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# Rights in Disability Accommodation – a transformational approach

**Abstract:** This paper proposes that there is only one legitimate way forward in protecting the rights of people who rent and who reside in Specialist Disability Accommodation facilities. That way being to ensure that they are given the same rights as all other people who are classified as renters and that their rights are protected under a single piece of Residential Tenancies legislation.

As such, the authors categorical and unreservedly oppose any position that either supports amending the current Disability Act 2006 (Victoria) or seeks to create special SDA Residential Legislation.

The authors support and promote the principle of equal rights and equal responsibilities. They contend that to seek to continue the separation of people with disabilities from mainstream structures demonstrates a lack of awareness of what social inclusion really means.

Authors: Max Jackson and Margaret Ryan

# RIGHTS IN SPECIALIST DISABILITY ACCOMMODATION
## - A Transformational Approach -

## 1. SCOPE OF THE CONSULTATION

The authors note that the primary focus of this consultation is both stated and inferred as being directly related to the tenancy rights of people who reside in specialist disability accommodation facilities.

Despite this focus, however, the authors note that of many of the questions asked as part of the review seem to be structured with the aim of guiding those making submissions to also focus on support services provision. While the authors acknowledge that the provision of funding and delivery of support services to people with disabilities is a major consideration in the wider context of the National Disability Insurance Scheme (NDIS), nonetheless they argue that in the context of this review the matter of support services is a totally separate topic to that of tenancy and hence has no part in this review.

Therefore they submit that in considering submissions made to the review and in undertaking their deliberations, the review body must focus on the matter of tenancy and the rights associated with tenancy for people with disability residing in specialist disability accommodation.

To further highlight their concerns, the authors urge that those responsible for reviewing fully understand that it is essential to separate support services provision from tenancy. Indeed, not to do so will continue to promote the current model of tenancy and service provision being provided by the one supplier. Given the intent to separate these two service types, the authors contend that the reviewers have an obligation to distinguish the separation of tenancy from support services provision, if rights are to be properly considered. Not to do so will inappropriately continue to acknowledge and promote the current dual model, despite it now being considered as inappropriate.

While the authors recognise the complexities associated with separating tenancy and support services provision, nonetheless, given the focus of the review they argue that the review has an obligation to only focus on tenancy. To emphasise this point, this means that the reviewers must set aside those elements on which they are seeking feedback which relate to support services provision.

## 2. CONFIRMING THE DEFINITION OF SPECIALIST DISABILITY ACCOMMODATION (SDA)

The authors note the definition provided through the review as to what constitutes Specialist Disability Accommodation (SDA). Significantly, they note two key elements of the definition. Firstly, that the nature of this type of accommodation includes accommodation where a number of people with disabilities live under the same roof. Secondly, the nature of the people who are covered by the definition are those people who have significant functional impairment and/or very high support needs, noting that an individual may well have these dual characteristics.

The authors recognise that within the population as described there may be people who are capable of advocating for themselves, or alternatively can make an informed decision with some level of third-party support. Equally however, the authors also recognise there are those whose capacity is such that they require third-party support or representation to advocate for their rights.

In emphasising the above, the authors submit that any proposal to simply review and update the Disability Act 2006 for rights in SDA will not necessarily ensure the full tenancy rights of people with disabilities that equate totally and unambiguously of the tenancy rights available to other renters who are protected by Victoria's tenancy legislation. The authors therefore argue in the strongest possible way that the Residential Tenancies Act and not the Disability Act must be the legislation that articulates rights in SDA.

The writers are aware that Victoria's Residential Tenancies Act 1997 has been the subject of review, and new legislation and regulations are to be introduced in the Victorian Parliament in 2018. The writers urge that in drafting the new tenancy legislation and regulations, coverage for SDA tenants must be included.

## 3. FIRST PRINCIPLES

The Disability Act 2006, section 5.1, determines that people with disabilities have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities.

This section of the Act must be taken to mean that the concept of "*the same rights and responsibilities as other members of the communit*y" includes rights and responsibilities associated with being a tenant, including tenancy in SDA. As such the rights as associated with tenancy must therefore be considered as being no greater and no less than those rights available to all other renters.

