of Australians.³²

The risks associated with data breaches are serious. Not only can breaches lead to serious financial loss, reputational damage and business disruption,³³ but can lead to the identity theft of individuals, which is when a criminal uses another person's private information for money or other gain.³⁴ Thus, data breaches pose a severe threat to the privacy, integrity and financial wellbeing of both data handlers and private users.

IV CURRENT PRACTICES IN THE RESIDENTIAL RENTAL MARKET

A The Role of Technology in the Rental Market

The intersection of technology and irresponsible data practices threatens the data privacy of prospective tenants in the NT.

²⁷ Anne de Hingh, 'Some Reflections on Dignity as an Alternative Legal Concept in Data Protection Regulation' (2018) 19(5) *German Law Journal* 1269, 1271.

²⁸ John Frank Weaver, 'Everything Is Not Terminator: Using State Law against Deceptive AI's Use of Personal Data' (2018) 1(4) *RAIL: The Journal of Robotics, Artificial Intelligence & Law* 267, 270.

²⁹ Alexandra Wedutenko and Nick Topfer, *Clayton UTZ* (Blog Post, 02 August 2018) <<https://www.claytonutz.com/knowledge/2018/august/click-wraps-the-way-of-the-future-but-make-sure-theyre-legal>>.

³⁰ 'Cambridge Analytica: Investigations Point to Additional Instances of Unlawful' (2019) 3(2) *International Journal for the Data Protection Officer, Privacy Officer and Privacy Counsel* 7.

³¹ 'What is Hacking?', *Fortinet*, (Information Page) <<https://www.fortinet.com/resources/cyberglossary/what-is-hacking>>.

³² 'The Complete List of Data Breaches in Australia for 2018 - 2021', *Webber* (Information Page, 2021) <<https://www.webberinsurance.com.au/data-breaches-list#twentyone>>.

³³ Geraldine Strawbridge, '5 Damaging Consequences of a Data Breach', *MetaCompliance* (Blog Post, 25 February 2020) <<https://www.metacompliance.com/blog/5-damaging-consequences-of-a-data-breach/>>.

³⁴ 'Identity Theft', *Australian Signals Directorate* (Web Page, 18 May 2020) <<https://www.cyber.gov.au/acsc/view-all-content/threats/identity-theft>>.

Tenant portals are a pertinent example of the growing role of technology in the NT. These are mobile applications that act as all-in-one products that allow prospective tenants to gather their personal information and make applications.³⁵ They can eventually be used to monitor rent payments, submit maintenance orders and receive direct communication about their rental property.³⁶ Examples of tenant portals in the NT include the ‘Owner and Property Portal’ used by LJ Hooker Darwin³⁷ and the ‘Property Portal’ used by RealEstateCentral.³⁸

B The Issue of Current Practices

Poor data practices undermine the benefits of technology, as they expose prospective tenants to substantial data risk. Due to a lack of focus on this issue within the NT, there is limited identified research, policy or other literature regarding data privacy and residential tenancy. Thus it is difficult to gauge the frequency and magnitude of these practices in the NT. However, by looking at other jurisdictions, it is clear that these practices comprise a growing trend that can, and are likely to, affect the NT.

One practice that is certainly occurring in the Northern Territory is the demand of extensive personal information at the application stage of property negotiations. RealEstate NT asks applicants to provide:

- Drivers licence *or* passport.
- Copy of previous telephone or electricity bill in your name.
- A copy of pay slips.
- Personal references.
- Car registration.
- Current employer and previous employer.³⁹

³⁵ Kaycee Miller, ‘Do I really need a tenant portal for my renters?’, *Rentec Direct*, (Blog Post, 14 January 2020) <<https://www.rentecdirect.com/blog/need-a-tenant-portal/>>.

³⁶ *Ibid.*

³⁷ ‘Owner and Tenant portals’ *LJ Hooker Darwin* (Web Page) <<https://darwin.ljhooker.com.au/renting/owner-tenant-portals>>.

³⁸ ‘Property Portal’ *Real Estate Central* (Web Page) <<https://www.lookatmyproperty.com.au/389502/Account/Logon?type=1001>>.

³⁹ ‘Tenancy Application’ *Real Estate Northern Territory* (Information Document) <https://approvednt.com.au/assets/uploads/Approved_Application_Form.pdf>.

