



Improving NSW rental laws

**Making rental laws fairer for people with physical disability in
NSW**

August 2023

Physical Disability Council of NSW

www.pdcnsw.org.au



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Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW.

Our core function is to influence and advocate for the achievement of systemic change to ensure the rights of all people with physical disability are improved and upheld.

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structures and programs available that enable their full participation, equality of opportunity and equality of citizenship.
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (i.e. self-advocate).
- To educate and inform stakeholders (i.e.: about the needs of people with a physical disability) so that they can achieve and maintain full participation, equality of opportunity and equality of citizenship.

The Physical Disability Council of NSW is part of the Building Better Homes campaign alliance in NSW. Building Better Homes was established to campaign for more accessible house to be built in Australia, by getting minimum accessibility standards included in the National Building Code.

Recommendations

Recommendations to make renting fairer in the long term:

The problem:

- Most people with physical disability in NSW live in the mainstream private rental housing market yet there is a serious shortage of accessible housing options for people with physical disabilities across the NSW housing market.

The solution:

1. ***NSW Government to adopt the new provisions in the 2022 National Construction Code (Silver Level Livable Housing Design).***
- For the NSW Government to adopt new provisions in the 2022 National Construction Code which require all Class 1a residential buildings and Class 2 Apartments to be built to minimum accessibility standards (Silver Level Liveable Housing Design) across all new home builds.

Recommendations to make renting fairer in the short term:

The problem:

- Many tenants with physical disabilities are reluctant to ask for repairs and don't request modifications to their rental properties for fear that they might receive a no-grounds eviction. Tenants need to feel that they are not putting their tenancy at risk by asking for repairs and modifications which make their home accessible and safe.

The solution:

2. ***Reform existing tenancy laws to remove no-ground evictions.***
- Reform existing tenancy laws to remove no-ground evictions. Make sure landlords comply and rules are enforced, providing renters with reasonable notice. For any 'no fault' eviction (i.e., where a renter is not in breach of the agreement) no less than 90 days' notice (possibly more) should be given and the renter should be able to move out at any time once the termination notice is served.

The problem:

- Excessive collection of tenants' personal information puts renters at risk of discrimination, privacy infringement, and data breaches.

The solution:

3. *To create a fairer and more transparent rental process for tenants, personal data information protections must be put into law.*

- Enforce legal limits on data collection, including a standardized form, to curb discrimination in property applications. Ensure strong safeguards for data use and sharing, involving agents, landlords, and tech companies. Securely store renters' data with defined time limits and accessible request options.
- Regarding AI or programs: provide equal options for paper or online applications, prevent discriminatory data use, and mandate transparent AI decision-making with public disclosure.

The problem:

- Moving house can be very expensive for renters and waiting on the return of one bond while being required to put down another bond leaves renters out of pocket in the immediate term.

The solution:

4. *Introduce the optional portable bond scheme and incorporate more flexibility for renters to alleviate the financial burden of moving.*

- The proposed portable bond scheme should allow for the direct transfer of bonds to new properties, preventing immediate out-of-pocket expenses. If the bond required differs between properties, renters should have the flexibility to pay the difference within a reasonable timeframe, ideally 14 days.
- Participation in the portable bond scheme should be optional for renters, ensuring they retain access to it in the future, and landlords shouldn't be able to terminate leases due to its use.

The problem:

- Housing affordability is a significant problem for people with physical disabilities. About 38% of households with a disabled person are low-income, compared to only 18% without disabilities. Research shows that people with physical disabilities

tolerate varying levels of housing inaccessibility due to financial constraints. They often avoid requesting modifications or settle for subpar conditions to avoid upsetting landlords (due to the lack of accessible properties available) and are less likely to be able to absorb excessive rent increases without going into financial stress.