Part of the intent of reviewing the tenancy legislation must be to ensure that the rights of all tenants are enhanced. The concept of "*all tenants*" must include those people who access SDA. Given this, the authors therefore submit that there is no need to seek to create stand-alone legislation for SDA tenants or special provisions in the Disability Act 2006. The Victorian Residential Tenancies Act must be the legislative framework for tenancy rights for SDA renters.

## 4. ASSUMPTIONS

In making this submission the authors contend that the following assumptions must stand as key parameters for the review.

- Assumption 1: That when the NDIS is fully rolled out, the current 'in kind' funding provisions associated with the provision of residential facilities will cease and will be replaced by funding to individuals provided via the NDIS.

- Assumption 2: That the landlord of individual SDA facilities will be fully acknowledged as being responsible for and the controller of the individual property.

- Assumption 3: That decisions as to who will be accommodated in particular SDA facilities will be ultimately that of the landlord.

- Assumption 4: That individual lease agreement will be established between the landlord and individual tenants who are accepted to reside in the SDA.

- Assumption 5: That the revised Residential Tenancies Act will include coverage of SDA renters. Should the promulgation of the revised tenancy legislation precede the completion of the rollout of the NDIS, then the revised tenancy legislation will be applied in establishing tenancy agreements between landlords and individual SDA renters.

## 5. ADDRESSING THE QUESTIONS POSED BY THE REVIEW

### 5.1 What should new agreements with the SDA provider cover?

In terms of the content of an agreement between a renter and an SDA provider/landlord, the contents should reflect those elements as provided for all other renters as per the Residential Tenancies Act.

### 5.2 Should agreements cover house rules?

This question as written is open-ended. For example, it could be taken to mean 'house rules' that are established by the support services provider(s) and as relating specifically to support service expectations and relationships between the residents. Equally, it could be taken to mean 'house rules' as applying to the responsibilities of the tenants as relating to their proper use of the property. Clarification is essential, in order to the distinction between those rules or requirements that may be imposed or required by the support service provider as opposed to those 'rules' that relate specifically to the tenancy of the premises.

Therefore in keeping with the first principle of people with disabilities having the same rights and responsibilities as other people, then the rental agreement should reflect those responsibilities, which can be translated as 'rules', which exist for all other renters in the Residential Tenancies Act.

### 5.3 Should residents all have to sign the same agreement?

Again, as noted above, this question can be taken two ways, where the notion of 'same agreement' means a single agreement for all, or alternatively, it may mean that the contents of individual agreements are the same. Clearly, where the individual renter has the same rights and the same responsibilities imposed on him or her as a renter, and is more than likely paying the same amount in rent, then the obvious answer to this question is residents should sign the same agreement, where 'same' means the content is replicated, albeit each one signs their own agreement.

In making this statement the authors emphasise that while each renter's agreement should replicate that of all other renters, each renter should have his or her own individual agreement. *See also 5.5*

### 5.4 What happens if a resident cannot sign an agreement?

The authors make the reasonable assumption that the reason why a resident may not be able to sign an agreement may either be because the person does not have the physical capability because of some physical impairment, or alternatively the person may not have the cognitive ability to understand what is required.

If it is that a resident is unable to sign an agreement because of some physical impairment, albeit that the person has the cognitive capacity to understand the agreement, then that person must be given the option of nominating a representative to sign on their behalf. If however, the resident is unable to sign the agreement because of cognitive impairment, then one of three options should be available to them. The first being, that if the resident is under a guardianship order, then the guardian has the authority to sign. Secondly, if the resident has active parent or family involvement, then a nominee of the family should be given the option of signing. Thirdly, if the resident is not under guardianship and does not have family involvement, an option could be a representative from the Public Advocate's office.

Given that the tenancy agreement represents a contract between the landlord and the tenant, then the authors contend that it is essential that the individual or entity nominated to sign on behalf of the resident has a legal imprimatur to do so. In the context of the current legal structure in Victoria, the authors submit that this function should be allocated to the Office of the Public Advocate. The authors argue that the option of the involvement of the Public Advocate can be exercised under section 15(a)(2) of the Guardianship and Administration Act 1986, which provides the Public Advocate with the function of minimising restrictions on the rights of a person with a disability. Hence in this case the authors contend that the person with a disability has a right to have an agreement signed on his or her behalf, and where restrictions occur then the Public Advocate can exercise that particular function.

