

Rights in
Specialist Disability
Accommodation
Consultation Paper





March 2017

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Designed by DEDJTR Design Studio

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Ministers Foreword

The National Disability Insurance Scheme is a once-in-a-generation reform that is transforming the lives of everyone involved.

Here in Victoria, we want people with disability to be able to live their goal of an ordinary life, their way. For people living in specialist disability accommodation, also known as supported accommodation, that means access to safe, affordable, secure and appropriate housing.

It's no surprise that as the NDIS rolls out, enormous changes are taking place. After all, this is the biggest social reform in Australia since the introduction of Medicare.

Bringing in this type of change means updating existing policies and laws so that the rights of people living in specialist disability accommodation are appropriately protected. Only then can people make informed decisions about how they live and make the most out of the NDIS.

Any changes to legislation as part of the NDIS roll out must first and foremost be the best option for people with disability.

That's where you come in – I want to hear what you think. Nothing is more valuable than your actual experiences and opinions of the NDIS and living with disability.

The Victorian Government will use all information gathered through this consultation to inform future decisions about the legislative framework.

I look forward to your responses about how Victoria could improve rights for residents in specialist disability accommodation in the future.

Martin Foley MP

Minister for Housing, Disability and Ageing

Definitions

Commonwealth Government (the Commonwealth) – the Australian federal government.

Disability Act 2006 (the Disability Act) – the Victorian legislation that currently regulates disability services, including the residential rights of individuals living in specialist disability accommodation.

Landlord – the person who owns and leases out a property.

National Disability Insurance Agency (NDIA, Agency) – the Commonwealth Government body that administers the National Disability Insurance Scheme, including assessing eligibility, creating and approving plans, and making payments to participants.

National Disability Insurance Scheme (NDIS, Scheme) – the Commonwealth Government program that provides reasonable and necessary supports to people with a permanent or significant disability under the age of 65.

NDIS Participant (participant) – a person with disability who has been deemed eligible for the NDIS and receives funding from the NDIA for their reasonable and necessary supports.

Plan or Participant's Plan – the document agreed by the NDIA and the NDIS Participant that outlines the funding allocated to the participant and how it is proposed (but not mandated) to be used, e.g. \$x for SDA, \$y for transport.

Residential Tenancies Act 1997 (RTA) – the Victorian Government legislation that regulates how tenants and landlords interact.

Specialist Disability Accommodation (SDA) – specialist housing for participants required due to significant functional impairment and/or very high support needs. This type of accommodation is also known as **Community Residential Units (CRUs), Shared Supported Accommodation (SSA), residential services, group homes** or **supported accommodation**.

Supported Independent Living (SIL) – specialist support services for participants who require assistance with and/or supervision of tasks, with a focus on developing the skills of each individual to live as autonomously as possible. These services are sometimes provided inside SDA homes.

SDA payment – the payment provided by the NDIA to cover SDA provision, to be included in a participant's plan. This is separate to rent payments.

Tenant – the person occupying (i.e. living in) a property.

Tenancy rights – the right to occupy a property for a specified period of time. In this paper, tenancy rights refers to the rights guaranteed by the Victorian Government that ensure agreements between tenants and landlords are fair.

Victorian Government (Victoria, the Government) – the state government.

Victorian Civil and Administrative Tribunal (VCAT) – a tribunal that hears and decides civil and administrative legal cases in Victoria, primarily resolving disputes and deciding human rights cases.



01

Introduction and getting involved

1.1 WHAT IS THIS PAPER ABOUT?

This paper is about getting views from the community about how we can best protect the accommodation rights of individuals living in supported accommodation under the NDIS.

The introduction of the NDIS is giving Victorians with a disability greater flexibility, choice and control over the services they receive, including supported accommodation. It will transform the way disability services are funded and accessed to ensure all people with disability get the best support possible. People with disability will be able to live their life, their way.

Changes to supported accommodation are designed to provide people with more choice over who works in their home and what home they live in.

Under the NDIS, supported accommodation will be separated into two different parts:

- Support services, known as Supported Independent Living (SIL); and
- Specialised housing such as shared supported accommodation or community residential units, known as Specialist Disability Accommodation (SDA).

