

Submission:

Improving NSW
rental laws consultation
paper

Council of the Ageing (COTA) NSW

COTA NSW is the peak body representing people over 50 in NSW. We're an independent, non-partisan, consumer-based, non-government organisation. We work with politicians, policy makers, service, and product providers, as well as the media to ensure the views and voices of older people are heard and acted on.

Our work is to:

- inform
- educate
- engage
- advocate

We work with:

- the community
- service & product providers
- government
- the media

Acknowledgement of Country

COTA NSW acknowledges the unique status of Australia's First Peoples as the original people of this land. We recognise their cultures, histories and ongoing relationship and obligations to the land, sky, and waterways.

In the spirit of reconciliation, COTA NSW acknowledges all traditional custodians of the lands we today know as New South Wales.

COTA NSW is funded by the NSW Government under the NSW Ageing Strategy.

Introduction

Council on the Ageing (COTA) NSW welcomes the opportunity to provide a submission on the *Improving NSW rental laws* consultation paper.

The increasing numbers of older people experiencing housing stress, instability and homelessness is of major concern to COTA NSW and a key focus of our policy and advocacy platform.

This precariousness comes at a time when the proportion of older people that are renting in the private market continues to grow. A COTA Federation national survey and subsequent report *State of the Older Nation 2023* highlighted the challenges that older renters are facing. Older renters had high levels of concern about their risk of homelessness in the next 12 months and were struggling to pay their rent and other bills.¹

It is increasingly difficult, if not impossible, for older people on JobSeeker or the Aged Pension to find and secure and appropriate private rental accommodation. The annual Anglicare rental availability snapshot provides stark evidence on the availability of affordable rental properties for people on an Aged Pension or JobSeeker in NSW, with less than 1% of rental properties affordable.²

COTA NSW has also been a key member of the Ageing on the Edge NSW Forum; that was established in 2017 in response to the release of *The Older I Get the Scarier It Becomes – Older People at Risk of Homelessness in NSW*.³ The forum is a coalition of 75 organisations and individuals that advocating on measures to address homelessness and housing stress amongst older people in NSW. The report *Home at Last: Solutions to end homelessness of older people in NSW* examined the significant housing challenges that many older people are currently facing, the inadequacy of current service responses to the issue and need for appropriate housing for this age group.⁴

In addition, COTA NSW supports the Making Renting Fair and Healthy Homes for Renters campaigns.

¹ COTA Federation (2023). *State of the older nation*. Retrieved: <https://cota.org.au/policy/state-of-the-older-nation/>

² Anglicare Australia (2023). Rental affordability snapshot regional reports.

³ J. Fiedler and D. Faulkner, *The older I get the scarier it becomes: Older people at risk of homelessness in New South Wales*, 2017, accessible at: <https://www.older tenants.org.au/sites/default/files/older-i-get-scarier-it-becomes-291117.pdf>

⁴ Ageing on the Edge NSW Forum, *Home at last: Solutions to end homelessness of older people in NSW*, December 2021. Retrieved from: <https://www.older tenants.org.au/publications/home-at-lastresponding-to-homelessness-among-older-people-in-nsw>

Context

Increasing numbers of older renters

Whilst a majority of older people in Australia (those aged 65 and over) own their own home (66.8%)⁵, NSW is witnessing a steady increase in the number of older, non-homeowners. In 2019-20, the ABS estimated that 19.1% of older people in the 55-64 age group rented, decreasing to 16% in the 65-74 cohort and 12.9% for those over 75.⁶

As of 30 June 2021, 2 in 3 (67%) of people aged 65 and over received the Age Pension, JobSeeker, Disability Support Payment or Carer Payment.⁷ This has implications for non-homeowners, particularly those renting in the private market because of the lack of affordable private rentals. Research conducted in 2017 by Housing for the Aged and University of Adelaide estimated that there were 33,000 low-income older renter households in housing stress (where they pay more than 30% of household income on housing costs) in NSW. Of these low-income older households, 9314 were in severe housing stress, paying more than 50% of their income on rent.⁸

"I found it very difficult to find rent I could afford and now my rent is draining my meagre savings. I am afraid I may have to become a homeless person and I don't think I will survive out there. I have been waiting since early 2011 for public housing to find a home or apartment for me but am not holding out much hope." [REDACTED]
Male COTA NSW survey respondent [REDACTED].