**5.5 Should landlords be allowed to make different agreements for residents in the same property? When could this be required?**

As a general principle, the authors contend that different agreements by way of content should not exist. However, in recognition that different rents might be charged due to the configuration of the property and one person's room being more desirable than that of another person, then this could lead to a variation in rent. Under such circumstances, the authors contend that this would constitute a legitimate situation for there to be different agreements.

**5.6 Under what circumstances should a resident be asked to sign a new agreement?**

Again, with reference to guiding principles, the guide for any such consideration should be that as exists under the Residential Tenancies Act.

**5.7 How long should the agreement be in place for?**

Again, by the application of first principles, the guide for any such consideration should be that as exists under the Residential Tenancies Act.

**5.8 What role should residents have in choosing a new housemate?**

Given the residential agreements are individual, and constitute a contract between the individual and the landlord, the authors therefore contend that it must be the landlord's prerogative to approve who takes up residency. While acknowledging the landlord's prerogative, the authors nonetheless recognise that a key driver of the NDIS is that of participants having choice and control. Therefore this raises the question of what part residents may play in vacancy management in their particular SDA.

In relation to this matter, the authors contend there are four key considerations. The first being, that there will be people who seek residency in supported accommodation who do not have the intellectual capacity to make a determination as to who might be best suited to fill a vacancy. Secondly, this then raises the question of who represents the individual resident and the legitimacy of any such representation. Thirdly, the potential involvement of residents in choosing a new housemate seems to assume that there will be unanimity among the residents. This cannot be assumed. Fourthly, a significant platform on which the NDIS is built is that of choice and control. It is important to note that the concept of choice and control is specifically directed to NDIS participants.

Notwithstanding the above, the authors recognise that there may be some who argue that in the event of a resident or residents not having the cognitive ability to make an informed decision then the representatives of the individual residents should

participate in the selection process. The authors totally oppose any such suggestion. They argue that to involve representatives of residents not only has the potential to diminish unanimity in the decision making in that it is reasonable to conclude that individual representatives will promote the needs of the resident whom they are representing, however, of even greater significance is that to involve representatives means that confidentiality and privacy of clients being considered to fill a vacancy will be breached. Therefore, in those circumstances, where residents are unable to contribute their view, the authors contend that the support service provider should be involved. Again, however, the authors return to their opening statement in this section, that ultimately it is the landlord's prerogative to approve who takes up the vacant residency.

**5.9 What would that role look like and what are the different interests that should be considered?**

Refer to 5.8 above.

**5.10 Who should oversee disputes about this process? Who makes the final decision?**

Based on the answers to questions 5.8 and 5.9 above, the authors reinforce their view that as the decision-maker must be the landlord, the final decision is that of the landlord. While the authors note that the first question in this set relates to disputes about the process of selection, they submit that given that the landlord decides the process of selection, then disputes about the process should be put to the landlord.

Notwithstanding the above, a more significant question however and one that has not been addressed is that of the issue of compatibility. Clearly, compatibility of residents within SDA must be considered as a significant issue and therefore one that might require review in the context of disputes. The authors submit that as is the case for all other renters, VCAT should be identified as the decision-maker regarding such disputes.

**5.11 When should a service provider or landlord be able to access the house?**

The authors note that in essence this question has two parts to it - that as relating to the service provider and that as relating to the landlord. In relation to the landlord, given that each of the residents should have a rental agreement with the landlord, then they argue that this agreement should identify the rules that must be followed as applying to access to the house by the landlord. They note that this should be no different to the same type of rules that apply to landlords and all other residents in other situation.

Given that each of the renters should also have an agreement with their support service provider, this agreement should identify as to when (the time), what (the nature of the service being provided) and where (specific locations within the house) services will be provided. The critical link, however, in relation to the way the question is framed, relates to a requirement that should establish an agreement between the service provider and the landlord as to when, where and why the service provider can access the house. Clearly, in the case of the service provider providing 24/7 supports, then it is important that this is written into an agreement between the service provider and the landlord.

