

# Protecting tenancy rights in specialist housing

**VCOSS submission to the Victorian  
Government's review of rights in SDA**

June 2017



## About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

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VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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# Acronyms

DHHS	Department of Health and Human Services
DSCV	Dispute Settlement Centre of Victoria
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
RTA	<i>Residential Tenancies Act 1997</i>
SDA	Specialist Disability Accommodation
SIL	Supported Independent Living
SRS	Supported Residential Service
VCAT	Victorian Civil and Administrative Tribunal
VCOSS	Victorian Council of Social Service
VCT	Vacancy Coordination Team

# Executive Summary

VCOSS welcomes the opportunity to respond to the Victorian Government's review of rights in Specialist Disability Accommodation. Access to secure, accessible and affordable housing will help people with disability reach their potential, participate in the community and live healthy and meaningful lives. We believe people with disability living in supported disability accommodation should have the same tenancy rights as other people living in the general community with several additional protections.

People with disability living in private rental or social housing are currently regulated by the *Residential Tenancies Act 1997* (RTA). The RTA provides basic tenancy rights and responsibilities for people living in mainstream accommodation and in alternative types of accommodation such as rooming houses. Public housing tenants are also subject to additional protections through Department of Health and Human Services (DHHS) public housing policy and practice manuals. Community housing tenants have additional avenues of redress through the Housing Registrar. People living in supported accommodation are currently regulated by the *Disability Act 2006*. This legislation provides a number of specific protections to people with disability and is based on the current model of combined service delivery and housing, where the provider is both the landlord and the service provider.

Under the National Disability Insurance Scheme (NDIS), specialist housing, known as Specialist Disability Accommodation (SDA), will be separated from service delivery, known as Supported Independent Living (SIL). The transition to the NDIS necessitates legislative amendments to cover the tenancy rights of people living in SDA.

VCOSS believe amending the RTA to include people with disability living in SDA will provide the strongest tenancy protection and will help cease the segregation of people with disability from the rest of the community. For example, the RTA will offer people stronger rights in relation to security of tenure, privacy from landlords and access to mainstream dispute resolution mechanisms. However, we recommend some parts of the RTA are amended to strengthen tenancy rights, such as making it easier for tenants to make home modifications and seek repairs.

Many of the recommendations which strengthen protections in the RTA can benefit other tenants, especially people with disability ineligible for SDA. This review is occurring alongside a review of the RTA, so provides an opportunity to easily enact these changes.

We also recommend incorporating some key protections from the *Disability Act 2006* into the RTA. This includes retaining the power of community visitors to inspect SDA properties, requiring temporary relocation notices to accompany any eviction notice and ensuring people are not unfairly held responsible or face eviction for damage caused directly as a result of their disability.

Existing protections for service delivery, such as the use of restrictive practices, need to be adequately captured by the NDIS Quality and Safeguarding Framework.

Legislative changes should be accompanied by measures to inform and empower people eligible for SDA to understand and enact their tenancy rights. Building people's capacity to understand their rights and responsibilities can help them successfully move towards independent living. Access to well-resourced disability advocates and tenancy support services can assist people to navigate the system and engage in dispute resolution processes.

VCOSS's recommendations are based on what we currently know about how the SDA and NDIS are likely to operate. The NDIS is constantly evolving and VCOSS members are concerned there will be unintended consequences for people in SDA, resulting in some people falling through the gaps. Conducting a review of the new legislation and support available to SDA tenants can help identify and quickly address emerging issues.

Tenancy rights are only one element of appropriate housing and must be underpinned by an effective SDA model, which gives people genuine choice and control in their housing arrangements and assists people to live independently.

Even with ideal SDA arrangements, only benefit a small number of people with disability will be eligible. Throughout the consultation VCOSS members repeatedly highlighted the shortage of accessible and affordable housing for all people with disability, including those eligible and ineligible for the NDIS. We briefly explore some of these broader issues in our submission.

# Recommendations

## Implement strong tenancy rights

### Legislation

- Amend the RTA to cover people with disability living in SDA, so people with disability have the same rights as other tenants in the general community with additional protections
- Insert a separate section in the RTA for additional protections for SDA tenants, making it easy for everyone to understand their rights and responsibilities.
- Monitor and evaluate how the legislative changes are affecting SDA tenants and modify where required.

### Tenancy agreements

- Adopt standard tenancy agreements for SDA tenants, as per the RTA, to provide people with greater tenure protections and help avoid unfair terms being placed in agreements.
- Ensure people can access an easy English version of the tenancy agreement.
- Build people's capacity to understand their tenancy rights and manage finances to support independent living, by making this support available to all participants through their NDIS plans.
- Include a presumption people have the capacity to sign a lease, and provide people with the necessary support to exercise their legal capacity and communicate their decisions.

### Notice to vacate and temporary relocation

- Make Victorian legislation consistent with the SDA service agreement terms to give participant a minimum of 90 days' notice before they are required to vacate the premises, unless shorter notice is required to address the risk of harm to the participant or others.
- Do not allow a notice to vacate for no reason, including at the end of a fixed term agreement.
- Ensure any notice to vacate relating to property damage is based on a person knowingly or intentionally damaging property and not due to their disability or mental illness.
- Ensure a notice to vacate is not given unless a temporary relocation notice has already been given to the tenant, with alternative accommodation provided.
- Require notification to central authorities when a notice to evict is issued.
- Ensure any notice to vacate based on the participants actions triggers a review of the participant's NDIS plan and behaviour support plan where relevant, before the notice of temporary relocation expires.
- Provide SDA tenants with assistance to find suitable, alternative housing if they are evicted or choose to move house.

### Shared living arrangements

- Provide existing and prospective tenants with choice in who they live with.
- Do not give landlords power to determine house rules under the legislation.
- Assist people living in shared housing to establish house rules and coordinate shared services.

- Retain the rights of SDA tenants to privacy, quiet enjoyment and proper use of their rented premises during the tenancy agreement.

### **Access to premises**

- Restrict an SDA provider's access to rented premises to only include situations where tenants have been given adequate notice and on the grounds specified in the RTA.
- Allow NDIS participants to negotiate access to rooms or premises by service providers on a case-by-case basis.
- Retain the right for people to request to see a community visitor.
- Retain the power of community visitors to inspect SDA properties, but enable individuals the right to refuse entry.

