



# Commissioner Initiated Investigation into IRE Pty Ltd (Privacy) [2026] AICmr 24 (1 April 2026)

## Decision and reasons for decision of Privacy Commissioner, Carly Kind

Respondent	IRE Pty Ltd
Decision date	1 April 2026
Case reference number	<b>CII25/00001</b>
Catchwords	Privacy — <i>Privacy Act 1988</i> (Cth) — Australian Privacy Principles — APP 3.2 – APP 3.5 – whether personal information collected was reasonably necessary – whether means of collection were fair

## Determination

1. I find that IRE Pty Ltd, trading as InspectRealEstate (**respondent**), interfered with the privacy of individuals whose personal information was collected via 2Apply between March 2020 and 18 March 2025, within the meaning of s 13(1) of the *Privacy Act 1988* (Cth) (**Privacy Act**), by:
  - a. collecting personal information that is not reasonably necessary for its functions or activities, in breach of Australian Privacy Principle (**APP**) 3.2; and
  - b. collecting personal information by unfair means, in breach of APP 3.5.

## Declarations

2. I declare, under s 52(1A)(a) of the Privacy Act, that the acts and practices of the respondent, as outlined at paragraph [1], constitute an interference with the privacy of individuals, and that the respondent must not repeat or continue those acts and practices.
3. I further declare, under s 52(1A)(b) of the Privacy Act, that the respondent must:
  - a. within **60 days** of the date of the determination, cease collecting the personal information listed in paragraph [94].
  - b. within **60 days** of the date of the determination, engage at its own expense, a suitably qualified independent reviewer such as a privacy expert (**Independent**

**Reviewer**)<sup>1</sup> to conduct a review of the respondent's privacy practices in relation to the 2Apply platform, including but not limited to:

- i. an assessment of the extent to which the personal information listed in paragraph [95] is reasonably necessary for its functions or activities (APP 3.2). This assessment is to have regard to the timing of collection throughout the stages of the tenancy application process;
- ii. the 'Online Choice Architecture' of the 2Apply form and the means by which the respondent requests personal information via the 2Apply form (APP 3.5); and
- iii. the respondent's data retention practices and policies (APP 11.2), as it relates to the personal information collected via 2Apply, in circumstances where:
  - A. the individual's tenancy application is successful, and their tenancy will be managed and administered using other product offerings by the respondent;
  - B. the individual's tenancy application is successful, and their tenancy will not be managed and administered using other product offerings by the respondent; and
  - C. individual's tenancy application is not successful.
- c. within **6 months** of the date of the determination, prepare a report that specifies the Independent Reviewer's findings and recommendations addressing, at a minimum, each of the factors at paragraph [3.b] (**Review Report**);
- d. within **14 days** of receiving the Review Report, provide a copy of the report to the Office of the Australian Information Commissioner (**OAIC**);
- e. within **12 months** of the determination, report to the OAIC on the steps it has taken to address and respond to the recommendations contained in the Review Report. The report must contain:
  - i. actions taken by the respondent to implement review recommendations; or
  - ii. where the respondent disagrees with a recommendation, the reasons why it disagrees with a recommendation and details of what alternative means will be used by the respondent for managing the risk which the recommendation is aimed at addressing; or
  - iii. if it is not implementing a recommendation because it is of the view that the relevant risk is insignificant, irrelevant, or already mitigated, explain or provide information as to the basis of this view.

## Key issues

4. Third-party rental technology platforms (**RentTech**) have emerged in recent years as the primary way in which individuals submit applications for rental properties. This

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<sup>1</sup> A range of expertise may be required to be a suitably qualified independent reviewer, including information security, technology, risk management, law, ethics, operational procedures and industry-specific knowledge. The team conducting the review needs to be familiar with and have reasonable experience in applying the Privacy Act, any other legislation or regulations that might apply to personal information handling (for example, state or territory legislation), and the broader dimensions of privacy (such as familiarity with issues such as ethical considerations, information governance, transparency, information lifecycle management, user rights etc).

determination concerns the collection of personal information for the purpose of processing tenancy applications and the role of RentTech platforms, such as 2Apply.

5. The selection of the rental sector as a regulatory priority for the Privacy Commissioner was informed by a recognition that there is an inherent and significant power imbalance in the rental property market which favours real estate agents, property managers and landlords. This power imbalance is exacerbated by a rental crisis in which there is a shortage of rental properties, sharply rising rents and other costs of living, and intense competition for properties. In this context, individuals are at a disadvantage in a highly competitive market and are more vulnerable to unfair practices, including the unfair and unlawful collection, use and disclosure of their personal information.
6. RentTech platforms are more than just a ‘middleman’ between renters and real estate agents; they directly collect and enable the collection of personal information. This determination reinforces that the operators of RentTech and other online platforms may bear their own obligations under the Privacy Act to handle personal information in a manner consistent with the Australian Privacy Principles.
7. The determination also includes an analysis of what is ‘fair’ collection for the purposes of APP 3.5. It presents an open-textured and evaluative assessment of the means by which an entity collects personal information that takes into account the context in which the collection occurs. This determination also considers, for the first time, an entity’s Online Choice Architecture in an assessment of whether the collection was fair.
8. During the course of the investigation the respondent was cooperative and provided detailed information as requested by the OAIC. In response to my preliminary view, the respondent agreed on a without admissions basis to cease collecting several types of personal information which I had formed the view may not be reasonably necessary. I congratulate the respondent on its participation in and response to the OAIC’s investigation, and its willingness to prioritise the privacy of individuals using its platform.
9. Whilst RentTech more broadly has been a growth industry in recent years, the impact of this sector is capable of affecting many millions of individuals.<sup>2</sup> As such, I expect that other RentTech providers will adapt their practices to be consistent with my findings. This determination will also be provided to the real estate peak bodies to assist in dissemination throughout the property rental industry.
10. All RentTech providers should undertake an assessment of what information it is reasonably necessary to collect at the time of a tenancy application, including whether the application process can be undertaken without certain personal information, or with less. I encourage RentTech providers and real estate agents to turn their minds to the privacy of tenancy applicants, and to ensure collection of personal information is fair and limited to what is reasonably necessary.

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<sup>2</sup> Choice identified 7 platforms providing services in the tenancy application process: 2Apply, Snug, tApp, Ignite, OurProperty.com.au, Tenant Options and rent.com.au. Choice found renters had most commonly used 2Apply (37%), Ignite (31%) and rent.com.au (19%). The remaining four platforms had each been used by less than 10% of renters surveyed. (CHOICE, [At what cost? The price renters pay to use RentTech](#), (Report, April 2023) (**Choice report**), p 7- 8).

# Findings and reasons

## Factual background

11. The respondent, IRE Pty Ltd is a corporation registered in Australia in 2012, with headquarters in Brisbane, Queensland.<sup>3</sup> The respondent is owned by parent company Reapit Holdings Pty Ltd.
12. The respondent owns and operates a suite of software products tailored for real estate agencies, including the 2Apply platform (**2Apply**) and its form-based workflow hosted on <https://www.2apply.com.au/login> (**2Apply form**).

## Respondent's tenancy application platform

13. 2Apply is a third-party application platform developed for renters and real estate agencies (including property managers) to support a range of rental-related processes including managing rental applications, rental payments and property maintenance requests.
14. 2Apply was beta client<sup>4</sup> enabled in [redacted] and the general release occurred in March 2020.<sup>5</sup>
15. As of 18 March 2025, [redacted] real estate agents across Australia use 2Apply to manage their tenant applications,<sup>6</sup> and over 8.5 million applications had been processed using 2Apply.<sup>7</sup>
16. 2Apply digitises rental application methods and its form-based workflow feature is used to collect and manage applications by individuals, including any supporting documents. 2Apply provides individual users the ability to create a profile and upload documents, so that they may submit applications to multiple agents.
17. The information uploaded to 2Apply is stored onshore using [redacted], a third-party service provider engaged by the respondent.<sup>8</sup>

## Operation of 2Apply

18. To apply for a property on 2Apply, individuals need to create an account. They can then complete a profile which includes details such as their name and contact details, smoker status, dependants' name and ages, address history, employment history including income and referee name and contact details, personal referee names and contact details, emergency contact name and contact details, pet details and vehicle details including registration number.
19. The property application process operates in the following way:<sup>9</sup>
  - a real estate agent lists a property for rent using TenantApp (a separate software offered by the respondent for property listings), or other websites integrated

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<sup>3</sup> ASIC Organisational Extract and Business Search, conducted on 22 April 2024.

<sup>4</sup> The beta client phase is when software is tested by a group of users.

<sup>5</sup> Respondent's s 44(1) response dated 15 April 2025 (**s 44(1) response**), p 2

<sup>6</sup> s 44(1) response, [redacted].

<sup>7</sup> InspectRealEstate, [Real estate agent Software - Australia - Inspect Real Estate](#), Inspect Real Estate website, 2023, accessed 2 May 2025.