Whilst this information is useful in allowing a landlord to choose their preferred tenant,⁴⁰ the fact that the majority of applicants will be rejected means that prospective tenants are often required to provide sensitive information to multiple property owners.⁴¹ This often means that, even after rejection, the personal information of applicants are usually kept by landlords or real estate agents for extended periods after the application.⁴² As previously mentioned, the presence of data in multiple locations makes it more difficult to secure.⁴³

C Emerging Issues

One growing trend in rental markets in general has been that landlords are asking for more detailed and intrusive information from prospective tenants. From jurisdictions like New Zealand, Ireland and Canada, there have been growing complaints from prospective tenants over the excessive amounts of data being asked by landlords, such as nationality, marital status, gender or banking history.⁴⁴ This issue is compounded by the fact that prospective tenants often feel that they have no choice, risking rejection if they do not comply.⁴⁵ In some cases, applicants are being pressured to submit their personal information before even viewing the property,⁴⁶ under the guise of “just in case you go for the property, we have your details”.⁴⁷

Furthermore, the passing of personal information to third parties is prolific in the private rental market. For example, the privacy policy of Ray White, which has a branch in the NT, flags that information concerning applicants may be shared with third parties in jurisdictions ranging

⁴⁰ ‘How to Choose the Right Tenant for My Rental Property’, *BuyMyPlace* (Blog Post) <https://buymyplace.com.au/support/how-to-choose-the-right-tenant-for-my-rental-property?utm_source=google&utm_medium=organic>.

⁴¹ Rob Gibbons, ‘Dealing with Potential Tenants in Light of GDPR’, *bhsm* (Web Page, 2020) <<https://www.bhsm.ie/insights-news/dealing-with-potential-tenants-in-light-of-gdpr/>>.

⁴² *Ibid*.

⁴³ ‘Risks and challenges of data access and sharing’, *OECD iLibrary* (Web Page, 2019) <<https://www.oecd-ilibrary.org/sites/15c62f9c-en/index.html?itemId=/content/component/15c62f9c-en>>.

⁴⁴ Rob Gibbons, ‘Dealing with Potential Tenants in Light of GDPR’, *bhsm* (Web Page, 2020) <<https://www.bhsm.ie/insights-news/dealing-with-potential-tenants-in-light-of-gdpr/>>; Melanie Carrol, ‘Privacy Commissioner concerned landlords may be seeking too much information’ *Stuff* (News Report, 04 February 2021) <<https://www.stuff.co.nz/business/property/124136581/privacy-commissioner-concerned-landlords-may-be-seeking-too-much-information>>; Richard Zussman, ‘Landlords are collecting too much personal info on renters: privacy commissioner’ *Global News Canada* <<https://globalnews.ca/news/4099439/landlords-are-collecting-too-much-personal-info-on-renters-privacy-commissioner/>>.

⁴⁵ Rob Gibbons, ‘Dealing with Potential Tenants in Light of GDPR’, *bhsm* (Web Page, 2020) <<https://www.bhsm.ie/insights-news/dealing-with-potential-tenants-in-light-of-gdpr/>>.

⁴⁶ ‘GDPR compliance for landlords’, *PG McMahon* (Web Page 18 July 2019) <<https://www.pgmcMahon.com/gdpr-compliance-for-landlords/>>.

⁴⁷ David Smith, ‘Collecting Data From Prospective Tenants and Property Purchasers’, *jmw* (Information Page, 1 July 2021) <<https://www.jmw.co.uk/services-for-business/commercial-litigation-dispute-resolution/blog/collecting-data-prospective-tenants-and-property-purchasers>>.

from the United States, China and the Middle East.⁴⁸ Similar practices are done by other RealEstate firms.⁴⁹ Whilst an applicant is at the liberty to request that this information be deleted,⁵⁰ this is unlikely to occur given that this essentially pulls them out of the application process.

D *Growing Risks*

The current and emerging practices in the rental market pose a marked risk for data security in the NT. Information gathered in tenancy applications is often the same as the information sought by commercial parties and hackers.⁵¹ Thus, the collection of copious amounts of personal information in current tenancy applications, coupled with the growing demand for information that oversteps privacy boundaries, violates privacy and generates serious risks. Even though some of these practices are not currently prolific in the NT, they cannot be dismissed.