### **Home modifications**

- Enable tenants to make non-structural home modifications without landlord consent.
- Ensure landlords are not permitted to unreasonably refuse consent to structural modifications that support disability or health needs.
- Permit but do not require tenants to remove modifications at the end of a tenancy when the modifications were necessary to support their health or disability.

### **Damage and repairs**

- Adopt RTA protections for SDA tenants to pursue urgent and non-urgent repairs, with an expanded list of urgent repairs to reflect the urgent nature of certain repairs as a result of having a disability.
- Introduce a landlord bond for repairs and maintenance to protect tenants against the risk of unmet repair needs.
- Only require tenants to contribute to the cost of damage where it was caused 'knowingly and intentionally' and is 'not the result of fair wear and tear' to protect SDA tenants against unreasonable damage claims.

### **Dispute resolution**

- Introduce a Housing Ombudsman, to provide an independent no-cost, accessible form of dispute resolution for tenancy issues.
- Ensure dispute resolution bodies, including VCAT and DSCV are adequately trained in the new legislation and have expertise in assisting people with disability.
- Increase funding to disability advocacy to assist people to understand their tenancy rights, navigate dispute resolution processes and help address the power imbalance between tenants and landlords.
- Increase funding to existing tenancy support services to increase their capacity to support SDA tenants and have expertise to assist people with disability.

## **Tackle broader housing issues for people with disability**

### **Deliver an effective SDA model**

- Advocate to the NDIA to require full separation of housing and service delivery.
- Advocate to the NDIA to ensure only support services which need to be shared in a joint tenancy are combined, with services that can be individualised to particular tenants remaining in the control of individuals.



- Ensure tenants can collectively control the provider of support services in a joint tenancy, including where State Government is seeking to transfer Supported Independent Living services during the transition to the NDIS.
- Advocate to the NDIA to support innovative SDA designs and provide more individual housing arrangements.
- Fund independent hubs to provide people with disability, their families and carers and service providers to share best practice housing models, and inform people about their options.

### **Improve housing options for people with disability ineligible for SDA**

- Increase the supply of social and affordable housing.
- Expand the availability of adaptable and accessible housing.
- Strengthen monitoring and enforcement of Supported Residential Services to uphold people's rights and improve their living circumstances.

# Implement strong tenancy rights

## Legislation

### Include SDA tenants under the Residential Tenancy Act

#### Recommendations

- Amend the RTA to cover people with disability living in SDA, so people with disability have the same rights as other tenants in the general community with additional protections
- Insert a separate section in the RTA for additional protections for SDA tenants, making it easy for everyone to understand their rights and responsibilities.

People with disability living in SDA should have, at a minimum, the same tenancy rights as other people living in the general community. While the *Disability Act 2006* includes many protections not otherwise available to tenants, these are mostly relevant to the provision of support services, rather than tenancy rights and housing services. At the same time, many of the protections available under the RTA are not available to people living in supported accommodation. We therefore recommend amending the RTA to cover people with disability living in SDA, with several additional protections. Strengthening the RTA so people with disability are covered by mainstream legislation and regulative mechanisms is preferable to retaining separate legislation, and helps include people with disability under the same rules as the rest of the community, rather than maintaining a segregated regulatory system.

Strengthening general protections in the RTA is likely to benefit other tenants, including people with disability ineligible for SDA. However, some clauses will be required which only apply to SDA tenants to reflect the specific nature of SDA rules and funding arrangements. Inserting a separate section in the RTA containing the additional protections which apply to SDA tenants provides the most straightforward option and makes it easier for SDA tenants and SDA providers to understand their rights and responsibilities. People with disability will be living in a wide range of SDA arrangements including individualised housing and shared living arrangements, and we believe an amended RTA has the capacity to cover all of these arrangements.

## Review any amended legislation

### Recommendation

- Monitor and evaluate how the legislative changes are affecting SDA tenants and modify where required.

VCOSS members report it is difficult to identify potential issues and the best solutions for protecting tenancy rights for people with disability due to the high level of uncertainty about how the SDA, and the NDIS more generally, will operate at full rollout. Uncertainty remains about the timing of full separation between housing and services, how quickly new housing stock will grow and how innovative new SDA models will be. Many of the policies, such as the DHHS policy and standards for offering residency in SDA<sup>1</sup> are untested. The move to SDA is occurring in the context of an evolving NDIS, with details about protections and safeguarding in service delivery still being developed under the NDIS Quality and Safeguarding Framework.

VCOSS makes its recommendations based on our current knowledge of how the SDA and NDIS will operate. We note there may be some negative unintended consequences for SDA tenants. In particular, VCOSS members are concerned some NDIS participants, particularly those with complex needs, people with challenging behaviours and those who are most marginalised, will face difficulties accessing suitable housing, having their rights upheld and be more likely to face evictions. VCOSS recommends the Government commits to monitor and evaluate how the legislative changes affect SDA tenants, to identify and address tenancy rights issues. This may necessitate further legislative amendments, greater monitoring and oversight or providing additional supports to help prevent people being disadvantaged due to unintended consequences.

## Tenancy agreements

### Adopt standard tenancy agreements

### Recommendation

- Adopt standard tenancy agreements for SDA tenants, as per the RTA, to provide people with greater tenure protections and help avoid unfair terms being placed in agreements.

Under the SDA rules 7.12 – 7.15, organisations can only provide SDA if they have a written service agreement with the NDIS participant(s). The NDIS provider toolkit outlines the terms which SDA providers must include in the agreement, however, state legislation can override these terms.<sup>2</sup> We recommend this agreement is in the form of a tenancy agreement (lease) with standard terms as

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<sup>1</sup> Department of Health and Human Services, Offering residency in Specialist Disability Accommodation – Policy and Standards (Victoria), May 2017.

<sup>2</sup> NDIA, *Provider Toolkit Module 3: Terms of Business*, 30 March 2017, p.13.

per the RTA, rather than simply providing individuals with a residential statement as currently occurs in the *Disability Act 2006*. The tenancy agreement could include the additional protections provided to SDA tenants, as outlined in our submission, such as the right to see a community visitor. Having a standard tenancy agreement will offer SDA tenants greater tenure protections and help avoid unfair terms being placed in agreements, giving people more certainty they can maintain their housing over an extended period. It also reaffirms the separation of housing from the delivery of services.

