



Action for More Independence & Dignity in Accommodation

1st Floor, Ross House, 247 Flinders Lane,
Melbourne Vic 3000

Phone: 9650 2722 Fax: 9654 8575

Email: amida@amida.org.au Website: www.amida.org.au

Inc No: A001608SV ABN: 32 993 870 380

Advocacy, Self Advocacy, Rights, Accessibility, & Community Living for People with a Disability

Rights in Specialist Disability Accommodation (SDA)

AMIDA's response to Consultation June 2017

AMIDA (Action for More Independence & Dignity in Accommodation) is an independent advocacy organisation which advocates for good housing for people with disability. We provide advocacy to individuals, with priority given to people with an intellectual disability, and advocate for change in systems which prevent people from achieving good housing.

AMIDA acknowledges that people with disability have a right to a choice of with whom they live and where they live. Further, people with disability have a right to good quality housing which is accessible, affordable and non-institutional. People with disability have a right to live in the community with access to support to participate and have a good quality of life.

AMIDA strongly supports the United Nations Convention on the Rights of Persons with a Disability and works to assert these rights and community inclusion for people with a disability and supports people with disability as valued members of our community. AMIDA recognises that people with disability contribute to and develop our community.

Introduction

AMIDA endorses the State governments wish for people living in Specialist Disability Accommodation to have safe, affordable secure and appropriate accommodation.

We agree that changes occurring due to the NDIA have the potential to help address this goal over time.

We also believe it is appropriate to update existing policies and laws so that the rights of people with a disability are appropriately protected in SDA. It is also important not to lose important protections in the Disability Act in the process of making these changes.

The missing piece in the equation is that more housing is desperately needed. A major transition issue shaping up is the large numbers of tenants in group homes who are being given notice to vacate now. With funding in tenants packages and no longer a need to maintain a good relationship with DHHS as a funding body, service providers are acting to evict difficult tenants. The intersection of the NDIA, new tenancy laws, reduction of protections and a huge unmet demand for appropriate housing has the potential to do significant harm to people with a disability. Incentives are not producing quick enough results to ensure the development of thousands of much needed appropriately small scale, affordable and safe dwellings. Real choice and the State Government goal for “people with a disability to live an ordinary life, their way” can only happen if there is leadership provided to create these housing solutions now. The market may provide some solutions in the future but government has a leadership role in filling the gap when the market does not respond appropriately and in time with the full range of diverse options needed. The State Government has responsibility for housing and doubly so if changes to State laws have the potential to make some people with a disability homeless.

The NDIA will provide funding subsidies for SDA designed to stimulate growth in housing options. The NDIS is supposed to monitor the markets response to the subsidies but it's not clear what they can do if the response is too slow. The State Government should take advantage of subsidies to develop options now. The NDIS is absolutely consumed with the job of transitioning hundreds of thousands of people to the scheme and the CEO recently admitted they have been struggling under the weight of this workload. So it is not surprising that although it was envisioned that the NDIA would develop 500-900 new dwellings per year since July 2016, in fact there have been almost none since then. Markets may eventually respond but people with a disability are likely to suffer the consequence of this delay unless governments act to lead the way.

If the State Government makes changes to tenancy and disability law now to give tenants safe affordable, secure and appropriate accommodation, this will probably result in many evictions of people not suited to sharing accommodation. Violence and abuse in group homes is a major and significant problem as shown in the State Government Inquiry into abuse in Disability Services and the Senate Inquiry into abuse in residential services. There have not been the funds allocated to develop the necessary smaller scale alternatives. One likely unintended consequence, with the change in laws being considered, is that a mechanism becomes available for tenants experiencing abuse to apply to landlords, and VCAT, to evict abusive tenants. Who will house these people, whether for temporary relocation, or emergency housing

upon eviction, if not the State government? Where are the 1 and 2 bedroom stock suitable for people requiring this style of SDA? Who will fill this gap in the interim?

