



Action for More Independence & Dignity in Accommodation

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Advocacy, Self Advocacy, Rights, Accessibility, & Community Living for People with a Disability

Submission Fairer Safer Housing - Options Paper February, 2017

AMIDA (Action for More Independence & Dignity in Accommodation) is an independent advocacy organisation which advocates for good housing for people with disability. We provide advocacy to individuals, with priority given to people with an intellectual disability, and advocate for change in systems which prevent people from achieving good housing.

AMIDA acknowledges that people with disability have a right to a choice of with whom they live and where they live. Further, people with disability have a right to good quality housing which is accessible, affordable and non-institutional. People with disability have a right to live in the community with access to support to participate and have a good quality of life.

AMIDA strongly supports the United Nations Convention on the Rights of Persons with a Disability and works to assert these rights and community inclusion for people with a disability and supports people with disability as valued members of our community. AMIDA recognises that people with disability contribute to and develop our community.

AMIDA has made submissions on the previous Fairer Safer Housing papers.

With this background and experience, we submit the following:

3.1 Limitations to the scope of the RTA

Option 3.1 - Remove the five-year limit on the scope of the RTA.

People with long term leases require the security of coverage by RTA. They should be covered by the same regulations as those in short term lease arrangements. Rights and responsibilities apply to both resident and landlord. Having two sets of rules and regulations just complicates matters. The benefits for both resident and landlord is that there would be less turnover of renters and this would allow everyone involved to plan and have security.

Option 3.2 - Introduce an optional prescribed fixed-term agreement for general tenancies agreements of five years or longer.

The development of a long term agreement template, with provisions for variation, would make it easy for those who agree a long term agreement suits them to go ahead, and have the confidence that they are still covered by the RTA.

Option 3.3 - Provide for the option for tenants to extend fixed term leases for a subsequent period.

Any option that provides tenants with opportunities to extend a lease, AMIDA would see as an advantage. After a year they would know if they were happy in their accommodation and that they would wish to extend their stay to a longer term. This would only work if RTA coverage was also extended to longer periods.

4.1 Unlawful discrimination against applicants and tenants

Option 4.1 - Include an information statement about unlawful discrimination in application forms.

This would send a clear signal to agents, landlords and tenants about discrimination legislation. In the case of vulnerable tenants, there should be an obligation to provide additional information so that people understand. There is no use including information unless people understand.

4.6 Terms of tenancy agreement

Option 4.9 - A comprehensive standard prescribed tenancy agreement, with plain English explanations. This would provide both parties with clear, detailed information to work with, and sounds like a good option to AMIDA. Both parties would know what their responsibilities are.

A standard lease, with plain English explanations, should be developed with the alterations and additions only able to be added by application to Consumer Affairs or VCAT.

We recommend that there should also be a standard application form template developed, with only questions compliant with RTA being asked.

We recommend that there also be included, along with income, other avenues available to pay the rent, ie, disability support package, family assistance and savings.

5.3 Right of entry

AMIDA recommends at least 7 days' notice for entry to a rented property for any reason needs to be in place. This should be by agreement between tenant and landlord, and should not be more than 2 entries per day, not on consecutive days, and no more than 3 times per week.

Compensation to be provided to the tenant who is paying rent for the property. RTA should quantify the compensation.

Landlord should be liable for any loss of the tenant's goods caused when the landlord is exercising a right of entry.

7. Bonds and Rent

Option 7.2 - Speedier bond repayments when all parties are in agreement. We recommend that if there is no disagreement, finalisation should be as soon as possible - 14 days for lodgement is practical. The onus should be on the landlord to submit the application for repayment, which is preferable for people with disability.

Option 7.3A - Current model strengthened - a new requirement that the landlord, when applying to VCAT, must demonstrate that a reasonable attempt was made to resolve the dispute with the tenant. They should provide proof.

Therefore AMIDA recommends a combination of elements of 7.2 and 7.3 as described above.

Consultation questions:

65. 7.2 is a good option, and will certainly support people with disability and those on low incomes.

66. 7.3A - Strengthening the current model is the preferred option. As with many options proposed there is still many instances when application to VCAT is necessary, and this will be difficult for some people with disability.

7.3 Frequency of rent increases

Rent increases should not be permitted every 6 months.

Option 7.4 - Annual rent increases. Once per year is frequent enough, and preferably every two years.

Option 7.5 - Disclosure of rent settings in fixed term leases - ...rent could only be increased if the tenancy agreement sets out the amount of or method of calculation for the increase, with an increase occurring 60 days after notice is provided and 12 months after the commencement of the tenancy. As tenants and landlords are locked into a fixed term, they need this information to plan for the future. This is reasonable for both sides.