V LAW SURROUNDING CURRENT PRACTICES

A *NT Legislation*

Whilst the current legislation in Australia and the NT offer some guidelines for responsible data practices, the legislation needs to be further developed. The *Residential Tenancy Act 1999* (NT) offers limited guidance on this issue. Sections 127, 128 and 129 of the Act limit the amount of information that can be put on tenancy databases, however no standards are set for the kind of information that can be requested in tenancy applications.⁵²

B *Federal Legislation*

The *Privacy Act 1988* (Cth), which applies to the NT, sets more explicit standards. The *Privacy Act* applies to organisations with an annual turnover of more than \$3 million.⁵³ This means that real estate agencies are likely to be included, however, it is unclear whether tenancy registration

⁴⁸ 'Privacy Policy', *Ray White* (Web Page, 2015) <<https://www.raywhite.com/privacy/>>.

⁴⁹ 'LJ Hooker Privacy Policy', *LJ Hooker* (Web Page) <<https://www.ljhooker.com.au/privacy-policy>>; 'Privacy Policy', *RealEstate.com.au*, (Web Page, 2021) <<https://about.realestate.com.au/privacy/>>; 'Privacy Policy', *Stone Real Estate* (Web Page) <<https://www.stonerealestate.com.au/privacy-policy/>>.

⁵⁰ *Ibid.*

⁵¹ Neel Lukka, 'How to Secure Your Tenant's Data and Prevent Data Breaches', *rentsync* (Information Page, 3 January 2020) <<https://www.rentsync.com/fr/resources/blog/how-to-secure-your-tenants-data-and-prevent-data-breaches>>; Carol Cadwalladr and Emma Graham-Harrison, 'Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach', *The Guardian*, (News Post, 18 March 2018) <<https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>>.

⁵² *Residential Tenancy Act 1999* (NT), s127, 128, 129.

⁵³ *Privacy Act 1988* (Cth), s 6.

websites would be as well.⁵⁴ The thirteen privacy principles, outlined in Schedule 1 of the Act, requires that relevant businesses handle data in an open, transparent and secure way.⁵⁵ This means that real estate agents to whom the Act applies can only collect information that is strictly necessary, limited to information that will help select a preferred tenant.⁵⁶ Furthermore, relevant real estate agents must explain why information is being collected, what happens to the information and who the information is being disclosed to.⁵⁷

The *Privacy Act* is, however, limited. The \$3 million annual turnover threshold means that not all agents and landlords are included under the Act. Furthermore, the Act provides no exhaustive definition of what information is necessary for selecting a preferred tenant, leaving unclear parameters.

C Legislation of other Australian Jurisdictions

Other Australian jurisdictions present useful models for the NT. In Victoria, the *Residential Tenancy Amendment Act 2018* (Vic), which amended the *Residential Tenancy Act 1997* (Vic), adds more stringent controls on the kind of information that can be asked in tenancy applications. Section 30B explicitly restricts the amount of personal information allowed in a residential tenancy application, only allowing information that is necessary for evaluating the suitability of an applicant.⁵⁸ Again, the issue here is that there is no comprehensive definition of what is considered ‘necessary’ in this context. As the Amendment only commenced in March 2021, the kind of precedent that this sets in Victoria is unclear,⁵⁹ however it is nonetheless useful in directly addressing data privacy in the residential rental market.

VI APPLYING DATA MINIMISATION TO TENANCY APPLICATIONS

In order to consider how to implement data minimisation in the NT it is useful to consider developments elsewhere. This section looks to the *General Data Protection Regulation 2016* (European Union) (GDPR) and the recent developments in its application in Ireland, to emphasise that data minimisation should be integral to law reform. The GDPR establishes strict standards

⁵⁴ ‘Tenancy’, *Office of the Australian Information Commission* (Web Page) <<https://www.oaic.gov.au/privacy/your-privacy-rights/tenancy>>.

⁵⁵ *Privacy Act 1988* (Cth), s 6.

⁵⁶ ‘Tenancy’, *Office of the Australian Information Commission* (Web Page) <<https://www.oaic.gov.au/privacy/your-privacy-rights/tenancy>>.

⁵⁷ *Ibid.*

⁵⁸ *Residential Tenancy Amendment Act 2018* (Vic), s 30B.