There are already thousands of people with a disability waiting for accommodation with many people housed inappropriately with ageing parents, in SRSs and nursing homes. Leadership to develop appropriate alternative housing for people who can't share is needed now or when residential laws change, which they should, a worsened housing and homelessness crisis will be created. Thanks to the NDIS, subsidies are now available to governments to use to develop these alternatives.

The State Government should improve tenancy rights for people in SDA, but it must not seek to avoid responsibility for the crisis this will create while supply of viable alternatives is lacking. Instead it should use its knowledge and capacity developed over many years to initiate innovative housing, subsidised by the NDIA. It could either do this itself, or via public/ private partnerships. At a date in the future the State Government may choose to tender out or sell this stock to the market having fulfilled its role of establishing needed options. However that time is not yet here and unless housing options greatly increase, it will not be here for some time.

In the interim the State government must remain the provider of last resort as neither the NDIA or markets currently have capacity to assume this role and there is potential for many people to become homeless resulting in significant harm being done to people with a disability.

The Disability Act contains many protections and these must also be continued until such time as an equally protective system has been developed nationally.

This is not the time for the State Government to abandon its responsibility as the leader in planning and developing appropriate alternative specialist disability accommodation options and its responsibility as the provider of last resort.

Questions asked by the SDA Consultation

1. What works well in SDA accommodation?

There will always be problems and disputes in any service provision. As an advocacy group we have found that SDA works well when it is welcoming of advocacy involvement. When service providers see a role for advocacy and support tenants to contact advocacy organisations, we can all play our part to help resolve disputes and protect rights. The Disability Act protects tenant's rights to involve advocacy and this protection must be maintained and strengthened. Advocates need to have a right of entry to SDA. SIL and SDA providers should be encouraged to contact advocacy on behalf of people with a disability and increased funding for independent advocacy should be provided to help protect people's rights.

2. What currently doesn't work so well?

When there is a lack of openness to advocacy, defensiveness and service providers who don't properly put the needs and rights of people with a disability above those of their organisation, then the ability to resolve problems is compromised.

The separation of SDA from SIL provides the potential to have 2 organisations that have a stake in resolving issues and this has the potential to decrease defensiveness, lack of openness and shift the focus back to the needs and rights of people with a disability. If there is not true separation; for example where service providers set up a new division or wing or their organisation under a new banner to act as the SDA provider, the potential for organisational defensiveness and the shift in focus away from the rights and needs of tenants is more likely to be maintained.

Although initially there will probably continue to be a single SIL provider in each SDA property, the presence of more than one SIL provider will act as a deterrent to abuse by staff and as a safeguard as there is less likelihood of covering up abuse and more witnesses to substantiate complaints.

As an advocacy organisation neglect and abuse by service providers is the main problem we see but this is closely followed by clashes between tenants in shared housing. We see a range of examples from unhappiness with the behaviours people display through to violence and abuse of tenants, sometimes from staff and often from other tenants. This is wholly as a result of a funding model that groups people in order to be cheaper, not because people choose to share, or because it is necessary for the provision of disability support. In fact many people with cognitive impairments have difficulty getting along with other people, or they have involuntary behaviours which disturb others, or they are sensitive to disturbances and have a low threshold to tolerating disruptive behaviours. The thing that really doesn't work most of the time in SDA is expecting people with such impairments to share their lives with other people who also have these, or similar impairments.

Sometimes shared living in SDA does work but it is common that it does not. People are not only forced to share in order to have housing and support, but they have little or no choice about who they share with and no avenue to force providers to move out abusive or disturbing tenants. AMIDA supports implementing strong tenancy rights but this must go along with suitable housing provision for those whom shared housing is not appropriate.

3. What's missing?

1 and 2 bedroom housing so that those who can't share are not made homeless.

