



**Physical Disability Council of NSW**  
Ordinary People Ordinary Lives

**Submission for the NSW Department of Fair Trading**

**Statutory review of the  
*Residential Tenancies Act 2010 (NSW)***

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Physical Disability Council of NSW  
3/184 Glebe Point Road  
Glebe 2037

02 9552 1606  
[www.pdcnsw.org.au](http://www.pdcnsw.org.au)  
admin@pdcnsw.org.au

### **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

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structure 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 (ie: self-advocate).
- To educate and inform stakeholders (ie: about the needs of people with a physical disability) so they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

### **Overview:**

The Physical Disability Council of NSW appreciates the opportunity to consider, and make comment to the NSW Department of Fair Trading about the Statutory review of the *Residential Tenancies Act 2010* Discussion Paper (January 2016).

PDCN will not be making comments on all the questions raised, but will respond to the following sections, where we can add contribution to the discussion.

- Trends in the Private Rental Sector
- Rights of Tenants
- A) Starting a tenancy
- B) Eviction with no Grounds
- C) Additions and Alterations
- Resolution of disputes by Conciliation

### **Discussion:**

The Physical Disability Council of NSW (PDCN) believes that it would be easy to assume that people with disability are not included in the private residential sector (PRS) due to the limited information concerning people with disability and tenancy legislation. Minimal advice is provided by the NSW Department of Fair Trading, and the NSW Civil and Administrative Tribunal whom administer and regulate tenancy legislation in NSW. Over the past ten years tenancy law for people with disability living in boarding homes has been well documented, but in

NSW the *Residential Tenancies Act 2010 (NSW)* only includes the conventional residential premises but does not include boarding homes.

Due to the limited amount of case law regarding people with disability and tenancy law, it is difficult to be guided by court decisions and subsequently information from the NSW Department of Fair Trading is limited. People seeking legal advice about disability and residential tenancy are referred by the department to either Tenants' NSW, or to the Australian Centre for Disability Law.

Victoria has adopted state based discrimination legislation such as the *Equal Opportunity Act 2010 (Vic)* which compliments other commonwealth human rights legislation. Legislation in NSW refers to the residential premise but provides no further explanation identifying what this includes. Nor does this legislation define disability but references disability with an explanation that disability has a similar meaning to that used in the *Anti-Discrimination Act 1977 (NSW)*. The *Equal Opportunity Act 2010 (Vic)* is more inclusive and includes a larger variety of accommodation facilities including:

- Business premises
- House or flat
- Hotel or motel
- Boarding house or hostel
- Caravan or caravan site
- Mobile home or mobile home site, and
- Camping site.

**Recommendation 1: PDCN would recommend that the *Residential Tenancies Act 2010 (NSW)* include a wider definition of residential premises to ensure all tenants living in the accommodation facilities listed above have enhanced tenancy rights.**

The *Residential Tenancies Act 2010 (NSW)* is regulated by the NSW Department of Fair Trading and addresses the following key issues:

- Starting a tenancy
- Rental bonds
- Rent and other charges
- Rights and obligations of landlords and tenants
- Terminations and
- Resolving disputes.

The Residential Tenancies Act 2010 (NSW) was introduced to address the needs of all stakeholders involved in the PRS including tenants, landlords, and real estate agents. As part of this piece of legislation, section 227 identifies the need to conduct a review every five years to determine how effectively it is being implemented and its current relevancy.

The following economic trends in the PRS highlight the significance of these trends in NSW and the impact on people with disability:

- In the twenty years between 1994–95 and 2013–14 rents increased by \$144, that being a 62% increase in average weekly housing costs, after adjustment for inflation.
- Rental costs were slightly higher in NSW than the national average.
- In the past twenty years rents have increased most significantly in Queensland and the ACT followed by NSW.
- The proportion of fixed and periodic private rental tenancies has been slightly higher in NSW than the national average.
- The proportion of families renting in the PRS was slightly higher in NSW (41.2%) than the national average (40.0%).
- The proportion of the PRS living in detached housing differed depending on urban or rural locality, with a national average of 54.5% and in NSW 44.8%.<sup>1</sup>

When investigating changing household trends, economic data highlights the following characteristics:

- Changes in the quantity and composition of the private residential sector
- Differences in the tenancy arrangements of long term renters
- Incidence of and socio-economic factors associated with long term renters, and
- Impact of housing stress.