Under the NDIS, SIL providers will be different from SDA providers. This separation will improve choice and control for participants by allowing for a change of one support or accommodation provider without necessarily changing the other.

People currently living in supported accommodation are likely to be eligible for SDA. In most cases, the homes they live in will also be classified as SDA. Eligibility for SDA is decided when a participant goes through their NDIS planning process.

Victoria is responsible for the tenancy rights of people living in SDA under the NDIS. The Government is exploring options to update rights and protections to reflect this new way of providing SDA.

Supported accommodation in Victoria is currently regulated by the *Disability Act 2006* (the Disability Act). At the moment, whoever provides staff support at the house is also the landlord. This makes it difficult to change providers without moving home. The Disability Act also does not allow people with disability to have control over their SDA as rent and property issues are handled by the SIL provider.

For more information about your current rights and protections under the Disability Act and more general protections to be provided by the National Quality and Safeguarding Framework, please refer to **sections 2.3** and **2.4**.

We would like a new approach to rights and protections for SDA residents, and this may lead to changes in the legislative framework.

This review will happen hand in hand with the community to ensure that people with a disability, their families and carers, staff, service providers and advocacy groups can put forward their views and influence the outcomes of the review.

This paper will outline the Government's vision for SDA in the future (**section 2**) and ask for your advice and opinion on these important issues as a result of this transition (**section 3**).

1.2 CAN I CONTRIBUTE TO THIS REVIEW?

Yes – any member of the public can contribute to this review.

Groups that we would most like to hear from include:

- People currently living in SDA (also known as a group home, community residential unit or shared supported accommodation)
- Their family, friends and/or carers
- Residents' advocates, including advocacy groups and peak bodies
- Individuals who work, or have worked, in supported accommodation
- Unions and peak bodies who represent workers in supported accommodation
- Providers and potential providers of SDA
- Providers and potential providers of other NDIS supports

1.3 HOW AND WHEN CAN I CONTRIBUTE?

This consultation paper will be open for responses until **Friday 30 June 2017 at 5 P.M.**

Contributing to a review of this kind isn't always easy. The Government has created a few different ways for you to participate in this review. You can write a submission, use the Easy English tools and questionnaires or participate in one of our focus groups for residents, peak bodies, workers, providers and advocates.

You can find alternative formats and more information about contributing to this review on our website here:

www.engage.vic.gov.au/sda

1.4 WHAT WILL HAPPEN AFTER THIS REVIEW?

The Victorian Government will use the information gathered in this review to inform any future decisions on changes to the legislative framework in Victoria.

If you have any further questions about this review, you can find out how to contact us at our website here:

www.engage.vic.gov.au/sda

02

The future of Specialist Disability Accommodation

2.1 OUR VISION FOR SPECIALIST DISABILITY ACCOMMODATION

Funding for SDA is designed to increase the supply of specialist accommodation for people with disability and to encourage a range of innovative accommodation solutions for participants with significant functional impairment and/or very high support needs.

A key change in the NDIS is the separation of support and accommodation.

The NDIA's approach to separating accommodation and support will give increased choice and control to participants. Participants will be able to choose an accommodation provider separately to the provider of supports in the home.

Over time, this will mean Victoria can transition from its current accommodation models to a range of innovative SDA options that meet the diverse needs of participants and better support independence and community participation.

This is an opportunity to reframe the law so that SDA residents can make informed choices about how they live and have the full set of accommodation protections required to enable them to make the most of the NDIS.

If you live in SDA, legislation should enable you to change your service support providers and know that your tenancy rights are secure.

We would like to hear the community's thoughts on what rights and protections you would most like to see in tenancy rights for SDA residents.

Some of the key questions to think about when responding to this review are:

- What works well in your accommodation currently?
- What doesn't work so well and needs to be improved?
- What is missing?
- Is there anything new Government should consider because of the NDIS?
- What should be covered in legislation?

For a more structured exploration of these issues, please refer to Section 3.

