

Submission: Improving NSW Rental Laws

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From: Sue Mowbray, CEO Mercy Foundation

Contact details: Sue.mowbray@mercyfoundation.com.au

1. Introduction

The Mercy Foundation appreciates the opportunity to make a brief submission to improve NSW rental laws. The Mercy Foundation is a not-for-profit organisation that focuses on ending homelessness, ending modern slavery and addressing social justice issues at the grass roots. The Mercy Foundation is committed to social justice and structural change to address poverty and disadvantage in our country.

All of us are entitled to a home that is affordable, secure and safe. Housing is a basic human right, it is fundamental to our health and wellbeing and is essential infrastructure that enables our communities to thrive.

More people in NSW are renting than ever before, where one in three people rent and this trend is expected to increase as more people rely on the private rental market due to the reducing rates of home ownership.

It is imperative that NSW laws reflect the changing landscape of renters, with more families and individuals expected to rent throughout their lifetime.

2. Right to housing

The right to housing is enshrined in the International Covenant of Economic, Social and Cultural Rights (ICESCR). Australia has ratified this Covenant and as such, all levels of government are obliged to ensure these rights are respected, protected and fulfilled.¹

The seven elements that make up the right to housing are:

- Legal Security of Tenure
- Availability of Services, Materials, Facilities and infrastructure
- Affordability
- Habitability – meets basic standards of quality and safety
- Accessibility – for specific groups such as women and older persons
- Location – that housing is seen in relation to other opportunities such as work and school, and embedded in community
- Cultural Adequacy

¹ The right to housing is included in Article 11 (1):

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2.1 Legal security of tenure:

Ending unfair evictions

Eviction can be a traumatic event that strips people of their home and can detrimentally impact people's health, education and employment. Renters need homes that are stable and secure and should not live in fear of unfair 'no grounds' evictions from their homes.

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.

- 'The property will soon be sold' should not be added as a ground for eviction.
- Eviction notices should provide appropriate notice of at least 90 days (where a renter is not in breach of the agreement)
- For renters on a fixed term lease, once a termination notice is served they should be able to move out and stop paying rent before the termination date. This means they do not have to pay double rent once they have secured alternative accommodation.ⁱ
- Additionally, a human rights approach to renting would mean that renters would never be evicted into homelessness.

Increase length of leases

As more families and individuals become renters for life, certainty of tenure becomes a key priority. The current options for fixed term lease agreements are for 6 or 12 months. This provides little certainty for individuals and families, particularly children and older people. Children need a stable home for their education, for social development and sense of security. The recent report *Waithood – the experiences of applying and waiting for social housing* discusses the impact of insecure housing on children, showing signs of anxiety, sleeplessness, some having to live away from their parents and some removed from their parents as they did not have stable or adequate accommodation.ⁱⁱ

Older people, especially older women, want a home where they can age in place, close to their family and networks. Unaffordable rent hikes or the prospect of being evicted creates much anxiety.

Consideration should be given to encouraging longer residential leases that provide both the tenant and the landlord with certainty and security of tenure.

Commercial leases often provide much longer lease terms. Eight to ten years with one or two option terms (exercisable by the tenant) of three to five years each is not uncommon for office leases.ⁱⁱⁱ

2.2 Rental affordability

Renters need the confidence of knowing that they will be able to pay their rent and that rent will be affordable. There should be fair limits on rent increases in NSW tenancy law and rent increases should be limited to once in 12 months for rolling leases and fixed term leases.

Where there are short leases, renters should be aware of rent increases before they sign an agreement.

Consideration should be given to introducing limits to rent increases as in the ACT, where rent increases are limited to 10% more than the rate of inflation.

2.3 Habitability

Basic standards

Housing that is mouldy, damp, unsafe or overcrowded, or where people are experiencing violence in the home, does not meet the basic standards of *habitability* which ensure quality and safety.

Repairs

Landlords are responsible for ensuring their properties are well maintained and repairs made in a timely fashion.

Pets

Renters need homes that feel like home. Renters should be allowed to make simple choices to make the houses we live in homes, including whether or not to keep pets. In Victoria and Queensland, a landlord cannot unreasonably refuse a tenant's request to keep a pet.

Landlords should only be able to refuse a pet by obtaining a Tribunal order allowing them to do so. This is a model similar to those that apply in Victoria, Queensland and the ACT, where blanket 'no pets' clauses are prohibited.

2.4 Availability of Services, Materials, Facilities and Infrastructure

Rental properties should be fit for purpose for Australia's climate. Access to affordable energy for cooking, with energy efficient means of heating, hot water, air conditioning and insulation should be provided.

We support the call for mandatory minimum energy efficiency standards for NSW rental homes and, for new builds, the introduction of minimum building standards that take account of universal design for general accessibility in the community. ^{iv}

3. Older women in private rentals

Women over 50 are at greater risk of financial and housing insecurity than older men, due to compounding and systemic factors. Lack of superannuation, lower wages, taking time out of the workforce to have children and fulfil caring roles are some of the reasons why women accumulate less wealth than men over their lifetime. One in four women approaching retirement have little or no superannuation and about a third of women are living in poverty.

Women's health needs increase as they age and are exacerbated by precarious housing. As the priority age for social housing in NSW is 80 years, many women are living in rental stress in expensive private rentals, waiting for an affordable home.

Older women living in private rental and relying on a low fixed income are at great risk of homelessness. The precarity of this group of women highlights the need for security of tenure, affordable rent, protection from rent hikes and confidence to request modifications to their home to make them more appropriate to their needs as they age, without fear of being evicted.

For older people renting on a low income, the connection between housing insecurity and the broader feelings of personal insecurity are especially acute. Housing connects to broader feelings of security through its permanency, stability, continuity, sense of control and ability to create a

comfortable home environment. The absence of these factors drives profound feelings of insecurity that are especially marked for older people.^v

Alternative tenancy arrangements such as share-housing, co-housing and sub-letting are interim options that will help increase the availability of housing for this group. Consideration should be given to ensuring protections are in place in NSW tenancy laws to make these alternative tenancy arrangements suitable for this cohort.

4. Supply of Social and Affordable Housing

Many concerns about insecure housing would be addressed by increasing the supply of social and affordable housing in NSW. Ageing on the Edge NSW is calling for 5,000 social and affordable homes to be made available each year for the next 10 years, with 20% ringfenced for women over 55 years.

Increasing the supply of social and affordable housing is crucial to ensuring a fair and equitable rental market in NSW.

ⁱ www.tenants.org.au

ⁱⁱ Morris, A., Idle, J. Moore, J., and Robinson, C. (2023) *Waithood: The Experiences of Applying for and Waiting for Social Housing*. Sydney: Institute for Public Policy and Governance, University of Technology Sydney

ⁱⁱⁱ <https://www.dlapiperrealworld.com/law/index.html?t=commercial-leases&s=legal-characteristics-of-a-lease&q=length-of-leases>

^{iv} <https://www.tenants.org.au/blog/what-you-need-know-right-now-make-renting-fair-nsw>

^v Power, E.R. 2020 Older women in the private rental sector: unaffordable, substandard and insecure housing. Western Sydney University. <https://doi.org/10.26183/5edf0f0d75cf8>