The financial trends identified above impact on people with disability in the following ways:

- People with disability account for approximately 18% of the general population.
- For people with disability with a limited earning capacity due to part-time wages or being on the pension, this may make acquiring a tenancy extremely hard or impossible to acquire. Although the following media article was based in Victoria, PDCN believes that the issues addressed in the article are universal and relevant to the PRS in NSW.

‘A 2012 Victorian Equal Opportunity and Human Rights Commission survey of 165 people found 24 per cent were refused properties more than 10 times.

Of those surveyed, 26 per cent said they were knocked back because they had children, 23 per cent because of their age, 22 per cent due to their race and 16 per cent cited disability as the reason.’<sup>2</sup>

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<sup>1</sup> Australian Housing and Urban Research Institute (2013) Long-term Private Rental in a Changing Australian Private Rental Sector

- Due to financial pressures people with disability are frequently found in the lower two income quintiles in comparison to the remainder of the community.
- Rental payments make up a larger portion of household expenditure for people with disability due to their limited earning capacity. After paying rent many people with physical disability have additional financial pressures including the costs of purchasing the following items:
  - ◆ Aids and equipment
  - ◆ Pharmaceutical and allied health
  - ◆ Transport and
  - ◆ Home modifications
- For people with disability an average rent of \$315 a week represents more than 30% of their gross weekly income, and subsequently increasing the likelihood of rental stress.
- And as a consequence people with disability find it difficult to save funds, preventing them from acquiring a bank loan, and subsequently minimising the possibility of home ownership.

In NSW the *Residential Tenancies Act 2010 NSW* identifies the following rights of the tenant:

- To be given a copy of the residential tenancy agreement, a condition report completed by the landlord/agent and the NSW Fair Trading *New tenant checklist*
- To have premises rented to you in a reasonable state of cleanliness and fit to live in
- To be given rent receipts (unless you pay rent into a nominated bank account)
- To be offered at least one means of paying the rent for which you do not incur a cost
- To be given 60 days written notice of a rent increase
- To have quiet enjoyment and use of the premises – the landlord/agent must not interfere with your possession of the premises
- To have reasonable peace, comfort and privacy
- To have reasonable locks and security
- To have reasonable repairs and maintenance done
- To be repaid for any urgent repairs that you have paid for – up to \$1000
- To apply to the NSW Civil and Administrative Tribunal for orders if the landlord has broken the tenancy agreement
- To be given written notice of the landlord wanting to end the tenancy agreement

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<sup>2</sup> Herald Sun 25/1/2016 <http://www.heraldsun.com.au/leader/south-east/people-with-disabilities-finding-it-almost-impossible-to-secure-a-rental-property/news-story/a8c9242e9df7dbd81cfaf9704a777d4e>

- To be notified of the change of name and address of the landlord or their agent
- To refuse the landlord access except in certain circumstances and with proper notice, and
- Not to be unlawfully evicted.<sup>3</sup>

Before signing a tenancy agreement it is vital that the landlord informs a tenant with disability the following conditions as these considerations impact on whether the tenant will enter into this particular tenancy agreement:

- The premises have been subject to serious flooding or bushfire in the last 5 years
- A free residential parking permit is not available, and subsequently no parking is available or only paid parking is available
- The premise has a driveway or walkway that others can legally use.

The NSW legislation permits eviction without grounds in certain circumstances such as in all fixed term tenancy agreements and periodic agreements of 90 days. This is of particular concern for people with physical disability, particularly where suitable accommodation has been difficult to locate due to accessibility or concerns regarding affordability. Subsequently PDCN considers it as unreasonable under any circumstances to evict a tenant with additional needs due to a disability, without substantial grounds.