Tenancy rights with access to VCAT so that all tenants are safe from abuse from other tenants

A specialist tenancy rights service to assist people in SDA to exercise their rights

Choice by tenants as to who moves into shared accommodation

Under the Disability Act providers are required to provide information to tenants in a way they are most likely to understand and this usually means plain English statements which then sit in a draw never to be looked at again. People with a disability and their families/carers should have access to appropriate independent training in their rights on an annual basis: perhaps via their NDIS plans

SDA Providers and SIL providers should also have access to training for their staff on the rights tenants have and on their support rights not only so they can properly deliver on these rights but also so they know to act when other services in their clients' lives are not as they should be.

4. Is there anything new the Government should consider because of the NDIS?

The Disability Services Commissioner currently helps conciliate service provision disputes but with the shift to a federal system the role of DSC may change. There will be a need for a State based service which can mediate disputes in SDA before they get to VCAT. If a state based DSC or state office is to continue it could potentially play this role. Such a service could also be provided by a Housing Ombudsman as operates in the English system. This might allow for all players to be heard, including support providers, as problems often arise from inadequate support.

In the development of new housing options it is necessary to fund an SDA information and development hub. This would be a clearing house of information on existing examples of SDA from around the world, legal aspects of ownership models via trusts, shared equity etc, registration and provider obligations, accessibility innovations and standards, etc. The hub would also act as a nexus bringing together people with a disability, families, investors, architects and designers and disability support providers. Project workers could resource partnerships to develop options. State government funding for much needed small scale housing options could be brokered through this service also.

The Supported Residential Service industry and Plenty Residential Services should also be examined in light of the NDIS policy that no larger models of accommodation are appropriate for people with a disability and therefore are not eligible for SDA subsidies long term. These models are housing people with disability despite being in no way fit for this purpose and in fact have been shown in inquiry after inquiry to be harmful. Eventually with the growth in appropriate alternative housing models which the NDIA will subsidize, the government must create a timetable to close PRS and replace it with

community living options that are not exclusively shared accommodation. Tenancy rights in SRS's should also be introduced as well as significantly improving the regulatory framework and requiring the downsizing of resident numbers per dwelling. The Ombudsman inquiry into reporting abuse showed the monitoring and enforcement of regulations, by DHHS, to be ineffectual. What is required is a rights framework, with appeal to VCAT, improved regulation and enforcement and the closure of the larger institutional elements of the SRS industry.

5. What should be covered in Legislation?

Laws, backed by advocacy, can protect people's rights. However without an avenue to go to VCAT, rights in law are unenforceable. This has been a problem with aspects of the Disability Act as it is with SRS legislation. Also, details about rights to action on urgent and other repairs in group houses is not specified in the Disability Act as it is in the Residential Tenancies Act. Tenants in SDA should have the same legislated rights as tenants have under the RTA. Legislation however must continue to provide the protections that the Disability Act provides such as temporary relocation, safeguards on restrictive practices, and safeguards on control of people's money and the requirement for behaviour support planning review during temporary relocation. Best practice cannot be guaranteed unless we demand it through laws.

6. Agreements

6.1 What should new agreements with the SDA provider cover?

Agreements should be a reflection of rights and responsibilities of legislation equal to the rights in the RTA and with the added protections of the Disability Act

6.2 Should agreements cover house rules?

House rules should not be determined by landlords but can be agreed to by tenants. Rights to quiet enjoyment and freedom from abuse must be legislated for.

6.3 Should residents all have to sign the same agreement?

Standard agreements should exist in easy English with the possibility of added items that don't conflict with rights in law.

6.4 What happens is a resident can't sign an agreement?

Legislate that people are presumed to have capacity to sign and be provided with support to exercise this right. This could be provided for in the NDIS plans. Even if people have an administrator in place, support provision must be made for tenants to be as involved as possible. If people cannot sign, even with support, existing mechanisms are in place such as administration. The NDIA allows a nominee to be appointed but oversight of this would be necessary.

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

Legislation should be reviewed periodically and this may necessitate new agreements being signed. Otherwise they should be long term leases.

6.6 How long should the agreement be in place for?

For the greatest security, the agreements should be long term and in place for the time people reside in the SDA. In our experience people in SDA who turn 65 are often moved into aged care despite their needs being better met in SDA. Long leases must protect people from this and age or eligibility for aged care should not be a reason to give notice to vacate.

