Rights in Specialist Disability Accommodation
June 2017

scope

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Rights in Specialist Disability Accommodation

Response to Consultation

June 2017

Scope welcomes the opportunity to respond to the Victorian Government's consultation into Rights in Specialist Disability Accommodation. Scope was established in 1948 and is now one of the largest disability service providers in Victoria. Scope provides support to people with physical, intellectual and multiple disabilities and developmental delays to achieve their goals, and our mission is to enable each person to live as an empowered and equal citizen. Across Victoria, Scope provides services to over 6,000 people with a disability across more than 100 service locations including day and lifestyle options, therapy (e.g., psychology, occupational therapy, speech therapy), respite, and supported accommodation. Currently, Scope provides shared supported accommodation to more than 290 people with disability. Scope is also registered with the National Disability Insurance Scheme and has been involved with service delivery under the Scheme since the trial in 2013 through our services in the Barwon region. Scope is therefore well placed to respond to the consultation given our experience in shared supported accommodation and with the National Disability Insurance Scheme.

3.1 Agreements

What should new agreements with the SDA provider cover?

As with any tenancy arrangement there will need to be:

- A tenancy agreement which details the rights of the tenant (i.e. the client/ resident/ NDIS participant) and the landlord;
- An access arrangement, which outlines rights of support workers and families to attend and access the premises. This may be a basic schedule which may be attached to the tenancy agreement in order to provide the support workers and family with "consent" as third parties to access a particular rental premises. This will be particularly relevant as part of implementing the SDA arrangement. It will also be relevant to ensure that third parties given access to a property do not interfere with the rights of other residents. There are existing provisions in the Disability Services Act which reflect these requirements and may be mirrored as part of any new regime.

There may potentially be other agreements in place that provide an overarching arrangement and outline key expectations of landlords and service providers. These other agreements may include:

- Supported Independent Living agreement;
- Participant Agreement outlining the roles and responsibilities of the service provider and the clients, as well as establishing level of support that is to be delivered; and/or
- Overarching agreement between the landlord and the NDIA.

Should agreements cover house rules?

In an effort to support right of choice, then the house rules are to be agreed to by the tenants. It may be beneficial to have in place a set of minimum of standards that enables the residents to hold a mutual understanding of occupying the premises. Some minimum principles may include cleaning, visitations etc. In order to assist with implementing house rules, any agreements (including house rules) should be communicated in a way that residents understand (e.g., easy English, plain English).

Should residents all have to sign the same agreement?

It would be beneficial to have a template lease/tenancy agreement that is used as part of implementing SDA, and can be modified through the provision of "special conditions" for each resident as required. The standard terms like any lease agreement will include mandatory terms:

- Lease period and option to extend;
- Rent payment;
- Rent increase;
- Rights of the tenant;
- Conditions of the premises;
- Damage to the premises and responsibility to repair any damages. Under these circumstances the landlord will be responsible for "wear and tear" and ensuring that the premises is fit for purpose, while the resident is responsible for damage he/she causes to the premises.
- Rights of the landlord;
- Managing disputes between the resident and the landlord. Any disputes between the residents will need to be managed according to house rules.
- Termination rights available to both landlord and tenant;
- Hardship arrangements whether this is around finance or health and wellbeing.
- Breaking the lease and the consequences.

In addition to the mandatory terms there should also be a provision, similar to the "special conditions", which will enable the landlord and resident to include specific requirements around the following:

- Modification to the premises;
- Costs for modifying premises;
- Emergency plan.

What happens if a resident cannot sign an agreement?

In all cases, information should be communicated in a way that the person understands. There will, however, be instances where the person does not have the capacity to sign the agreement. In these situations, the authorised representative should sign on the person's behalf, in accordance with current practice.

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

As mentioned above there should be a standard agreement that covers mandatory conditions and then there may be special conditions that are specific to the needs and requirements of individual residents.

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

Residents should sign a new agreement at the commencement of a new lease arrangement or when the agreement is renewed. This practice is to be in line with the requirements set out under the Residential Tenancies Act 1997.

How long should the agreement be in place for?