<sup>8</sup> s 44(1) response, p 17.

<sup>9</sup> s 44(1) response, pp 3-4.

with the respondent's suite of products. This creates a link for the real estate agent to provide to individuals.

- an individual can commence an application for a property they are interested in leasing by clicking the link provided by the real estate agent, or the 'apply now' button on the real estate agent's website listing;<sup>10</sup>
  - if the individual has completed a profile on 2Apply, this information is pre-filled in the application for the property to the extent those details are requested in the relevant form;<sup>11</sup>
  - 2Apply allows for documents to be provided along with information in an application.<sup>12</sup> When an individual completes an application, they may click 'submit' for the application to be submitted to the real estate agent directly via 2Apply;<sup>13</sup> and
  - the real estate agent is notified by email of the completed application and can access the application to commence their assessment of the application.<sup>14</sup>
20. When an application has been completed by an individual, the real estate agent is notified by email. The real estate agent can then access the application, including all data and supporting documentation provided by the individual, by logging into 2Apply, or by clicking a link in the email to download a pdf copy of the application. Downloading the pdf of the application requires the real estate agent to be logged into the respondent's software. The real estate agent can only access an application once all co-applicants have submitted an application.<sup>15</sup>
21. Once the real estate agent has completed their assessment of the applications, individuals are notified if they are successful. Individuals can view whether an application has been marked as 'successful' or 'unsuccessful' on 2Apply.<sup>16</sup>

## Respondent's retention of personal information

22. The length of time information is retained by the respondent is dependent on whether an individual submits an application for a property, and whether the application is successful or unsuccessful.
23. Where an individual enters information into their profile on 2Apply, the respondent deletes the application information after 14 days of continuous inactivity, unless the individual has a paid subscription which enables longer retention.<sup>17</sup>
24. Where an individual's application is submitted but is unsuccessful, the respondent deletes the application information 60 days after submission, or earlier if requested by the real estate agent.<sup>18</sup> However, the real estate agent may have already downloaded the application, including all supporting documentation.

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<sup>10</sup> InspectRealEstate, [How Can I apply for a rental property?](#), 2Apply website, 2021, accessed 2 May 2025.

<sup>11</sup> InspectRealEstate, [Filling out your application](#), 2Apply website, 2022, accessed 2 May 2025; InspectRealEstate, [How to Login/Create an Account](#), 2Apply website, 2022, accessed 2 May 2025; The respondent's response to the Oaic's preliminary view dated 24 November 2025 (**PV response**), p 1.

<sup>12</sup> InspectRealEstate, [Identification points](#), 2Apply website, 2021, accessed 2 May 2025.

<sup>13</sup> s 44(1) response, p 3.

<sup>14</sup> InspectRealEstate, [How can I inspect a property?](#), 2Apply website 2020 (**How can I inspect a property?**), accessed 2 May 2025.

<sup>15</sup> s 44(1) response p 3.

<sup>16</sup> [How can I inspect a property?](#), accessed 7 October 2025.

<sup>17</sup> PV response, p 1.

<sup>18</sup> s 44(1) response, p 4; Application Lifecycle document attached to s 44(1) response.

25. Where an individual's application is successful, the respondent deletes the application information 3 years after submission, or earlier if requested by the real estate agent. The respondent indicated this is for the related secondary purpose of managing and administering the tenancy, in circumstances where the real estate agent elects to use this service as part of the broader product offerings by the respondent outside of 2Apply.<sup>19</sup>
26. Individuals may request the respondent delete 'profile data' or their 'account' on 2Apply. Instructions on the 2Apply website provide:
  - a. 'Deleting profile data will remove all data held against your profile including all applications, but submitted applications may still be held by the agent. To delete submitted applications please contact the agent you submitted with if you wish to remove these.'
  - b. 'Deleting your 2Apply Account will delete your entire 2Apply account including all of your profile data and partially completed. Submitted applications may still be held by the agent. To delete submitted applications please contact the agent you submitted with if you wish to remove these.'<sup>20</sup>
27. As the respondent's retention practices are not the subject of this determination, this has not been examined further.

## The 2Apply tenancy application form

28. The respondent initially advised that it provides real estate agents with a default form for use on 2Apply, 'as a starting point before changes are made.'<sup>21</sup> The respondent later clarified that real estate agents are provided with a list of data fields (**default list**) when creating an application form for a given property on 2Apply.<sup>22</sup> The default list is set out in **Attachment A**.
29. Real estate agents have the option to customise the default list by, '[S]electing the questions they would like to ask, which fields are visible, which fields/questions are mandatory and which documents are required.'<sup>23</sup> The 2Apply form does not permit real estate agents to create additional bespoke fields.<sup>24</sup>
30. Real estate agents are also able to customise which supporting documents individuals are required to provide by creating document categories, assigning a minimum score for each category, categorising each document from the list of available documents the respondent provides, setting the number of documents required and assigning a score to each document that will count towards the category minimum sum.<sup>25</sup>
31. Where individuals are being requested to submit documents, the real estate agent has the option to include a note which appears in a blue box stating '[real estate agent] has requested the following information to help speed up your application process'.<sup>26</sup>

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<sup>19</sup> s 44(1) response, p 4. PV response, p 14. The respondent stated that the timing of this is based on s.76B(2a) of the *Residential Tenancies Act 1995* (South Australia) which is currently the strictest such standard. South Australian legislation requires destruction of tenant's personal information as soon as practicable after 3 years from the end of the tenancy.

<sup>20</sup> InspectRealEstate, [How do I delete my 2Apply profile data or account?](#), 2Apply website, 2024, accessed 6 February 2026

<sup>21</sup> s 44(1) response, p 6.

<sup>22</sup> PV response, p 2.

<sup>23</sup> s 44(1) response, p 6.

<sup>24</sup> PV response, p 15.

<sup>25</sup> s 44(1) response, p 14.

<sup>26</sup> Reapit, [2Apply Default Rentals & Applications](#), 2026 (**2Apply default rentals and applications**), accessed 6 February 2026.

32. Where state or territory laws prohibit a landlord or their agent from requesting particular information or documentation from an individual, the real estate agent is not able to include this data field or question in the 2Apply form.<sup>27</sup>
33. Individuals may submit their application without providing all requested information and documents by ticking a box next to the text which states, 'I am unable to provide some of the required information above'. Where individuals tick this box, they are required to provide an explanation in a free text box, and a note appears stating, '[Y]ou will be able to submit your application without supporting information, but this may affect whether you are considered as a suitable tenant for the property'.<sup>28</sup>
34. The final step before submitting an application requires an individual to accept the real estate agent's terms and conditions. The respondent provides real estate agents with default terms and conditions, which can be customised or replaced with terms and conditions drafted by the particular real estate agent.<sup>29</sup>
35. The footer of the application form presents individuals with a 'Personal information collection statement' which states that the respondent will need to collect, use and disclose their personal information to provide its technology and services to them and encourages individuals to read the respondent's Privacy Policy. The statement notes that the respondent may direct market to them about other applications and services in the 'IRE family' for example, Move Me In.<sup>30</sup>

## OAIC's investigation

36. On 18 March 2025, the Privacy Commissioner (**Commissioner**) commenced an investigation under s 40(2) of the Privacy Act into the respondent's compliance with APP 3 between March 2020 (the general release of 2Apply) and the commencement of the investigation (**relevant period**).
37. On 15 April 2025, the respondent provided information to the Office of the Australian Information Commissioner (**OAIC**), in response to a Notice dated 18 March 2025 requiring the production of documents and information under s 44(1) of the Privacy Act.
38. On 10 November 2025, the OAIC sent a preliminary view to the respondent for comment.
39. On 24 November 2025, the respondent provided submissions in response to the preliminary view.

## Application of the relevant law

40. The Australian Privacy Principles (**APP**) in Schedule 1 of the Privacy Act regulate the handling of personal information by Australian government agencies and certain private sector organisations (**APP entities**).
41. An APP entity is prohibited from doing an act, or engaging in a practice, that breaches an APP.<sup>31</sup> An act or practice of an APP entity is an interference with the privacy of an individual if the act or practice breaches an APP in relation to the personal information about an individual.<sup>32</sup>

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<sup>27</sup> s 44(1) response, pp 6-7.

<sup>28</sup> [2Apply default rentals and applications](#); s 44(1) response, p 21.

<sup>29</sup> s 44(1) response, pp 18 - 20.

<sup>30</sup> s 44(1) response, p 20.

<sup>31</sup> Privacy Act, s 15.

<sup>32</sup> Privacy Act, s 13.