The Solution:

5. *Reform existing tenancy laws to prevent unsubstantiated rent increases.*

- The Residential Tenancies Act 2010 should be amended to provide tighter stipulations on when a landlord can increase the rent, and by how much. Rent increases across any one year should not exceed the Consumer Price Index (CPI).
- A landlord should not be able to increase the rent more than once in 12 months for a rolling (periodic) lease and a fixed-term lease. For short leases, renters should know about rent increases before they sign an agreement.
- There should be protections to prevent a landlord from increasing the rent when changing between lease types. Landlords should need to show that a rent increase is not excessive. Other factors must be considered alongside the market rent when determining whether a rent increase is excessive.

The problems:

- Renters with disabilities are reluctant to ask for home modifications, resulting in persistent accessibility issues. Inadequate transparency in property listings creates problems as those with physical disabilities might find out about access limitations only upon arrival, leading to wasted travel and limited housing options. Distance from crucial support services adds to relocation complexities. Fear of eviction affects well-being, reflecting the need to address a legal gap permitting rejection of accessibility changes by Body Corporates in strata properties, including common areas.

The solutions:

6. *Modify NSW strata and tenancy laws to protect the right to request accessibility modifications and real estate agencies to increase transparency of property accessibility.*

- Modify NSW strata laws to prevent body corporates from refusing disability-related accessibility modifications.
- Reform existing tenancy laws to provide tenants with disability with the prima facie right to modify their rental property to meet their accessibility requirements.
- Agents and real estate companies should introduce accessibility filters on their websites or list accessible properties separately from non-accessible properties.

Introduction

PDCN welcomes the opportunity to contribute to the Improving NSW Rental Laws Inquiry. As a membership organisation, we represent people with physical disabilities and are informed by their daily experiences and challenges. Problems with housing in the private rental market are one of the top issues our members raise with us. We welcome this opportunity to suggest improvements that could improve the lives of people with physical disabilities in this space.

Our research reveals that people with physical disabilities want to live in their local communities, surrounded by loved ones, and age in place. Unfortunately, they often don't qualify for specialised disability housing. The NSW Government plays a significant role in fulfilling Australia's housing obligations to this demographic under the United Nations Convention on the Rights of People with Disability (UNCRPD).

Currently, the existing approaches in NSW to address housing needs for those with physical disabilities fall short. Enforcing minimum accessibility standards for all new homes built in NSW could help meet both short-term and long-term housing needs. Furthermore, granting people with disabilities greater rights to make accessibility modifications to rental properties and homes within strata schemes would empower them to live independently and securely within the community.

Prevalence of physical disability in NSW

Identifying the extent to which people in NSW live with physical disability is challenging due to varying estimates caused by differences in definitions, measures and survey methods¹.

We have adopted the Australian Bureau of Statistics (ABS) method. Using this methodology, most recent figures indicate that people with disability make up approximately 18.1% of the overall NSW population, and 77% of those, or 1,036,574 individuals have a physical disability as their main disability².

The experiences of people with disability in the private rental market

PDCN conducted research with our members in 2022 which found that:

- Most people with physical disability in NSW live in the mainstream private rental housing market;
- There is a serious shortage of accessible housing options for people with physical disabilities across the NSW housing market;
- Specialised housing options such as social housing, Specialist Disability Accommodation, retirement villages and residential aged care are neither preferable nor viable options for many in the physical disability community;

¹ Australian Institute of Health and Wellbeing (AIHW), The definition and prevalence of physical disability in Australia, 16 July 1999 accessed 2 September 2022

² Australian Bureau of Statistics, New South Wales, Census 2021 Quick Stats accessed 26 August 2022

- Home modifications are not a satisfactory response to the shortage of accessible homes, and cannot be universally realised for all who require them across the physical disability community;
- There is a lack of clear guidance for those looking to build their own homes on how to build these homes accessibly, in line with universal design best practice;
- Renters in the private market have the least options in terms of making modifications to their homes, which is exacerbated by weak tenancy laws around evictions, modifications and rent increases; and
- The lack of housing accessibility is felt not only in the homes that people with disabilities live in, but also in the homes of their friends and family that they struggle to visit.

