



# Action for More Independence & Dignity in Accommodation

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

## **Submission Review of the effectiveness of the legislative framework governing Supported Residential Services November, 2016**

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 who they live with 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.

In general we feel the Act, although an improvement, has made little difference in practice due to lack of action on non-compliance and breaches, lack of training and accessible information to residents on the Rights and Standards in the Act, coupled with lack of access to advocacy without fear of retribution.

With this background and experience, we submit the following:

**Protection of resident's money**

**Control of residents' money**

- Are the requirements of the SRS legislation for managing residents' money effective to protect residents from financial exploitation, misappropriation or theft?

Obviously this is not effective as AMIDA has, within the last six months, been informed of a case where an SRS resident was asked to provide money weekly to be kept by the proprietor. This was supplied by a family member. This money was never seen by the resident and when the resident asked about it they were informed that they had spent it and had forgotten. This occurred for some time before the family member realized what was happening and stopped the practice. The family member provided the resident with a prepaid debit card, which they were able to use themselves. When a request had been made to the SRS proprietor for receipts or a record of how money was spent, the family member was told no records had been kept.

If this resident had not had a vigilant family member, this practice could have continued with no checks. So although a system was in place, it was clearly being abused.

- Are residents given enough information about how their money is managed? In particular, are residents given enough information to understand that the proprietor is only allowed to manage money with their consent and that they can revoke their consent at any time?

AMIDA has limited experience of issues with money being handled by SRS proprietors, but the example above indicates that the resident and the resident's close family members were not informed of the processes that have been set up for managing the residents' money.

AMIDA has experience of a resident who was placed in an SRS by a VCAT appointed Guardian against their wishes. When the client removed themselves and went back to live in their own home, fees continued to be paid to the SRS by the Financial Administrator. There was conflict with the Guardian, and there appeared to be little correspondence/conversation between the SRS, Guardian and Financial Administrators, so the situation went on for months, all the while SRS fees were paid when the AMIDA client was not in residence at the SRS. The AMIDA client was unable to get information from the Administrators, who only wanted direction from the Guardian. The client had great difficulty when they attempted to have fees refunded.

- Are proprietors familiar with these requirements? Do proprietors manage residents' money in accordance with residents' wishes? Do they maintain records and provide statement as required? Are the requirements onerous or difficult to comply with?

Again, the incident mentioned demonstrates that SRS managers don't always respect the residents' wishes. Quite obviously this SRS did not maintain records or provide statements.

If SRS proprietors consider managing money responsibly to be onerous or too difficult, perhaps they need training and support to do so within their business.

- Are there better ways to ensure that resident's money is managed appropriately?

More checks on money management should be made by Administrators, Community Visitors and Authorised Officers.

### **Transactions with residents**

- Are the 'prohibited transaction' requirements effective to protect residents from financial exploitation?

Many vulnerable people live in SRSs, and unless they have family to support them or access to independent advocates, they may not be aware of what a 'prohibited transaction' is. Much more information about rights needs to be provided to residents, their families and proprietors and staff.

- What is the best way that residents can be provided with information about prohibited transactions?

Residents of SRSs must be given information in a format that they can understand when they begin to live in an SRS. This information should be explained to them by the SRS who should have the onus put on them to ensure that the resident understands the information. They should also have access to information from advocates. AMIDA believes community education is vital for people with disabilities and other vulnerable people, but we have had great difficulty gaining access to residents of SRSs. There should be a process which promotes education and information sessions in SRS for those who want to attend. Residents should be free to attend without fear of retaliation by proprietors.

### **Limits on up-front fees and trust account requirements**

- Are the restrictions on receipt of security deposits, fees-in-advance, reservation fees and establishment fees effective to protect residents from financial exploitation?
- Is there enough information available to residents on the types of payments that are permitted and how they are managed? Do residents understand what up-front fees they can be asked to pay? Are residents generally aware that

proprietors must hold their security deposit and up-front fees in a trust account?

Residents will only understand if they are given information in a format they understand and have access to advocates and information sessions. This is not available at present.

- Do residents know about their right to apply to VCAT for return of a security deposit and other fees? Are there any impediments to residents making such applications?

Residents with disabilities may need support to apply to VCAT, so they need access to community support in the form of advocates, community health centre counsellors and others who can support them to go through the VCAT process. Advocates do not have right of entry unless invited by residents. This puts residents in a risky position. Right of entry would assist residents access to information and to exercise their rights.

- Do proprietors understand what fees they can charge, and their obligations to pay fees into a trust account and to keep proper records? Are these requirements difficult for proprietors to comply with? Do proprietors now charge more fees than they would have charged before 1 July 2012?

AMIDA has no knowledge of whether SRS proprietors have this knowledge, but again if they are finding this difficult or onerous, they may need training on how to do this to run their business.

### **Security of tenure for residents**

- Have the security of tenure requirements been effective in giving residents a greater sense of accommodation security?

No, as people are still vulnerable. They are generally not aware of their rights. As mentioned previously AMIDA has attempted to provide information to people living in SRSs by way of information sessions, but we have found it impossible to gain access to SRSs and their residents, unless they approach us first, which puts them at risk in relation to their treatment. Proprietors are not always positive about the involvement of advocates and resident can suffer retaliation.