7. Housemates

7.1 What role should residents have in choosing the new housemates?

The lack of choice people have about housemates has been one of the big failings of the group housing system. This has been the result of lack of supply and a crisis driven system. The situation must urgently be resolved with more SDA options so that people living in SDA have real choice, including of the people who move into their home.

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

Tenants and SIL providers can advise landlords on the type of person they are looking for, for example a group of elderly women sharing a house may be looking for someone who is of the same gender and age. Currently the support provider gives the vacancy management team a vacancy profile describing the type of person they are looking for. Landlords should ensure tenants or their nominees, in future, have a say in this vacancy profile and approve it. Landlords may propose several candidates to fit the profile from those who apply. SIL providers can support tenants and their nominees to meet candidates and decide on the person they would most like to move in.

7.3 Who should oversee disputes about the process?

Possibly this could be referred to the DSC or Housing Ombudsman.

7.4 Who makes the final decision?

Ideally there should be consensus between the tenants and landlord as this decision has such long term consequences.

8 Accessing the House and Room

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

Landlord-As per the RTA , SIL- As per the Disability Act and service provision agreement where it is not inconsistent with the Disability Act

8.2 Access to the tenants Room

Landlord- Access as per the RTA provisions. SIL- as per the Disability Act and service provision agreement where it is not inconsistent with the Disability Act

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

Landlord- Access as per the RTA provisions. SIL- as per the Disability Act and the service provision agreement where it is not inconsistent with the Disability Act

Access should also continue to be allowed for Community Visitors but should enable individuals the right to refuse. If there is concern a tenant has been pressured to refuse entry to a Community Visitor, a referral could be made to the DSC/Housing Ombudsman or VCAT for review.

Advocates should also have the right to enter as long as they have at least 1 tenant's approval to enter.

9 Paying the Rent and Money Management

9.1 Should there be a Bond?

No bond should be required

9.2 Who should manage disputes about rent?

Mediation body (DSC/Housing Ombudsman) with appeal to VCAT

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

Safeguards of the Disability Act around SIL handling a tenant's money should remain. The Landlord should not have control of tenant's money apart from rent paid.

9.4 How much notice should landlords give of a rent increase?

Minimum of 90 days notice of rent increases to allow support provision to appeal if required.

9.5 How often can the rent be increased?

Once per year

10 Modifying the House

10.1 Key issues when considering obligations to make modifications?

Tenants must be able, in law, to make non structural home modifications without landlord consent.

The law should say landlords are not permitted to unreasonably refuse consent to structural modifications that support disability, health or safety needs.

Law should permit but not require tenants to remove modifications at the end of the tenancy when modifications were necessary to support health or disability.

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

VCAT should oversee landlords' responsibility to make modifications in terms of what's allowable. NDIS SDA registration and guidelines should clearly state it is expected needed modifications will be done in a timely way. Complaints about SDA providers not making modifications in a timely way should be able to be made to the NDIA under the quality and safeguarding process. In order to continue to receive SDA subsidies, SDA providers must be compliant with guidelines. These guidelines should stipulate that modifications must be done by the SDA provider in a timely way.

NDIS plans for participants in SDA can contain the need to make modifications but SDA providers are responsible to make and pay for modifications as they receive subsidies. This must be spelt out by the NDIA. Double dipping to receive subsidies and have modifications funded in plans must not be allowed.

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

Tenants to have access to all and any available State government short stay or emergency housing, or other landlord properties. In lieu of this being unavailable, NDIA packages should fund short stay accommodation in the private hotel/apartment market.

10.4 How will this intersect with the role of the NDIA Registrar under the Quality and Safeguarding Framework?

The Registrar will outline SDA responsibilities to make required modifications and where a landlord refuses, tenants should have a right of complaint and review of the SDA providers' compliance with registration responsibilities and the Registrar will need the power to order modifications be made. The Registrar may need powers to withhold subsidies. SDA providers should not be able to double dip by claiming subsidies and then asking that the NDIA fund modifications via tenants plans.