**5.12 When should a service provider or landlord be able to access the room?**

Assuming that this question is actually referring to the individual resident's room, then the authors contend that in relation to the landlord the same rules that apply and as articulated in the Residential Tenancies Act in relation to right of entry should also apply in relation to SDA facilities.

In relation to the right of entry by a support service provider, the authors submit that this should be written into the individual service agreement between the individual and the support service provider.

**5.13 How much notice should a service provider or a landlord give a resident?**

Again, this represents a two-edged question. While there is no definition as to the type of 'notice' which might be given, in relation to a service provider the authors assume that this relates to the service provider making a decision to withdraw their services to an individual residence. This would be what is written into the service agreement with the individual, but ensuring that whatever is written into the agreement does not usurp the principle of the right of the individual resident to privacy.

In relation to the landlord, the authors assume that the notice relates to the notice to vacate. The authors therefore argue that the notice period should be in keeping with the Residential Tenancies Act.

**5.14 Should SDA residents have to pay a bond?**

This is a matter between the landlord and the individual tenant as to whether or not a bond would apply, and if it does, this should be as per the Residential Tenancies Act.

**5.15 Who should manage disputes about rent?**

Managing disputes about rent should be as per the Residential Tenancies Act.

**5.16 What should be done to prevent financial exploitation by service providers?**

The authors note that this question has no relationship whatsoever to tenancy or tenancy agreements. As such, they submit that in the first instance the financial arrangements between the resident and the support service provider should be established through the individual service agreement.

Any requirements as relating to financial obligations, responsibilities and safeguards established by the NDIS Act and its Specialist Disability Accommodation Rules must be recognised in the individual service agreement.

**5.17 How much notice should a landlord give of a rent increase?**

Notice of a rent increase should be as per the Residential Tenancies Act.

**5.18 How often should landlords be able to increase the rent?**

Increases to rent should be as per the Residential Tenancies Act or as per the individual's rental agreement with the landlord.

**5.19 What are the key issues when considering obligations to make modifications?**

Based on the reasonable assumption that by the use of the term 'modifications' such modifications relate to the rental property and include structural changes or repairs to

the rental property, the authors contend that the key issue is that of what obligations are imposed on the landlord as per the Residential Tenancies Act.

**5.20 Who should oversee the landlord's responsibility to make modifications?**

As with any matters associated with landlord obligations, in those instances where the resident or the resident group is unable to advocate on their own behalf, the individual resident's representative should take up the matter with the landlord. In the event of the landlord not meeting his or her obligations, then the matter should be able to be taken or referred to VCAT, as applies for all other tenants.

**5.21 What should happen if part of the property cannot be used while modifications are made?**

Significantly and ideally where modifications are planned, reasonable notification in terms of timelines should be provided by the landlord to the resident or his or her representative. Part of the property not being able to be used while modifications are made does not, of course, mean that the property is not habitable. Nonetheless, even in the case of emergency relocation, ultimately responsibility for identifying alternative accommodation must rest with the landlord, in cooperation with the support service provider. Ideally it would be a planned effort between the landlord, the support service provider and the resident or his or her representative. The writers maintain that in the event of co-operation or agreement not being established, provisions of the Residential Tenancies Act should apply in this matter.

**5.22 How will this intersect with the role of the NDIS Registrar under the Quality and Safeguarding Framework?**

The functions of the authorities who will be responsible for the Quality and Safeguarding Framework should not be so broad as to require those authorities to seek to address every issue confronted by an NDIS participant. In the case of tenancy issues as applying in Victoria, the authors submit that in the first instance the Residential Tenancies Act would be the legislative authority, with VCAT being the appeal and authority of last resort.

If a landlord is shown at VCAT as not meeting their obligations, then the NDIS Registrar would be able to take this up as a matter of whether or not the landlord maintains approved status.