### Build people's capacity to understand their tenancy rights

#### Recommendations

- Ensure people can access an easy English version of the tenancy agreement.
- Build people's capacity to understand their tenancy rights and manage finances to support independent living, by making this support available to all participants through their NDIS plans.

Providing access to an easy English version of the tenancy agreement could help make this more accessible to NDIS participants, particularly those with intellectual disability and mental health conditions. People also need to have their rights and responsibilities under the tenancy agreement explained to them in a way they understand.

Building people's capacity to understand their tenancy rights and manage their finances would assist people successfully move towards independent living. *The NDIS (Supports for Participants) Rules 2013* states the NDIS is responsible for building people's capacity to maintain a tenancy<sup>3</sup> and support coordination is available to assistant participants to find and apply for a rental tenancy and undertake tenancy obligations.<sup>4</sup> We believe this support should be available to any participant who would benefit from this assistance. The Victorian Government could advocate to NDIA to ensure this capacity building support is readily available to all SDA participants and adequately covers tenancy rights and responsibilities. Monitoring access to this support item and its effectiveness as the NDIS rollouts out could help identify gaps where further assistance is required.

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<sup>3</sup> section 7.19, National Disability Insurance Scheme (Supports for Participants) Rules 2013.

<sup>4</sup> NDIA, NDIS Price Guide VIC/NSW/QLD/TAS Valid from: 1 July 2016, 11 July 2016, p.45.

## Include a presumption of capacity

### Recommendation

- Include a presumption people have the capacity to sign a lease, and provide people with the necessary support to exercise their legal capacity and communicate their decisions.

A person with disability is presumed to have decision making capacity unless there is evidence to the contrary, as per the *Powers of Attorney Act 2014*.<sup>5</sup> We believe this principle should apply to decisions about where and who people lives with, including signing leases. In line with the *UN Convention on the Rights of Persons with Disabilities*<sup>6</sup> people should be provided with support to communicate and make decision about their own lives, such as through a supported decision making model.<sup>7</sup> This is particularly relevant for people with cognitive impairments or mental illness. Some people with disability may not have capacity to sign a lease, even with support. There are already arrangements in place for situations where people do not have capacity, such as the appointment of an administrator through the Victorian Civil and Administrative Tribunal (VCAT).

## Notice to vacate and temporary relocation

### Use eviction as a last resort and give adequate notice

### Recommendation

- Make Victorian legislation consistent with the SDA service agreement terms to give participants a minimum of 90 days' notice before they are required to vacate the premises, unless shorter notice is required to address the risk of harm to the participant or others.

Evicting SDA tenants from their homes should be a last resort. The new legislation should be drafted to ensure property owners do not use eviction as a 'short-cut' to solving problems able to be resolved by other means. Where eviction does occur, tenants need adequate notice and support to find alternative housing. The NDIA provider toolkit requires the SDA Provider to 'give a participant a minimum of 90 days' notice before the participant must vacate the premises, unless shorter notice is required to address the risk of harm to the participant or others'.<sup>8</sup> We recommend this minimum notice period is adopted in Victorian Legislation for SDA tenants as it may take people substantial time to find suitable alternative specialist housing. We agree shorter timeframes should only be in response to the risk of harm to the participant or another tenant. Currently both the *Disability Act 2006* and the RTA include variable, and often much shorter notice periods, depending on the circumstances of the notice.

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<sup>5</sup> Powers of Attorney Act 2014, [http://www.austlii.edu.au/au/legis/vic/num\\_act/poaa201457o2014286/s4.html](http://www.austlii.edu.au/au/legis/vic/num_act/poaa201457o2014286/s4.html)

<sup>6</sup> United Nations, *Convention on the Rights of Persons with Disabilities and Optional Protocol*.

<sup>7</sup> Office of the Public Advocate, Supported decision making, <http://www.publicadvocate.vic.gov.au/advocacy-research/supported-decision-making>

<sup>8</sup> NDIA, *Provider Toolkit Module 3: Terms of Business*, 30 March 2017, p.13.

## Remove the option to vacate without a reason

### Recommendation

- Do not allow a notice to vacate for no reason, including at the end of a fixed term agreement.

Both the *Disability Act 2006* and RTA enable landlords to give notice to vacate with no reason specified. The notice to vacate at the end of a fixed tenancy within the RTA (for no reason other than the fixed term is expiring) is also effectively a 'no reason' notice to vacate. We recommend disallowing a notice to vacate for 'no reason'. Allowing SDA providers to evict people for 'no reason' gives them an extraordinary amount of discretion to evict someone and poses a significant infringement on people's security of tenure. The ability to evict for 'no reason' can mask the real reason an eviction is pursued, which could include for discriminatory reasons, or a retaliatory eviction against people who request repairs or otherwise assert their rights. As no reason is required, SDA tenants would have little capacity to contest the decision, or show the eviction is unreasonable.

Amending the RTA to remove this option for all landlords would help protect the tenancy rights of all tenants, not just those in living SDA.

## Avoid eviction resulting from unintentional damage

### Recommendation

- Ensure any notice to vacate relating to property damage is based on a person knowingly or intentionally damaging property and not due to their disability or mental illness.

People should not be unfairly evicted due to the nature of their disability or mental health condition. In particular, the legislation must protect people from being evicted due to unintentional property damage related to their disability or mental illness. We recommend adopting the language used in the *Disability Act 2006* section 76(1)(e) which specifies notice to vacate are only on the basis of the tenant 'knowingly or intentionally' damaging the room or the premises. As recommended in our section on dispute resolution, we believe training on the new legislation and the nature of disability for all parties involved would help ensure this clause is correctly interpreted.

## Provide temporary relocation notices

### Recommendation

- Ensure a notice to vacate is not given unless a temporary relocation notice has already been given to the tenant, with alternative accommodation provided.