The agreement should be in place for a minimum of 3 years. However, it is recommended that there are termination provisions available to both landlord and resident to reflect changes in circumstances.

3.2 Housemates

What role should residents have in choosing the new housemate?

Article 16 (Living independently and being included in the community) of The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) states that "Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living environment". Residents should, therefore, be able to exercise choice and control in all aspects of their life including who they live with and should drive selection of housemates. Decision-making support may be required in order for residents to choose housemates (refer to http://www.scopeaust.org.au/research-project/decision-making-support-building-capacity-within-victoria/).

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

In choosing a co-resident, a range of factors should be taken into account. For example, the person's preferences and lifestyle (e.g., parties, visitors, smoking, overnight guests, pets), compatibility of typical routines, alignment of cleanliness and tidiness expectations/ standards, suitability of the physical environment, age and gender. These factors may vary depending on the needs and opinions of the residents.

Who should oversee disputes about this process?

Disputes should be overseen by the residents, as is the case in mainstream tenancy situations. In shared housing situations, it is good practice to have house rules. House rules typically specify cleaning rosters, how and when bills are paid, how much notice should be given when someone wants to move out, and should also include how disputes will be managed and resolved. Residents should agree to these before moving in. It may be that residents require support from the SIL provider, family and/or friends to resolve disputes. If disputes cannot be resolved by tenants, dispute resolution services (e.g., The Dispute Settlement Centre of Victoria) or community legal centres may be able to provide advice and mediation. These services may, however, lack skills in working with people with disability (e.g., providing information in accessible formats) and so capacity building will be necessary and, in accordance with Article 9 of the UNCRPD, measures put in place to ensure that information is accessible to people with disability.

Who makes the final decision?

In accordance with the UNCRPD and contemporary practice, the residents should make the final decision. Decision-making support principles should be implemented, as required, so that residents are empowered to make the decision (refer to http://www.scopeaust.org.au/research-project/decision-making-support-building-capacity-within-victoria/).

3.3 Accessing the house and room

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

Article 22 of the UNCRPD relates to respect for privacy and states that "no person with disabilities, regardless of place of residence or living arrangements shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour or reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks". Access to the house by a service provider or landlord must always be in accordance with Article 22. This should be made clear in the service agreement and the tenancy agreement, respectively. The service agreement will specify the nature of services to be delivered and the nature of access required in order to deliver those services. This will need to be agreed to separately with each of the residents, with consideration for the fact that the service provider will of course require access to the house to deliver services to a resident in his or her room. If the nature of services being delivered to a resident includes personal support on a daily basis (e.g. getting out of bed, showering, getting dressed), then there needs to be permission given in advance for a service provider to have access to the house to carry out these duties. The landlord should only be granted access in specific circumstances (see below).

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

As with access to the house, access to a residents' room must be according to the service agreement and the tenancy agreement, respectively. The service provider will have a specific, continuing purpose in requiring access to a residents' room. But the way in which the service provider accesses the room must be respectful of the residents' privacy and confidentiality, and be done as the resident wishes. The landlord should only be able to access a resident's room to carry out planned repairs, for scheduled inspections that have been notified in advance (in line with the tenancy agreement or if the resident has breached the tenancy agreement), or in an emergency.

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

The terms of access for a service provider need to be specified in the service agreement, and for a landlord in the tenancy agreement. It will be impractical for the service provider to give any notice if daily access is required in order to deliver services and that has already been made clear in the service agreement. The way in which the service provider accesses a house and a resident's room need to be made clear to all workers.

3.4 Paying rent and money management

Should SDA residents have to pay a bond?

It would be reasonable to expect SDA residents to pay a bond only if there was allowance for that in their NDIS package. The bond should be proportionate to rental payments. The need for a bond could be obviated if payment were made to the SDA provider for the same purposes as a bond would be paid. If damages to the property at the end of the tenancy exceeded the amount of the bond, this would be

payable by the resident, provided the terms and conditions had been made clear in the tenancy agreement.

Who should manage disputes about rent?

Disputes about rent should be referred to Consumer Affairs (see 3.6 below in relation to capacity building for government agencies involved in dispute resolution for NDIS participants).