42. I am satisfied that the respondent is an APP entity because it is a body corporate that is not a small business operator,<sup>33</sup> a registered political party, an agency, a State or Territory authority or a prescribed instrumentality of a State or Territory,<sup>34</sup> and had an annual turnover greater than \$3 million in a financial year.<sup>35</sup>
43. In making this determination, I have considered the material obtained during the course of the investigation, including the respondent's submissions. I have also had regard to the Privacy Act, the *Australian Privacy Principles Guidelines (APP Guidelines)*,<sup>36</sup> and the *OAIC Guide to privacy regulatory action*.<sup>37</sup>
44. For the purposes of s 43(4) of the Privacy Act and following my consideration of the submissions and evidence, I am satisfied that:
  - a. the acts and practices to which the investigation relates can be adequately determined in the absence of a hearing with the respondent; and
  - b. there are no unusual circumstances that would warrant holding a hearing before making this determination.
45. The investigation and this determination consider the default list developed and provided by the respondent for real estate agents' use in creating a 2Apply form. It is possible that the respondent may also collect additional personal information through customised application forms or for other business functions. If this is the case, the Privacy Act would also apply to those collections, but this was not the focus of the investigation.
46. The facts and circumstances of this matter require me to consider the relevant law, and in particular determine the answer to the following questions:
  - a. Was the personal information collected by the respondent, via the 2Apply form, reasonably necessary to carry out one or more of the respondent's functions or activities, as required by APP 3.2?
  - b. Was the collection of personal information undertaken by fair means, as required by APP 3.5?

## APP 3 – Collection of solicited personal information

### APP 3.2 – Collection of personal information that is reasonably necessary for functions or activities

47. APP 3.2 provides that an APP entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for one or more of the entity's functions or activities.
48. The APP Guidelines describe a two-step process for determining if an organisation has contravened APP 3.2:
  - identifying an APP entity's functions or activities; and

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<sup>33</sup> Privacy Act, s 6D(1).

<sup>34</sup> Privacy Act, s 6C(1).

<sup>35</sup> Respondent's response to preliminary inquiries dated 15 October 2024, [1].

<sup>36</sup> OAIC, *Australian Privacy Principles guidelines*, October 2025

<sup>37</sup> OAIC, *Guide to privacy regulatory action*, December 2024.

- determining whether the particular collection of personal information is reasonably necessary for one of those functions or activities.<sup>38</sup>
49. To determine whether the respondent collects personal information in contravention of APP 3.2, I have considered:
- a. Does the respondent collect personal information?
  - b. What are the respondent's functions or activities, as relevant to 2Apply?
  - c. Was the personal information collected reasonably necessary for the respondent to carry out one or more of its functions or activities?

## Does the respondent collect personal information?

50. Section 6(1) of the Privacy Act provides that an entity 'collects' personal information only if the entity collects the personal information for inclusion in a record or generally available publication. Collection refers to practices within the ordinary sense of the word, that is to gather, assemble, accumulate or make a collection.
51. Personal information is defined in the Privacy Act as:
- [I]nformation or an opinion about an identified individual, or an individual who is reasonably identifiable:
- (a) whether the information or opinion is true or not; and
  - (b) whether the information or opinion is recorded in a material form or not.<sup>39</sup>
52. Personal information is routinely uploaded to 2Apply and collected by the respondent as part of its business practices. The information uploaded to 2Apply is information that identifies an individual, including name, address, contact details, date of birth, employment details, salary, and job title.
53. The respondent has operational involvement in the development and maintenance of the default list of questions for the 2Apply form and also engages in the collection of personal information in its own right – it is not merely collecting personal information on behalf of real estate agents.
54. As the information uploaded to 2Apply is about an identified individual and is included in a record held by the respondent, I am satisfied that the respondent collects personal information and has obligations to comply with the APPs.

## What are the respondent's functions or activities?

55. The APP Guidelines provide that an organisation's functions or activities include:
- a. current functions or activities of the organisation;
  - b. proposed functions or activities the organisation has decided to carry out and for which it has established plans; and
  - c. activities the organisation carries out in support of its other functions or activities, such as human resource, corporate administration, property management and public relations activities.
56. The APP Guidelines further provide that, '[F]unctions and activities of an organisation will commonly be described (though not necessarily exhaustively) on a website, in an

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<sup>38</sup> APP Guidelines, [3.9].

<sup>39</sup> Privacy Act, s 6.

annual report, and in corporate brochures, advertising, product disclosure statements and client and customer letters and emails.’

57. The respondent provides a range of products and services for the rental property management industry. The respondent’s website describes it as, ‘[A]n Australia-based global property management software company that specialises in tech solutions for the real estate industry. From booking inspections, managing applications, tracking keys and many other time-saving products designed to streamline an agent and property manager’s daily tasks.’<sup>40</sup>
58. 2Apply is one of the respondent’s suite of products offered for the property application processes. The respondent’s promotional statements describe 2Apply as, ‘A smart, user-friendly tenant application form that integrates seamlessly with the IRE product suite.’<sup>41</sup>
59. In response to the OAIC’s preliminary view, the respondent submitted that its functions or activities with regard to 2Apply include:
  - a. to provide a service to potential applicants to facilitate making multiple applications for multiple properties, all of which will involve identical or similar data points;
  - b. to provide a service to the respondent’s real estate agent customers, which includes:
    - i. offering a digitised tenancy application form that follows the standard hard copy forms used by the real estate agent;
    - ii. encouraging/enabling complete applications to accelerate the tenancy application and assessment process (which in a competitive market, the respondent considers assists applicants, real estate agents and owners);
    - iii. assisting the real estate agent to manage and administer the tenancy to successful applicant/s over the tenancy’s lifecycle, including ongoing property management;
    - iv. providing functionality for a real estate agent to facilitate easier move-in for the tenant by connecting them with utility providers; and
    - v. amending/adapting the respondent’s services in response to feedback received from real estate agent customers about the respondent’s service offerings, which may involve amendments to the fields available on the 2Apply application forms; and
  - c. to provide a service to the respondent’s customers who manage and administer alternative housing situations, where applicants are applying for a room rather than a whole property, e.g. university accommodation or other shared housing arrangements. Rooming situations require customers to request and collect different or additional types of personal information as compared with that of standard tenancy applications.<sup>42</sup>
60. Having regard to the respondent’s publications, and its submission as set out in paragraph [59], I consider that the respondent’s functions or activities with regard to 2Apply can be characterised as:

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<sup>40</sup> InspectRealEstate, [Real estate agent Software - Australia - Inspect Real Estate](#), 2023, accessed 16 February 2026.

<sup>41</sup> InspectRealEstate, [Online Tenancy Application Form 2Apply](#), 2023, accessed 16 July 2025 (**2Apply tenancy application form information website**).

<sup>42</sup> PV response, p 2.

- a. facilitating the processing of complete tenancy applications (with reference to the stated functions or activities set out in paragraphs [59(a)], [59(b)(i)(ii)] and [59(c)]);
- b. facilitating the administration and management of successful tenancy applications (with reference to the stated functions or activities set out in paragraph [59(iii-iv)]); and
- c. improving its service offerings and fields on the 2Apply form (with reference to the stated function or activity set out in paragraph [59(v)]).

## Was the personal information collected reasonably necessary for the respondent's functions or activities?

61. Whether a particular collection of personal information is permitted under APP 3.2 involves establishing whether the personal information is reasonably necessary for one or more of the respondent's functions or activities.
62. 'Reasonable' and 'reasonably' are not defined in the Privacy Act. The terms bear their ordinary meaning, as being based upon or according to reason and capable of sound explanation. What is reasonable is a question of fact in each individual case. It is an objective test that has regard to how a reasonable person, who is properly informed, would be expected to act in the circumstances.<sup>43</sup>
63. Likewise, 'necessary' is not defined in the Privacy Act. The word has been held by the High Court, '[N]ot as meaning essential or indispensable, but as meaning reasonably appropriate and adapted.'<sup>44</sup> In the context of the Privacy Act, the APP guidelines specify that necessity requires something more than the collection, use or disclosure being '[M]erely helpful, desirable, or convenient.'<sup>45</sup>
64. The Privacy Act refers to 'necessary' and 'reasonably necessary', the latter being an objective test with reference to necessity: whether a reasonable person who is properly informed would agree that the collection is necessary.<sup>46</sup>
65. The test must be applied in a practical sense. If an entity cannot in practice effectively pursue the relevant function or activity without collecting the personal information, the collection would usually be considered reasonably necessary for that function or activity.<sup>47</sup>
66. In most circumstances, a collection would not be reasonably necessary on the basis that the personal information could become necessary for a function or activity in the future, or where personal information is collected from a group of individuals, when it is only required from some of those individuals, or there are reasonable alternatives.<sup>48</sup>
67. The APP Guidelines provide that factors relevant to determining whether a collection of personal information is reasonably necessary for a function or activity include:
  - a. the primary purpose of collection;
  - b. how the personal information will be used in undertaking a function or activity of the APP entity; and

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<sup>43</sup> APP Guidelines, [B.108]

<sup>44</sup> *Mulholland v Australian Electoral Commissioner* [2004] HCA 41 [39] (Gleeson CJ)

<sup>45</sup> APP Guidelines, [B.116].