In 2018, we published our annual 50+ Report with a focus on older people that were renting, in mortgage debt or experiencing homelessness. The report *Debt, rent and homelessness: An insecure future*, was based on findings from a survey completed by 7,600 older people and informed by focus groups which provided sobering statistics and personal stories.⁹

The results of the COTA NSW 2018 survey provided further evidence of the severity of housing affordability stress for older people, particularly for those receiving government income support. The survey indicated that the main source of income for 39.7% of renters in the private market was either the Aged or Disability pensions. A further 7.9% of private market renters were reliant on JobSeeker. Given the primary source of their incomes, it is

⁵ ABS (2018) 2071.0 – Census of Population and Housing: Reflecting Australia – Stories from the Census: 2016.

⁶ ABS (2022) Housing occupancy and costs, Australia 2019-20.

⁷ Australian Institute of Health and Welfare (2021). *Older Australians: Income and finances*. Retrieved from: <https://www.aihw.gov.au/reports/older-people/older-australians/contents/10-income-and-finances#Income%20and%20wealth>

⁸ Fiedler, Jeff; Faulkner, Debbie (2019): *"The older I get the scarier it becomes" Older people at risk of homelessness in New South Wales*. The University of Adelaide. Online resource. <https://doi.org/10.25909/5dc3732b1e809>

⁹ COTA NSW (2018). *Debt, rent and homelessness: An insecure future*.

unsurprising that the survey found that 71.5% of older renters estimated that they spent greater than 30% of their income on rent. Alarming, of those individuals 11.7% estimated that they spent greater than 70% of their income on rent.¹⁰

Case Study: [REDACTED]. *I no longer receive enough income to rent privately. My rent is subsidised by a social housing provider in [REDACTED]. I was in a car accident some 15 years ago and unable to work. I used up my savings and the small amount of superannuation I had trying to survive. After that was gone, I was left on Social Security and had \$16 p.w. to live on. I do not have family to rely on. I was evicted as the real estate raised the rent by \$20 p.w. After about 6 months of moving between homelessness and a number of refuges, I was moved into a rent subsidised unit with this housing provider.*

In 2023, a single Aged-Pensioner in the Sydney Metropolitan area would be able to afford 38 properties or less than 1% of all available rentals. For JobSeeker recipients the situation is dire with 1 property affordable. In the North Coast region, only 1 property was available for a single Aged-Pensioner, and no properties for JobSeeker recipients.¹¹ Anecdotal feedback from attendees at consultations held by COTA NSW in these areas indicated that the competition for rentals in towns with high numbers of holiday makers or students resulted in a dire situation for older people seeking affordable accommodation in these locations.

"I slept in my car in [REDACTED] for 7 years; then moved back to [REDACTED] in Sept 2016 - stay in backpacker hostels and occasionally with friends and family (usually visiting out of [REDACTED]) - usually during peak rate season when backpacker bed rate is too expensive and sometimes not available." [REDACTED] Female COTA NSW 2018 survey respondent [REDACTED].

Insecure tenancy

The COTA NSW 2018 survey included questions to better understand the experience of renting as an older person, the results reflected the housing precariousness of all renters. Tenancies in NSW are covered by the Residential Tenancies Act 2010 (NSW), with leases typically six or 12 months in duration. Current legal protections under this Act are limited, with many tenants facing rent increases, evictions without grounds and limitations on home modifications or the right to have pets and we acknowledge the NSW Government's review into these provisions.