2.2 HOW WILL SPECIALIST DISABILITY ACCOMMODATION CHANGE UNDER THE NDIS?

People currently in supported accommodation will likely receive support from a range of providers. These include:

- support providers (who may help with things like meal preparation, shopping, personal care, taking medication and accessing facilities in the community); and
- SDA providers (who manage and provide accommodation).

Both of these providers will be regulated by the National Quality and Safeguarding Framework, which is currently being developed by the Commonwealth Government in preparation for full Scheme.

Under the NDIS, it is envisaged that support providers will not own or provide the home that residents live in.

In the future, accommodation may be provided by another provider (e.g. housing organisation), your family or by you, if you would like to own your own home. It is expected that SDA providers will mainly be housing organisations. SDA providers will receive the SDA payment from the NDIA and rent from residents, and they are responsible for maintaining properties.

The SDA payment from the NDIA encourages and enables SDA providers to build new, innovative accommodation for residents. More providers are expected to offer SDA under the NDIS. This will give people with disability more choices about where to live.

This will create new opportunities for people with disability. SDA residents will be able to choose their own home just like everybody else.

People being able to choose their own home is at the heart of the NDIS model.

Under the NDIS, support providers and SDA providers will have different responsibilities:

Support provider	SDA provider
Provide support and promote participation in household and community activities	Provide residents with accommodation and a written agreement to live in the home
Help people to manage money and household budget	Set and collect rent
Assist the SDA provider to make offers to prospective tenants	Offer accommodation to prospective tenants
Help to manage household tasks such as preparing food	Fix and maintain homes
Manage and supervise workers	Address damages
Ensure workers are screened	Perform major upgrades
Notify residents of changes to the service agreement	Notify residents of changes to the residency agreement
Address complaints about support provided	Address complaints about the SDA

2.3 CURRENT PROTECTIONS FOR RESIDENTS

If you currently live in supported accommodation, SDA or another disability residential service, your accommodation is regulated by the Disability Act. The *Residential Tenancies Act 1997*, which regulates all other residential accommodation, does not apply to your home.

Rights and responsibilities related to accommodation in the Disability Act include:

- Residents must be issued a residential statement which covers terms of living in the home, including charges, house rules and who to contact if there are issues
- Right to make a complaint
- Responsibility to only use the premises for residential purposes
- Responsibility to pay rent
- Responsibility to maintain the room and common areas
- Responsibility to notify the provider about damage
- Responsibility to not to alter the house without permission
- Right to apply to VCAT for review of some decisions (e.g. eviction, rental increase)
- Right to be informed of services provided

You are also extended extra rights about your supports and protection from exploitation. These rights and protections include:

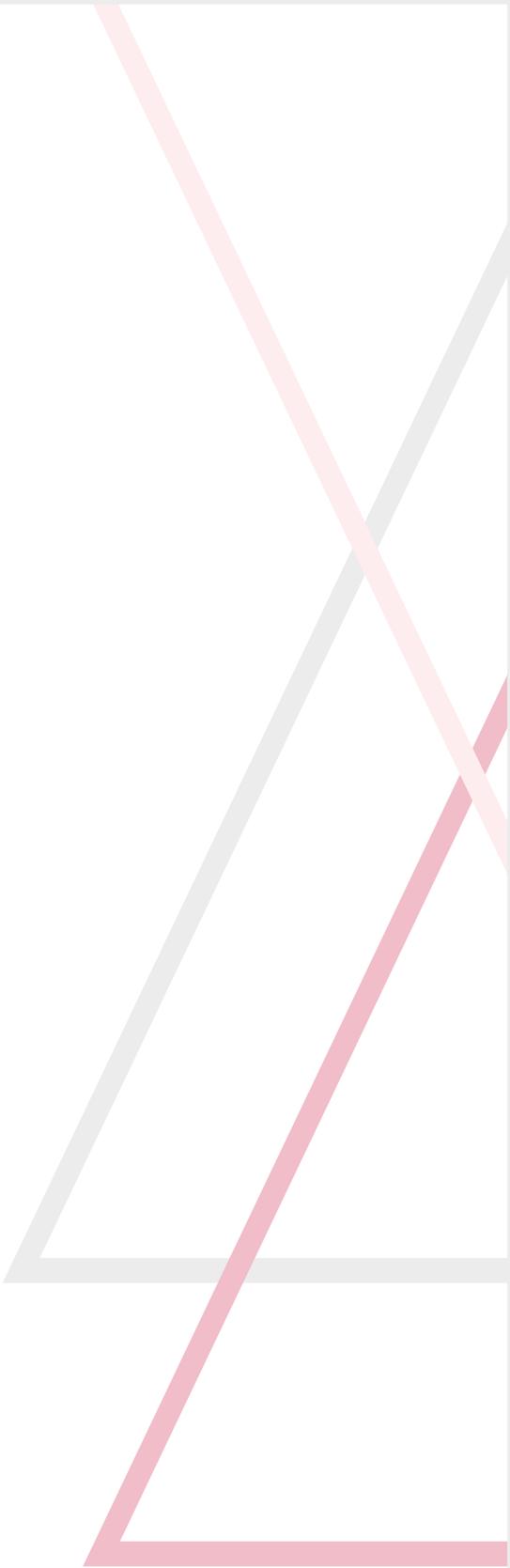
- Right to be informed of services provided
- Right to see a community visitor
- Protection from financial exploitation