We recommend that the NSW Government takes the following actions to better realise its international and domestic housing commitments to the physical disability community:

Recommendations to address long-term problems.

1. NSW Government to adopt the new provisions in the 2022 National Construction Code (Silver Level Livable Housing Design).

- *For NSW to adopt new provisions in the 2022 National Construction Code which require all Class 1a residential buildings and Class 2 Apartments to be built to minimum accessibility standards (Silver Level Livable Housing Design) across all new home builds.*

Retrofitting costs as an impediment to modifications across all property types

Modifying homes for better accessibility is often hindered by retrofitting costs and limited (National Disability Insurance Scheme) NDIS or Aged Care funding for modifications. Research shows retrofitting is much more expensive than designing for accessibility initially, with up to 22 times higher costs to retrofit.³

People who have renovated their homes often face high modification costs. Some adapt parts of their homes but can't afford further changes or modify them based on immediate needs but require additional adjustments later, as their accessibility needs increase⁴.

People with physical disabilities want homes that support their involvement in the community. Many participants in our research face challenges due to housing accessibility,

³ This is based on building to Silver Level Livable Housing design at the time of build verses when an unplanned need arises. Livable Housing Design Australia, Livable Housing Design Guidelines, 2017 < Downloads (livablehousingaustralia.org.au)> accessed 25 August 2022.

⁴ Access Denied The experiences of people with physical disability across the NSW housing sector H. Stone, A.Batchelor & M.Mead. May 2022 p22

impacting their ability to live a full life. In severe cases, inaccessible homes lead to isolation and dependency, which negatively impacts people's health and well-being.

"I have been unable to shower for 7 years, no access to community, bed bound because the house won't accommodate a wheelchair."

"In 2016 I was moved to a property with 26 stairs and stayed for three years. I just had to stay up there (in the home) or go down the stairs on my backside. "

Where housing was accessible, it was clear that people with physical disability had much greater levels of independence and enjoyed their homes significantly more:

"The installation of ramps into and within my house was a great boon. This allowed me to go outside for the first time in a long time."

"I am extremely glad that I moved from a two-storey house to a retirement village when I was 75."

It was also apparent that the benefits of accessibility improvements could be realised by different household members at different times:

"The changes to my house were made for my deceased husband, now I am benefitting from it."

Visiting the homes of others

An estimated 90% of homes will have visits by a person with a disability or injury⁵ yet many homes remain at a standard of accessibility that will not allow for the comfort and dignity of these visitors.

A significant number of people we surveyed and interviewed described the challenges they regularly experienced when trying to visit others and how this affects their social lives:

"I lead a very social life, we have barbeques and such, but we [my wife and I] never get invited anywhere because our friend's houses aren't accessible for me. It's not just affecting me, it affects [my wife's] socialising too."

"I can't visit my grandfather because of a steep driveway and stairs. I visit my aunty but generally stay in the backyard as the house is relatively inaccessible."

"Family & friends do not have accessible homes. There is a lack of understanding from family regarding installing a simple rail in the bathroom to allow a disabled person to use the bathroom."

The experiences of people with physical disability across the NSW housing sector

When people with disability do visit the homes of others that are not accessible this is often an undignified experience:

⁵ Australian Network for Universal Housing Design, Submission by Australian Network for Universal Housing Design to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2019 < <https://aduhdblog.files.wordpress.com/2019/12/anuhds submission-to-the-disability-royal-commission.finalnen.pdf>> accessed 9 September 2022

"Some of my friends are quite strong, they can lift my chair up a bit and drag me in the house"
- PDCN member, full time wheelchair user.

"Occasionally when I do go out, I have to be carried up the stairs."

The challenges that participants experience in going to others' homes were a stated reason as to why a number choose to not attend social gatherings or go out often:

"I don't really go out that much. I can usually get into a toilet, but I can't close the door behind me, so I just have to leave the door open".