7.5 Rent payment fees and methods

Option 7.6 - One fee-free method of paying rent must be offered to tenants.

Option 7.7 - Centrepay payments - This must not be the only fee-free option for tenants. Once Centrepay has commenced it is difficult for tenants to opt out of this payment method. This can result in them paying rent past the end of a tenancy.

AMIDA has experience of people with fluctuating income affecting rent due in public and community housing, this necessitates a change in rental payments to Department of Health and Human Services. Our experience is that it is unwieldy and difficult to manage for people with disabilities.

Further, if you are sharing public housing accommodation, one tenant is the person responsible for the Centrepay payment, and has to recoup the rent from the other tenants. This can lead to debts, disputes and associated problems.

Centrepay is not always a simple option.

7.6 Rental bidding

Rental bidding will disadvantage people with disability and those on low income. It should not be allowed.

As previously mentioned, AMIDA recommends that there also be included, along with income, other avenues available to pay the rent, ie, disability support package, family assistance and savings.

8. Property conditions

8.6 Conditions of premises during a residential tenancy

Option 8.16 - Rental agreement to clarify responsibility for particular maintenance. A good idea so everyone knows what they are responsible for, and the timeframe for acting on each point.

8.7 Modifications

“...The dual aims of protecting the landlord’s asset, while also ensuring a habitable and safe environment for the tenant, are achieved through protections relating to:

- Cleanliness, security and access to services
- Property modifications”

And

“Submissions to the property conditions issues paper identified a range of issues arising under the current framework, with the following recurring themes:

- The inability to make property modifications for a diverse array of purposes, including to support tenants with a disability”

This is a huge problem for the people we work with.

Firstly, many disability modifications are “improvements” which should not be required to be removed at the end of a tenancy.

It is obvious that many landlords and property managers need education on the provisions of the EOA, and their obligations. This needs to be addressed.

Option 8.20A - Landlord may not unreasonably refuse consent to certain modifications -

This heading needs to read ‘Landlord **cannot** unreasonably refuse....’ It needs to be strong and clear.

AMIDA recommends that these ‘certain modifications that can be refused’ do not include access modifications.

Landlord consent should be sought but if modifications are required so that a tenant can live in a property in an uncompromised way - this is not unreasonable, and cannot be refused.

Option 8.20.B - No requirement for landlord approval for certain modifications. AMIDA considers this seems unwise. Landlords will exit the housing market, if they have so little control over their properties

Option 8.21 - Liability for removing fixtures and/or restoring the property - In some cases it is reasonable for the landlord to ask for the property to be returned to its previous state. This should be acceptable. In other cases, the modifications should be seen as an improvement. For these modifications to be removed, the landlord must be able to demonstrate that retaining the modifications at the end of the tenancy would cause them hardship before they can request that a tenant remove it.

Consultation questions.

98. Presently we observe that landlords, even in social housing, are refusing to make even minor modifications, which is causing people to be living in housing that is not suitable for them, or having to search for other accommodation. This is difficult to find if they have special

accommodation requirements. The wording of these three options would see the same situation retained. So, no the options do not support the most critical types of modifications.

99. Retaining the requirement to seek landlord's consent for all modifications as mentioned above is wise. This will mean that landlords have some control over their property, will be involved in modifications that are agreed on (they will gain some knowledge of the reasons modifications are requested and required), and maintain good relations with tenants.

101. Using qualified people to do modifications is necessary, so the job is done well, and safely. It is necessary, and would allay landlord concerns.

AMIDA's submission on Security of Tenure included the following Appendix, and we believe that these standards are the minimum that should be acceptable for people with disability, and should be able to be incorporated into the RTA, so landlords are compelled to at least adhere to these:

"Appendix 1

Rights & Inclusion Australia

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Position Statement

Australian Network for Universal Housing Design and Rights and Inclusion Australia believe that the homes we build for today should be fit for all of tomorrow's Australians.

*Please support our call to the Australian Government to regulate **minimum access features in the National Construction Code for all new and extensively modified housing**. This should be supported by education and training for the housing industry.*

Why?