- service providers must have written consent from either you, your guardian or your administrator to handle your money
- protocols are in place for the management of your money by service providers, should consent be issued by either you, your guardian or your administrator
- Safeguards regarding the use of restrictive interventions, such as restraint and seclusion

2.4 PROTECTIONS FOR RESIDENTS UNDER THE NDIS

The National Quality and Safeguarding Framework will provide a consistent, Australia-wide approach to quality and safeguarding. As a result of the transition to the National Quality and Safeguarding Framework, some parts of the Disability Act will be modified or repealed. Once this occurs, the national framework will replace existing safeguards for people receiving disability services. This consultation will help government identify what tenancy rights are needed to protect people who live in SDA.

Victoria will continue to guarantee your basic rights, freedoms and responsibilities after the introduction of national legislation as set out in the *Charter of Human Rights and Responsibilities Act 2006*. This Charter acknowledges that we all have basic rights, including the right to be treated equally, to be safe from violence and abuse, to be part of a family and to have our privacy respected.



Rights and responsibilities that relate to support service providers (including SIL) will be covered under the National Quality and Safeguarding Framework. This means people receiving support services will have safeguards through the new Commonwealth Government framework.

The National Quality and Safeguarding Framework will also ensure that all providers deliver safe, innovative and high quality supports.

For further information about the National Quality and Safeguarding Framework, you can go to the Department of Social Services website here:

<https://www.dss.gov.au/ndisqualitysafeguards>

Although providers and support services will be covered by the National Quality and Safeguarding Framework, it does not provide residents with rights or pathways to resolve issues with their landlord. For example, the NDIA will not be able to order the accommodation owner to make repairs or change the required rent. Residential and tenancy rights for people are the responsibility of the Victorian Government.

Until the full National Quality and Safeguarding Framework is legislated and implemented in Victoria, existing Victorian safeguards will continue and will not be diminished. No existing quality and safeguards will be eroded or undermined during this process of establishing new tenancy rights legislation for SDA residents.

03

What are the issues?

This section asks for your advice and opinion on the key issues Government is considering during this transition to a new model of rights for SDA residents. It asks you to consider some different scenarios and poses some questions.

One key question we want you to think about is what does Government need to think about?

We want to hear about your thoughts and experiences in SDA, so that we can understand what you want legislation to do.

Another key question is should this be defined in the law?

Laws are sometimes too complicated and hard to understand or they don't reflect the way people want to live their life, so they are not always effective. We would like to know if you think any of these things should definitely be in a law, or if you think we can make this happen in another way.



3.1 AGREEMENTS

Currently people living in supported accommodation have residency rights and they are issued a residential statement. The Disability Act requires that this statement is provided in a format that the resident is most likely to understand. This is so that residents understand the agreed terms upon moving in. Under the Disability Act, a residential statement is provided by a service provider, not a landlord. To keep this system would restrict residents' ability to choose separate accommodation and service providers.