- Are residents aware of the grounds on which they may be evicted, and of their right to challenge a notice to vacate in VCAT? Are residents using the VCAT process?

AMIDA has experience of a client living in an SRS who was being continually bullied, harassed, threatened and assaulted by another resident. This other resident

did not appear to be aware that he could be evicted because of his behavior. Whether the SRS provided this information initially is unknown. The SRS proprietors did warn the other resident finally, but this did not stop the behavior towards the AMIDA client. We consequently became aware that although the proprietor told us they reported the incidents to DHHS, in fact they did not.

- Do proprietors understand the notice requirements? Is there any evidence that proprietors are not complying with them?

In the instance mentioned above, the SRS proprietors did not give the offending resident notice, even when the bullying and behavior was brought to their attention by independent advocates and support services, nor did they report the incidents which may have prompted DHHS to respond.

- Is it too difficult for a proprietor to remove a resident who is causing danger or disturbance, to move or transfer a resident for whom the SRS is no longer able to provide appropriate health care or for any other reason?

From the instance above, it is unclear whether it is too difficult as we don't know what the SRS attempted. We do know they didn't report the incidents of abuse. It may not have been in their interests financially to try to evict the abuser due to the income provided.

### **Accommodation and personal support standards**

- Do SRS residents now have a better understanding of what to expect from the services provided by their SRS than they would have had before 1 July 2012?

As mentioned previously unless residents are given information in a format that they understand, and/or have people explain it to them, they are likely to have no more knowledge than they did in 2012. A complex piece of law like this needs to be put into plain English and accessible formats with training. If proprietors need training, it is essential that vulnerable residents also require training and information in formats that they can understand.

- Are the services being provided to SRS residents now better tailored to residents' own individual support needs than services that were being provided before 1 July 2012?

There is much work needed to provide information to residents on their rights, so they can have a say in the services meeting their individual needs.

### **Lifestyle standards**

- Do residents believe that:
  - Their privacy, dignity and confidentiality are respected?

- They have appropriate independence and freedom of choice?
- That they are looked after and not at risk of abuse, or mistreatment or exploitation?

An AMIDA client continued to be abused after he reported the abuse to the SRS proprietors. The reporting was not effective. In this case the resident's dignity was not being respected by either the other resident or by the proprietor of the SRS who did not seem willing or able to deal with the problem, therefore seeming not to take the issue seriously and not respecting the resident.

People will only have independence and freedom of choice if there are actually other places to live. Many people live in an SRS as they have no-where else to go, and the choice is often to stay where they know or move to an 'unknown' SRS which doesn't seem like much of a choice.

Obviously the resident spoken about above would not have believed that they were being looked after, as abuse and mistreatment continued whilst they resided in the SRS.

The Victorian Ombudsman Reports and investigation of allegations of abuse in the disability sector - June 2015 and December, 2015 report that '...the focus of the response is not on the individual but the process' and 'serious incidents in SRS are not subject to DHHS incident reporting or review procedures, despite this being routine response for services operated by the department or providers funded by the department' and 'incident reports concerning allegations of assault are provided to the DSC if the perpetrator is an employee of DHHS or a funded provider but not if they are a fellow resident, or if the incident occurred in an SRS'. These points demonstrate that the lack of accountability and oversight will not provide residents with confidence in the whole system.

- That their personal property is safe and secure?
- Have these things improved since 1 July 2012?

This is difficult to gauge but unless information is given in a format that is comprehensible to the resident and/or they have someone to explain it to them, then it is likely that they will not understand that there have been changes, and that the changes made in July 2012 should have made their property safe and secure. They will also be unlikely to know what to do if their property is not safe and secure.

- Do proprietors understand what they need to do to comply with the lifestyle standards? Do they focus on the stated outcomes for each standard, or only on the minimum requirements?

Examples from Ombudsman's Report where they continue to breach but are given more time might lead them to believe that compliance isn't required in practice.

### **Health and wellbeing**

- Has the introduction of the new Health and Wellbeing standards made it easier or harder for the Department and AOs to deal with an SRS which does not adequately meet the health and wellbeing needs of its residents?

Again, the Ombudsman's Report found numerous breaches over long periods which were not rectified by follow up visits. No action was ever taken so there was no real requirement to comply.

### **Physical Environment**

- Do residents feel that they are living in an SRS which is safe, clean and comfortable? Do they feel that SRS accommodation has improved since 1 July 2012?

From AMIDA's experience, residents in some SRSs continue to experience conditions which would not be acceptable to others in the community, ie outdated and worn bathrooms, unsatisfactory heating and cooling, dingy rooms, lack of protection and response to abuse and violence.

- Has the introduction of the new Physical Environment standards in this form made it easier or harder for the Department and AOs to deal with a SRS which does not meet appropriate standards of safety, cleanliness, comfort and maintenance?

From AMIDA's experience many SRSs are ageing buildings, which require costly maintenance. As SRSs are business ventures it is unlikely that any profit would be used to maintain a building apart from emergency maintenance.