- Current housing designs do not work for many people including older people, people recovering from illness or injury, mothers with prams and people who have mobility difficulties.*
- Greater accessibility is cheap and easily achieved—with **three simple features**.*
- An increased supply of accessible mainstream housing is critical to the success of the National Disability Insurance Scheme and the Aged Care Reforms.*
- In 2010, Australian housing industry leaders agreed to provide these three simple features in all new housing by 2020. With a few exceptions, the housing industry has not responded. We anticipate that less than 5% of the 2020 target will be met unless these features are regulated.*
- Regulating these **three simple features** will allow many more people to stay in their homes, and to visit others—regardless of their age, disability or life circumstances.*
- Regulation in the National Construction Code will provide a "level playing field" for the Australian housing industry and cost and production efficiencies for everyone.*
- Regulation will lead to more inclusive and sustainable communities now and in the future.*

What are these three simple features?

1. *An **accessible path of travel** from the street or parking area **to and within** the entry level of a dwelling.*
2. *Doors, corridors and living spaces that allow **ease of access for most people on the entry level**.*
3. ***A bathroom, shower and toilet that can be used by most people**, with reinforced wall areas for grab-rails at a later date."*

8.10 Resolving disputes about repairs

Obligation on landlord to do timely repairs seems to be missing. We see this over and over again in our work. Tenants request maintenance, which is delayed or refused. There must be penalty for not carrying out repairs. The rules and regulations exist but they are not working in favour of the tenant. If penalties were in place, the onus would be on the landlord, not on the tenant. People with disability often have difficulty requesting maintenance, and to require them to navigate a complicated system involving application to VCAT is unreasonable and unrealistic.

It must be ensured that if tenants request repairs, which the landlord carries out, the costs for these repairs cannot be passed on to the tenant to cover such costs, ie there can't be an increase in rent even, a small increase.

Option 8.35 - Landlord repairs and maintenance bond

AMIDA considers that if this option was in place, landlords may be more inclined to repair and maintain their property, this could mean that the tenant does not have to approach VCAT to get maintenance done or paid for.

10.0 Dispute resolution services and mechanisms

Option 10.1 - Enhance CAV's information and advice services

CAV's information service needs to be extended. Online and digital service would be good, but the current telephone service also needs to be expanded to include direct intervention by CAV, which does sometimes happen, and seems to be very effective.

AMIDA has experienced CAV making a call to a real estate agent to remind them of the Act, which has smoothed the way.

Option 10.4A - Introduce re-hearing for residential tenancies cases at VCAT

This option proposes that there be a fee for an application for an internal appeal. This would disadvantage low income earners, and other vulnerable people. Re-hearing should be fee free.

11.0 Terminations

There need to be longer notice periods - same day evictions result in homelessness.

There needs to be scope and mechanisms to pay arrears over a longer period of time.

VCAT must be able to have discretion to take into account hardship.

The termination date must not be the same day as the day on which the notice is given.

Option 11.15 - Provide option for tenant to negotiate repayment plan where seven days' rent owed. Instead of an automatic notice to vacate, notice of lateness and offer for development of a plan is a good idea. Any opportunity to avoid homelessness should be encouraged, and facilitated.

Option 11.16 - Require that repayment of arrears invalidate termination processes. Very good idea.

Consultation questions

172. 7 days after due date is the minimum that action should be able to be taken. First option should be notice of lateness, followed by an offer to make a repayment plan.

Option 11.24 - Expand the definition of antisocial behaviour to include a wider range of behaviours and people who may be affected by those behaviours -

Under the EOAct there are behaviours that are a direct result of disability, and it is unlawful to discriminate because of the behaviour.

Consultation questions

187. Potential benefits would be that those adversely affected may gain some peace and safety (quiet enjoyment), but unless steps are taken to support those with the antisocial behaviour, it could just end in homelessness and/or shifting the same antisocial behaviour to another place. Where the cycle would begin again.

11.2.2 Notice to vacate for no specified reason

Option 11.27C - Require a landlord to apply directly to VCAT for a termination order where termination is for reasons not specified in the RTA.

AMIDA recommends this puts the onus on the landlord, and VCAT must consider a range of factors in making its decision.

Option 11.27D - Remove the notice to vacate for no specified reason. (First preference)

Landlords should have some control over their properties, but should not use this clause to remove existing tenants, which is what we have observed.

11.2.3 Notices to vacate for change of use

Option 11.28 - Require notice to vacate to be accompanied by evidence of change of use. We agree evidence should be provided.

Option 11.30A - Extend notice periods to 90 days (or longer, with a preference for 6 months) for change of use terminations. We consider long notice periods to be essential in all cases, so people have an opportunity to appeal decisions or to find alternative accommodation.

11.3 Terminations provisions and security of tenure

No option is preferred but a longer notice period of 6 months is preferable.

11.5.2 Reduced period of notice of intention to vacate in certain circumstances

We agree that an offer (and acceptance) of public or community housing should reduce the notice time of intention to vacate.