**Recommendation 2: To ensure a greater understanding PDCN would recommend a disability awareness program for members of the Real Estate Institute of NSW, Property Owners Association of NSW, and all other relevant stakeholders.**

**Recommendation 3: PDCN would recommend disability awareness as part of the Disability Action Plan for the NSW Department of Fair Trading.**

PDCN considers sections 52-57 within the *Equal Opportunity Act 2010 (Vic)* as preferable to tenancy legislation in NSW as the following sections within the VIC Act provide greater guidance to people with disability;

- Discrimination in offering to provide accommodation
- Discrimination in providing accommodation
- Discrimination by refusing to allow assistance dogs
- Discrimination by refusing to allow alterations

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<sup>3</sup> Tenants' NSW- Fact Sheet 1- Residential Tenancy Act  
<http://www.tenants.org.au/factsheet-01-residential-tenancies-act>

- Discrimination by refusing to allow alterations—owners corporations
- Discrimination in access to public premises

The Victorian Equal Opportunity and Human Rights Commission provide research, resources and tools aimed at promoting attitudinal change and preventing the likelihood of discrimination. Even with these resources, research into discrimination in the private rental market includes the following examples of discrimination:

*'The landlord would not allow installation of ramps, handrails, etc. as needed, as they felt it would devalue their property.'*

*'I was simply unable to find properties that we could make accessible. Work is needed, and you could see the look on the agents' faces... the "oh yes, I'll ask the owner'.*

*'I was told outright that the rental agencies don't consider an assistance dog any different from a pet and they don't allow pets.'<sup>4</sup>*

Additionally to sections 52-57 of the *Equal Opportunity Act 2010 (Vic)*, this piece of legislation contains allowances excusing landlords and managing agents from needing to comply with relevant legislation.

**Recommendation 4: To reduce the likelihood of discrimination PDCN would recommend that the *Residential Tenancies Act 2010 (NSW)* include relevant sections addressing the following issues:**

- Refusing or not accepting an application
- Processing an application in a different way
- Offering the property on different terms (such as requiring a higher amount for the bond)
- Refusing to provide accommodation to a person because they have an assistance dog.

**Recommendation 5: That the NSW Department of Fair Trading prepare and promote relevant guidelines, frequently asked questions and plain English guides outlining the additional sections referred to in recommendation 4.**

**Recommendation 6: PDCN would recommend that the documentation prepared as part of recommendation 5 be promoted on the following websites:**

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<sup>4</sup> Victorian Government Equal Opportunity and Human Rights Commission (2012) Locked Out: Discrimination in Victoria's Rental Market

- **NSW Department of Fair Trading**
- **NSW Civil and Administrative Tribunal**
- **Australian Centre for Disability Law**
- **Tenants' NSW**

The following list includes home modifications commonly needed when providing accessibility to units, flats and apartments to either the residential facilities or to common areas:

- Wall mounted grab rails
- Bathroom modifications including adding grab rails, installing hand-held shower-heads, replacing shower doors with curtains, installing wedge ramps to allow access into the bathroom where tiling creates a step up, and removing the bath or the shower if it has a hob that a person has to step over to make a walk-in shower
- Kitchen modifications including lowering benches
- Handrails to assist with stairs in either the residential facilities or in the common areas
- Improved lighting
- Designated accessible parking

**Recommendation 7: To illustrate how disputes can be effectively resolved by conciliation, PDCN recommends that the NSW Civil and Administrative Tribunal prepare a series of case studies on issues common to people with disability with concerns about tenancy agreements, around the following:**

- i) Alterations and additions**
- ii) Termination of tenancy**
- iii) Repairs and maintenance**
- iv) Security and safety**
- v) Strata management**
- vi) Discrimination**
- vii) Tenant databases**

**Recommendation 8: To illustrate the relevance to people with disability of different procedural directions, PDCN recommends that the NSW Civil and Administrative Tribunal prepare a series of frequently asked questions about adjournments and resolution of disputes by conciliation.**