



National Disability Services Victoria

Submission to the “Rights in
Specialist Disability Accommodation”
Consultation Paper

June 2017

Overview

Consultation on “Rights in Specialist Disability Accommodation” is an important step in developing the policy and process framework for a key support of the National Disability Insurance Scheme (NDIS). Specialist Disability Accommodation (SDA) is a significant disability support, unlocking a market and funding for innovative design, technology, and integration with wider society.

The transition to the NDIS is introducing new roles for the Victorian Government, Commonwealth and Department of Health and Human Services (DHHS). This consultation is an opportunity to consider the implications for residents of SDA and service providers. While SDA may take different forms in terms of bricks and mortar, it is also crucial to address and clarify the grey areas of relevant policy, during transition as well as within full scheme NDIS rollout.

Our primary recommendation is to:

- Amend the *Residential Tenancies Act 1997* (RTA) to include rights and responsibilities specifically tailored for SDA residents based on many of the tenancy related rights in the *Disability Act 2006*.

Currently the Disability Act includes rights and protections for people with disability who live in group homes and shared supported accommodation. In general, NDS supports the retention of these protections relating to tenancy, and considers they should be included in a separate section of the RTA (a Part to the Act, for example).

Development of the new Victorian SDA policy framework should also consider how to achieve a balance between extending security of tenure for people with disabilities with the ability of service providers to initiate removal of residents due to safety concerns of other residents and staff.

Further, NDS urges the Victorian government to work with the National Disability Insurance Agency (NDIA) to address the need for a provider of last resort, particularly for people who may not be able to safely live with others. NDS also believes that VCAT is the appropriate authority to address tenancy issues for SDA residents, including notices to vacate, temporary relocation, and orders for possession, as well as maintenance.

National Disability Services

NDS is the peak body in Victoria and Australia for non-government disability service providers, with more than 200 members in Victoria and more than 1,050 members nationally. We have a diverse and vibrant membership, comprised of small, medium and larger service providers supporting thousands of people with disability, including both children and adults with autism spectrum disorder. Our members employ over 8,000 people in Victoria alone and are supported by countless volunteers in delivering vital services to Victorians with disability.

NDS is committed to improving the disability service system to ensure it better supports people with disability, families and their carers, and to building a more inclusive community. NDS has advocated strongly over a number of years for the introduction of the NDIS and is now supporting service providers across Victoria as they transition to the new Scheme.

The changing environment

As the disability sector transitions to the NDIS, models of disability housing are changing and diversifying. In 2006, the tenancy rights of people with disabilities were covered by a separate Act, reflecting their position in society, and their living situations, which were generally in group homes, with parents, or in institutions. The Disability Act treated the support provider and tenancy manager as a single entity, with no distinction between the two. The current profile of specialist disability housing in Victoria generally reflects these entwined responsibilities, even with some contracting out of tenancy matters by support providers.

Under the NDIS, the landscape is changing and people are being supported to live in a variety of settings, including individually or with a small group in apartments and private homes, as well as group homes. People with disabilities are also engaging with a support provider that is independent of the owner or manager of the property in which they choose to live. With the principles of choice and control, the NDIA is driving a separation in the provision of housing and support for people with disabilities. At this stage, the NDIA requires residents to sign separate contracts with their SDA provider and Supported Independent Living (SIL) provider.

During this transition to the NDIS, the policies and processes relevant to SDA, as well as the roles and responsibilities of State Governments, the Commonwealth, the NDIA, residents, SIL providers and SDA providers are still under development, and are only just beginning to be put into practice. The new NDIS Quality and Safeguarding Framework is similarly under development. This creates a very dynamic environment in which to develop appropriate protections for residents.

That said, NDS understands that in full Scheme, tenancy matters, rights and protections will be covered by State legislation, and that support service rights and protections will fall under the National Quality and Safeguarding Framework.

The Disability Act 2006 and the Residential Tenancies Act 1997

Currently, tenancy rights for people with disabilities who live in group homes or shared support accommodation are covered by the *Disability Act 2006*.

In the Disability Act, rights and agreements are between the resident and the service provider, and assume the service provider is responsible for both provision of supports and tenancy arrangements. This is out of alignment with the move to

increased separation of housing and support promoted by the NDIS. Within this context, legislation for people living in SDA should support a direct relationship between resident and landlord, separate to the relationship with the support provider. This policy sits more appropriately in the RTA than the Disability Act.

It is noted that the RTA currently incorporates specific rights and duties for certain residential circumstances such as rooming houses and caravan parks.

Recommendation:

- Amend the *Residential Tenancies Act 1997* (RTA) to include rights and responsibilities specifically tailored for SDA residents based on many of the tenancy related rights in the *Disability Act 2006*.

Comment on current provisions

The Disability Act includes the following tenancy related rights, provisions, and protections:

- Community Visitors (Division 6, Sections 28- 36)
- Duties of disability service provider providing residential services (Section 58)
- Duties of residents (Section 59)
- Entry to a resident's room (Sections 60-62)
- Residential charge (Sections 65-71)
- VCAT orders (Sections 72-73)
- Temporary relocation (Section 74)
- Termination of residency (Section 75)
- Notice to vacate by disability service provider (Sections 76-79, 81-82)
- Notice of intention to vacate by resident (Section 80)
- Possession orders (Sections 83-85)

Feedback to NDS from residential service providers about the application of these provisions in practice has been generally positive, and has indicated that, for the most part, the provisions provide appropriate protections for people living in group homes. A key challenge is in teasing out tenancy protections from those protections relating more to the role of support provider, acknowledging that in day to day life in a group home the support provider may be intimately involved in these areas. NDS supports an approach which would require the SDA manager to consult with the support provider in regard to the above areas.