This is supported by data from the Australian Bureau of Statistics (2018) which found the most avoided situation for people with disability because of their disability was visiting family and friends, at 39.2%⁶. Multiple studies have found that loneliness has been linked to poor physical and mental health and an overall dissatisfaction with life⁷

The information we have received across our research indicates a direct correlation between housing accessibility and loneliness and the potential for poorer physical and mental health outcomes for people who are impacted by limited accessible housing options warrants further investigation. What is clear is that housing accessibility is more than just an issue faced by people with disability, it also affects friends and families – when most homes are unsuitable and inaccessible, everyone suffers the consequences⁸.

Recommendations to address short-term problems.

2. Reform existing tenancy laws to remove no-ground evictions.

Reform existing tenancy laws to remove no-ground evictions.

Our research shows that many tenants with physical disabilities don't request modifications to their rental properties for fear that they might receive a no-grounds eviction. To be able to realise home modifications (including home modifications via the NDIS and Commonwealth Home Support Packages) tenants need to feel that they are not putting their tenancy at risk in asking for them.

A valid reason for eviction for all renters.

⁶ Australian Bureau of Statistics, Snapshot of Australia, 28 June 2022 accessed 9 September 2022

⁷ Australian Institute of Health and Welfare, Social isolation and loneliness, Snapshot, 16 September 2021 (aihw.gov.au) accessed 9 September 2022

⁸ Access Denied The experiences of people with physical disability across the NSW housing sector H. Stone, A.Batchelor & M.Mead. May 2022 p34

All renters should be provided with a valid reason for ending a tenancy.

Landlords should be required to provide a reason to end a rolling (periodic) lease, and a fixed-term lease after the end date.

Renters in fixed-term leases and those in rolling leases deserve valid reasons for ending a tenancy.

Reasonable grounds for ending a tenancy (fixed or periodic) include:

- The property will be renovated or repaired.
- Landlord wants to use the property differently and will change the use of the property (e.g., from a home to a shop or office).
- The property will be demolished.
- The landlord will move into the property, or a member of their immediate family will move in.

'The property will soon be sold' is not a reasonable ground.

'The property will soon be sold' should not be added as a ground for eviction.

Where the property is sold to an investor, the tenancy should continue. Where the property is sold to an owner occupier, either the existing ground of the property being sold with vacant possession can be used or the new owner can use the proposed ground that the landlord will move into the property.

In other jurisdictions where this is grounds for eviction, we are aware landlords have used this as grounds for evicting a renter, and then changed their mind and brought in new tenants. We have even seen renters evicted from their home, made homeless and then move back into the exact same property with the new landlord.

Making sure landlords comply and rules are enforced.

Written evidence should be provided to renters when being evicted for all reasonable grounds being considered.

- Where the landlord or an immediate family member will be moving in a statutory declaration should be required.
- Appropriate compliance protections are required to ensure landlords do not misuse newly introduced 'reasonable grounds' for eviction.
- This should include stopping the landlord from renting out the property following an eviction for any of the reasonable grounds being considered. The time period before the landlord can rent the property again should be sufficient to ensure the rule works to prevent landlords from misusing newly introduced reasonable grounds.

Providing renters with reasonable notice.

Finding a new home for yourself, your family or your household can take some time and planning. This is whether you are on a fixed-term lease or a periodic (rolling) lease.

Appropriate notice periods may vary depending on the ground provided.

For any 'no fault' eviction (i.e., where a renter is not in breach of the agreement) no less than 90 days' notice (possibly more) should be given. Some grounds may require a longer notice period (more than 90 days).

The renter should be able to move out at any time once the termination notice is served.

If you are evicted during a periodic (rolling) lease you should be able to move out and stop paying rent at any time before the termination date listed on the notice. This is not the case now for renters on a fixed-term lease. They should also be able to move out and stop paying rent before the termination date listed on the notice.