11 Repairing the Damages

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

As per the Disability Act, tenants should only be liable for damage knowingly and intentionally caused and where it is not the result of fair wear and tear.

11.2 Who should oversee disputes about repair and maintenance of SDA?

Adoption of RTA protections for SDA tenants to pursue urgent and non-urgent repairs with an expanded list of urgent repairs.

11.3 How will this intersect with the role of the NDIA Registrar under the Quality and Safeguarding Framework?

As well as an avenue for orders to be made on repairs from VCAT, the SDA Registrar will outline SDA responsibilities to make required maintenance and repairs and where a landlord refuses, tenants should have a right of complaint and review of the SDA providers' compliance with registration responsibilities and the Registrar will need the power to order maintenance and repairs be made. The Registrar may need powers to withhold subsidies. SDA providers should not be able to double dip by claiming subsidies and then asking that the NDIA fund maintenance and repairs via tenants plans.

12 Notice to vacate and relocation

12.1 How should landlords consult with residents about temporary relocation?

While the effectiveness of these provisions of the Disability Act have not been formally reviewed, OPA have anecdotal experience that the fact that they are informed, as is the secretary of the DHHS, allows for their involvement to seek to resolve the issues, ensure additional funds are found, or ultimately that alternative accommodation is provided usually by DHHS, if required. While the Disability Act doesn't require service providers to find alternative accommodation, in reality there is a duty of care as these tenants would experience significant harm, even death, if they were not provided with shelter and support. It would be best if landlords therefore had to continue to notify OPA, the secretary of DHHS and the NDIA as well as tenants. Landlords should also provide tenants and their nominees with information on tenant advice and advocacy services. More than consultation is required however. Provision of emergency and long term alternative accommodation is needed.

12.2 Should temporary relocation continue to be regulated? How?

The provisions in the current Disability Act are reasonable but with no provision to give notice to vacate for no reason. This temporary notice should continue to trigger a review of the behaviour support plan and the NDIS plan as more funding may be required to adequately support the tenant as well as crisis support co-ordination. In fact notice for temporary relocation should immediately trigger additional funding being available in the NDIS plan for crisis support co-ordination.

12.3 How much notice should a landlord give a resident to vacate? What kind of reasons are acceptable?

90 days notice before requirement for tenant to vacate the premises unless shorter notice is required to address the risk of harm to tenant or others. The "no reason" provision should not be acceptable.

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

The tenant has a right to change accommodation and could give notice in person or in writing from themselves or a nominee.

12.5 Should there be a minimum notice period?

No minimum period required as tenants may need to give immediate notice if they are at risk of harm.

12.6 What should happen if a resident vacates without any notice?

Tenants should be encouraged to give notice but not penalised if they don't.

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

This is the responsibility that every part of the system is currently trying to avoid because there is not adequate supply of appropriate accommodation. Advocacy services are having support co-ordinators call us asking for advice because no one will take responsibility for housing provision. This is shaping up as a major transition issue. While the effectiveness of these provisions of the Disability Act have not been formally reviewed, OPA have anecdotal experience that the fact that they are informed, as is the secretary of the DHHS, allows for their involvement to seek to resolve the issues, ensure additional funds are found, or ultimately that alternative accommodation is provided by DHHS if required. It would be best if landlords therefore had to continue to notify OPA, the secretary of DHHS and the NDIA.

DHHS should remain the provider of last resort at least until the supply of alternative SDA accommodation has greatly improved. They must also provide leadership in creating these accommodation options using NDIA subsidies. There is crisis provision of support co-ordination possible under the NDIS pricing policy but it takes time to have a plan review to request this and during crisis, time isn't available. This funding should be triggered and automatic if a person receives notice to vacate or temporary relocation notice. This co-ordinator would have responsibility for liaising with DHHS to sourcing alternative accommodation, both temporary and long term. If suitable accommodation cannot be sourced within current SDA stock, funding to pay for rental stock may have to be supplied by either DHHS or NDIA. There is potential for significant harm to the evicted tenants who would otherwise be homeless.