<sup>46</sup> APP Guidelines, [B.117].

<sup>47</sup> APP Guidelines, [B.118].

<sup>48</sup> APP Guidelines [B.118]; [3.19]; [3.21].

- c. whether the entity could undertake the function or activity without collecting that personal information or by collecting a lesser amount of personal information.<sup>49</sup>

### *What is the primary purpose of collection?*

68. The 'primary purpose' of collection is the specific function or activity for which the entity collects the personal information.<sup>50</sup> Identifying the primary purpose of collection assists to clarify how the information will be used to carry out an APP entity's functions and activities.
69. The APP Guidelines state that where an APP entity collects personal information directly from an individual, the context will help in identifying the primary purpose of collection. For example, the individual may provide the personal information for a particular purpose, such as buying a particular product or receiving a particular service. This is the primary purpose of collection, even if the entity has additional secondary purposes in mind.<sup>51</sup>
70. In cases of ambiguity, and with a view to protecting individual privacy, the primary purposes for collection should be construed narrowly rather than expansively, by reference to the APP entity's functions or activities.<sup>52</sup>
71. Whilst 2Apply may provide a range of services to its customers, the primary purposes for which personal information is collected should be assessed at, and informed by, the objective circumstances at the time of collection. Relevantly, the circumstances include the following:
  - a. 2Apply is characterised on its website as 'an application system developed, owned and operated by InspectRealEstate to assist Real Estate Agencies to manage rental applications and inspections'<sup>53</sup> and is promoted in the following terms:
    - i. '2Apply can help you fast-track your application, whether you have already found a property or are still looking';
    - ii. 'We've streamlined the process to allow tenants to fill in the form once and use it in as many applications as they wish';<sup>54</sup> and
    - iii. 'Say goodbye to incomplete tenancy applications and chasing tenants for missing information. When a 2Apply application comes in, it's complete and ready to act. So, why not switch on 2Apply today and get more rent in less time?'.<sup>55</sup>
  - b. The personal information collection statement on the 2Apply website provides that the respondent will, '[C]ollect, use and disclose [an individual's] personal information' and directs users to the privacy policy. The respondent adopts the privacy policy of its parent company Reapit Pty Ltd which states that the respondent processes this personal information for its and others' 'business purposes', including:

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<sup>49</sup> APP Guidelines, [3.19].

<sup>50</sup> APP Guidelines, [B.101].

<sup>51</sup> APP Guidelines [B.102].

<sup>52</sup> *'ADJ' and The Secretary to the Department of Veterans' Affairs (Privacy) [2023] AICmr 29* (26 April 2023), [152].

<sup>53</sup> InspectRealEstate, [2Apply Privacy Policy & Online Terms of Service](#), 2Apply website, accessed 26 February 2026.

<sup>54</sup> InspectRealEstate, [2Apply Free Fast Rental Application Form](#), 2Apply website, 2026, accessed 9 February 2026.

<sup>55</sup> [2Apply tenancy application form information website](#), accessed 2 May 2025.

- i. providing services to ‘you’ (anyone who visits the respondent’s website, uses any of the respondent’s services or software, supplies any services to the respondent, or engages with the respondent in any other manner, and including business customers, business suppliers, real estate agents, property owners and tenants).
  - ii. enabling the respondent’s business customers and suppliers to provide their services to ‘you’; and
  - iii. communicating with ‘you’.<sup>56</sup>
- c. When an individual submits an application on 2Apply, they are required to accept the terms and conditions. As outlined at paragraph [34] the respondent provides real estate agents standard form terms and conditions, which they may use, or replace with their own. The standard form terms and conditions state: ‘[Agency name] collects your personal information for the primary purpose of assessing the risk to our clients in providing you with a property you have requested to rent and if considered acceptable provide you with a tenancy for the property’.<sup>57</sup>
72. As the information is collected by the respondent when individuals submit an application, or create a profile to apply for tenancy, the objective circumstances surrounding the collection reveals that the purpose of the collection is to allow the respondent to carry out its function or activity of facilitating the processing of complete tenancy applications.
73. For completeness, I note it may also be reasonable to justify interpreting the purpose of collection at a more general level; for example, that the purpose of collection is to ‘provide a service’ to potential applicants and real estate agent customers. My view is that this construction is overly broad and that such an approach would undermine the objectives of other APPs – an overly general purpose would prevent individuals from being able to make informed choices and would grant the respondent broad discretion to collect, use and retain personal information.

*Could the respondent undertake the function or activity without collecting the personal information, or by collecting a lesser amount of personal information?*

74. In addition to the primary purpose of collection, I have considered how the information is used by the respondent in undertaking its functions or activities as set out in paragraph [60], and whether the respondent can undertake its functions or activities without collecting the personal information, or by collecting a lesser amount of personal information.

### **Facilitating the processing of complete tenancy applications**

75. To facilitate the processing of complete tenancy applications, personal information uploaded to 2Apply is made available to real estate agencies on completion of an application – ‘completed’ applications is a key promotional feature of 2Apply. In this context, a complete tenancy application would be one that would enable the real estate agent to assess an individual’s application for a tenancy.
76. To assess whether the respondent could undertake this function or activity without collecting the personal information, or by collecting a lesser amount of personal information, I have therefore considered what information is required to assess an individual’s application for tenancy and compared this information to the personal information on the 2Apply default list.

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<sup>56</sup> Reapit, [Reapit Australia & New Zealand Privacy Policy](#), Reapit website, accessed 26 February 2026.

<sup>57</sup> s 44(1) response, p 18.

77. What is reasonable is a question of fact in each individual case and can be influenced by current standards and practices.<sup>58</sup> I note there is no federal legislation or Australia-wide standard that prescribes the personal information necessary to assess an individual's tenancy application. In the absence of such, in my consideration of whether collection of personal information is merely helpful, desirable or convenient, I have had regard to legislation, standards and guidelines likely to inform the limits of what is required in this context:

- a. **State-based tenancy legislation.** Some Australian states and territories<sup>59</sup> have legislated limits on the information individuals can be asked to provide when applying for a rental property, for example:
  - i. in Victoria, rental providers cannot request information regarding previous rental related legal actions or disputes; an individual's rental bond history; statement from a credit or bank account containing daily transactions; or any information about the individual that relates to a protected attribute;<sup>60</sup>
  - ii. in South Australia, landlords and agents are prohibited from requesting unredacted financial statements; information relation to discharge from bankruptcy; social media information; and level of education;<sup>61</sup> and
  - iii. in Queensland, individuals cannot be asked to provide information about legal action they have taken; certain tenancy notices issued; history regarding rental bond or bank statements.<sup>62</sup>
- b. **State-based tenancy guidelines.** State and Territory Commissioners responsible for tenancy regulation, in interpreting the relevant tenancy legislation as well as privacy and anti-discrimination laws, have issued guidance on the personal information required to enable a tenancy application to be assessed. For example, the New South Wales Fair Trading Commissioner and the NT Commissioner of Tenancies have issued guidance that the following information (in general terms) may be required:
  - i. proof of the identity of the tenant;
  - ii. proof the tenant can pay the rent; and
  - iii. evidence the tenant will look after the property.<sup>63</sup>
- c. **Federal, state and territory anti-discrimination laws** which make it illegal to refuse to rent or make an offer of rent on the grounds of individuals' personal attributes such as sex, race, age, disability, marital status, parental status, gender or sexuality.<sup>64</sup>

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<sup>58</sup> APP Guidelines [B.108].

<sup>59</sup> The NSW [Residential Tenancies Amendment \(Protection of Personal Information\) Bill 2025](#) introduced on 27 June 2025 and currently before the NSW Parliament includes as one of its objects: 'to provide for additional measures to protect tenants' personal information, including in relation to the collection, use and destruction of personal information and penalties for contraventions'.

<sup>60</sup> *Residential Tenancies Regulations 2021* (Vic), r 15.

<sup>61</sup> *Residential Tenancies Act 1995* (SA) *Residential Tenancies Regulations 2025* (SA), r 8.

<sup>62</sup> *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), (**Queensland tenancy act**) s 57C.

<sup>63</sup> NSW Government, '[When a prospective tenant applies for a property](#)', Fair Trading Commissioner's Guidance, 2026, accessed 10 February 2026; Northern Territory Government, '[Approved information and documents for rental applications](#)', Consumer Affairs, 2026, accessed 10 February 2026.

<sup>64</sup> *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), *Age Discrimination Act 2004* (Cth), *Australian Human Rights Commission Act 1986* (Cth), *Anti-Discrimination Act 1977* (NSW), *Equal Opportunity Act 2010* (Vic), *Anti-Discrimination Act 1991* (Qld), *Equal Opportunity Act 1984* (WA), *Equal Opportunity 1984* (SA), *Anti-Discrimination Act 1998* (Tas), *Discrimination Act 1991* (ACT), *Anti-Discrimination Act 1992* (NT).