This would help to minimise the costs associated with moving so that a renter is not required to pay double rent once they have secured alternative accommodation.

3. To create a fairer and more transparent rental process for tenants, personal data information protections must be put into law.

Limits on the information that can be collected must be put into law, including through the introduction of a standard rental application form.

- Strong limits on the information that can be collected can help to reduce discrimination against renters when they apply for a property.
- Strong protections that provide specific guidance on how renters' information can be used and shared are required. These should apply not only to real estate agents, but also landlords, and property technology companies.
- Renters' information should be kept (or stored) securely, and there should be appropriate time limits on how long information about a renter can be kept. Renters should be able to request access to the information a landlord or real estate agent holds about them.

Use of Artificial Intelligence (AI) or computer programs in the rental application process.

While new technology can help streamline the application process for both renters and landlords or their agents, certain protections must be in place to ensure equity and transparency as their use becomes more widespread.

- Renters must be provided with the option to apply with a paper form and paper applications must be accepted and considered equally alongside online applications.

- Any information that can be used to unlawfully discriminate against a renter (renter's age or suburb) should not be allowed to be used by computer programs for decision making.
- Full transparency regarding how a computer program will make recommendations or decisions about renters' applications should be required. Information about this should be made publicly available by those relying on the program.

4. Introduce the optional portable bond scheme and incorporate more flexibility for renters to alleviate the financial burden of moving house.

Moving house can be very expensive for renters. The proposed portable bond scheme will allow renters to directly transfer their bond to another property when they move so they are not out of pocket in the immediate term.

- If there is a difference between the bond required, renters should be given flexibility and an appropriate amount of time to pay the difference in bond between properties.
- At a minimum this should be 14 days. More time – 30 days, or more than 30 days – would provide renters with greater flexibility and help minimise the financial disruption moving often causes.
- If a renter is not able to pay the difference on time, the new landlord's bond should be guaranteed in some way, with the money to be recovered from the renter. The renter should not be barred from the portable bond scheme in future, and landlords should not be able to end the lease.
- The portable bond scheme should be optional for renters to use.

5. *Reform existing tenancy laws to prevent unsubstantiated rent increases.*

The Residential Tenancies Act 2010 should be amended to provide tighter stipulations on when a landlord can increase the rent, and by how much. Rent increases across any one year should not exceed the Consumer Price Index (CPI).

- **A landlord should not be able to increase the rent more than once in 12 months for a rolling (periodic) lease and a fixed-term lease. For short leases, renters should know about rent increases before they sign an agreement.**
- **There should be protections to prevent a landlord from increasing the rent when changing between lease types. Landlords should need to show that a rent**

increase is not excessive. Other factors must be considered alongside the market rent when determining whether a rent increase is excessive.

Rent increases are another impediment to seeking accessibility modifications to rental properties, particularly for renters with physical disability living on modest incomes.

Housing affordability poses a major challenge for many people with lived experience of disability. Among households with at least one person with a disability, 38% are low-income, while only 18% of households without a person with disability fall into this category.

Our research highlights that people with physical disability tolerate varying levels of inaccessibility to afford rental homes. The reluctance to request modifications and a propensity to 'making do' to avoid a negative response from the landlord, likely results in underreported property inaccessibility rates reported to landlords⁹.

Affordability remains a key issue, hindering people with disability's access to housing.

Many people with disability cannot afford modifications or suitable homes. Adults under the age of 65 with disabilities have lower employment rates (48% compared to 80% without disabilities) and rely more on income support (56% compared to 13% without disabilities).

This leads to fewer homeowners with disabilities (55% compared to 61% without a disability) and financial limitations in finding suitable rentals in the private market, further constraining limited options:

"In several weeks of searching [for a rental property] not one of the properties we saw was suitable for someone with a power chair and no walking ability at all, in that we didn't see any [properties] that were ground floor with flat access. In the price range we looked at, the first floor with a lift and good stairs was the best we found. Only one listing mentioned disability access - to say there was none¹⁰.

