



Tenants Union of Victoria  
response to

**Rights in Specialist Disability Accommodation  
Consultation Paper**

June 2017

Yes, what else but home?

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# Tenants Union of Victoria

The Tenants Union of Victoria (TUV) was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state.

Our aim is to promote and protect the rights and interests of residential tenants in Victoria.

We operate an integrated service model that combines our three main areas of activity:

- > client services (advice and advocacy),
- > community education, and
- > social change

## **1. Client Services (advice & advocacy)**

The purpose of our client service is to provide accessible and effective assistance to residential tenants across Victoria. Advice is provided by telephone, in person, by email and through secondary consultations with other services.

During 2015/16, the TUV handled more than 18,100 enquiries. The TUV provided advocacy on behalf of tenants in almost 1000 matters, represented tenants in over 240 hearings at VCAT or other Courts, and attended 250 outreach visits and provided advice and information to over 500 rooming house and caravan park residents.

## **2. Community Education**

The TUV produces a wide range of publications and practical resources for tenants, rooming house and caravan park residents, and community service workers to assist tenants to understand their rights and responsibilities and to resolve their own tenancy problems. We have about 150,000 unique users accessing resources through our website each year.

The TUV also runs a training program for community sector workers to provide basic training in tenancy rights and responsibilities. During 2015/16 we did 26 training sessions and other community education presentations.

## **3. Social Change**

The TUV undertakes a broad range of social change activities to represent the interests of tenants and to highlight the impact of living in the rental sector. This work includes research, policy formulation, lobbying, and media liaison.

Across these three areas of activity our strategic goals can be summarised as:

- > Better tenants' rights
- > Better tenant resources
- > Better tenant services

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# Summary of Recommendations

## Legislation

- R1. Amend the Residential Tenancies Act 1997 (RTA) to include people with disability living in SDA.
- R2. Include a separate part in the RTA for SDA, to ensure that the provisions are clear and easy for all parties to understand their rights and responsibilities, and appropriate for the needs of SDA tenants.

## Agreements

- R3. Provide a prescribed standard tenancy agreement for SDA tenants and prohibit the use of additional terms unless they have been approved by an appropriate decision maker.
- R4. Create an offence provision for the inclusion of non-approved additional terms in lease agreements.
- R5. Enable an accessible mechanism for tenants to challenge lease terms that are perceived to be unfair, harsh or unconscionable.

## Accessing the house and room

- R6. Restrict an SDA provider's access to rented premises to only include situations where tenants have given their consent or adequate notice has been provided in line with sections 85 – 88 of the RTA.
- R7. Retain the power for community visitors to inspect properties, but enable individuals living on their own the right to refuse entry.
- R8. If a community visitor believes or has reason to believe a person with disability has been pressured or manipulated by another party to deny them entry, there should be a process to have the matter reviewed by an appropriate decision maker.

## Rents

- R9. The Housing Registrar should publish a central registry of policies for all registered housing agencies. The agency should provide up-to-date policies at all times to the Registrar. Only the policies held by the Registrar should be enforceable by the housing agency.
- R10. The performance standard for rents should be strengthened to provide that the Housing Registrar must monitor, investigate and enforce affordable rents to be charged by Registered Housing Agencies, and to make this information publically available.
- R11. Include mirror provisions as the current RTA in relation to rent increases, and a tenant's right to challenge a notice of rent increase.

## **Modifying the house**

- R12. Allow an SDA tenant to install non-structural modifications without the landlord's consent.
- R13. Larger or structural modifications should require the landlord's consent however the landlord should not be permitted to unreasonably refuse consent to structural modifications that support disability, health or safety needs.
- R14. Modification should not be required to be removed at the end of a tenancy where the modifications were necessary to support the tenant's health or disability.

## **Repairing damages**

- R15. Adopt RTA protections for SDA tenants to pursue urgent and non-urgent repairs.
- R16. Clearly outline tenant liability for damage and have regard for damage that may be caused due to a tenant's disability.