**5.23 When should SDA residents have personal liability for property damage, if ever?**

An SDA resident should have liability for property damage when there is evidence to show that the resident has personally caused the damage and in accordance with the Residential Tenancies Act.

**5.24 Who should oversee disputes about repair and maintenance of SDA?**

This should be as per the Residential Tenancies Act and ultimately VCAT.

**5.25 How will this intersect with the role of the NDIS Registrar under the Quality and Safeguarding Framework?**

The functions of the authorities that will be responsible for the Quality and Safeguarding Framework should not be so broad as to require those authorities to seek to address every issue confronted by an NDIS participant. In the case of tenancy issues the Residential Tenancies Act would be the legislative authority with VCAT being the appeal and authority of last resort.

If a landlord is shown at VCAT not meeting their obligations, then the NDIS Registrar would be able to take this up as a matter of whether or not the landlord maintains approved status.

**5.26 How should landlords consult with residents about temporary relocations?**
Landlords should consult directly with the resident and/or his or her representative.

**5.27 Should temporary relocation continue to be regulated? How?**
Currently the Disability Act 2006 provides for a range of reasons why someone might need to be temporarily relocated. Notwithstanding the range of reasons as currently articulated in the Disability Act 2006, the authors contend that temporary relocation should only apply as in the case of section 74(1)(h) of the Act. In relation to all other sub-clauses of section 74 of the Disability Act, as in (a) to (g) inclusive and (i), the authors argue that none of these circumstances should impose on the landlord or the support service provider to find or provide temporary accommodation for relocation.

They submit that in all such circumstances, if a landlord deems that a resident is no longer suitable to be accommodated for any of the reasons as identified in 74(a) to (g) inclusive and (i) then a notice to vacate can be issued and the resident has the choice of using his or her NDIS fund's to seek to purchase alternative accommodation.

**5.28 How much notice should a landlord give a resident to vacate?**
Notice to vacate should be as required by the Residential Tenancies Act.

**5.29 Should a landlord require a reason to notify a resident to vacate?**
Yes, however, it is noted that where there is "no reason to be specified" as per section 76(1)(m) of the Disability Act 2006, this must be considered as abhorrent and should not be part of any legislation. While "no reason" may be part of the Residential Tenancies Act, this also is abhorrent.

**5.30 What kind of reasons are acceptable?**
The reasons in the current Disability Act 2006 as identified under section 76(1), (a) to (l) inclusive represent acceptable reasons for the landlord issuing a notice to vacate, but again noting that the current reason as identified under 76(1)(m), " no reason", is not acceptable.

**5.31 How should residents notify the landlord that they are initiating a change of accommodation?**
Notification should be as required by the Residential Tenancies Act or as per the individual tenancy agreement if included.

**5.32 Should there be a minimum notice period?**
Notice should be as required by the Residential Tenancies Act or as per the individual tenancy agreement if included.

**5.33 What should happen if a resident vacates without any notice?**
What should happen should be as per the Residential Tenancies Act.

**5.34 Who is responsible for sourcing alternative SDA after a notice to vacate?**
Such responsibility would be that of the resident or the resident's representative.

**5.35 Who is responsible for sourcing alternative SDA during a temporary relocation?**
As noted above in 5.26, in the case of temporary relocation, ultimately responsibility for identifying alternative accommodation must rest with the landlord, in cooperation with the support service provider. Ideally it would a planned effort between the landlord, the support service provider and the resident or his or her representative.

**5.36 How should residents be supported to complain or request review?**
This is a matter for the resident or his or her representative to decide, if support is required.

**5.37 Who makes decisions about how the house operates?**
The support service provider in consultation with the residents should make such decisions. This should be covered as a common clause in each resident's service agreement with the support provider.

**5.38 Should decisions require agreement between housemates?**
The common clause should recognise that ideally, the housemates should be encouraged to be part of the decision-making process as to the operation of the house. However, consideration must be given to those matters where there is not unanimity. In such cases, the decision must be that of the support service provider. Further, in the event of the housemates seeking to implement an action that is either unsafe or inappropriate, as determined by the support service provider, then again the support service provider must be deemed to be the decision-maker.