Compromising on independence for affordability and in-home support.

For many, the compromise on affordability and accessibility was living independently. People with disability and their families reported having to settle for living in group homes or with family for the foreseeable future despite a keen desire to live independently:

"What he was offered was a three-person share house, which [because] he's always lived by himself with [...] significant supports, [...] he was saying that he doesn't feel safe living with other people. It's not his choice." - PDCN member, parent of an adult son with a physical disability "I found it hard finding a place to rent [in Sydney] and difficult getting around on

⁹ Access Denied The experiences of people with physical disability across the NSW housing sector H. Stone, A.Batchelor & M.Mead. May 2022 p19

¹⁰ Access Denied The experiences of people with physical disability across the NSW housing sector H. Stone, A.Batchelor & M.Mead. May 2022 p26

*public transportation. I didn't last long in Sydney, only six months. I had to go back to my parents' accessible home in regional Australia and study online."*¹¹

This was a particular issue for younger people with a physical disability, who saw a lack of housing options as a major barrier to establishing independent adult lives. At its most extreme, a lack of accessible housing options was observed to give younger people with disability no choice but to live in aged care facilities:

"I lived in aged care for 10 years (all my 40s) before I found a wheelchair-accessible Specialist Disability Accommodation (SDA) property 6 years ago".

We note that in February 2023, there were 130 people under 45 years of age were living in residential aged care nationwide. Of the states and territories, NSW has the highest percentage of younger people living in aged care, at 34% (44 people)¹².

Many people we surveyed who bought existing homes or rented had compromised on the accessibility of their homes in one way or another, settling on properties, in the short term, that only partially met their accessibility requirements to avoid homelessness or a loss of independence. Cost constraints were often also a significant factor in settling for a particular property, as was proximity to services and supports.

Low rates of income support as a barrier to accessible housing for people with physical disability

Constrained incomes significantly impact people with physical disability, limiting both the range of properties they can choose from and the extent to which they can modify properties if they don't already suit their needs.

"Not enough access to social housing/ affordable housing for me [and other] people with disabilities. I rent but only with the assistance of family financial support."

This is particularly the case for people with disability who rely on income support (either Disability Support Pension or Jobseeker) as their primary source of income. Currently, the DSP's maximum basic rate for a single independent person over the age of 21 is \$987.60 per fortnight¹³ and the rate for Jobseeker Allowance is \$642.70 per fortnight¹⁴. In contrast, the mean NSW home price is \$1,207,200¹⁵ and median weekly rent is \$516¹⁶. Both payments restrict both buying and rental choices amid the booming housing market.

¹¹ Access Denied The experiences of people with physical disability across the NSW housing sector H. Stone, A.Batchelor & M.Mead. May 2022 p20

¹² Gusheh M., Murphy C., Valenta L., Bertram N., & Maxwell D., Adaptable housing for people with disability in Australia: a scoping study, 2021 Monash Urban Lab, Australian Human Rights Commission accessed 9 September 2022

¹³ i Services Australia, How Much Jobseeker Payment You Can Get < How much JobSeeker Payment you can get - JobSeeker Payment - Services Australia> accessed 9 September 2022

¹⁴ Australian Bureau of Statistics, Residential Property Price Indexes: Eight Capital Cities, 2021< Residential Property Price Indexes: Eight Capital Cities, December 2021 | Australian Bureau of Statistics (abs.gov.au)> accessed 9 September 2022

¹⁵ Services Australia, How Much Jobseeker Payment You Can Get < How much JobSeeker Payment you can get - JobSeeker Payment - Services Australia> accessed 9 September 2022

¹⁶ Tenants Union of NSW, Rent Tracker Postcode Tool

Anglicare's April 2022 Rental Affordability Snapshot highlights this. For a single person on the Disability Support Pension, only 51 properties (or 0.1% of the 45,992 properties reviewed nationally), while only 8 properties (all shared rooms) were affordable for a single person on Job Seeker¹⁷. The Snapshot doesn't account for accessibility or modification requirements and the options may, in fact, be even more restricted for those with specific accessibility requirements¹⁸.