## **Notice to vacate and relocation**

### **Relocation**

- R17. Temporary relocation as described in s74 of the Disability Act should be amended to provide clear outlines for when it is permitted as an option.
- R18. Where temporary relocation is enacted there should be a requirement for written reasons for the decision to be provided to the tenant, the tenant's service provider, and the Secretary and the Public Advocate before the relocation can occur.
- R19. Relocating a tenant without reasonable grounds should be made an offence provision, similar to that which is provided in section 368A of the RTA *Offence to give notice to leave or purported notice to leave without reasonable grounds*.
- R20. Relocation of a tenant must be to a dwelling that is appropriate and meets the needs of the tenant including in a suitable location.
- R21. Include minimum notice periods for temporary relocation of tenants.

### **Notices to vacate**

- R22. Include a similar provision in the RTA as is provided in section 76(7) of the Disability Act *Secretary and the Public Advocate must be notified within 24 hours of a notice to vacate being issued*.
- R23. Increase notice periods from the 60 days' provided in the Disability Act to 90 days', unless a shorter period is required.
- R24. Do not allow a notice to vacate to be issued for no specified reason, including end of fixed term notices.
- R25. Do not include current notices to vacate that relate to service provision.
- R26. Strengthen protections against retaliatory evictions.

## **Tenants' complaints**

- R27. Introduce a rental housing ombudsman.

## **House management**

- R28.** House rules should not be tied to security of tenure whereby a breach of the rules may result in eviction, but instead should trigger a support response.

# The future of Specialist Disability Accommodation

## Legislation

- R1. Amend the Residential Tenancies Act 1997 (RTA) to include people with disability living in SDA.**

Supported accommodation is currently regulated under the *Disability Act 2006* (Disability Act). Under proposed changes the service provider and the housing provider will be separated into two parts. Along with this change it would be appropriate for the housing component to be moved from the Disability Act into the *Residential Tenancies Act 1997* (RTA). This would ensure consistency across tenants living with and without disability in SDA and other types of rental accommodation. It would also create greater clarity for housing providers, tenants and their advocates as all tenancies would be governed by the same legislation.

- R2. Include a separate part in the RTA for SDA, to ensure that the provisions are clear and easy for all parties to understand their rights and responsibilities, and appropriate for the needs of SDA tenants.**

A new part in the RTA should be created to enable the most appropriate legislation for the needs of SDA tenants and providers. In some instances provisions contained in the Disability Act should be maintained and included in the new SDA part of the RTA. The new part should not be restricted by the structure and contents of other parts of the RTA. It is important that SDA tenants have appropriate protections legislated even where these are not currently contained elsewhere in the RTA. For example the RTA does not currently deal with modifications appropriately and so new provisions will need to be created for SDA tenants. The RTA is often confusing and difficult to understand and navigate by tenants. The new part should be developed to be clear and easy to understand by all parties.

## Agreements

- R3. Provide a prescribed standard tenancy agreement for SDA tenants and prohibit the use of additional terms unless they have been approved by an appropriate decision maker.**
- R4. Create an offence provision for the inclusion of non-approved additional terms in lease agreements.**
- R5. Enable an accessible mechanism for tenants to challenge lease terms that are perceived to be unfair, harsh or unconscionable.**

One issue that we see in tenancies governed by the RTA is the inclusion of unfair additional terms in tenancy agreements. Currently under the RTA a tenancy agreement must be in a prescribed form, however tenancy agreements routinely include additional terms that are far more numerous and of greater ambit than the prescribed terms. Additional terms are permitted under the RTA however they are invalid if they '*purport to exclude, restrict or modify*' provisions in the RTA.

Very few tenants properly understand the additional terms and conditions to which they are agreeing despite the ritual observed by many landlords and real estate agents to require the tenant to initial each additional term. Commonly tenants are required to pay the bond and rent in advance at the same time or before they sight the written agreement. That process is inimical to informed consent.