- d. **Data minimisation** which is the practice of limiting the collection of all information, but especially personal information. A data minimisation approach is implicit in the requirement in APP 3.2 that APP entities must only collect personal information that is *reasonably necessary* for its functions or activities, in other words, that data collected should be relevant, minimal, and not excessive. Data minimisation is an important risk mitigation measure and, in my view, represents best practice for APP entities.<sup>65</sup>
78. I acknowledge that state-based legislation and guidelines are inconsistent and that there are states with varying levels of restrictions in place. However, I consider that an assessment based on factors outlined above is consistent with the objects of the Privacy Act, which include to promote the protection of the privacy of individuals and to recognise that such a protection is balanced with the interests of entities in carrying out their functions or activities.<sup>66</sup>
79. Whilst the respondent's intention is to provide real estate agents with all the personal information required in a 'ready to act' bundle, this does not authorise the collection of any, and all, personal information that might be helpful and desirable to a landlord, even when doing so might be more convenient than collecting less information.
80. Having regard to the factors discussed at paragraph [77] and the information provided by the respondent, I consider that collecting personal information is required for facilitating the processing of complete tenancy applications, where the personal information establishes:
- a. the individual's identity and contact details;
  - b. the individual's ability to pay the rent; or
  - c. whether the individual is likely to appropriately maintain the property.
81. I have considered the personal information collected by the respondent with reference to the default list in [Attachment A](#) and undertaken an assessment of whether the personal information is required for the function or activity of facilitating the processing of complete tenancy applications.
82. In undertaking this assessment, I have considered how the information is used by the respondent, whether the personal information falls within one of the categories I listed in paragraph [80] and whether the respondent could undertake the function or activity without this information or with less information.<sup>67</sup>
83. Having undertaken that assessment, I consider that the respondent could undertake the function or activity of facilitating the processing of complete tenancy applications without collecting the following information:
- a. **Gender.** The respondent submitted that this information is reasonably necessary where the relevant property is an alternative housing arrangement, such as room sharing and that existing tenants may have preferences regarding the gender of roommates. The respondent agreed on a non-admissions basis to remove this option from the 2Apply form.

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<sup>65</sup> A Puranik, 'Data Minimization Is Still an Underrated Security Control', *Data Breach Today*, 17 February 2026, accessed 26 February 2026; Maalsen, S., Clarke, A., Daniel, C., Floreani, S., Humphry, J., Martin, C., Przhedetsky, L., Rogers, D., Sadowski, J., Soundararaj, B. and Wolifson, P. 'Implications of tenant data collection in housing: protecting Australian renters', (Final Report No. 454, Australian Housing and Urban Research Institute Limited, 29 January 2026), doi: 10.18408/ahuri7333901, ('**AHURI report**').

<sup>66</sup> Privacy Act, s 2A.

<sup>67</sup> APP Guidelines, [3.19].

I consider that alternative housing arrangements involving legitimate gender preferences can indicate this in their listing, rather than necessitating a collection from all individuals that submit an application. Moreover, this information may also increase risks of discrimination in the tenancy application process, noting that federal, state and territory anti-discrimination laws broadly make it illegal to refuse to rent or make an offer of rent on the grounds of individuals' personal attributes such as gender.

My view is that the respondent can undertake the function or activity without collecting this information.

- b. **Details of dependants, specifically names and ages.** The respondent submitted that this information is reasonably necessary to assist its customers to assess the suitability of an individual for a property and the likelihood of the individual taking care of the property. The respondent agreed on a non-admissions basis to limit the information to number and age of dependents.

This information may also increase risks of discrimination, noting that federal, state and territory anti-discrimination laws broadly make it illegal to refuse to rent or make an offer of rent on the grounds of individuals' personal attributes such as age or parental status.

My view is that the respondent can undertake the function or activity without collecting this information as it does not establish an individual's ability to pay rent or the likelihood that the individual will take care of the property.

- c. **Student status.** The respondent submitted that this information is reasonably necessary as it was added in response to feedback from its customers and is relevant to their ability to pay the rent. The respondent agreed on a without admission basis, to remove this option from the 2Apply form.

My view is that the respondent can undertake the function or activity without collecting this information as it does not establish an individual's ability to pay rent or the likelihood that the individual will take care of the property.

- d. **Bankruptcy status.** The respondent submitted that this information is reasonably necessary as an indication of an individual's ability to pay rent for the entire lease period. The respondent agreed on a without admission basis, to remove this option from the 2Apply form.

This information does not demonstrate the individual's ability to pay rent where evidence of income or financial resources has been provided. It also does not establish the likelihood that the individual will take care of the property. My view is that the respondent can undertake the function or activity without collecting this information, or by collecting a lesser amount of personal information.

- e. **Retirement status.** The respondent submitted that this information is reasonably necessary for the relevant function or activity to enable retired individuals to accurately reflect their ability to pay the rent. The respondent advised it had received feedback that it may be offensive for retired individuals to have to choose between 'employed' or 'unemployed' when describing their employment status.

This information does not establish an individual's ability to pay rent, which can be established by evidence of income or financial resources. My view is that the respondent can undertake the function or activity without collecting this information.

- f. **Previous living history (2 years).** This includes whether the individual rented through a real estate agent or rental provider, owned their place of residence, lived with family and friends and their reasons for leaving. The respondent submitted that this information is reasonably necessary for the relevant function or activity to assess a tenant's likelihood to take care of the property, including by performing reference checks.

This information does not establish the likelihood that the individual will take care of the property or their ability to pay the rent. Reference checks could be undertaken by providing the name and contact details or referees to be contacted. My view is that the respondent can undertake the function or activity without collecting this information.

- g. **Current or intended ownership of their principal place of residence or investment property.** The respondent submitted that this information is reasonably necessary for the relevant function or activity to enable the real estate agent to offer additional support or services that may be of interest to the individual. The respondent agreed on a without admission basis, to remove this option from the 2Apply form.

This information does not establish an individual's ability to pay rent or the likelihood that the individual will take care of the property. My view is that the respondent can undertake the function or activity without collecting this information.

- h. **Current applications for other properties.** This information does not establish an individual's ability to pay rent or the likelihood that the individual will take care of the property. My view is that the respondent can undertake the function or activity without collecting this information.

- i. **Bond and rent assistance application status.** The respondent submitted that this information is reasonably necessary so that individuals may be offered appropriate support and be offered department of housing properties.

Rent and bond assistance are social security assistance available to certain individuals and are not indicative that the individual is eligible for or seeking social housing. Individuals who are seeking social housing will presumably apply for such properties. Collection of this information increases the risk of profiling of vulnerable individuals who are in receipt of social security payments, and discrimination of certain individuals such as single parents.

My view is that the respondent can undertake the function or activity without collecting this information.

- j. **Citizenship status and visa expiry.** The respondent submitted that this information is reasonably necessary to ensure individuals are able to uphold the tenancy agreement, including payment of rent for the entire lease period.

This information does not establish an individual's ability to pay rent or the likelihood that the individual will take care of the property. My view is that the respondent can undertake the function or activity without collecting this information.

- k. **Emergency contact.** The respondent submitted that this information is reasonably necessary for the function or activity of providing a service to its customers, including assisting the real estate agent to manage the successful applicant's tenancy over its lifecycle.

This information does not establish an individual's ability to pay rent or the likelihood that the individual will take care of the property. My view is that the respondent can undertake the function or activity without collecting this information.

- l. Vehicle details.** The respondent submitted that this information is reasonably necessary to assess whether there is sufficient parking at the property and to ensure access to any allocated parking. The respondent also submitted this information informs the likelihood of the individual taking care of the property.

This information does not establish an individual's ability to pay rent and bears no connection to the likelihood that the individual will take care of the property. My view is that the respondent can undertake the function or activity without collecting this information.

84. There are two further types of personal information the respondent collects via the 2Apply form, which I consider may not be reasonably necessary for the function or activity of facilitating the processing of complete tenancy applications, namely, smoker status, and bond history and claims. In most circumstances, I consider that this personal information is not reasonably necessary for the relevant function or activity, as they do not establish an individual's ability to pay rent or the likelihood that the individual will take care of the property. However, I acknowledge that interested parties may have countervailing views about the collection of this type of personal information. In any event, the respondent has agreed on a without admission basis to cease collecting this personal information, and so I do not need to reach a decision about this type of personal information for the purpose of this determination.
85. I am of the view that the respondent could undertake the function or activity of facilitating the processing of complete tenancy applications by collecting a lesser amount of personal information, and that there are reasonable alternatives available, in relation to:

  - a. Identification documents; certain details in identification documents such as passports, number of names listed on Medicare Card and card colour.** The respondent stated that this information is reasonably necessary for identity verification. Certain details in identification documents are collected when an individual chooses to verify their identity via these methods or, in the case of Medicare card information to establish citizenship and residency status. The respondent advised it does not undertake identity verification itself – this is done by the real estate agent.