We believe any notice to vacate should be accompanied by a temporary relocation notice, as per the *Disability Act 2006* s.76(2). In line with *Disability Act 2006* s.74(5)(6), any notice of temporary relocation should provide the tenant with temporary alternative accommodation. This will help ensure SDA tenants are not at risk of being evicted into homelessness. The financial and emotional impact of eviction and homelessness can be highly detrimental for people with disability, particularly those with mental health issues or cognitive impairments. The State Government can negotiate with the NDIA about how alternative, emergency housing is funded and provided. For example, this could be managed through a provider of last resort arrangement to provide a safety net for people who cannot access housing under the market driven NDIS model.

## Notify central authorities of evictions

### Recommendation

- Require notification to central authorities when a notice to evict is issued.

Any notice of temporary relocation should include notification to central authorities within 24 hours of the notice being issued, similar to the *Disability Act 2006* s.74(4). Notification could be provided to the Office of the Public Advocate, NDIA, and the Senior Practitioner where the eviction is related to a behaviour of concern. This process will act as a monitoring and safeguard mechanism, helping to ensure correct procedures are followed, deter landlords from making unfair evictions and enable the NDIA to identify issues and trends in eviction. The Office for the Public Advocate could then refer cases to the tenancy support service or other relevant disability advocacy services where required. Referral to advocacy services can help people identify and dispute any unfair causes of eviction and where relevant assist with NDIS plan reviews.

## Ensure eviction notices trigger an NDIS plan review

### Recommendation

- Ensure any notice to vacate based on the participants actions triggers a review of the participant's NDIS plan and behaviour support plan where relevant, before the notice of temporary relocation expires.

Similar to Clause 74(11) of the *Disability Act 2006*, notices to vacate based on the participants actions could trigger a review of the participant's NDIS plan, and a behaviour support plan where

relevant, before the notice of temporary relocation expires. This could be instigated by the NDIA upon notification of the eviction.

The behaviour related to the notice to vacate could be an indication the level or type of behaviour support provided is not suitable and requires modification. For example, the quality or amount of behaviour support may not be adequate, there could be an undiagnosed mental health issue, the nature or severity of the disability may have changed or the person's broader circumstances may have changed requiring an update to the plan.

Undergoing a plan review may also help determine if different housing arrangements are required. For example, the person may be better suited to individualised housing rather than shared arrangements, or may require a higher level of SDA housing support such as 'robust housing'. Determining the cause of the issue and providing appropriate support service and housing arrangements can help avoid the situation repeating, with participants churning through houses.

### Assist people to find suitable housing whenever they need it

#### Recommendation

- Provide SDA tenants with assistance to find suitable, alternative housing if they are evicted or choose to move house.

The NDIA have stated participants will be able to include support coordination in their plan to help them find suitable SDA housing in their area<sup>9</sup>. It is crucial this assistance is not limited to when NDIS participants first move to SDA housing and is available but at any point when they need to transition to another home. This includes support to find another house in cases of eviction or if a participant wishes to move due to changing circumstances, such as wanting to move out of shared housing, where they lived happily when they were younger, into a house with their partner.

## Shared living arrangements

### Enable choice of housemates

#### Recommendation

- Provide existing and prospective tenants with choice in who they live with.

The DHHS recently released their policy for offering residency in Specialist Disability Accommodation.<sup>10</sup> Vacancy Coordination Teams (VCTs) will coordinate vacancies for all Victorian

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<sup>9</sup> NDIA, Specialist Disability Accommodation Factsheet, <https://www.ndis.gov.au/document/specialist-disability-accommodation-fact>, accessed 17 May 2017.

<sup>10</sup> Department of Health and Human Services, Offering residency in Specialist Disability Accommodation – Policy and Standards (Victoria), May 2017.



Government owned dwellings. The policy gives non-government owned SDA housing the option to manage vacancies in accordance with minimum standards, or to use the government's VCTs to coordinate the process. Regardless of the option selected, SDA providers will retain the final decision of who is offered the position. This policy will apply during transition to the NDIS with the intention it will be reviewed. There is also an expectation the National Disability Insurance Agency (NDIA) will develop a register of vacancies.

VCOSS are pleased the decision to accept, decline or negotiate an SDA offer will rest with the NDIS participant.<sup>11</sup> Where people live and who they live with is fundamental to their wellbeing and people should not feel pressured to accept an offer. Existing SDA tenants should also be able to meet and get to know a prospective tenant before agreeing to share their home. Shared housing is not uncommon in the general community. However, these arrangements generally require the consent of all parties, and people cannot be forced to accept tenants they do not wish to live with.

VCOSS members report lack of choice and inappropriate matching of people in shared housing directly contributes to cases of peer to peer abuse and increases the frequency and severity of challenging behaviours. A great deal of resources are spent trying to resolve issues between poorly matched tenants. Recent inquiries have found housing incompatible residents together due to organisations trying to achieve 'economies of scale' or due to lack of alternative accommodation, directly exacerbates or causes violence, abuse or neglect.<sup>12</sup>

We believe there should be a process whereby prospective tenants are assisted to inspect a property and meet the existing tenants before both parties agree to live together. This could be covered by SDA policies and standards. VCOSS members suggest even where a thorough matching process is undertaken, shared living arrangements may not always work out and people require the flexibility to move to alternative SDA housing.

## Do not give landlords power to determine house rules

### Recommendations

- Do not give landlords power to determine house rules under the legislation.
- Retain the rights of SDA tenants to privacy, quiet enjoyment and proper use of their rented premises during the tenancy agreement.

Under the rooming houses section of the RTA, landlords have permission to set house rules directly related to tenancy. Rooming house rules usually cover items such as respecting other residents' right to peace and quiet, not damaging any property, keeping rooms clean and not using

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<sup>11</sup> Department of Health and Human Services, Offering residency in Specialist Disability Accommodation – Policy and Standards (Victoria), May 2017, p.5.

<sup>12</sup> Senate Standing Committees on Community Affairs, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Commonwealth of Australia, November 2015, p. 2.16

rooms for illegal purposes.<sup>13</sup> We believe these issues are already adequately covered by existing clauses in the RTA legislation. We recommend retaining both the landlord and resident's duties in the legislation to protect the rights of tenants to privacy and the quiet enjoyment and proper use of their rented premises during the tenancy agreement. This will still enable landlords to evict tenants where there is a threat to the safety of other tenants or where one tenant is consistently disturbing other tenants.