Many of the common additional terms are unfair in relation to the considerations in Australian Consumer Law, invalid under section 27 of the RTA or potentially harsh and unconscionable. Despite this, they are regularly included in tenancy agreements.

Whilst it may be possible for a tenant to defend against the enforcement of any such unfair, invalid or harsh term, a tenant would have to be sufficiently aware of this defence to contest any action by the landlord or their agents including the landlord's insurers. We believe that the sole purpose of these terms is to create the misleading impression that a tenant must comply.

For SDA tenants it is all the more important that there are strong protections from unfair additional lease terms. A standard tenancy agreement should be adopted with restrictions on additional terms unless they have been approved by an appropriate decision maker. This could be the Director of Housing or the Housing Registrar or another suitable party. There should also be a mechanism to challenge terms thought to be unfair.

## **Selecting housemates**

### **Tenant input**

As SDAs will commonly be shared housing it is important that existing tenants have the opportunity to contribute to the decision of selecting a new tenant. Allowing tenants to have input into this decision is likely to improve tenants' quality of life and increase the longevity of households. It would be important for existing tenants to have the ability to object to a new tenant in the instance of a history of family violence with the prospective tenant or other health and safety concerns.

Under Part 4A of the RTA there are provisions to allow site tenants living in Residential Parks to participate in site tenant committees. This is positive however the legislation does not provide for the site committee to formally influence decisions of the site owner. A similar provision may be appropriate for SDA tenants, however if this was introduced there should be an avenue for committee decisions to have meaningful influence over the housing provider's decisions about the selection of new tenants and other housing matters.

### **Landlord selection process**

It is understood that the long term sustainability of households is an important consideration for a housing provider when selecting a new tenant for shared SDA. Whilst it is necessary to choose a tenant that will fit in with a household, the selection process must also be transparent and fair. Many of the attributes outlined for consideration in the *Offering residency in Specialist Disability Accommodation Policy and Standards* document (Appendix 4)<sup>1</sup> are protected attributes under the *Equal Opportunity Act 2010*. Attributes such as age, gender, cultural background, and support needs, are all protected under the EOA and cannot legally be used against someone when assessing whether they should be offered accommodation. We would have grave concerns if these characteristics were to be permitted to be used as selection criteria by housing providers, as this may allow for unfair and unlawful discrimination.

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<sup>1</sup> DHHS, *Offering residency in Specialist Disability Accommodation – Policy and Standards* (Victoria), May 2017, <http://www.dhs.vic.gov.au/for-service-providers/disability/national-disability-insurance-scheme>

## Accessing the house and room

- R6. **Restrict an SDA provider's access to rented premises to only include situations where tenants have given their consent or adequate notice has been provided in line with sections 85 – 88 of the RTA.**
- R7. **Retain the power for community visitors to inspect properties, but enable individuals living on their own the right to refuse entry.**
- R8. **If a community visitor believes or has reason to believe a person with disability has been pressured or manipulated by another party to deny them entry, there should be a process to have the matter reviewed by an appropriate decision maker.**

Tenants living in SDA should have the same right to quiet enjoyment and privacy as tenants living in other types of rented accommodation. Currently the provisions around accessing a residents' room or house under the Disability Act are broader than those found in the RTA. As many of these provisions will no longer be relevant to housing providers under the NDIS changes, it would be more appropriate to adopt similar provisions to those found in the sections 85-88 of the RTA. The power for community visitors to inspect properties is an important protection outlined in the Disability Act that should be maintained.

## Paying rent and money management

### Bonds

Consideration for bond charges in SDA would need to include:

#### *The bond amount*

The bond should be capped at four weeks' rent.

#### *Clear provisions for determining liability of damage for bond refunds*

Tenants should only be held liable for damage that was caused 'recklessly and intentionally'. Tenants should not be made to pay for damage that was caused due to a tenants' disability.