I do not consider that all individuals that submit an application require identity verification and that the respondent could undertake this function or activity without collecting this information, or by collecting a lesser amount.

In the initial application phases, I consider that individuals' identity can be sufficiently established to distinguish them from other applicants, by collecting less information. Where verification of identity is required prior to offering a tenancy contract, I consider that there are less privacy intrusive ways to establish the identity of an individual. For example, individuals could be referred to an appropriately secure third-party ID verification service, or physical sighting of the documents.
  - b. Proof of income documents.** The 2Apply application form allows collection of up to 2 years of employment history. The respondent submitted this information is reasonably necessary for the relevant function or activity, in that it is indicative of whether the individual will pay rent for the entire lease period. The respondent

advised that its customers requested the ability to request and specify additional income documents to assist individuals who may have multiple or unconventional sources of income.

I observe that 2 years of income history is substantially more than the 2 documents collected in the Queensland and South Australian context and by financial institutions for verifying income.<sup>68</sup> My view is that the respondent can undertake the function or activity by collecting a lesser amount of personal information.

- c. **Employment details, including occupation, start and end date, and employment status.** The respondent submitted that this information is reasonably necessary as an indication of an individual's ability to pay rent for the entire lease period.

This information does not establish the individual's ability to pay rent where proof of income is otherwise provided. My view is that the respondent can undertake the function or activity without collecting this information or by collecting a lesser amount of personal information.

### **Facilitating the administration and management of successful tenancy applications**

86. To undertake the function or activity of facilitating the administration and management of successful tenancy applications, I acknowledge that more personal information may be required than that for processing complete tenancy applications. For example, the respondent has submitted that individuals' emergency contact and vehicle details (where such information is required to allow carpark access) are required to undertake this function or activity.
87. However, the respondent's current practice is to collect all personal information from all individuals who apply for a tenancy, for the possible future function or activity of administering the tenancy of the successful applicant.
88. I am of view that the respondent could undertake this function or activity without collecting information, or by collecting a lesser amount of personal information from all individuals. This is because personal information is only required from the successful applicant and in circumstances where the real estate agent elects to use 2Apply to administer and manage the ongoing tenancy as part of the respondent's broader product offerings.

### **Improving the respondent's service offerings and fields on the 2Apply form**

89. The respondent submitted that the collection of all the personal information in paragraphs [83] and [84] was reasonably necessary to undertake the function or activity of improving its service offerings and fields on the 2Apply form.
90. I consider that this reasoning is circular and self-referential, as the asserted function or activity necessitates the collection it seeks to justify – the respondent's real estate agent customers may request additional personal information be collected, or form fields adjusted, and acting on such requests or feedback may result in the collection of the personal information.
91. I am of the view that the function or activity of improving the respondent's service offerings and the fields on the 2Apply does not inherently require information that

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<sup>68</sup> For example, to apply for a personal loan, ANZ currently request 3 months of payslips ([Apply for a Personal Loan | ANZ](#)); Commonwealth Bank and Westpac currently request two most recent payslips ([What you need to apply for a personal loan; Unsecured Personal Loan | Westpac](#)). NAB currently request employment details for the past three years, and details of income ([Learn how to apply for a personal loan online - NAB](#)).

identifies individuals. This function or activity could be undertaken using technical or operational metrics, or through usability testing and feedback.

92. On this basis, I consider that the respondent could undertake the function or activity of improving its service offerings and fields on the 2Apply form without collecting any of the personal information listed at paragraphs [83] and [84].

## Finding

93. All APP entities must limit the personal information collected to what is reasonably necessary for their functions or activities. Having regard to:
- a. the primary purpose of the collection is to allow the respondent to carry out its function or activity of facilitating the processing of complete tenant applications (paragraphs [68] to [73]); and
  - b. how the information is used in undertaking the respondent's functions or activities and my view that the respondent could undertake its functions or activities without collecting the personal information, or by collecting a lesser amount of personal information (paragraphs [75] to [92]),

I conclude that the respondent has collected personal information that is not reasonably necessary for its functions or activities.

94. In particular, I find that the respondent could undertake its functions or activities without collecting the following personal information:
- a. gender;
  - b. details of dependants, specifically names and ages;
  - c. student status;
  - d. bankruptcy status;
  - e. retirement status;
  - f. details of previous living history;
  - g. current or intended ownership of their principal place of residence or investment property;
  - h. current applications for other properties;
  - i. bond and rent assistance application status; and
  - j. citizenship status and visa expiry.
95. The respondent could undertake its functions or activities by collecting a lesser amount of personal information in relation to:
- a. emergency contact;
  - b. vehicle details;
  - c. identification documents; certain details in identification documents such as passports, number of names listed on Medicare Card and card colour;
  - d. proof of income documents; and
  - e. employment details, including occupation, start and end date, and employment status.
96. As the respondent has collected personal information that is not reasonably necessary for its functions or activities, I find that the respondent has contravened APP 3.2.

## APP 3.5 – Collection of personal information by lawful and fair means

97. APP 3.5 provides that an APP entity must collect personal information only by lawful and fair means. In contrast with APP 3.2, which is concerned with *what* is collected, APP 3.5 is concerned with *how* the information is collected – the means of collection.
98. Whilst APP 3.5 specifies that entities must collect personal information by lawful *and* fair means, a breach of APP 3.5 may be found where an entity fails to collect information in a manner that is either not lawful *or* not fair.<sup>69</sup>
99. As set out above at paragraph [54], I have found that the respondent collects personal information in its operation of 2Apply. The relevant question I have then considered is whether the respondent collected the personal information by fair means.
100. To determine whether the respondent collects personal information by fair means, as required by APP 3.5, I have considered:
  - a. the meaning of ‘fair’ in the context of APP 3.5; and
  - b. the circumstances relevant to the assessment of whether the collection of personal information.

### What is the meaning of ‘fair’ in the context of APP 3.5?

101. The meaning of what is ‘fair’ under APP 3.5 is to be determined having regard to consideration of the text, context and purpose of the Privacy Act. This exercise of statutory interpretation must start with the language of the statutory text.<sup>70</sup>
102. The High Court has endorsed a contextual approach to statutory interpretation in *SZTAL v Minister for Immigration and Border Protection*, in which their Honours stated, ‘The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose. Context should be regarded at this first stage and not at some later stage and it should be regarded in its widest sense’.<sup>71</sup> Consistent with a contextual approach, the Court has stated the meaning of ‘fair’ is not fixed; the concept of ‘fairness’ should be adapted to changing circumstances viewed in context and in accordance with community values.<sup>72</sup>
103. The Privacy Act does not define ‘fair’. According to the APP Guidelines:

A ‘fair means’ of collecting information is one that does not involve intimidation or deception, and is not unreasonably intrusive. Whether a collection uses unfair means will depend on the circumstances. For example, it would usually be unfair to collect personal information covertly without the knowledge of the individual. However, this may be a fair means of collection if undertaken in connection with a fraud investigation.<sup>73</sup>
104. I take the statement, ‘A ‘fair means’ of collecting information is one that does not involve intimidation or deception, and is not unreasonably intrusive,’ not as an exhaustive definition of ‘fair means’, but rather as providing examples of means of

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<sup>69</sup> *Commissioner Initiated Investigation into Property Lovers Pty Ltd (Privacy)* [2024] AICmr 249, [49] (‘**Property Lovers**’); ‘*LP and the Westin Sydney (Privacy)* [2017] AICmr 53.

<sup>70</sup> *Alcan (NT) Alumina v Commissioner of Territory Revenue* (2009) 239 CLR 27, [47] (French CJ Hayne J Heydon J Crennan J Kiefel J).

<sup>71</sup> See, e.g., *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362, [14] (Kiefel CJ, Nettle and Gordon JJ).

<sup>72</sup> *R v Swaffield; Pavic v The Queen* [1998] HCA 1 [53] (Toohey, Gaudron and Gummow JJ), [131] (Kirby J).

<sup>73</sup> APP Guidelines [3.62].

collection that fall short of 'fair'. There may be other means of collection which are not fair, yet do not fit within the meaning of intimidation, deception, or unreasonable intrusion.