VCOSS does not believe landlords should have the power to determine house rules under the legislation, as this could lead to the creation of rules which are not in the best interests of tenants. Rules may impinge on tenants' rights or result in some SDA tenants facing eviction over unfair rules. Instead, we believe tenants could collectively determine and agree on house rules such as those governing the use of common areas and the purchase and use of furniture and equipment such as whitegoods. House rules could also cover the management and coordination of shared services, where SDA tenants choose to do so. This aligns with the general RTA standards, where landlords do not have a say in the day-to-day operation of a house they are renting.

Depending on the nature of the living arrangements it may be suitable for tenants and SIL or SDA providers to collectively agree on rules in, such as where board is also provided, but in other circumstances it would be more suitable for tenants to agree all rules only among themselves. These arrangements are best determined by policies rather than legislation.

### Assist cotenants to establish shared rules and coordinate services

#### Recommendation

- Assist people living in shared housing to establish house rules and coordinate shared services.

Guidelines and sample agreements between tenants could be developed to assist cohabitating SDA tenants to establish and formalise house rules among themselves or where appropriate with SDA providers or SIL providers. Advocacy organisations or tenancy support services could be funded to help provide assistance in establishing these arrangements and providing ongoing support where required, such as managing low level disputes.

Support coordination could also be used to assist tenants to coordinate ongoing shared services and household management. This will be particularly relevant once tenants have greater choice in whether they share some or all of their services. Based on current arrangements Victorian SDA providers and SIL providers must work together, formalised through a Collaboration Agreement.<sup>14</sup> However, the NDIA have indicated SDA and SIL should ultimately be separately provided, not just

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<sup>13</sup> Consumer Affairs Victoria, *Rooming houses: a guide for residents and operators*, April 2017.

<sup>14</sup> Department of Health and Human Services, *Offering residency in Specialist Disability Accommodation – Policy and Standards* (Victoria), May 2017.

separable.<sup>15</sup> At this point NDIS participants will have much greater freedom and should be able to change service providers without having to move to a different housing provider.<sup>16</sup>

## Access to premises

### Restrict landlord access

#### Recommendations

- Restrict an SDA provider's access to rented premises to only include situations where tenants have been given adequate notice and on the grounds specified in the RTA.
- Allow NDIS participants to negotiate access to rooms or premises by service providers on a case-by-case basis.

Under the *Disability Act 2006*, residential providers can access a residents room without notice for a range of reasons including to provide support services, implement a behaviour management plan, conduct urgent repairs, or if it is deemed necessary to protect the health or safety of the resident or of any other person on the premises.

VCOSS do not believe SDA providers should be able to enter a tenants' room without notice, as is currently allowed under the *Disability Act 2006*. This is because of the separation between housing and service provision under the NDIS. We recommend SDA providers are subject to the usual restrictions placed on landlords when letting a tenancy, in line with Clause 85 to 88 of the RTA. This includes only permitting entry situations where tenants have been given adequate notice and based on the limited grounds specified in the RTA. Entry to a premises or room to deliver services is best negotiated directly between the service provider and tenant on a case-by-case basis.

### Retain community visitors' power to inspect

#### Recommendations

- Retain the right for people to request to see a community visitor.
- Retain the power of community visitors to inspect SDA properties, but enable individuals the right to refuse entry.

Under the *Disability Act 2006*, community visitors are empowered to visit premises providing a residential service to people with disability, with or without any previous notice. People with disability also have the right to request to see a community visitor.

We believe the right to request a community visitor and the power of community visitors to inspect SDA premises without notice should be included in the amended RTA. This will help provide an

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<sup>15</sup> NDIA, *Specialist Disability Accommodation: Decision Paper on Pricing and Payments*, 1 June 2016, p.30

<sup>16</sup> Disability Services Consulting, *Final NDIS Housing Paper Released*, 2 June 2017.

additional safeguard to SDA tenants. Over time, more SDA tenants will live on their own and these participants should have the right to refuse entry to community visitors. However, VCOSS members warn people living on their own may be at risk of being pressured or manipulated by another party to deny community visitors entry. In cases where a community visitor suspects this is occurring, they should be able to refer this issue to the NDIS Quality and Safeguarding Commissioner for review.

## Home modifications

### Enable tenants to make reasonable modifications

#### Recommendations

- Enable tenants to make non-structural home modifications without landlord consent.
- Ensure landlords are not permitted to unreasonably refuse consent to structural modifications that support disability or health needs.

Under both the *Disability Act 2006* and RTA tenants are unable to make modifications without landlord consent.<sup>17,18</sup> When landlord consent to a modification is sought, people with disability have reported an unwillingness by landlords to agree to even modest modifications.<sup>19</sup> An inability to modify a home may exacerbate an impairment or health condition. VCOSS believes all tenants, not just those living in SDA, should have a right to make non-structural modifications without having to seek landlord consent, when these modifications are necessary to support disability and health needs, and that landlords are not permitted to unreasonably refuse consent to structural modifications that support disability needs. Guidelines specifying structural and non-structural modifications could be developed to help give people confidence about the types of modifications that can be lawfully made without owners' consent, and reduce the likelihood of disputes.

### Do not require tenants to remove modifications

#### Recommendation

- Permit but do not require tenants to remove modifications at the end of a tenancy when the modifications were necessary to support their health or disability.

Under the RTA, tenants are required to restore the home to its original condition (fair wear and tear excepted), or compensate the landlord for the cost of restoring the home to its original condition, before the tenancy ends, even when the landlord has given consent.<sup>20</sup> This requirement could

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<sup>17</sup> *Disability Act 2006*, s 59(2).

<sup>18</sup> *Residential Tenancies Act 1997* (Vic) s 64(1).

<sup>19</sup> Andrew Beer and Debbie Faulkner, *The housing careers of people with disabilities and their carers*, Australian Housing and Urban Research Institute, May 2009.

<sup>20</sup> *Residential Tenancies Act 1997* (Vic) s 64(2).

deter SDA tenants, many of whom on a low-income, from requesting consent to modifications, because they fear the costs of removal and rectification works.