### **Monitoring and compliance**

- Have the changes in the Department's approach to compliance and enforcement, for example:
  - The move from periodic registration renewal to annual planned monitoring;
  - Giving AOs the ability to accept undertakings;
  - Giving AOs the power to issue enforcement notices; and/or
  - Provision of guidance and advice by AOs -
 Been effective in improving compliance with SRS regulatory requirements?

As mentioned in the Ombudsman's Report there have been no enforcement notices issued, so giving AOs power to issue has had no effect.

- Have these changes improved the quality and safety of SRS accommodation and services?

From AMIDA experience there have been no improvements in the lives of those who live in SRSs.

- Have these changes been effective in reducing the regulatory burden on SRS proprietors?

We refer to the Victorian Ombudsman's Report, June 2015 which states that the SRS Act is silent on how notification to the department of serious reportable incidents is done. It also criticizes the fact that until April 2014, when notification of a reportable incident was received, an Authorised Officer was required to complete a Category One incident report, in accordance with the Department of Health incident reporting instruction. In April 2014, the department reviewed this requirement and implemented a policy that reduced the role of Authorised Officers in the incident reporting process. The reason for these changes is detailed in a factsheet for SRS authorized officers and Regional Directors, which states: Given the legislative framework governing SRS proprietors, and the absence of direct funding relationship between DH [Department of Health] and SRS proprietors, the Incident Management Governance Group and the Director, Ageing and Aged Care have agreed that SRS should be removed from the scope of the incident reporting instruction'...the focus of the department's monitoring of incidents in SRS is on the proprietor's compliance with process rather than client wellbeing. This is a large flaw, which lets down the residents of SRSs.

On page 39 of the Ombudsman's Report of June 2015, it is highlighted that when asked about Authorised Officers offering support to the residents, a manager in the department's SRS program said the role of the Authorised Officer is not to provide support for the person involved, but they will provide advice and guidance and undertake with their regional manager to facilitate the provision of adequate support. The role of responding to serious incidents lies primarily with the proprietor.

The burden may have been lifted from the SRS proprietors, but this does not lead to a better outcome for residents. Perhaps the Authorised Officer's role needs to include ensuring (not just 'undertake with their regional manager to facilitate the provision of adequate support') is provided to the resident, either from the SRS or from outside agencies. It should also include ensuring that the proprietor, who has had a burden lifted, does comply with their responsibilities under the Act.

The Ombudsman's report also found that there is currently no specific training provided to Authorised Officers on responding to serious incidents.



AMIDA's experience is that when we follow up a complaint that comes to us about an assault or abuse in an SRS, it has not been made clear to the person involved what action has been taken, and that things will improve. In fact even when we have been assured that all the correct procedures have been undertaken, it is obvious that this is not sufficient to ensure that the same incidents do not happen again and again.

Unless the Authorised Officer actually does something about the serious incidents, then this situation will continue and the changes that have been made to streamline the Act have done nothing to improve conditions for residents in SRSs.

There are examples in the Ombudsman's report of multiple SRSs having numerous inspections (up to 22), and when SRSs have been found to be non-compliant (in inspection after inspection), there was no enforcement action taken by the department against the SRS proprietor in any of the SRSs mentioned, even though the Act allows for a range of statutory enforcement options including infringements, undertakings, compliance notices censure in Parliament, suspension of admissions, revocation of registration. If these interventions are not used by people eligible to use them, then changes in regulations, reviews and reports have not been effective in improving the conditions for people living in SRSs.

From AMIDA's experience, and the lack of action taken after incidents we have been involved in, this is not surprising.

The Ombudsman's report goes on to say that since the 3 years the SRS Act has been in place, and over the 24 years since the commencement of the Health Services Act, the department has never issued an infringement notice to an SRS proprietor, despite it being legal to do so.

Further, as The Ombudsman's Report states that the SRS Act has been in place for 3 years, when asked by the Ombudsman's staff why no infringement notices have been served, a manager in the SRS program said '...the process for infringement notices hasn't been approved yet...'. .

So despite the dissatisfaction by AMIDA clients, the advocacy towards SRS proprietors, the contacting of Authorised Officers, on numerous occasions, in the Ombudsman's Report an SRS program manager is stating that '...the process for infringement notices has not been approved...and we don't get that many complaints, and so this is why we have not implemented the Act to issue infringement notices and there have been no prosecutions.'

If there have been so few complaints and infringements, why have there been reviews of SRSs over the years? And why have conditions for residents not improved? The Act was introduced to improve outcomes for residents but the

implementation, lack of resident training and accessible information, poor access to advocacy and negligent monitoring of SRSs by DHHS has led to a failure to improve outcomes.

### **Other comments**

Finally we contend that this review must incorporate the findings of the Ombudsman's reports as they have forensically investigated the reporting and response to abuse in SRSs. This review of the Act cannot ignore the Ombudsman's findings and we contend that the main problem identified is lack of real action such as issuing of infringement notices, is a fundamental reason for the failure of the Act in delivering improved outcomes for people residing in SRSs. This must change immediately.