Under the NDIS, a new type of tenancy agreement is needed to ensure rights are protected. This should give residents greater choice and control over their SDA and service providers.

QUESTIONS

What should new agreements with the SDA provider cover?

Should agreements cover house rules?

Should residents all have to sign the same agreement?

What happens if a resident cannot sign an agreement?

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

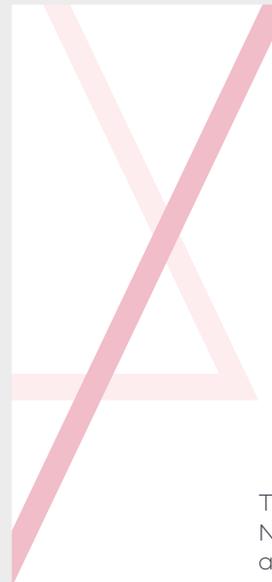
Under what circumstances should a resident be asked to sign a new agreement?

How long should the agreement be in place for?

3.2 HOUSEMATES

Currently, most SDA is shared between a number of residents. Over time, it is expected that SDA will become shared between fewer people. Currently, new housemates are allocated to SDA by the Victorian Government.

Movement of residents from one house to another is sometimes required when there are issues with the supports provided or conflicts between residents. Residents currently have limited choice over where they live, who they live with and who provides services to them in their home.



This will change in the future as the NDIA will not be involved in choosing housemates. NDIS participants with SDA in their plans will be able to look and apply for their own accommodation. Some participants may require support with finding a home, which can be provided for in NDIS plans.

QUESTIONS

What role should residents have in choosing the new housemate?

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

Who should oversee disputes about this process?

Who makes the final decision?

3.3 ACCESSING THE HOUSE AND ROOM

Under the Disability Act, the service provider has the right to enter a residents room (if notice is provided 24 hours before hand) to undertake maintenance work, value the room, or show the room to a prospective resident, buyer or lender.

There are also rights to enter a residents room without notice in some circumstances such as an emergency, to provide supports, to undertake urgent repairs or to implement a behavioural support plan.

It is foreseeable that into the future there will continue to be a need for multiple parties to have access to SDA.

QUESTIONS

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

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

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

3.4 PAYING RENT AND MONEY MANAGEMENT

Currently SDA residents pay rent to the support provider, not the SDA provider. Residents also currently receive notice of rental increases 60 days beforehand and the service provider cannot increase the rent more than once in a six month period.

Under the NDIS, the method of paying and charging rent will change. Rent and living costs (such as water, energy and food) will be separate. Living and housekeeping costs will not be regulated, to allow residents control over how they manage their money.

Rent will be a maximum of 25% of Disability Support Pension (and Commonwealth Rent Assistance, if eligible). Providers will not be able to receive the SDA payment from the NDIA if they charge more than this amount unless you agree to the charge and there is evidence of an independent market evaluation. This is to make sure landlords are only asking for rent that is fair and reasonable.

QUESTIONS

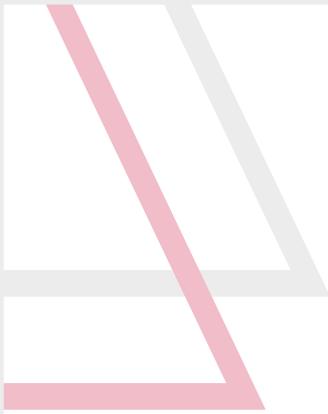
Should SDA residents have to pay a bond?

Who should manage disputes about rent?

What could be done to prevent financial exploitation by service providers?

How much notice should landlords give of a rent increase?

How often should landlords be allowed to increase the rent?



3.5 MODIFYING THE HOUSE

Over time, it is expected that new SDA will be designed to suit the needs of people with disability. However, some SDA at present is not purpose built and may require adaptations or alterations to fit individual needs. It is possible that new residents will require some modifications to these homes. The landlord will be compensated for these through the SDA payment

QUESTIONS

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

Who should oversee the landlords responsibility to make modifications?