A third of the survey respondents felt either somewhat or very insecure in their current tenancy. The predominant length of time that renters had lived in their current home was 1-5 years, 44.5% of respondents. For 28% of renters who had moved in the last 5 years, the

¹⁰ COTA NSW (2018) 50+ report. *Debt, rent and homelessness: An insecure future.*

¹¹ Anglicare Australia (2023). *Rental affordability snapshot – regional report April 2022.*

sale of the property or the owners wishing to move in were the primary reasons that necessitated their move. The extent of rent increases also impacted 11.3% of renters and forced them to search for more affordable properties. The difficulty in finding another place to rent that they could afford in their area was of concern to 68.6% of respondents.¹²

"I was renting in a house with my son, where he contributed to the expenses. The owner sold the house, and my son decided he wanted to live by himself. So, I had to find somewhere much smaller to live that I could afford by myself." [REDACTED] Female COTA NSW Survey Respondent [REDACTED].

Removing 'No grounds' terminations

COTA NSW has long supported the campaign by the Tenants Unions NSW to remove 'no grounds' terminations in NSW. For older people reliant on Newstart, Aged or Disability Pension the type of rental tenure that they are able to secure is crucial to their ability to 'age well'. Those individuals or couples who rent in the private market experience high levels of rental stress, income poverty and housing insecurity. These factors are known to negatively impact a person's health and wellbeing and significantly increases the risk of experiencing homelessness.

The COTA 2018 survey found the predominate length of time that renters lived in their current home was 1-5 years with 44.5% of respondents. For 28% of renters who had moved in the last 5 years, the sale of the property or the owners wishing to move in were the primary reasons that necessitated their move. The extent of rent increases also impacted 11.3% of renters and forced them to search for more affordable properties. The difficulty in finding another place to rent that they could afford in their area was of concern to 68.6% of respondents.

"I feel somewhat less secure as a tenant now, as my previous landlord put the home up for sale and terminated my lease when I would have preferred to stay." [REDACTED] Male COTA NSW 2018 Survey Respondent.

This housing insecurity is particularly impactful on older people that rely on existing personal support networks, the need to be close to services and facilities and the difficulty and stress of looking for alternate accommodation that is appropriate and affordable. Interviews with older renters conducted by Morris (2018) detailed the chronic anxiety and stress experienced by the interviewees due to the insecurity of their tenure and consequent impact on their physical and mental health.¹³

¹² COTA NSW (2018). *Debt, rent and homelessness: An insecure future*. Retrieved from: https://www.cotansw.com.au/wp-content/uploads/sites/5/2018/09/COTA-NSW_Debt-rent-homelessness-3.pdf

¹³ Morris, A. (2018). *Housing tenure and the health of older Australians dependent on the age pension for their income*. *Housing Studies*, 33:1, 77-95.

Older renters have also told us that they feel that the termination of their lease was due to request for home modifications that would improve accessibility and allow them to age in place. COTA NSW asserts that home modifications must be allowed when not demonstrably proven to impact the value of the property.

When a valid reason is provided for the termination of a lease, it is vital that the notice period is lengthened for the tenant. This is particularly important for older renters, who can find the process of moving extremely stressful and overwhelming.

COTA NSW supports the recommendations of the Tenants' Union NSW:

1. At the end of a fixed term lease a landlord should only be able to end the tenancy for a valid reason.
2. A property 'being prepared for sale' should *not* be added as a new reason for eviction. The following new reasons to end a tenancy could be added:
 - a) The landlord genuinely intends to demolish, and/or reconstruct the property and has obtained all necessary consents and permits to carry out the planned demolition and/or reconstruction of the premises.
 - b) The landlord genuinely intends to use the property for another purpose where they can demonstrate the intended change of use and that the premises will not be used as a residence for at least 6 months.
 - c) The landlord, or a member of their immediate family, genuinely intends to use the property as their principal place of residence for at least 12 months.
 - d) The landlord genuinely intends to use the property for another purpose where they can demonstrate the intended change of use and that the premises will not be used as a residence for at least 6 months.
 - e) The landlord, or a member of their immediate family, genuinely intends to use the property as their principal place of residence for at least 12 months.
3. At the end of a fixed term lease a landlord should only be able to end the tenancy for a valid reason.
4. A property 'being prepared for sale' should *not* be added as a new reason for eviction. The following new reasons to end a tenancy could be added:
 - f) The landlord genuinely intends to demolish, and/or reconstruct the property and has obtained all necessary consents and permits to carry out the planned demolition and/or reconstruction of the premises.
 - g) The landlord genuinely intends to use the property for another purpose where they can demonstrate the intended change of use and that the premises will not be used as a residence for at least 6 months.
 - h) The landlord, or a member of their immediate family, genuinely intends to use the property as their principal place of residence for at least 12 months.