⁵⁹ ‘Residential Tenancies Regulations 2020 - Regulatory Impact Statement’, *Consumer Affairs Victoria* (Web Page, 5 April 2021) <<https://www.consumer.vic.gov.au/resources-and-tools/legislation/public-consultations-and-reviews/residential-tenancies-regulations-2020-regulatory-impact-statement>>.

regarding the way in which data handlers can process the data in the EU. Article 5 stipulates that data must be processed fairly and transparently, that it must be used for explicit and limited purposes, and be reasonably secured.⁶⁰ The full impacts of the GDPR are still uncertain, although the way that it will reshape the private rental market has recently come to attention.

The Data Protection Commission (DPC) of Ireland comprehensively developed the application of the GDPR on the private rental market in its *Guidance on Requesting Data from Prospective Tenants* report. The report asserts that although Article 6 of the GDPR outlines consent as a necessary aspect of data collection, in the context of the landlord-applicant relationship, consent is not sufficient given the relationship's asymmetrical nature.⁶¹ Ultimately, an applicant is not in a position to refuse providing excessive amounts of information, as their application may simply be rejected.⁶² Therefore, the rental market specifically requires stricter guidelines for data collection.

With regard to the information necessary for choosing the preferred tenant, the DPC referred to Article 5(1)(C) of the GDPR, which outlines the principle of data minimisation: information that is provided must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed". With regards to tenancy applications, the report states that the amount of personal data provided in an application should be significantly less than when entering a tenancy agreement;⁶³ in particular, the extensive collection of financial statements, utility bills, references, and other information should not be collected until a preferred tenant has been identified and a formal offer made.⁶⁴

This interpretation of data minimisation renders a lot of the personal information provided in current tenant applications excessive and against the interest of private individuals.⁶⁵ However, whilst the report outlines the ways in which current practices are unacceptable, it does little to provide a comprehensive alternative. As the DPC is the only authority that has issued a comprehensive report on the implications of the GDPR on residential tenancy applications, there is limited guidance on the alternatives.

⁶⁰ *General Data Protection Regulation 2016* (European Union), art 5.

⁶¹ *Guidance on Requesting Personal Data from Prospective Tenants* (Data Protection Commission of Ireland Report, July 2019), 2.

⁶² *Ibid.*

⁶³ *Ibid.*, 3.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, 4.

VII IMPLEMENTING DATA MINIMISATION IN THE NORTHERN TERRITORY

Applying the lens of data minimisation highlights the need for law reform in the NT, as well as other Australian jurisdictions. For example, although Victoria has stringent standards on what kind of information may be asked, the DPC would deem current standards insufficient, given that tenancy applications in Victoria still include excessive amounts of personal information.⁶⁶

Implementing data minimisation requires practical considerations. In an interview with a property investment manager based in Queensland, it was stated that if no personal information is submitted at all, there would be several barriers for the effective choosing of the preferred tenant.⁶⁷ This reflects the general reality facing landlords; they have an interest in avoiding problematic tenants, at the risk of incurring serious costs, such as property damage or unpaid rent.⁶⁸ The interviewee further stated that landlords ultimately need to know whether a prospective tenant is capable of paying rent, which requires knowledge of stable income, with previous rental history being desirable.⁶⁹ Whilst interpersonal interaction was flagged as a valid means of gauging whether a prospective tenant would be the right fit for a property,⁷⁰ it was stated that this provides an insufficient understanding of the financial risk of a tenant.⁷¹

Thus, the question is, where should the line be drawn? By striking a balance between the societal need for data minimisation and the need of property owners to distinguish between tenancy applicants, some general standards can be created. Ultimately, the landlord needs to know the financial situation of the applicant without gaining excessive information. In this case, perhaps the only information provided at the application stage should be proof of employment, salary and rental history. This would provide a comprehensive understanding of an applicant's financial information, whilst precluding other information such as utility bills, vehicle registration and identity documents, which could be provided later on as a means of confirming the identity of the preferred applicant.

A comprehensive enforcement mechanism is essential for such standards. Under the *Privacy Act*, breaches can warrant significant fines, with s 13G fining 2000 penalty units for serious or repeated inferences with privacy.⁷² Fines are also implemented under the GDPR, with some fines

⁶⁶ *Residential rental application* (Consumer Affairs Victoria).

⁶⁷ Interview with *Anonymous* (Callum Bryan, Phone Interview, 7 October).