In the event of an individual resident determining that he or she wishes to change his or her service provider, the terms of his or her funding with the NDIA, in that he has choice to do so, must be respected. As such, the resident with the necessary representation must have the authority to employ an alternative support service provider. However, in so doing, the current service provider must be entitled to a notice period, and this should be covered in the service agreement.

While it may be that more than one or indeed the totality of residents wish to change the support service provider, this must be done as per the individual service agreements.

**5.39 Does the landlord have a role in managing the house?**
The landlord's only role in terms of management of the house is to ensure that the property is being managed in accordance with the individual tenancy agreements and his agreement with the support service provider. Apart from this consideration, the management of the house – as taken to be how the house operates in terms of support service provision – must in the first instance be that of the support service provider as per the resident/providers agreement(s).

**5.40 How should issue with or disagreements about house management be resolved?**
In the first instance and where at all possible, this should be via discussion between the support service provider and the resident group or the individual resident if the

issue or disagreement is only raised by one person. If the matter cannot be resolved and agreement cannot be reached, the complaints mechanism established for the NDIS should be accessed.

**5.41 What types of oversight functions are needed to protect tenancy rights?**

Underpinning this question is the question as to whether or not there should be provisions specific to people with disabilities over and above protective mechanisms that exist for all other tenants. The authors submit that the platform decision must be that all tenants are equal in the eyes of the law. Therefore, any attempt to categorise residents into groups - eg intellectual disability, physical disability, mental illness, unemployed, and so the list can go on – runs the risk of setting up special provisions and protective mechanisms for all different tenant cohorts.

Despite the variations that may exist between the cohorts, nonetheless the platform decision must be maintained as being one that protects the rights of all tenants as a single cohort called tenants. As such, the tenancy rights for all should be enshrined in a single piece of tenancy legislation and associated regulations. To emphasise this principle, the authors condemn any attempt to seek to create a separate SDA tenancy legislation.

It is essential to note that there are a myriad of protective mechanisms in existence that serve to protect the rights and interest of tenants as well as members of the general population. Such protective mechanisms include equal opportunity, disability discrimination, human rights, and of course in relation to disability in Victoria, provisions in the Disability Act 2006.

Therefore, in the writers view, attempting to create a separate SDA tenancy legislation and oversight functions is not only unnecessary, but transgresses a basic principle (5(1), as articulated in Victoria's current Disability Act 2006, that "*persons with a disability have the rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities*". If rights and responsibilities for people with disabilities are to be truly recognised and acknowledged as being the same as all others in the community, then to promulgate separate legislative provisions regarding tenancy will simply undermine this crucial principle.

As such, the writers contend that through general tenancy legislation, the rights of those people accommodated in SDA will be protected in the same way as the rights of all other tenants, no matter where accommodated. On the matter of responsibilities, the writers contend that people with disabilities must be subject to the same range of responsibilities as required of all other tenants and as articulated in general tenancy legislation.

**5.42 In what legislation should SDA tenancy rights be regulated?**

As already noted, SDA tenancy must be considered within the provisions as general tenancy. Indeed, the authors express significant concern at the way in which many of the questions are framed and the frequent directing of attention to the concept of separate SDA tenancy legislation can reasonably be considered to be an attempt by the authors of the questions to engineer the thinking and responses of the responders to a position whereby separate SDA tenancy legislation is supported.

The writers categorically re-emphasise that there should be no separate tenancy legislation for SDA tenants and the Residential Tenancies Act must apply.

**5.43 Should VCAT continue to hear and arbitrate disagreements?**

Yes. VCAT should continue to hear and arbitrate disputes as per the Residential Tenancies Act and thus be the final arbiter in relation to tenancy disputes.

Given that the Disability Act 2006 should no longer have a part to play in relation to tenancy and SDA once the Residential Tenancies Act has been established as the tenancy basis for all tenants, then the current provisions regarding tenancy as detailed in the Disability Act 2006 should be repealed.

**5.44 What other options should Government consider?**

If this question is actually asking what other options should Government consider vis-à-vis tenancy legislation and the protection of tenancy rights, the writers submit that none is necessary. To emphasise the reality, the Residential Tenancies Act is the Residential Tenancies Act is the Residential Tenancies Act. As such, it must apply to all tenants, regardless of their categorisation.