5. Increase the notice period to 6 months when the reason for change of use, major renovations/repairs and demolition. It is suggested that a notice period of 120 days for the sale of the property.
6. COTA NSW supports the requirement of the landlord to provide written evidence on the reasons why the tenancy will be terminated. The current Victorian evidentiary requirements for terminations provide a suitable standard to emulate.

A new model for keeping pets

The arduous search for an appropriate rental is further exacerbated if the tenant owns a pet; with many rental properties including clauses within the tenancy agreement that excludes pets residing on the property.

For many older people, their pet is integral to their health and wellbeing. They may be living alone, and their pet provides vital companionship. The exclusion of this family member can severely limit the number of properties available to them and contribute to the ongoing stress of sourcing suitable accommodation.

Case Study: [REDACTED] is an [REDACTED] woman currently receiving the pension and living in [REDACTED]. She has been looking for an affordable rental unit for over a year. She has a small dog, which is her sole companion - as she is a widow. She has been knocked back on at least 6 units over that time as they state that no pets are allowed. She is currently on a wait list for public housing, so is sleeping on a relative's lounge.

We are also aware of the confusion around assistance dogs in the community. Assistance animals are not pets but may be interpreted as one. They are highly trained in providing support to a range of disabilities. In the past, there was a narrow definition of an assistance animal, this is continuing to evolve and may now also include support for people with dementia or mental health issues. Any alteration to the *Residential Tenancies Act 2010* must include safeguards to ensure that landlords cannot exclude assistance animals from their property, with reference to the *Disability Discrimination Act 1992 (Cth) (DDA)*.

In August 2021, strata regulations were updated to prevent an owner's corporation stopping owners of a strata property from owning a pet unless the pet is dangerous or listed as a restricted dog. In addition, the pet must not disturb other residents. Given these changes and the other jurisdictions across Australia that provide protections for tenants that own pets, COTA NSW asserts that these rights should also be extended to tenants in this state.

Whilst COTA NSW is mindful of the concerns that some residents may have regarding damage or soiling of common areas. This can be alleviated by by-laws that clearly allocate

the responsibility for cleaning or repair with the respective pet owner. Investors have also expressed concern about damage to their properties. All tenants are currently responsible for intentional or un-intentional damage to the premise and must ensure the rental is return to a similar condition as it was upon the commencement of the tenancy.

COTA NSW supports regulatory rental reforms that incorporates a model based on that which exists in Victoria, the ACT and NT whereby the landlord can only refuse permission for a tenant to keep a pet if they obtain a Tribunal order allowing them to do so.

We must recognise that a rental property is still a person's home and that for many a companion pet is a critical part of their family. By placing the onus on the landlord to provide grounds on which a pet cannot be accommodated, it will ensure that there are greater safeguards for prospective tenants and improve the range of properties available to lease for pet owners.

COTA NSW supports the recommendations of the Tenants' Union NSW:

1. 14 days is a reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet.
2. Where a landlord is seeking an order to refuse a request for a pet, they should be required to do this within a 14-day timeframe from the date on which the renter made a written request.
3. Landlords must be required to seek an order at Tribunal if they wish to refuse a request for a pet.
4. The Tribunal should consider the welfare of the animal as the primary consideration when determining whether it is reasonable to refuse a request for a pet at the property. They should be guided to determine this with reference to relevant animal welfare guidelines and/or other companion animals' regulation.
5. The Tribunal should not be able to give the landlord the ongoing right to say no to animals at the property.