We believe an SDA tenant should not be required to remove modifications, or pay the costs of removal and restoration, when the modifications were necessary to support their health or disability. Where changes are not structural, provide added utility to the property, or are within community standards (such as handrails or identifiable light switches) we believe they should not need to be removed. In regards to structural changes, an independent valuer could be appointed to advise whether the changes have reduced the value of the property. If they have added value, they should not have to be removed by the tenant at the end of the tenancy.

While these amendments can help support the health and wellbeing of SDA tenants, expanding these rights to all tenants would help benefit all people with disability. As outlined in the next section, there is a lack of accessible, affordable homes for people with disability. Enabling people to make home modifications could help increase the supply of accessible housing stock. Many modifications will also add value to the house and benefit others who may live there in the future. For example, slip-resistant flooring, step-free showers and accessible bathrooms might benefit older people, people with health conditions and families with small children, among others. The presumption should be these modifications add value to the home in terms of both its marketability as a rental home and its capital value.

## Damage and repairs

### Ensure disputes about repairs are resolved quickly

#### Recommendations

- Adopt RTA protections for SDA tenants to pursue urgent and non-urgent repairs, with an expanded list of urgent repairs to reflect the urgent nature of certain repairs as a result of having a disability.
- Introduce a landlord bond for repairs and maintenance to protect tenants against the risk of unmet repair needs.

Tenants should have the right to live in healthy, safe and secure homes, with disputes about repairs and maintenance resolved quickly. While both the *Disability Act 2006* and RTA require landlords to maintain premises in good repairs, the RTA has stronger protections for tenants to seek action where repairs and maintenance are required. The RTA permits tenants to carry out urgent repairs and enables tenants to apply to the Tribunal for an order requiring the landlord to carry out specified urgent and non-urgent repairs.<sup>21</sup> We recommend adopting RTA clauses 72 to 77 for SDA tenants but with some improvements, as outlined in our recent submission to the RTA options paper. In particular, we recommend including an expanded list of urgent repairs, and

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<sup>21</sup> s72 - s77, Residential Tenancies Act 1997

implementing faster repair dispute resolution processes for non-urgent repairs.<sup>22</sup> An expanded list of urgent repairs could reflect the urgent nature of certain repairs as a result of having a disability, such as issues which restrict physical access.

VCOSS also recommends introducing a property owners' repairs and maintenance bond to protect tenants against the risk of unmet repair needs.<sup>23</sup> Under a bond scheme, a set amount of funds would need to be set aside by the landlord for repairs and maintenance. Tenants could make a claim on the bond when the landlord does not carry out repairs within the current statutory periods: for urgent repairs, a claim could be made if the repairs were not immediately carried out; for non-urgent repairs, a claim could be made if the landlord has not carried out the repair within two weeks of notification by tenants. A repairs and maintenance bond would better balance the rights and responsibilities of landlords and tenants.

Again, while these amendments can help support the health and wellbeing of SDA tenants, expanding these rights under the RTA to all tenants would help benefit all people with disability.

### Protect SDA tenants against unreasonable damage claims

#### Recommendation

- Only require tenants to contribute to the cost of damage where it was caused 'knowingly and intentionally' and is 'not the result of fair wear and tear' to protect SDA tenants against unreasonable damage claims.

VCOSS members are concerned people with disability or mental health concern will be unfairly penalised for damage caused as a result of their impairment or condition or by the actions of service providers when delivering support. We believe SDA tenants, and people with disability more broadly, should only be held financial responsible for property damage where they knowingly and intentionally damage the property. We do not support adopting the current RTA clause relating to damage caused by tenants (s.61). The current wording is too vague and may result in people being held responsible for all acts of damage even unintentional. Instead we recommend adopting the language used in the *Disability Act 2006* s.59(1) which requires tenants to contribute to the cost of damage where it was caused 'knowingly and intentionally' and is 'not the result of fair wear and tear'. We believe this language is fairer and provides greater clarity for both parties.

A higher level of SDA funding for 'robust housing' is available for tenants who are more likely to cause damage due to the nature of their disability, including people with complex behaviour.<sup>24</sup> Therefore, SDA providers are less likely to be exposed to unreasonable repair costs.

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<sup>22</sup> VCOSS, *Strengthening Rental Laws: Submission to the Residential Tenancies Act options paper*, February 2017.

<sup>23</sup> Victorian Council of Social Service, *Regulation of property conditions in the rental market: Submission to the issues paper for the Residential Tenancies Act 1997 Review*, February 2017.

<sup>24</sup> NDIA, *Specialist Disability Accommodation: Decision Paper on Pricing and Payments*, 1 June 2016, p.30

## Dispute resolution

### Provide accessible dispute resolution processes

#### Recommendations

- Introduce a Housing Ombudsman, to provide an independent no-cost, accessible form of dispute resolution for tenancy issues.
- Ensure dispute resolution bodies, including VCAT and DSCV are adequately trained in the new legislation and have expertise in assisting people with disability.

VCOSS recommends using existing dispute resolution processes for SDA tenants and landlords, including VCAT. Training VCAT staff in the new legislation and ensuring they have knowledge and skills to work with people with disability would help ensure disputes are resolved fairly and consistently.

Many issues likely to occur between SDA tenants and landlords could be resolved by more conciliatory methods. VCOSS recommends establishing an independent, well-resourced alternative dispute resolution service. An informal, accessible service would also promote earlier intervention, and help to avoid VCAT escalation and delays which compromise people's wellbeing. It could also be more skilled in working with the specific needs of people with disability. This role could be performed by a Victorian Housing Ombudsman, as outlined in our previous submission to on the RTA review.<sup>25</sup>

A Housing Ombudsman may be more approachable and accessible than a government agency such as Consumer Affairs Victoria. In addition to playing conciliatory role in disputes between landlords and tenants, a Housing Ombudsman would be well-placed to issue information about rights and responsibilities and identify systemic issues and solutions for government. Introducing a Housing Ombudsman would benefit all tenants, not just SDA tenants.

Where rooming house residents cannot resolve disputes between themselves, they are encouraged to access the Dispute Settlement Centre of Victoria (DSCV), operated by Consumer Affairs Victoria. The DSCV is a free, confidential dispute resolution service funded by the Victorian Government. We believe SDA tenants could also utilise this process, provided staff were adequately trained in the new legislation and had expertise to assist people with disability.