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

This is the likewise the most crucial issue currently requiring attention. Advocacy groups including AMIDA are receiving increasing referrals from tenants, support co-ordinators and families of people in group homes who are being given temporary notice to vacate. Even with NDIA plans including significant resources,

service providers no longer feel obliged to house difficult clients. They are evicting people and the NDIS cannot stop this. The NDIS can fund supports but it doesn't have control of housing resources. This is an emerging transition issue. The State government should co-operate with OPA and the NDIA to identify emergency housing and short term accommodation to be used. If emergency housing remains unavailable the NDIA or DHHS could potentially fund emergency rental accommodation where appropriate. This is a systemic issue. There is provision for crisis support co-ordination under the NDIS pricing policy to assist with managing the crisis but applying for it and getting approval all takes time, which generally isn't available in a crisis. Provision of crisis support co-ordination should be triggered and automatic if a person is in receipt of NDIS and receives temporary relocation notice. This co-ordinator would have responsibility for liaising with whichever authority is going to manage the emergency or short term accommodation or apply for emergency rental payments of no SDA accommodation is available.

12.9 How should residents be supported to complain or request review?

The support co-ordinator can assist tenants with complaints about other service provision, including when people are given notice to vacate, or they wish to complain or request a review. Advocates can consider referrals for advocacy support, particularly when there is a complaint about the support co-ordinator themselves. Advocacy resources need to be increased significantly to deal with the issues arising such as increased numbers of eviction notices being issued. Specialist SDA tenancy advice services or projects also need to be funded to support tenants who have wish to legally challenge notices to vacate, or who want support to protect their other tenancy rights.

13 House Management

13.1 Who makes decisions about how the house operates?

Tenants should be involved and consulted in a way which is meaningful to them about all decisions that affect them. This will require support from SIL providers.

13.2 Should decisions require agreement between housemates?

Support for decision making needs to be provided by SIL as this is part of independent living. Consensus decision making should be the goal and time and support for this to occur is the resource required.

13.3 Does the landlord have a role in managing the house?

Landlords only have a role with regard to tenancy matters such as when tenants' rights are being infringed. Then they have to act to protect tenants'

rights. The tenants should have exclusive use of their own rooms and shared areas should only be accessed by landlord with notice. Day to day decisions in the house should be made by the tenants and their nominees with support from SIL providers.

13.4 How should issues with or disagreements about house management be resolved?

DSC or the Housing Ombudsman could be used if necessary and people can access advocacy if required.

14 Legislation

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

Strong enforceable oversight functions are required such as under the RTA.

14.2 In what legislation should SDA tenancy rights be regulated?

Ideally the RTA could have an SDA section; however the important protections of the Disability Act including Behaviour Support Plan review, management of restricted practice and notification to OPA and the secretary of DHHS as provider of last resort, avenues of referral to DSC and Senior practitioner in the Office of Professional Practice, should be retained amongst other protections. A redrafted Disability Act or new SDA act could be created but it would have to include all tenancy rights equal to the RTA with referral to VCAT.

14.3 Should VCAT continue to hear and arbitrate disagreements?

Yes around all tenancy matters. A limitation of the current Disability Act is that not all tenancy areas are able to be referred to VCAT. A mediation service could help resolve issues before they reach VCAT.

14.4 What other options should Government consider?

There must be consideration of the lack of both emergency and long term SDA housing and the need to have this in place urgently as this is crucial to protecting tenants' rights and wellbeing.

15 Other Matters

15.1 Is there anything we have missed?

Tenants in groups homes have told us that one of the main issues they have is that their privacy is not respected. Group homes can be difficult environments in which to keep tenants information private from other tenants or support workers. With a separate SDA provider there are questions about the sharing of information to protect rights while not breaching privacy.