105. The APP Guidelines provide examples of collection of personal information which may be unfair.<sup>74</sup> Whilst the examples are not relevant to the matter at hand, they indicate that 'fair means' of collection is not limited to being only those means of collection that do not involve intimidation, deception or are unreasonably intrusive. The examples convey that knowledge of the collection and of the reason for the collection does not automatically render the means of collection fair and that it is also necessary to consider the individuals' particular circumstances which may impact their ability to advocate for their own interests and act protectively toward their personal information.
106. The meaning of 'fair' was considered in *Commissioner Initiated Investigation into Property Lovers Pty Ltd*. In that determination I noted that the Privacy Act is a beneficial legislation which should be construed liberally in cases of ambiguity.<sup>75</sup> Whether a collection is 'fair' for the purposes of APP 3.5 requires consideration of the facts of the particular case.<sup>76</sup>
107. This approach was accepted by the Administrative Review Tribunal in *Court Data Australia and Office of the Australian Information Commissioner*, which considered the collection of personal information from court listings published on the internet and noted that, as 'fair' is not defined in the Privacy Act, '[I]t is necessary to undertake an open-textured, evaluative assessment which makes it not susceptible to precise and comprehensive defining'.<sup>77</sup> The Tribunal concluded that the examples in the APP Guidelines show the importance of context in interpreting fairness under APP 3.5, and accepted my submission that the guidelines do not purport to exhaustively define what is 'fair' under APP 3.5.<sup>78</sup>
108. Before considering the circumstances of the collection of personal information by 2Apply, it is important to note the objects of the Privacy Act, as this will help to inform the legislative intent and the content of the norm of fairness. Relevantly, the objects of the Privacy Act include:
- a. to promote the protection of the privacy of individuals with respect to their personal information;
  - b. to recognise the public interest in protecting privacy;
  - c. to recognise that the protection of the privacy of individuals is balanced with the interests of entities in carrying out their functions or activities; and
  - d. to promote responsible and transparent handling of personal information by entities.<sup>79</sup>

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<sup>74</sup> APP Guidelines [3.63].

<sup>75</sup> *Property Lovers*, [43].

<sup>76</sup> *Property Lovers*, [47].

<sup>77</sup> [2025] ARTA 876, ('**Court Data Australia**'), [27]. See, e.g., *Kumova v Davison (No 2)* [2023] FCA 1, [281] (Lee J); *Paciocco v Australia and New Zealand Banking Group Ltd* (2015) 236 FCR 199, [304] (Allsop CJ); *Australian Competition and Consumer Commission v Quantum Housing Group Pty Ltd* (2021) 285 FCR 133, [91] (Allsop CJ, Besanko and McKerracher JJ).

<sup>78</sup> *Court Data Australia*, at [27].

<sup>79</sup> Privacy Act, s 2A.

## The circumstances of the respondent's collection of personal information

109. As set out in paragraphs [101] to [107], the assessment of whether the means of collection are fair for the purpose of APP 3.5 involves a consideration of the circumstances of collection.
110. Relevantly, I note that the collection of personal information in the circumstances of this matter, is occurring in a context where the following are present:
- a. There is an **inherent and significant power imbalance** in the rental property market which favours real estate agents, property managers and landlords.<sup>80</sup> As an intermediary to individuals' access to housing, this power imbalance also favours platforms such as 2Apply.
  - b. This power imbalance is exacerbated by a **rental crisis** in which there is a shortage of rental properties, sharply rising rents and other costs of living, and intense competition for properties.<sup>81</sup> In the absence of any legislated right to housing, the competitiveness of the current rental market means that individuals are at a disadvantage when trying to rent a home and are more vulnerable to unfair practices.<sup>82</sup> Unlike other consumer products and services, housing is an essential need, as well as being recognised as a human right in international law. The implications of not securing housing are significant, and those mediating access to housing wield significant power.
  - c. **Individuals have limited choice.** An individual wanting to apply for a property cannot choose which rental platform to use – this choice is made by the real estate agent – and at times individuals have been refused any other method of applying.<sup>83</sup> The power imbalance in the rental property market results in individuals feeling that they have no choice but to engage with and submit personal information to rental platforms, even if they are not comfortable doing so, for fear that their applications may be rejected.<sup>84</sup>
  - d. There is **excessive collection of personal information** – the respondent's usual practice is to collect personal information that is not reasonably necessary for its functions or activities as noted in paragraph [94], and to collect personal information from all individuals who apply for a tenancy, when such information is only required from some. Arguably, excessive collection as a means or practice, can be considered an unreasonably intrusive act that adversely affects the rights and interests of individuals.
  - e. There are **security risks** associated with the vast amounts of personal information collected in the real estate sector in addition to inadequate information handling

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<sup>80</sup> OAIC, [Submission No 16 to Attorney-General's Department, Review of Australia's Credit Reporting Framework 14 June 2024](#) [53]; Senate Community Affairs References Committee, Parliament of Australia, [The Worsening rental crisis in Australia, \(Interim report, September 2023\)](#), ('**The worsening rental crisis**') [2.96 – 2.104].

<sup>81</sup> AHURI report; [The worsening rental crisis](#).

<sup>82</sup> [The worsening rental crisis](#), Chapter 2; B Bate, '[Unlawful and lawful discrimination: how the selection process disadvantages some private renters](#)', *Tenants' Union of NSW*, 17 August 2020, accessed 25 February 2026.

<sup>83</sup> In Queensland renters must be provided with at least two different methods for submitting an application (Queensland tenancy act, s 57B). Other states have not yet legislated such a requirement.

<sup>84</sup> See [The worsening rental crisis](#), Chapter 2; ([Choice report](#)); J Mowbray, '[Privacy, data and discrimination in renting](#)', *Tenants' Union of NSW*, 24 March 2023 (**Tenants' Union survey**). In the Choice report 41% of renters surveyed said they were pressured to use a third-party platform by their agent or landlord. 60% respondents in the Choice report said they were uncomfortable with the amount and type of information collected; this figure was 91.7% in Tenants Union survey. Quotes from respondents to the Tenants' Union survey included: 'I do not feel I have a choice'; 'I never felt as though I was in a position to be able to refuse'; 'I always feel like there is no option other than to provide whatever nonsense the form asks for'.

practices. Unnecessary or excessive collection of personal information increases the risk of harm to individuals, particularly in the event of data breaches in the real estate sector, which is a well-documented area of community concern.<sup>85</sup>

- f. The **‘Online Choice Architecture’ practices**<sup>86</sup> the respondent employs on the 2Apply form, which I consider in this case, unfairly pressure individuals into making choices that are otherwise misaligned with their preferences or choices they would normally voluntarily make. Whilst this is a novel approach to considering fairness for the purpose of the Privacy Act, it is becoming an increasingly important and relevant, privacy and data protection issue. I have discussed this further below.

### Online Choice Architecture

111. In my assessment of whether the collection of personal data by the respondent is fair, I have considered the design, structure, and way information is conveyed on the 2Apply form. I utilise the concept of Online Choice Architecture for this purpose, and as this is the first time I have done so in the context of APP 3.5, I have taken the opportunity to elaborate on this concept further below. However, I note that Online Choice Architecture is but one of the many factors I have considered in assessing APP 3.5, this section does not affect the weight I have placed on the other circumstantial factors as outlined in paragraph [110].
112. Online Choice Architecture refers to ‘the way information is presented and choices are structured [which] plays an important role in shaping consumers’ decision-making and behaviour online’.<sup>87</sup> An Online Choice Architecture is not inherently bad or harmful – digital platforms can be structured in a way that benefits consumers, for example, where default security settings are in place that reduce the likelihood of a user falling prey to a virus or malware. However, these practices can be harmful to individuals if they undermine their choice and control over their personal information.<sup>88</sup> Harmful Online Choice Architecture practices can also be referred to as dark or deceptive patterns.<sup>89</sup>
113. Relevantly to the present case, Online Choice Architecture practices can include: confirmshaming; biased framing; and bundled consent.<sup>90</sup>
114. ‘Confirmshaming’ is the use of emotive language to make a user feel guilty or embarrassed for not taking an action that is beneficial to the information-collecting entity. For example, a user who chooses not to buy insurance when purchasing an airfare might be required to click a button with the text, ‘I am willing to take the risk’, rather than simply ‘No’. Confirmshaming can be a harmful Online Choice Architecture

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<sup>85</sup> See for example, J Taylor, [Real estate agents in Australia using apps that leave millions of lease documents at risk, digital researcher says](#), *The Guardian*, 2 February 2026, accessed 26 February 2026; W Thorpe, [‘More Information Being Collected On Renters, As Experts Call For Protections’](#), *City Hub*, 8 February 2026, accessed 24 February 2026; A Kollmorgen, [‘RentTech platforms have your data, whether you like it or not’](#), *Choice*, 18 April 2023, accessed 10 October 2025; Digital Rights Watch, [‘Submission to Senate Community Affairs Committee’s inquiry into the worsening rental crisis in Australia’](#), 28 July 2023; A Hall, [Harcourts data breach: Advocates warned of real estate hack dangers](#), *SBS News*, 3 November 2022, accessed 5 March 2026.

<sup>86</sup> [Harmful design in digital markets](#), p.4.

<sup>87</sup> [Harmful design in digital markets](#), p.4.

<sup>88</sup> [Harmful design in digital markets](#).

<sup>89</sup> J Baumeister, J-Y Park, A Cunningham, S Von Itzstein, I Gwilt, A Davis, and J Walsh [‘Patterns in the dark – deceptive practices in online interactions’](#), (Report to the Data Standards Chair, Data Standards Body, 8 August 2024, (**‘Patterns in the dark’**), p 9; NSW Fair Trading, [Dark Patterns: tricks to make you spend more online](#), NSW Government website, 2026, accessed 27 February 2026.