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<sup>25</sup> VCOSS, *Regulation of property conditions in the rental market, Submission to the issues paper for the Residential Tenancies Act 1997 Review*, August 2018.

## Fund disability advocacy and tenancy support services

### Recommendations

- Increase funding to disability advocacy to assist people to understand their tenancy rights, navigate dispute resolution processes and help address the power imbalance between tenants and landlords.
- Increase funding to existing tenancy support services to increase their capacity to support SDA tenants and have expertise to assist people with disability.

SDA tenants will have varying ability to understand and represent themselves in dispute processes. There is likely to be power imbalance between parties, creating additional barriers for SDA tenants to advocate for their rights. Some people, particularly those with intellectual disability, cognitive impairment and mental health conditions may require intensive assistance to navigate and represent themselves in the process.

Disability advocates are well placed to build people's capacity to understand their tenancy rights and engage in dispute resolution processes either with other tenants or with landlords, such as assisting people to lodge applications to VCAT. Advocates can also represent people during the dispute resolution process and help address the power imbalance between landlords and tenants. They can also assist people to articulate and secure their preferred living arrangements. However, there are not enough disability advocacy services and VCOSS members advise there is large unmet demand which is likely to grow as the NDIS rolls out. Investing in a strong and diverse disability advocacy sector, will help more SDA tenants access independent advocacy.

Tenancy support services, such as the Tenancy Assistance and Advocacy Program and Social Housing Advocacy and Support Program provide valuable education and advocacy support to tenants in private rental and social housing. There is currently a gap in tenancy support services for people with disability. Existing tenancy support services could assist SDA tenants, however, VCOSS members advise they already have high unmet demand. Increasing funding to mainstream tenancy advocacy services, could increase their capacity to help SDA tenants and build their expertise in working with people with disability.



# Tackle broader housing issues for people with disability

## Deliver an effective SDA model

Many VCOSS members stated tenancy rights were only one part of the picture and must be underpinned by an effective SDA model. Members highlighted the need for a transformed model of housing and supports, which gives people genuine choice and control in their housing arrangements and assists people to live independently. The key issues are highlighted below.

### Fully separate housing and services

#### Recommendation

- Advocate to the NDIA to require full separation of housing and service delivery.

The SDA Decision Paper on Pricing and Payments indicates there will be a transition period during which time SDA providers can provide SIL, although they must have separate agreements for the housing and support arrangements and there will be conflict of interest provisions.<sup>26</sup> While the NDIS states their goal of full separation they have not provided detail on when full separation will occur. VCOSS continues to advocate for the full separation of housing and service provision, to avoid one provider being 'in charge of their whole life' and to allow a participant the choice to change service provider without having to move house.<sup>27</sup> Numerous inquiries have highlighted the heightened risk of violence and abuse created by institutionalised residential environments.<sup>28,29</sup>

If NDIS participants do share their care resources with others, this does not need to apply to all services they use. Care must be taken to avoid simply bundling the entirety of tenants support services to a single provider. Instead, there should be a careful assessment of those services which tenants need to or wish to share, and only seek a joint provider for that subset of a person's

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<sup>26</sup> NDIA, *Specialist Disability Accommodation: Decision Paper on Pricing and Payments*, 1 June 2016, p.30

<sup>27</sup> VCOSS, *Housing for people with disability, Submission to the Joint Committee on the NDIS and the National Disability Insurance Agency*, March 2016.

<sup>28</sup> Parliament of Victoria, Family and Community Development Committee, *Inquiry into abuse in disability services, Final Report*, May 2016, p.36.

<sup>29</sup> Senate Standing Committees on Community Affairs, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Commonwealth of Australia, November 2015, p. 2.16

needs. Services which can continue to be individualised for each tenant should not be included in collective support services.

### Provide choice in selecting shared SIL providers

#### Recommendations

- Advocate to the NDIA to ensure only support services which need to be shared in a joint tenancy are combined, with services that can be individualised to particular tenants remaining in the control of individuals.
- Ensure tenants can collectively control the provider of support services in a joint tenancy, including where State Government is seeking to transfer Supported Independent Living services during the transition to the NDIS.

Where services are shared, this does not mean that people should cede control of their provider. Instead, there should be a mechanism where shared support services can be under the collective control of tenants, who can agree to change providers if they so wish. We believe this principle can also be applied during the transition phase. The Victorian Government is currently undertaking an expression of interest to measure the interest and ability of non-government disability service providers to deliver disability services, including SIL, in group home or residential units for people with disability. Giving existing tenants choice in selecting the new provider rather than government deciding, would better support the goals of the NDIS to provide participants with choice and control. It is also possible for some services, such as therapy, to be individualised for NDIS participants, and only share those which require it.

### Fund independent hubs to promote individualised and innovative housing designs

#### Recommendations

- Advocate to the NDIA to support innovative SDA designs and provide more individual housing arrangements.
- Fund independent hubs to provide people with disability, their families and carers and service providers to share best practice housing models, and inform people about their options.

In theory, SDA funding will support housing providers to invest in innovative housing models and over time, grow the supply of suitable housing. However, VCOSS members fear SDA funding will be used to build more 'group homes', albeit on a smaller scale, or models which continue to segregate people with disability from the rest of the community. For example, VCOSS members report they are aware of families and providers planning to use SDA funding to develop housing arrangements for groups of NDIS participants with a similar type of disability on cheap land, away from amenities.

Limited awareness about different and effective housing models for people with disability, among participants, families and housing providers is likely contributing to this issue. The group home model is well-known and easy to replicate and from a funding and provider perspective, group homes appear to be cost effective.<sup>30</sup> However, they are highly problematic from the point of view of people with disability, often providing limited choice in who they live with, how they live, and failing to build their capability to live more independently. As highlighted above, shared living arrangements, especially when people are inappropriately matched, can exacerbate behavioural issues and peer to peer abuse which require more resources to manage. Large numbers of group homes currently in operation will transition into the NDIS, meaning this housing model will already be highly represented in available housing options.

It is crucial SDA funding is used to support independent living arrangements, and more innovative housing models, as detailed in our submission to the NDIS on the housing needs of people with disability.<sup>31</sup> In particular, VCOSS members report innovative housing design should be encouraged for all forms of disability including for people with intellectual disability and cognitive disability, not just for those with physical disability. Research consistently indicates small-scale and dispersed housing produces better outcomes for people with disability.<sup>32,33</sup> Even where people with disability are not able to live independently, with the right assistance they may be able increase their independence, and reduce their reliance on paid support workers or 24 hour care.