### Rent

#### *Rent setting*

Better transparency of rent setting policies for Registered Housing Agencies is required to improve fairness and clarity for SDA tenants.

- R9. **The Housing Registrar should publish a central registry of policies for all registered housing agencies. The agency should provide up-to-date policies at all times to the Registrar. Only the policies held by the Registrar should be enforceable by the housing agency.**

The Performance Standards for Registered Housing Agencies provide:

*"The registered agency makes information about its tenancy management policies and procedures available in a variety of formats."*

In our experience registered housing agencies frequently do not have policies and procedures available and do not readily provide them when asked. This makes it virtually impossible for a tenant or a tenant's advocate to ascertain whether the agency is complying with its own policies. Whilst the standard on transparency is relatively clear, the Registrar does not adequately enforce its compliance. When we have raised noncompliance with this standard in a formal complaint we have seldom received a response that an undertaking would be given to ensure the policies are made available.

Transparency of policies is a significant issue in the community housing sector, particularly with policies pertaining to rent setting which will be discussed further below. Other policies influencing tenant management procedures are also of concern. In public housing, provided by the Department of Health and Human Services, detailed policy manuals and operational guidelines are available online. This allows tenants to understand their rights and responsibilities. There needs to be the same level of accountability for tenants living in housing provided by Registered Housing Agencies. For this to occur the Housing Registrar must ensure that the housing agencies have up to date policies publically available.

#### *Rents*

**R10. The performance standard for rents should be strengthened to provide that the Housing Registrar must monitor, investigate and enforce affordable rents to be charged by Registered Housing Agencies, and to make this information publically available.**

The Performance Standards for Registered Housing Agencies provide:

- 1 *“The registered agency makes information about its policies and procedures to determine and manage rents available in a variety of formats.”*
- 2 *“The registered agency manages rent in accordance with the specific legal and policy requirements.”*
- 3 *“The registered agency has policies and strategies to deliver housing services at affordable rents to low income tenants. The Registrar and registered agencies will monitor the extent to which rent charged is below 75% of market rent and between 25% and 30% of tenant income (in compliance with the current affordable rent parameters).”*

The Performance Standards for rents state that registered agencies must have policies and procedures to deliver housing at affordable rents, however it is not specified how rents should be set. It is understood that the standards must inform a wide and divergent sector targeting housing at different population groups.

One major weakness in the Performance Standards is that the Housing Registrar does not have a requirement to enforce the affordability of rents, it must only monitor them. There are no further requirements to publish the figures or to act to investigate or enforce that the level of rent should be charged. It is difficult to see how this monitoring is of benefit when no further action is required. With the introduction of SDA into this sector of housing it is all the more important that there are strong regulations and enforcement powers to ensure that rent calculation is transparent and that rents are affordable.

**R11. Include mirror provisions as the current RTA in relation to rent increases, and a tenant’s right to challenge a notice of rent increase.**

The provisions in the RTA for rent increases should be extended to SDA tenants.

#### **Modifying the house**

**R12. Allow an SDA tenant to install non-structural modifications without the landlord’s consent.**

**R13. Larger or structural modifications should require the landlord’s consent however the landlord should not be permitted to unreasonably refuse consent to structural modifications that support disability, health or safety needs.**

- R14. Modification should not be required to be removed at the end of a tenancy where the modifications were necessary to support the tenant's health or disability.**

The rights and responsibilities with regard to modifications are not adequately addressed in the Disability Act or the RTA.

For tenants living in the private rental market this can act as a prohibitive barrier to accessing housing. Where the landlord is not required to give consent there can be significant delays or restrictions that will impinge on the tenants' security of tenure and access of appropriate housing. Additionally the requirement to remove modifications at the end of a tenancy can be incredibly cost prohibitive and may make moving unviable.