Renters' personal information

COTA NSW is extremely concerned about the breadth of personal information that tenants are required to provide when applying for a property. As articulated in the consultation paper, the importance of protecting important personal information for our citizens should be paramount. The risk of data breaches and increasing identity and financial fraud should prompt us to examine the over collection of personal information.

COTA NSW supports the proposed model with the consultation paper that: will limit the information that can be collected from applicants; restrict how renter information is used

and disclosed; detail how renter information should be stored and destroyed and ensure that renters have the right to see and correct information held about them.

COTA NSW supports the recommendations of the Tenants' Union NSW:

1. A standard rental application form should be developed and prescribed
2. Limits should be placed on the types of additional information and the number of pieces of information that can be requested for specific categories of information (i.e. Information relating to: proof of identity; ability to pay agreed rent; suitability)
3. Renters, not the landlord or their agent, must be able to choose which of the types of information they will provide for each category for which information can be requested.

Opportunities for early intervention to prevent homelessness

There is a fundamental need at a structural level to increase the social housing stock in NSW. Investment in new housing stock has not kept pace with population growth and community demographics. In 2020, NSW's social housing stock as a proportion of overall housing was 4.71% - a decrease from 5% in 2011. The state has the third lowest social expenditure capital per capita of all states and territories and decreased in the period 2017-18 to 2019-20. This decrease in investment corresponds with a waiting list for social housing of approximately 52,000.¹⁴

It is important to recognise that older people that are at risk of experiencing homelessness do not engage with traditional pathways to obtain assistance and support. As indicated previously, many older people may not recognise that they are experiencing homelessness because they are living temporarily with friends or family. There may also be shame and a reluctance to seek help. For others they are hindered by low digital literacy or financially unable to access the internet – hampering their ability to search for services or information. The importance of appropriate housing that meet the physical and safety needs of older people is also an important point of difference compared to younger cohorts and is not always considered in mainstream channels of housing assistance.

COTA NSW understands that the Department of Communities and Justice is investigating the possible trial of a specialist older person's housing information and support service that comprises both an early intervention and crisis response, similar to the HAAG 'Home at Last' model in Victoria. This service would provide specialised case management and advocacy to

¹⁴ Barnes, E., Writer, T., Hartley, C. Social Housing in New South Wales: Report 1 Contemporary analysis, (2021), Sydney: Centre for Social Impact. Retrieved from: https://www.csi.edu.au/media/uploads/social_housing_in_nsw_contemporary_analysis.pdf

help financially disadvantaged older people navigate the housing and aged care systems to achieve better housing outcomes when they are in housing crisis, and plan for their housing futures before reaching crisis point.

Residential Land Lease communities are another critical provider of low-cost rental housing for older people with limited assets and incomes. Many older women in particular end up in this accommodation due to the shortage of public housing and social housing for emergency accommodation and ongoing accommodation. However, it is important to note that in many instances this housing tenure continues to be precarious. There are examples where residents in these communities encounter unscrupulous operators, issues with utility charges and restrictions on maintenance of their sites. An additional concern is the location of these Land Lease communities. As has been demonstrated recently in Lismore, some are located near rivers or beach fronts and are at risk of natural disasters such as flooding and storms. Other communities due to their location have had permanent residents removed to enable re-development of the sites for tourism. It is recommended that there is a regular review of legal and regulatory protections available to tenants of these communities.

COTA NSW calls for:

1. Fund a specialist older person's housing information and support service that comprises both an early intervention and crisis response, similar to the HAAG 'Home at Last' model in Victoria.
2. Build 5,000 social and affordable homes per year for 10 years, at least 20% of which should be dedicated to older people.
3. Continued revision and improvement of the *Residential (Land Lease) Communities Act 2013* is required to ensure adequate protections are in place for vulnerable residents of these communities.

Older people in regional, rural, and remote areas

As highlighted earlier, housing, and rental affordability and the incidence of homelessness is deteriorating across the state.

