

Response to the Victorian Government Rights in
Specialist Disability Accommodation Consultation Paper

Submission by the Victorian Advocacy League for Individuals with
Disability Inc

19 July 2017

About VALID

The Victorian Advocacy League for Individuals with Disability Inc (VALID) is the peak organisation in the Victorian disability sector representing people with an intellectual disability. VALID is run by and for people with disability and their families. VALID has particular expertise in networking and providing information to people with disability and families across the state. VALID is committed to the vision of an Australian nation in which people with a disability are empowered to exercise their rights – as human beings and as citizens – in accordance with the United Nations Convention on the Rights of Persons with Disabilities. VALID strives to realise its vision through a range of strategies that work to empower people with disabilities to become the leaders of their own lives.

VALID works collaboratively within a range of networks, alliances, advisory groups and representative bodies and is:

- The Victorian agency member of Inclusion Australia (NCID)
- An active member of the Disability Advocacy Network of Australia
- A member of the Victorian Government NDIS Implementation Taskforce
- A member of the NDIA Intellectual Disability Reference Group
- Represented on the Future Social Service Institute Steering Committee
- Appointed to the Registration and Accreditation for Victoria's Disability Workforce Project Advisory Group

VALID actively campaigned for the introduction of the National Disability Insurance Scheme (NDIS) and remains a committed and active supporter. Our members, directly and via Inclusion Australia (NCID), have always driven our constructive feedback to the NDIA, Commonwealth and Victorian governments, and to consultations such as this. VALID's comments should not be interpreted as any reduction of support for this vital reform that is fundamental to improving life outcomes for people with disabilities.

Future of specialist disability accommodation in Victoria

The transition of Victorian supported accommodation to the NDIS, via Specialist Disability Accommodation (SDA), represents a fundamental shift in the way in which eligible people with disability will have their accommodation needs met. VALID expects that as the market responds to funding opportunities made possible through the NDIS, new housing will become available in the long term and address the critical shortage of specialist disability accommodation in Victoria.

In the case of Supported Independent Living (SIL) supports, VALID has adopted a position that calls for all moves towards privatisation of services to cease until the issues around appropriate unit pricing have been resolved (see www.valid.org.au for details).

VALID recommends the retention and funding of those aspects of the Victorian system that work well, such as the Community Visitors program and independent information and advocacy.

VALID recommends that the Victorian Government strengthens referral processes with the NDIA, where the Victorian Government recommends the inclusion of particular supports in a participant's NDIS plan.

Alternatively, the Victorian Government and NDIA should reach agreement on the funding of independent reports that cover decision-making supports, behaviour management supports and suitability to particular SDA dwelling types including the recommendation for a person with disability to live alone with support when this is the best option.

VALID believes it is necessary for the Victorian Government to remain a provider of last resort of both SDA and SIL supports.

VALID led Rights in SDA consultations

In late June / early July 2017 on behalf of the Victorian Department of Health and Human Services (DHHS), VALID conducted 10 consultation sessions with 51 people with disabilities living in shared supported accommodation. The resulting Report on Consultation Feedback 21 July 2017 contains their collated feedback on what is important to them and their opinions on the proposed changes to legislation as the NDIS comes into effect. This submission is a companion document to that report and should be read in conjunction with it to obtain the full benefit of VALID's work on this important topic.

VALID's Report on Consultation Feedback 21 July 2017 reflects the authentic voice of people with disabilities that VALID represents and supports and includes detailed responses to the Rights in Special Disability Accommodation consultation paper. This submission does not duplicate this detail, but rather is VALID's considered position informed by the report as well as by VALID's advocacy work, state-wide networks of people with intellectual disability and families, self-advocacy forums and representation work.

Consultation Issues

VALID believes that many of the accommodation rights and responsibilities contained within the Disability Act 2006 (the Disability Act) are generally fair and reasonable, with the notable exceptions of the lack of choice and control over selection of provider and housemates. We call for any new legislation to uphold the many good protections enshrined in the current legislation.