⁶⁸ 'How to Choose the Right Tenant For Your Investment Property', *Benchmark* (Web Page) <<https://benchmarkpm.com.au/choose-the-right-tenant/>>.

⁶⁹ Interview with *Anonymous* (Callum Bryan, Phone Interview, 7 October)

⁷⁰ 'How to Choose the Right Tenant for My Rental Property', *buymyplace* (Web Page) <https://buymyplace.com.au/support/how-to-choose-the-right-tenant-for-my-rental-property?utm_source=google&utm_medium=organic>.

⁷¹ Interview with *Anonymous* (Callum Bryan, Phone Interview, 7 October)

⁷² *Privacy Act* 1988 (Cth), s 13 G (Note: a penalty unit is currently valued at \$210AU- 'CRIMES ACT 1914 - SECT 4AA' Commonwealth Consolidated Acts' (Legislation Page) <http://www5.austlii.edu.au/au/legis/cth/consol_act/ca191482/s4aa.html>.)

costing millions of dollars.⁷³ Another punishment under the GDPR has been deleting information databases, removing an essential asset for data handlers.⁷⁴ These methods should be considered when reforming NT legislation, as they could provide useful ways of incentivising and enforcing standards.

In the NT, a larger array of data handlers should be included under the law; landlords and agents that make under \$3 million annually should also be included. Legislation should minimise the amount of data that can be collected and require that data be held correctly and securely.⁷⁵ This should require data handlers to formalise cybersecurity policies and emergency plans regarding data they hold.⁷⁶ Furthermore, data handlers should be required to immediately report when data breaches occur.⁷⁷

One of the most pervasive issues regarding breaches of data privacy has been that the laws are often unclear in their application, as discussed in the Cambridge Analytica case.⁷⁸ Thus, NT law must make explicit the standards to be maintained and the parties held accountable. This could be helped by issuing a guide on the privacy standards that apply, similar to that issued by the Privacy Commissioner in New Zealand.⁷⁹

The transfer of data between jurisdictions must also be addressed. UK data handlers face this issue when transferring data to the US, which has less stringent data protection laws.⁸⁰ To resolve this, any data transferred to the US is subject to security conditions, such as contracts between data handlers within and without the UK that guarantee that certain standards be upheld.⁸¹ This issue will be faced by the NT once it has enacted its reforms. Whilst this calls for greater reform across all Australian jurisdictions, the NT should in the meantime employ a strategy that holds third parties to certain data standards.

VIII CONCLUSION

⁷³Paul Lambert, 'Complying with the Data Protection Regime' (2018) 2(7) *International Journal for the Data Protection Officer, Privacy Officer and Privacy Counsel* 17, 17.

⁷⁴ *Ibid.*

⁷⁵ 'Why your tenant's privacy policy matters: protecting your tenants and yourself', *Reliable Water Services* (Web Page, 20 February 2020) <<https://reliablewater247.com/tenant-privacy-policy-matters-protect-your-tenants/>>.

⁷⁶ 'Cybersecurity 101: What property managers & landlords need to know- Part 2', *Buildium* (Information Page, 20 April 2017) <<https://www.buildium.com/blog/cybersecurity-for-property-managers-2/>>.

⁷⁷ Paul Lambert, 'Complying with the Data Protection Regime' (2018) 2(7) *International Journal for the Data Protection Officer, Privacy Officer and Privacy Counsel* 17, 17.

⁷⁸ John Frank Weaver, 'Everything Is Not Terminator: Using State Law against Deceptive AI's Use of Personal Data' (2018) 1(4) *RAIL: The Journal of Robotics, Artificial Intelligence & Law* 267, 269.

⁷⁹ *Privacy Act Guidance for Landlords and Tenants* (Privacy Commissioner New Zealand, August 2019)

⁸⁰ Paul Lambert, 'Complying with the Data Protection Regime' (2018) 2(7) *International Journal for the Data Protection Officer, Privacy Officer and Privacy Counsel* 17, 20.

⁸¹ *Ibid.*

Undoubtedly more research is needed to develop a tenancy privacy framework in the NT. Any law reform should involve consultation with NT tenants, as well as NT landlords and real estate agents. Considering the issue of data transfer between jurisdictions, a multilateral mindset is essential; there needs to be communication between stakeholders and policy-makers across Australian states and territories. Now more than ever, the NT needs to set clear standards for its data practices, to protect prospective tenants and landlords alike from serious security threats.

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