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

How will this intersect with the role of the NDIA Registrar under the Quality and Safeguarding Framework? (please see section 2.4)

3.6 REPAIRING DAMAGES

In mainstream housing properties, landlords are responsible for all repairs but there are some circumstances where residents are held liable for damage. Mainstream residents have recourse to VCAT if they wish to claim compensation or seek action on damages. SDA residents currently do not have recourse to VCAT on maintenance matters.

Under the NDIS, the landlord or SDA provider will receive the SDA payment to fund routine maintenance and property replacement. This should also include property damage in some instances.

QUESTIONS

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

Who should oversee disputes about repair and maintenance of SDA?

How will this intersect with the role of the NDIA Registrar under the Quality and Safeguarding Framework? (please see section 2.4)



3.7 NOTICE TO VACATE AND RELOCATION

Currently notices to vacate and temporary relocation notices in SDA are tightly regulated to avoid disrupting residents lives. Some types of notices to vacate require more notice than others, but the minimum amount of notice is 28 days.

The Disability Act states when and how residents can be temporarily relocated, such as for the resident's safety (e.g. a bushfire, flood warning, repairs and refurbishment) or for the safety of other residents. The Act also states that the Public Advocate and the Secretary of the Department of Health and Human Services have to be notified if someone is temporarily relocated. The *Residential Tenancies Act 1997*, which regulates most other tenancies in Victoria, does not cover temporary relocation.

Residents can give notice that they intend to leave the accommodation but there are no protocols to support this process, such as no requirement to provide a notice before vacating and no minimum notice period. Additionally, there is no requirement to find suitable alternative accommodation.

Under the NDIS, residents need to be supported to initiate their own accommodation changes to enable increased choice and control over their lives. The law must also continue to protect residents from unreasonable eviction or relocation.

QUESTIONS

How should landlords consult with residents about temporary relocation?

Should temporary relocation continue to be regulated? How?

How much notice should a landlord give a resident to vacate?

Should a landlord require a reason to notify a resident to vacate?
What kind of reasons are acceptable?

How should residents notify the landlord that they are initiating a change of accommodation?

Should there be a minimum notice period?

What should happen if a resident vacates without any notice?

Who is responsible for sourcing alternative SDA after a notice to vacate?

Who is responsible for sourcing alternative SDA during a temporary relocation?

How should residents be supported to complain or request review?



3.8 HOUSE MANAGEMENT

It is important that residents are involved in all decisions about how the household operates. At the moment, service providers are responsible for setting house rules.

Under the NDIS, service providers and SDA providers need to include residents in all decisions that affect them.

QUESTIONS

Who makes decisions about how the house operates?

Should decisions require agreement between housemates?

Does the landlord have a role in managing the house?

How should issue with or disagreements about house management be resolved?

3.9 LEGISLATION

People with disability who live in the private rental sector or social housing are regulated by the *Residential Tenancies Act 1997* (RTA). The RTA confers basic tenancy rights on those living in mainstream accommodation, and residency rights for those living in alternative types of accommodation such as rooming houses and caravan parks.

For people with disability who cannot access suitable private rental properties and need to use specialist disability accommodation, there will need to be a new law or legal amendment to ensure that rights and protections for SDA residents are maintained into the future.

One option is to amend the RTA to include rights and responsibilities specifically tailored for SDA residents based on those in the Disability Act.

There is also the option to amend the Disability Act and retain the protections in this specialist Act. As part of the transfer to a National Quality and Safeguarding Framework, substantive changes to this Act will be required in the near future (see section 2.4).

Alternatively, Government could create a new piece of legislation tailored to SDA residents.

QUESTIONS

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

In what legislation should SDA tenancy rights be regulated?

Should VCAT continue to hear and arbitrate disagreements?

What other options should Government consider?

3.10 OTHER MATTERS

Updating tenancy rights for SDA residents is no easy task, so we may not have covered every issue that you are concerned about.

We want to hear from you about what else we could be doing to ensure that SDA residents have effective rights and protections as we move towards full NDIS rollout.

QUESTIONS

Is there anything we have missed?

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