VALID agrees with the approach of the NDIS to increase individual choice and control over provider selection and that separation of SDA and SIL will help achieve this, and increase the safeguarding of people with disability. VALID also calls for the new legislation to protect the rights of people in SDA to choose with whom they live.

Agreements

Residential Statements

People with intellectual disabilities currently living in what will become Specialist Disability Accommodation (SDA) are generally unfamiliar with the Residential Statement that they have been provided according to the Disability Act 2006 (the Disability Act). They generally do not understand the detail of the Residential Statement and find the language and concepts of their Residential Statement to be inaccessible.

Accessibility

VALID therefore believes that the accessibility and navigability of the new legislation dealing with rights in SDA is the primary concern. This includes the accessibility of information about the legislation and documentation that emerges from the legislation.

Implementation

VALID contends that the practice and implementation of the legislation is of equal importance to the drafting of the legislation. New requirements must be included to ensure that people with disability, and in particular people with intellectual disability, have an ongoing understanding of the current status of their accommodation (e.g. rent increases) and the associated rights and responsibilities.

Signatures

Through our advocacy work, VALID is aware of circumstances where service providers of SIL, when unable to get written consent from the NDIS participant or family member, will go further afield to obtain a signature, including advocacy organisations and house supervisors. This is unsatisfactory and problematic. It is possible this could occur also with SDA providers.

VALID suggests that the concept of the Residential Statement (which does not require a signature from the resident) remains strong, and that a requirement that written agreements must be signed by an NDIS participant in SDA is unnecessary.

Different expectations need different strategies

VALID supports the separation of SDA and SIL and observes that the expectations of people entering SDA for the first time in the NDIS environment differ markedly from the expectations and concerns of people who have been in the system for a long time, especially those who have achieved a stable and happy housing situation. The new legislation may need to include 'grandfathering' considerations for people who have been in the current system for a long time. These considerations may include enabling SDA service agreements to be fixed term, up to and including the lifetime of the resident, to enable ageing in place, if that is their choice.

Housemates

VALID believes that people in SDA should be able to choose with whom they live and that there should be consensus between existing housemates on incoming residents. VALID does not support a situation where the NDIA allocates a resident to the SDA provider based upon their own assessment, with the SDA provider then 'considering' the views of existing residents.

Mediation & decision supports

VALID also believes that people with disability may need help and support in reaching the desired consensus. VALID therefore recommends that the Victorian Government invest in:

1. Support and training of people with disability before embarking on the process of choosing a housemate
2. The provision of specialist independent mediation services that can be accessed by people with disability for 'lower level' disputes such as selection of housemates

Accessing the house and the room

VALID recommends that the considerations currently included in the Disability Act should be maintained. We again stress that importance of implementation of the legislation and that requirements must be included to ensure people living in SDA have an ongoing understanding of their rights around accessing the house and the room, and the requirement for written notice (by letter, email or text) be strictly enforced.

VALID also recommends that Community Visitors, managed by the Office of the Public Advocate, should be able to access SDA properties and rooms according to the relevant legislation.

Paying rent and money management

VALID recommends that the considerations currently included in the Disability Act should be maintained (e.g. 60 days' written notice and no more than one increase every six months). We again stress the importance of implementation of the legislation and that requirements must be included to ensure that people living in SDA have an ongoing understanding of their current rent and associated rights, including clarity about who is responsible for providing this information to the resident.

VALID does not believe that SDA residents should have to pay a bond. See the 'legislation' section for our comments on dispute resolution.

Modifying the house

VALID recommends SDA providers should be responsible for the provision of alternative accommodation, and the associated additional costs, during house modifications instigated by the landlord. This should not be expected to be covered from a participant's plan. See the 'legislation' section for our comments on dispute resolution.

Repairing damage

VALID recommends that the SDA provider be responsible for repairing all property damage, with the exception of obvious wilful damage.