Balancing tenure and safety

One key issue to address is how providers balance security of tenure for residents and the ability to initiate the removal of residents in order to address issues including the safety of other residents. Many people with disabilities eligible for SDA funding will live for most of their lives in rented accommodation, and are understandably seeking extended tenure arrangements. Many organisations that run residential

services acknowledge and understand the need for stable housing for people with disability and aim to support people to remain in their residence.

It is inevitably the case, however, that when one resident becomes violent or aggressive towards other residents or staff, providers face a tension between upholding the individual's 'right' to stay in the house, and the provider's obligation to ensure a safe and enjoyable environment for the other residents and staff.

The current provisions in the Disability Act relating to removal of residents are leading to costly and time consuming appeals to VCAT and arguably do not give sufficient weight to the views of other residents who may be experiencing violence from a co-resident. Too often, NDS has received reports of instances when a victim of a violent act has been forced to move out of their accommodation, rather than the perpetrator. This said, it is acknowledged that these situations may arise as a result of the initial inappropriate placement of incompatible residents. SDA policy should address this tension and allow providers to offer longer-term secure tenure to residents, with the ability to initiate removal of residents who have acted, or pose a risk of acting aggressively or violently towards others in the home.

VCAT

NDS supports the use of mainstream services for people with disability as much as possible, and this applies also for tenancy related matters. It is appropriate that VCAT, the existing authority for tenancy dispute resolution for Victorians, should address tenancy issues for SDA residents in Victoria. VCAT should continue to hear disputes about notices to vacate, temporary relocation, and orders for possession. Residents of SDA should additionally have recourse to VCAT on maintenance matters.

Provider of last resort

It is crucial that the Victorian and Commonwealth Governments determine the SDA 'provider of last resort' and clearly articulate the specific responsibilities. This is important to ensure that for residents of SDA who cannot live safely with other people, there is a provider of last resort and accommodation with necessary supports.

Specific issues outlined in consultation paper

The consultation paper raises a number of questions regarding aspects of the rights of SDA residents. NDS has addressed some of these below.

Agreements

- NDS supports the continued reliance on clear agreements documenting residential rights. It is noted that the NDIS *SDA – Addendum to the Terms of*

Business for Registered Providers contains a number of reasonable provisions for SDA service agreements. Any Victorian SDA agreement should align with these to reduce confusion and duplication. NDS suggests that if Victoria identifies omissions in the standard SDA service agreement, this should be addressed by negotiation with the Commonwealth and amendment of the SDA Terms of Business rather than through development of additional Victorian provisions.

Housemates

- NDS acknowledges the issues of vacancy management are complex, particularly in the evolving NDIS environment. There is a need to balance the wishes of new potential residents with the choices of existing residents, as well as the interests of the support provider and landlord, against a backdrop of extreme shortage of and high demand for suitable disability housing.
- NDS supports models of vacancy management that formalise input from these different parties, providing some say to the service provider, landlord, and potential and existing residents. NDS is aware of a few examples of effective vacancy allocation models emerging in trial sites and elsewhere, which strive to account for the different interests.
- It is noted that the recently released DHHS document *Offering Residency in Specialist Disability Accommodation – Policy and Standards (Victoria) May 2017* outlines a vacancy management process to apply during transition. It is important that this process and any lessons identified during its implementation lay the groundwork for the vacancy allocation process which will apply under full Scheme rollout. Such a process will need to reflect the NDIS focus on participant choice, and encouragement of market solutions, but hopefully also recognise the voices of the various parties involved in establishing successful group living arrangements.

Accessing the house and room

- NDS supports the current provisions around accessing the house and room in the Disability Act and believes these should be transferred to the new SDA section of the RTA.

Paying rent and money management

- It is noted that the NDIS specifies the quantum of rent allowed to be charged by SDA providers. Living and housekeeping costs are the responsibility of SIL provider and should be addressed in National NDIS Quality and Safeguarding Framework.

Modifying the house and repairing damages

- NDS submits that there should be protections for residents while there are any modifications, as well as consultation with the SIL provider to ensure there are as few disruptions as possible. Tenancy related matters are a

Victorian Government responsibility and will require close work and development of clear protocols outlining respective responsibilities with the NDIA Registrar. SDA residents should have recourse to VCAT on maintenance matters.

Notice to vacate and relocation

- In case of notice to vacate and relocation, the landlord should liaise with support coordinators, Local Area Coordinators, or the local NDIA office, to support residents. Temporary relocation and vacating following an incident should also trigger a review of a resident's NDIS plan, as it relates to changing circumstances and support needs.

Housing management

- NDS agrees that under the NDIS, service providers and SDA providers need to include residents in all decisions that affect them. NDS believes that house management is primarily a SIL responsibility.

Conclusion

NDS contends that the rights of people living in SDA should be addressed within a specific Part of the Residential Tenancies Act, rather than within a revised Disability Act. This approach would bring the rights of SDA residents into line with protections offered to others in the community. This mirrors the principles of the NDIS to bring people with disability into mainstream, rather than segregated, social and civic engagement.

Specifically, the amended legislation should address key changes to residential disability services, such as the direct relationship between SDA resident and landlord. It is important for policy to take into account the need for flexibility for service providers to offer extended security of tenure to residents while also having the ability to initiate removal of residents in case of violence or risk of violence to others. To ensure a smooth transition to new processes within disability housing, VCAT should continue to hear tenancy related disputes, and the Victorian Government in negotiation with the Commonwealth Government should clarify the SDA provider of last resort.

There are many complexities in the transition of policy and practice, and NDS welcomes further consultation on rights in SDA.



David Moody
State Manager