<sup>90</sup> [Harmful design in digital markets; Patterns in the dark](#).

practice when it pressures users to provide more personal information than they would have, if not for the guilt or shame-inducing message.

115. 'Biased framing' is the practice of presenting choices in a way that emphasises their supposed benefits (positive framing) or downsides (negative framing). Biased framing can be harmful to the individual where the framing is beneficial to the entity and not in the interests of the user. For example, a website popup asking a user about information sharing settings states that if the user shares more information the entity will be able to offer a more personalised experience. That statement may be accurate in a sense, however it is framed in a way that emphasises the benefits of sharing more information, which is in the commercial interest of the entity, and fails to mention any potential downsides for the user. This results in individuals being encouraged to choose the option that results in the collection of more of their personal information.<sup>91</sup>
116. 'Bundled consent' involves the entity requesting consent from the user for their personal information to be used for multiple purposes in a single request.<sup>92</sup> This practice undermines users' ability to exercise effective control over how their personal information is used and can result in users inadvertently consenting to their personal information being used in ways they do not want.
117. I consider that the respondent has implemented elements in its Online Choice Architecture which are contrary to the interests of individuals, are likely to lead to individuals providing more personal information than they would otherwise have provided. A feature of harmful Online Choice Architecture is that individuals are encouraged to act against their own best interests by providing more personal information than they otherwise would have.<sup>93</sup>
118. In particular, I consider that the respondent has employed confirmshaming and biased framing. As outlined in paragraphs [31] and [33] the 2Apply form states that the provision of information would 'help speed up your application process' and conversely, not providing the information may 'affect whether you are considered as a suitable tenant for the property'. These statements are not necessarily untrue or misleading (rather, it appears that completeness of an application is a heavily weighed factor in which applications real estate agents will present to landlords).<sup>94</sup> However, by presenting these messages to individuals, my view is that the respondent is employing language that suggests that the volume and type of personal information provided is an indicator of their suitability as a tenant. I consider these statements have the effect of pressuring individuals to provide more personal information via 2Apply and are examples of harmful Online Choice Architecture.
119. I am also of the view that the respondent has utilised bundled consent. In order to progress with an application for a property through 2Apply, individuals are required to agree to the use of their personal information for direct marketing. Whilst the 2Apply website states, '[D]on't worry, you'll be able to unsubscribe,' it has not provided a mechanism to opt out at the point of collection – the lack of choice and control to the individual to not receive direct marketing at the point of collection of their personal information means that the only option is to not submit their application, or not use the platform. In the context of an individual applying for housing, this may in effect mean the individual has no choice but to engage with 2Apply.

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<sup>91</sup> OAIC, *GPEN Sweep finds majority of websites and mobile apps use deceptive design to influence privacy choices*, [media release], OAIC, 10 July 2024, accessed 27 February 2026.

<sup>92</sup> *Harmful design in digital markets*, p.21.

<sup>93</sup> *Patterns in the dark*, p 9.

<sup>94</sup> Choice report, p 20.

## Finding

120. I find that the circumstances of this matter as set out at paragraph [110] cumulatively support a conclusion that the collection of personal information by the respondent was not fair.
121. The circumstances in which the respondent collects personal information is characterised by significant power imbalances, limited choice and security risks relating to the real estate sector. In the absence of any legislated right to housing, the competitiveness of the current rental market means that individuals are at a disadvantage when trying to rent a home and are more vulnerable.<sup>95</sup>
122. In this context, I consider that the means by which the respondent collects personal information, which involves a practice of excessive collection of personal information and Online Choice Architecture practices that unfairly pressure individuals into making choices that are otherwise misaligned with their preferences or would normally voluntarily make, weighs in favour of circumstances of collection that are not fair.
123. On this basis, I find that the respondent did not collect personal information via 2Apply by fair means and has contravened APP 3.5.

## Declarations

124. As I have found that the respondent interfered with the privacy of individuals, I have a discretion under s 52(1A) of the Privacy Act to make one or more declarations. Consequently, I have made declarations outlined at paragraphs [2] and [3] of this determination.

### Carly Kind

Privacy Commissioner

1 April 2026

## Review rights

Section 96 of the *Privacy Act 1988* (Cth) states that a party may make an application to the Administrative Review Tribunal (**ART**) to have a decision under s 52(1) or (1A) to make a determination reviewed. The ART provides independent merits review of administrative decisions and has power to set aside, vary, or affirm a privacy determination. An application to the ART must be made within 28 days after the day on which the person is given the privacy determination (s 18(1) of the *Administrative Review Tribunal Act 2024* (Cth); r 5(3) of the *Administrative Review Tribunal Rules 2024* (Cth)). An application fee may be payable when lodging an application for review to the ART. Further information is available on the ART's website ([art.gov.au](http://art.gov.au)) or by telephoning [1800 228 333](tel:1800228333).

A party may also apply under [s 5](#) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) to have the determination reviewed by the Federal Circuit and Family Court of Australia or the Federal Court of Australia. The Court may refer the matter back to the OAIC for further consideration if it finds the Information Commissioner's decision was wrong in law or the Information Commissioner's powers were not exercised properly. An application to the Court must be lodged within 28 days of the date of

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<sup>95</sup> [The worsening rental crisis](#), Chapter 2; B Bate, 'Unlawful and lawful discrimination: how the selection process disadvantages some private renters', *Tenants' Union of NSW*, 17 August 2020, accessed 25 February 2026.

the determination. An application fee may be payable when lodging an application to the Court. Further information is available at <https://www.fccoa.gov.au/gf> and [www.federalcourt.gov.au/](http://www.federalcourt.gov.au/).

# Attachment A: 2Apply default list

Extracted from <https://app.2apply.com.au/Agency/2applydefault>:

## General

- Applicant's contact details including full name, mobile, email address.
- Details of any dependents
- Date of Birth
- Gender
- Whether an individual is a smoker
- Whether an individual is a student

## Identification

- 60 points of identification documentations, including requirement to upload supporting documents as well as providing additional details such as document number and expiry dates.

### Category A (minimum 40 points)

- Drivers Licence (40 points)
  - Licence Number, Expiry Date, Driver Licence Country, Driver Licence Address.
  - Copy of the front and back of the drivers licence
- Birth Certificate (40 points)
  - Issue Date
- Citizenship Certificate (40 points)
  - Number, Issued Date
- Passport (40 points)
  - Passport number, expiry date, Issued In, Nationality
- Student Card (40 points)
  - Student No./Reference No., Expiry Date
- Marriage Certificate (40 points)
  - Registration Number, Issue date

### Category B (minimum 20 points)

- Medicare Card (30 points)
  - Medicare Number, expiry date, Medicare Reference Number, Number of names listed on card, colour
- Payslip (20 points)

- Issue date
- Bank Statement (20 points)
  - Issue date
- Employment Agreement (20 points)
  - Issue date
- Centrelink Statement (20 points)
  - Issue date
- Travel Visa (30 points)
  - Visa Number and expiry date
- Proof of Age Card (30 points)
  - Reference Number, Age Card Country, expiry date
- Proof of Address (20 points)
  - Issued date
- General Identification (20 points)
  - Issued Date, expiry date.
- General Financial (10 points)
  - Issued Date, expiry date
- Current Tenant Ledger (20 points)
  - Issued Date
- Previous Tenant Ledger (20 points)
  - Issued Date
- Child Support Statement (20 points)
  - Issued Date
- Electricity Bill (20 points)
  - Issued Date
- Gas Bill (20 points)
  - Issued Date
- Water Bill (20 points)
  - Issued Date

**Financials** (2Apply Default requires a minimum of 2 years employment history)

- whether an individual is retired
- occupation
- company Name
- start and end date
- take-home Income Amount and Annual Income Amount
- address (of the company)
- whether its self-employment, status (Casual, Part-time, Full-time or Contractor)
- whether an individual is receiving additional income including Centrelink payments, scholarships and government payments or applying for bond/rent assistance
- whether an individual intends to pay rent by other means (savings, paid by parents or future employment) or otherwise how they intend to pay
- whether an individual is self-employed
  - type of business
  - contact details of their accountants or solicitor (if any)

**Living History** (2 Apply Default requires a minimum of 2 years of living history)

- Address
- Contact (first and last name), email, mobile, phone number
- whether the last address was a personal ownership
- who the property was rented through
- whether the individual was living with family/friends
- dates of when the individual started living in the address and finished living at the address
- whether the individual was paying rent
- reasons for leaving

**Pet**

- Pet Name, Breed, Size and Living Situation

**2Apply default questions**

- Citizenship status and visa expiry
- Whether an individual is applying for a Department of Housing bond/rent assistance
- Bankruptcy status

**Emergency contact** (2Apply requires 1 Emergency Contact)

- First Name, Last Name, Relationship, Email, Mobile

**Vehicle**

- Vehicle type, registration, make and model