We also recommend that the Victorian Government, in conjunction with the Victorian Managed Insurance Authority, develops and provides specialist insurance cover for Victorian SDA providers. We note the NDIS has developed five SDA design categories (basic, improved liveability, fully accessible, robust and high physical support) and that it may be appropriate to ensure there are corresponding levels of insurance cover made available to SDA providers, with particular focus on providers of housing in the 'robust' category.

We again stress the importance of implementation of the legislation and the requirements must be included to ensure people living in SDA have an ongoing understanding of their current rent and associated rights.

Notice to vacate and relocation

VALID notes the NDIS Terms of Business for Registered Providers of SDA (effective 1 July 2016) require the provider give 90 days notice to vacate, unless shorter notice is required to address risks of harm to the participant or others. VALID suggests the Victorian legislation will need to be consistent with the NDIS requirements.

With regard to unfair notice and relocation, VALID suggests the considerations currently included in the Disability Act should be maintained. We again stress the importance of implementation of the legislation and that requirements must be included to ensure the people living in SDA have an ongoing understanding of their rights around notice to vacate and relocation.

VALID reiterates that the Victorian Government must remain a provider of last resort of both SDA and SIL supports.

House management

VALID acknowledges that the separation of SDA and SIL has created some new challenges. Nonetheless it seems somewhat of an anomaly for house management to be included in legislation about Specialist Disability Accommodation.

VALID believes the landlord's role in house management should be limited to maintenance and repairs.

While VALID has concerns about a range of house management issues including how the important functions of house supervisors will be fulfilled under the NDIS, we agree with people with disability and families that each group of SDA residents should be responsible for the house rules and that it will be a role of the SIL provider to support this.

The NDIS response to house management appears to be the allocation of support coordination through each individual resident's NDIS plan. Each resident would then decide together which SIL provider they would like to use and this would include house management tasks. However, making a consensus decision on a provider also calls for decision-making support and training of people with disability, as well as the need for an independent external mediator.

Legislation

VALID is sympathetic to sector calls for people with disability to be treated like all others in the community and therefore SDA related legislation should be included in the Residential Tenancies Act (RTA). However, we are also mindful that the majority of NDIS participants who will receive SDA in their plan will be people with intellectual disability, and that the RTA is a complicated piece of legislation that is very hard to navigate. Therefore VALID's recommendations are focussed on the accessibility and navigability of the legislation and the form of the resulting information and documentation, rather than where the legislation sits.

VALID recommends that the Victorian Government take the opportunity to craft a contemporary piece of legislation that prioritises the accessibility and navigability by people with disability and upholds and protects their existing rights. This legislation could be a reframed Disability Act, a special section of the RTA or a new stand-alone piece of legislation.

Tenant status

The structure of SDA, which assumes all residents / tenants have equal status and responsibility differs from the RTA where a lead tenant has an increased level of legal responsibility. This means that the SDA legislation must differ as well.

Disputes

VALID recommends that there be an appropriate dispute resolution process included in the new SDA legislation. We note VCAT has long experience in the RTA and this could be utilised on the understanding that investment is made to significantly improve its level of disability expertise and understanding, especially in the area of people with complex support needs and behaviours of concern. However, we would also contend that the years of investment in awareness of the Disability Services Commissioner and the success of the *It's OK to complain* campaign should be respected.

We observe that this is reflected in the high proportion of people with intellectual disability currently living in supported accommodation having a much higher awareness of the DSC than VCAT, and therefore nominating DSC as the place for dispute resolution.

VALID reiterates the recommendation that the Victorian Government invest in the provision of specialist independent mediation services that can be accessed by people with disability for 'lower level' disputes.

Other matters

Advocacy

VALID's recent experience is that the introduction of the NDIS and the rollout in Victoria has resulted in overwhelming demand for independent information and advocacy. VALID also notes the expectation by people with disability and families that they will have access to independent advocacy when they have a problem.

VALID commends the Victorian Government on its ongoing commitment to independent advocacy, good training and good communication with the sector, and recommends that advocacy funding state-wide be increased proportionately to demand, especially during the transition to SDA.