Fair limits on rent increases are needed:

The current protections for rent increases are not working well.

Rents have been increasing sharply for many renters in NSW. The limited protections currently available are not adequate for renters who face an excessive increase during a tenancy.

A landlord should not be able to increase the rent more than once in 12 months for a rolling (periodic) lease and a fixed-term lease.

At present a landlord cannot increase the rent more than once in 12 months for a rolling (periodic) lease. This is a useful and appropriate, though limited, protection. There should also be a limit introduced to ensure rent cannot be increased more than once in 12 months for those in short, fixed term leases (less than 2 years).

For short leases, renters should know about rent increases before they sign an agreement.

This is an existing and appropriate protection for renters on fixed-term leases of less than 2 years - the agreement must either specify the increased rent or provide the method of calculating the increase.

There should be protections to prevent a landlord from increasing the rent when changing between lease types.

Some landlords are taking advantage of the current loophole in protections to increase rents more than once in a 12-month period by swapping renters between lease types. To help close this loophole, there should be protections to prevent a landlord from increasing the rent when changing between lease types.

Renters do not often feel confident in challenging rent increases that are excessive.

It can be hard to know when a rent increase is excessive.

Currently, the onus is on the renter to challenge a rent increase, and the only basis to do this is if they believe it is excessive. Many renters do not feel confident challenging an excessive rent increase, and they may worry the landlord may retaliate in response.

Landlords should need to show that a rent increase is not excessive.

¹⁷ Anglicare Australia, Rental Affordability Snapshot National Report April 2022 accessed 9 September 2022

¹⁸ Access Denied The experiences of people with physical disability across the NSW housing sector H. Stone, A. Batchelor & M. Mead. May 2022 p27

For renters it can be very hard to access and provide the information and evidence required to demonstrate a rent increase is excessive to the Tribunal. This kind of information is more easily available to real estate agents and landlords.

Landlords should be required to justify a rent increase if it is over a reasonable threshold (such as CPI). The onus should be on the landlord to show a rent increase is not excessive.

Other factors must be considered along the market rent when determining whether a rent increase is excessive.

A rent increase is excessive if it is well above the previous rent.

The rental housing system's failure, characterised by limited supply and unregulated rents, has led to market rents not aligning with perceived 'fair market value'. Current rents are determined by what renters feel compelled to pay due to housing crisis pressures, not true willingness. This self-referential market approach pushes rents to extreme levels, even when this outstrips salary increases and households' incomes. Relying on market rents as the sole measure for assessing excessive rent increases undermines fairness and access to housing.

6. Modify NSW strata and tenancy laws to protect the right to request accessibility modifications and real estate agencies to increase transparency of property accessibility.

- **Modify NSW strata laws to prevent body corporates from refusing disability-related accessibility modifications.**
- **Reform existing tenancy laws to provide tenants with disability with the prima facie right to modify their rental property to meet their accessibility requirements.**
- **Agents and real estate companies should introduce accessibility filters on their websites or list accessible properties separately from non-accessible properties.**

Experiences of private renters

Private tenants were far less likely to have modified their homes, with a number stating that they had tried to negotiate unsuccessfully with their landlord and had been refused. This is in line with current rental laws in NSW which permit landlords to reject substantial modification requests from tenants without grounds for the rejection¹⁹.

"Landlords of private rentals do not want their home modified to accommodate disability. This means the only option for people needing modified housing is to either buy or try to get social housing. Not good enough."

¹⁹ Residential Tenancies Act NSW (2010) Div. 6.