If SDA residents are to be adequately catered for the new section in the RTA will need to provide additional provisions for modifications.

### **Repairing damages**

- R15. Adopt RTA protections for SDA tenants to pursue urgent and non-urgent repairs.**
- R16. Clearly outline tenant liability for damage and have regard for damage that may be caused due to a tenant's disability.**

SDA tenants should have the same pathways to access repairs as other residential tenants. Special considerations should be taken when determining liability for damage to ensure that tenants damaging property due to their disability are not treated unfairly.

### **Notices to vacate and relocation**

#### **Relocation**

- R17. Temporary relocation as described in s74 of the Disability Act should be amended to provide clear outlines for when it is permitted as an option.**
- R18. Where temporary relocation is enacted there should be a requirement for written reasons for the decision to be provided to the tenant, the tenant's service provider, and the Secretary and the Public Advocate before the relocation can occur.**
- R19. Relocating a tenant without reasonable grounds should be made an offence provision, similar to that which is provided in section 368A of the RTA *Offence to give notice to leave or purported notice to leave without reasonable grounds.***
- R20. Relocation of a tenant must be to a dwelling that is appropriate and meets the needs of the tenant including in a suitable location.**
- R21. Include minimum notice periods for temporary relocation of tenants.**

Temporary relocation has the potential to significantly disrupt a tenant's wellbeing and routine and so it is important that there are adequate safeguards in place to ensure that it only occurs where it is the most appropriate action and where all other options have been exhausted.

Considerations for temporary relocation need to include the impact that relocation may have on the health and wellbeing of the tenant as well as the other tenants in the property. Relocation should only be permitted where all other avenues have been exhausted and where additional support has been triggered. Temporary relocation should only occur as an option of last resort.

#### **Notices to vacate**

- R22. Include a similar provision in the RTA as is provided in section 76(7) of the Disability Act *Secretary and the Public Advocate must be notified within 24 hours of a notice to vacate being issued.***
- R23. Increase notice periods from the 60 days' provided in the Disability Act to 90 days', unless a shorter period is required.**
- R24. Do not allow a notice to vacate to be issued for no specified reason, including end of fixed term notices.**
- R25. Do not include current notices to vacate that relate to service provision.**
- R26. Strengthen protections against retaliatory evictions.**

SDA tenants are more vulnerable to eviction due to the barriers to finding new appropriate housing. This means that there needs to be strong protections from unfair and unnecessary evictions, generous notice periods, and options to challenge unreasonable evictions. Notices to vacate for no specified reason, including end of fixed-term notices should not be permitted in SDA housing as the presence of these notices reduce security of tenure for SDA tenants.

### **Tenants' complaints**

- R27. Introduce a rental housing ombudsman.**

The introduction of a rental housing Ombudsman or Ombudsman Scheme would be the most appropriate way to address tenant concerns. Ombudsman Schemes are known to be more accessible than other dispute resolution methods such as tribunals or courts, and are considered effective in promoting access to justice and overcoming power imbalances.<sup>2</sup> There is also a critical difference in culture within such schemes, where they are directed at resolving consumer complaints, generally consistent with good industry practice and the law. As well as resolving individual disputes, Ombudsman schemes are able to address systemic issues, which over time would lead to a reduction in the number of disputes between tenants and landlords and the identification of repeat offenders.

### **House management**

- R28. House rules should not be tied to security of tenure whereby a breach of the rules may result in eviction, but instead should trigger a support response.**

In Rooming Houses we see house rules play a complex role. In many instances unfair house rules can cause situations of bullying and insecurity for rooming house residents. Whilst maintaining a harmonious household is important it is thought that this would be better achieved through legislated rights and duties and through appropriate service supports. Where house rules are in place, any breach of the rules should trigger a support response, rather than threatening the security of tenure of tenants.

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<sup>2</sup> Productivity Commission, Access to Justice Arrangements: Inquiry Report, no. 72, 5 September 2014, p 315.