COTA NSW has heard many stories of short-term rentals in regional locations that attract tourists, with renters evicted prior to the holiday periods to enable the owner to place the dwelling on sites such as Stayz or Airbnb. There is little recourse in the Residential Tenancy

Act for older people seeking housing stability. A recent ABC news article highlighted this issue in locations from Bega to Shoalhaven to the Tweed.¹⁵

Recent natural disasters, such as the bushfires on the South Coast and the recent devastating floods in the Northern Rivers area has had a dramatic impact on the availability of affordable and adequate housing in these areas. Again, COTA NSW has heard distressing stories of older people living in their cars or sleeping on lounges of family and friends in the Lismore area. As mentioned earlier, many low-income older people move to regional areas in an attempt to access cheaper rents.¹⁶

COTA NSW calls for:

1. Urgent consideration must be given to the provision of temporary and long-term housing options for residents in areas of NSW impacted by floods and bushfire, including the specialised needs of older tenants.
2. Establish an inquiry into the short-term holiday letting industry, and examine its effects on the property and rental markets in NSW.

Older people with disability or mobility limitations

Older people with disability or other mobility limitations that rent in the private market face significant challenges in sourcing housing that meets their accessibility needs.

There is a recognition that for many older people their current housing design will not be suitable in advancing years. That excessive steps, shower access or narrow doorways will inhibit their ability to remain in their home and in many cases their neighbourhoods as their mobility needs change. COTA NSW conducted an extensive survey in 2015 that explored older peoples' needs and wants in relation to housing.¹⁷ Respondents were asked to rate features for a future house purchase. The largest requirement was for a single-storey house (62%), with an easy access bathroom and shower rated the 3rd most important. An easy

¹⁵ Woodburn, J. (19/05/22) *Rental crisis caused by short-stay businesses leaving NSW tenants evicted and homeless*. ABC NEWS. Retrieved from: <https://www.abc.net.au/news/2022-05-19/rental-crisis-nsw-tenants-paying-price-evictions-homelessness/101068752>

¹⁶ Natassia Chrysanthos Chrysanthos, N. (13/03/22). *Housing crisis worsens as locals turn to cars and floors to sleep*. Retrieved from: <https://www.smh.com.au/national/nsw/housing-crisis-worsens-as-locals-turn-to-cars-floors-to-sleep-20220311-p5a3um.html>

¹⁷ COTA NSW (2015). *50+ Report – How and where we live*. Retrieved from: <https://www.cotansw.com.au/publication/50-report-how-and-where-we-live/>

access kitchen & storage and minimal steps into the home were the 5th and 6th most important features.

COTA NSW has long advocated for the introduction of increased minimum design standards of accessibility that will allow older people and the broader community to be able to live in a home that meets their needs as their circumstances change over a life course. COTA NSW supports universal design principles as espoused by Livable Housing Australia that takes a 'whole of life' approach - that is inclusive - regardless of age, ability or background. Taken in this context, universal design should not solely be considered in the realm of 'adaptable' or 'accessible' housing but as a design standard to ensure liveable communities for all. The lack of appropriate housing available for rent, especially those with a disability severely limits their options.

COTA NSW continues to advocate for the adoption of the new minimum accessibility standards within the National Construction Code by the NSW Government. The minimal changes that are required to meet the Silver Livable Housing Design standards include a step-entry, wider corridors and doorways and a shower and toilet that are easy to use. The adoption of these standards will create diverse housing stock that will provide both present and future generations with housing options for all life stages and physical ability.

COTA NSW calls for:

1. NSW Government adopt and implement the minimum Silver Livable Housing design standard within the National Construction Code.
2. Allow for tenant home modifications in instances where it would improve the accessibility and functionality for older people when not negatively affecting the value of the property.

Conclusion

Thank you for the opportunity to contribute to this discussion paper. COTA NSW is encouraged by the commitment of the NSW Government to review the existing legislation relating to tenancy in this state.

The proportion of residents in NSW (including older people) that rent continues to grow. By strengthening protections for renters in this state, it will be an acknowledgment that their tenure is valid and respected. That they have a right to security of tenure and minimum standards in the home in which they live.