Again, if the Government and indeed the Parliament itself truly believes in the principle of equality of rights and responsibilities for all, then any contemplation that a sitting government may even consider the thought of a separation of rights and responsibilities as relating to tenancy is at total odds with where disability has been heading for the past three decades. The temptation to *"fiddle around the edges"* must be resisted at all costs.

**5.45 Is there anything we have missed?**

The answer to this question is "Probably." However, as noted elsewhere above the writers contend that the flavour of the issues addressed in many of the questions can reasonably be concluded to tend towards separate SDA tenancy legislation. The writers express significant concern about what appears to be a pre-conceived view as to the future directions of tenancy legislation and associated rights as applying to SDA residents.

It is of some significance that despite the articulation of the principle as identified above (5(1) of the Disability Act 2006) and despite the continued push as through the NDIS itself promoting choice, rights and inclusion, there is still a tendency by many who engage with the disability sector to want to act as a protector and indeed controller of people with disabilities. Thus, rather than promoting independence and facilitating the inclusion of people with disabilities within the broader community, these social engineers still consider people with disabilities as requiring a multitude of separate and specially targeted legislation.

The writers contend that until such time as this nonsense of protectionism and social engineering is obliterated, there will be little real advance in promoting the cause of people with disabilities as being equals among equals.

**5.46 Is there anyone missing who should be covered by this new framework?**

The writers assume that by the use of the terminology '*new framework'* the question relates to a new framework as relating to tenancy legislation applicable to

people residing in SDA. Indeed, the writers note that the nature of this consultation is towards determining which of three directions should be supported.

That is:

(i) Should the current Disability Act 2006 (Victoria) be strengthened in order to address the tenancy rights of people who reside in SDA?

(ii) Should there be separate tenancy legislation established for people who reside in SDA?

(iii) Should the current residential tenancies legislation as applying in Victoria for all other tenants be amended to include, as renters, those people who reside in SDA?

From the writers perspective and based on their strong views that there should be a single piece of legislation covering all tenants in all types of accommodation, the answer to the above is that the current Residential Tenancies Act should be amended and the other two options rejected. If indeed there is any doubt among the promoters of either of the first two options, then the simple question they must ask themselves "Which other groups in our society should also have separate tenancy legislation?" For example, might it be that different religious groups are entitled to separate tenancy legislation? Might it be that individuals of particular sexual persuasions are entitled to separate tenancy legislation? Or might it be that different age groups are entitled to separate tenancy legislation? The answer must clearly be "No."

## 6. A CONSOLIDATED POSITION – THE FUTURE

The writers have clearly articulated that the Residential Tenancies Act must be amended to incorporate people with disabilities who live in Specialist Disability Accommodation. By association, any amendments required in the Disability Act 2006 should make reference to protections under the Residential Tenancies Act.

The writers are aware of other legislation and documents which have relevance to SDA. Particularly:

- NDIS (Specialist Disability Accommodation) Rules 2016
  **https://www.legislation.gov.au/Details/F2017L00209**
- Offering Residency in Specialist Disability Accommodation Policy and Standards May 2017
  http://www.dhs.vic.gov.au/__data/assets/word_doc/0009/986382/Offering-residency-in-Specialist-Disability-Accommodation_20170511.doc
  *Note: This policy will apply during transition to the NDIS (from 1 July 2016 to the 30 June 2019) and will be reviewed throughout this period.*
- Specialist Disability Accommodation – Guide to Suitability
  https://www.ndis.gov.au/medias/documents/hc1/h8d/8800514244638/SDA-Guide-to-Suitability.pdf
- Registering as a provider in Victoria
  https://www.ndis.gov.au/providers/vic-registering-provider

However, in responding to this consultation paper the writers have focussed on the questions raised in the paper.

The writers contend that there must be changes to the way in which tenancy rights for people residing in SDA are articulated. They submit that their considerations provide a transformational approach to tenancy rights for people with disabilities, in keeping with the transformational approach of the NDIS.

**End of Submission**

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