Several renters had made temporary (non-fixed) modifications to properties themselves (at their own expense) to try to increase the property's accessibility:

"I installed [portable] ramps to entry and rear of the home and balconies. As a renter, ramps are basically my only option for modifications."

Others didn't consider it worth even asking landlords, and simply accepted that they would live with reduced accessibility across their renting life:

"If I'm renting, I can't make changes."

Where reasons were provided by landlords for rejecting modification requests, tenants reported being told that the modifications would 'damage the premises' or be 'visually unattractive'. This was, in many cases irrespective of whether the tenant offered to pay for these modifications themselves or return the premises to its original state at the end of the tenancy²⁰.

Lack of transparency across property listings

For the 42% of people with disability in Australia who live in private rental property²¹, the real estate industry's marketing of rental properties is a major concern. Currently, property listings lack transparency on accessibility features, which leaves applicants with physical disabilities who do not even know if they can enter the property until they turn up.

People with disability often travel far to view properties, only to find they can't access them. If there were separate listings for accessible properties or online search filters like step-free entryways or ground-floor bedrooms, this would make the home search much less complex and frustrating for people with disabilities.

"I should be able to go into a real estate agency and look at their list of available accessible homes."

"When real estates (sic) list rental homes on websites there needs to be a way for people to easily check if it is accessible, or if the property at least has minimum accessibility standards."²²

Rental insecurity as an impediment to modifications

Our research indicates that rental insecurity is a strong disincentive for tenants with physical disability to seek approval for modifications to improve the accessibility of their homes. This fear is not unreasonable, given the culture of short-term leases in NSW and the capacity for landlords to issue no grounds evictions.

²⁰ Access Denied The experiences of people with physical disability across the NSW housing sector H. Stone, A.Batchelor & M.Mead. May 2022 p17

²¹ Australian Institute of Health and Welfare, People with disability in Australia: Living arrangements, Oct 2020 <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/housing/living-arrangements> accessed 9 September 2022

²² Access Denied The experiences of people with physical disability across the NSW housing sector H. Stone, A.Batchelor & M.Mead. May 2022 p25

A proportion of renters advised that they would not ask for modifications, as they were concerned that the landlord would evict them.

"In terms of [modifications], I personally would not [ask for them] because you usually don't know your landlord and have no idea how they might respond, but it depends. I bought a shower chair a while ago, so that I can sit down in the bathroom and lean on it if needed to step over the shower frame. It also fits in the shower space if needed. So, the chair has given me the extra help I've needed for the past few months, without asking for mods."

Recent changes to the Residential Tenancies Act 2010 (NSW) aim to extend lease terms might provide greater security for renters.

However, Choice, the National Association of Tenants' Organisations (NATO) and National Shelter's 2017 research highlight the entrenched trend of short-term leases in Australia. Of tenants surveyed, 51% had 12-month leases, with only 6% having two-year leases.

Tenant security is undermined by the 'no grounds' eviction clauses in NSW tenancy laws. Such evictions allow landlords to potentially remove tenants with as little as 30 days' notice, without specifying a reason.²³

Limited housing options and proximity to support services amplify the complexities of moving. Renters with disabilities in our survey exhibited a strong fear of termination, reflecting the substantial impact on their well-being.

"As there is no such thing as a permanent rental, moving means having to pack up every few years and move and negotiate stairs. This is impossible to do if you're older and carrying disabilities, particularly arthritis."

Modify NSW strata laws to prevent body corporates from refusing disability-related accessibility modifications

Our research suggests there is a legal gap which allows Body Corporates to refuse accessibility-related modifications in strata properties including common areas. Body Corporates should be prohibited from refusing accessibility modifications to properties that enhance the accessibility of a specific lot or shared common areas, unless the Body Corporate can demonstrate reasonable grounds for denying the request, again for example, if the request is in contravention of planning laws.

²³ Kollmorgen. A., Rental Rights, Choice Website, 22 August 2014 accessed 9 September 2022