VCOSS members report participants eligible for SDA, their family members and carers want access to trusted information about different housing options, and to be made aware of vacancies. Similarly, housing providers are interested to understand possible housing models and locations required by participants so they can build desirable accommodation. Funding independent hubs could help people with disability and their families and carers make informed decisions about their housing arrangements, and share ideas with others. Similarly independent hubs could help promote best practice housing models and provide a clearinghouse of nationally and internationally research to help promote effective, innovative design. This could be accompanied by data on demand for housing, by housing type and location.

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<sup>30</sup> VCOSS, Housing for people with disability, Submission to the Joint Committee on the NDIS and the National Disability Insurance Agency, March 2016.

<sup>31</sup> VCOSS, Housing for people with disability, Submission to the Joint Committee on the NDIS and the National Disability Insurance Agency, March 2016.

<sup>32</sup> Youth Disability Advocacy Service, *Housing and support for young people with disabilities transitioning to independent living*, June 2013, p.6

<sup>33</sup> Wiesel I & Habibis D, *NDIS, housing assistance and choice and control for people with disability*, AHURI, December, 2015, p.25

## Improve housing options for people with disability ineligible for SDA

Even with an ideal SDA system, this will only benefit a small number of people with disability. Throughout our consultations, VCOSS members repeatedly highlighted the shortage of accessible and affordable housing for people with disability. If adopted, many of our recommendations to strengthen the RTA could also benefit NDIS participants and the broader population of people with disability renting their home. However, further action is still required to increase the supply of accessible and affordable housing. VCOSS members also raise concerns about the quality of services and tenancy rights of people living in Support Residential Services.

### Increase the supply of affordable, accessible housing for people with disability

#### Recommendations

- Increase the supply of social and affordable housing.
- Expand the availability of adaptable and accessible housing.

The NDIA estimate 6 per cent of NDIS participants will be eligible for SDA housing. This leaves over 430,000 NDIS participants and over one million Victorians with disability without funding to help cover the cost of housing. For example, it has been estimated between 83,000 and 122,000 of people eligible for the NDIS alone will have an unmet need for affordable housing.<sup>34</sup>

People with disability face much higher risk of poverty than people without disability<sup>35</sup> and are therefore severely impacted by the lack of affordable housing. There are very few properties available in the private rental market that are affordable for a person living on the Disability Support Pension (DSP), even with Commonwealth Rent Assistance (CRA).<sup>36</sup>

A further barrier faced by people with disability is the low availability of adaptable or accessible private properties. It is relatively rare for properties to be offered for sale at a basic level of adaptability (such as Liveable Housing Australia's Silver Standard<sup>37</sup>). The cost of installing these features in homes during construction is much cheaper than trying to retrofit houses afterwards.

The supply of accessible, affordable housing is substantially inadequate to meet the needs of people with disability. Demand will further increase following the rollout of the NDIS, as more people will have their basic support needs met providing them with greater capacity to live independently. Concerted efforts by state and territory governments are required to increase the supply of social and affordable housing, and to expand the availability of adaptable and accessible

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<sup>34</sup> Wiesel I & Habibis D, *NDIS, housing assistance and choice and control for people with disability*, AHURI, December, 2015, p.17

<sup>35</sup> Australian Council of Social Service, *Poverty in Australia 2014*, p.10

<sup>36</sup> Wiesel I & Habibis D, *NDIS, housing assistance and choice and control for people with disability*, AHURI, December, 2015, p.17

<sup>37</sup> Liveable Housing Australia, *Liveable Housing Design*, 2015

housing. VCOSS makes a wide range of recommendations to increase the supply of suitable housing in our submission to the Joint Committee on the NDIS and the NDIA on housing for people with disability.<sup>38</sup>

## Uphold people's rights in Supported Residential Services

### Recommendation

- Strengthen monitoring and enforcement of Supported Residential Services to uphold people's rights and improve their living circumstances.

Approximately 91 per cent of people living in Support Residential Services (SRSs) have a disability.<sup>39</sup> We believe this review provides an opportunity to strengthen tenancy rights and safeguards of people living in SRSs, including increasing monitoring and enforcement of service providers. SRSs are privately operated and provide accommodation and support for Victorians who require assistance with everyday activities, many of whom are on low income. They range in size from 3 to 74, with average of 33 residents per facility<sup>40</sup> and are regulated by the *Supported Residential Services (Private Proprietors) Act 2010*.

VCOSS members continue to raise concerns about the variable quality of services and failure to uphold the rights of people with disability living in SRSs, for example the eviction of clients with mental illness or challenging behaviour without following required processes<sup>41</sup> and cases of abuse and neglect.<sup>42</sup> VCOSS members report there is a lack of government regulation and enforcement for SRS to comply with standards. This view is supported by the ombudsman's report into abuse which found "*With the exception of one SRS where admissions were suspended, the department has not used any of the statutory enforcement powers available to it under the Act to enforce compliance by SRS. The only other enforcement action taken by Authorised Officers has been the issuing of compliance instructions.*"<sup>43</sup>

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<sup>38</sup> VCOSS, Housing for people with disability, Submission to the Joint Committee on the NDIS and the National Disability Insurance Agency, March 2016.

<sup>39</sup> Market Solution, 2013 Census of Supported Residential Services (SRS) in Victoria, Prepared for: The Department of Health SRS & Accommodation Support Unit, Melbourne, October 2013, p. 4

<sup>40</sup> Market Solution, 2013 Census of Supported Residential Services (SRS) in Victoria, Prepared for: The Department of Health SRS & Accommodation Support Unit, Melbourne, October 2013, p. 1

<sup>41</sup> Office of the Public Advocate, Submission to The review of the effectiveness of the legislative framework governing Supported, 2016.

<sup>42</sup> Office of the Public Advocate, Community Visitors Annual Report 2015–2016, Disability Services Mental Health Residential Services, September 2016, pp. 72-73

<sup>43</sup> Victorian Ombudsman, Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight, June 2015, p.44.

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