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

The NDIA agreement with the SDA provider should stipulate the rights and responsibilities of residents in relation to the tenancy. The service provider must present itemized accounts for all services to the resident or their nominated representative. The service provider should not have access to the resident's bank account; and all payments to the service provider should be electronic, if possible. Any transactions that involve cash should be documented and receipts provided, if available. There is a role for natural safeguards around SDA residents to be protecting them from financial exploitation. If there was an identifiable risk of financial exploitation involving the resident (whether that risk be from the service provider, the family, or from others), then application should be made for appointment of an administrator (or equivalent, depending on the applicable laws in the state jurisdiction).

How much notice should landlords give of a rent increase?

There should be at least a six month notice period of a rent increase for SDA. Living in SDA differs from other residential tenancies in significant ways. The people living in SDA will generally be on a fixed income; the funds that a resident has available to pay rent will be determined by a combination of financial variables, primarily: NDIS package; disability support pension; and discretionary individual funds. There is a real possibility that rent increases, as in aged care, will become informally linked to increases in the disability support pension. The rules that apply to notice periods for pending rent increases will need to be documented and published in accessible formats.

How often should landlords be allowed to increase the rent?

Landlords should be allowed to increase rent only once in a 12 month period. Any rental increase must be indexed and not exceed increases in the disability support pension.

3.5 Modifying the house

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

At the commencement of the lease there will need to be a condition report provided by appropriate professional outlining the modifications that need to be in place. This will provide the landlord with a report about the modifications. There should also be a pre-condition (or a form of cooling off period) in the lease that sets out that if the modifications are not made to the standard or in the form required by the tenant then the lease will not proceed.

Throughout the term of the lease. There may need to be an audit or check of the modifications to see if they functional or whether there needs to be other modifications to meet the need of the resident. This may happen either quarterly throughout the lease.

At the end lease, there will need to be a provision to outline whether the landlord or tenant is responsible for removing the modifications made to the premises. Under the Residential Tenancies Act this would be the responsibility of the tenant.

Who should oversee the landlords responsibility to make modifications?

This will potentially need to be governed by the NDIA to ensure that consistent standards and responsibilities are being met. This may be covered by any arrangement that is in place between the relevant government agency and the landlord.

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

This would be covered under the lease agreement and would provide the residents with the following options:

- If the premises can be substantially used then there may be a deduction in rent or some sort;
- Where the premises cannot be used (for example excessive noise), then the landlord will arrange alternative accommodation for the resident.

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

The NDIA Registrar would need to specify the minimum standards for SDA, including a description of what would make SDA fit for purpose. More extensive modifications would be at the discretion of the providers and may, over time, be determined by market forces. The NDIA should have a role in ensuring sufficient payments are made to participants for reasonable and necessary home modifications, and the Registrar would become involved if there was any dispute about the responsibility for costs that are considered beyond what was reasonable and necessary. This would be negotiated between the provider and the participant (or the participant's authorised representative). The landlord should arrange alternative accommodation or rent relief in the event that modifications are instigated by the SDA provider; and the NDIS should cover any reasonable and necessary modifications that are specific to the needs of participants should be covered by the NDIS.

3.6 Repairing damages

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

The tenancy agreement should stipulate the conditions under which SDA residents would have personal liability for property damage. The agreement between the SDA provider and the NDIA should establish clear directions around the rights and responsibilities of SDA providers and their tenants, and the terms and conditions from these agreements would flow through (as appropriate) to the tenancy agreements. The tenancy agreement for all persons sharing the house would need this consistent basis as there may be some tenants that may be more likely to cause damage to the property as opposed to others. Any

damage caused by residents should not be recoverable by the SDA provider as the SDA payment scheme has made allowance for higher levels of wear and tear. The issue of personal liability also needs to be considered in the context of legal capacity. Do the tenants have guardians/administrators/ powers of attorney? What are the terms of the instruments appointing these representatives? What authority will be required to enter into a tenancy agreement on behalf of a tenant who does not have capacity? The answers to these questions may determine who acts on behalf of the tenant should the tenant damage the property. As with any tenancy agreement, reasonable wear and tear needs to be excluded from personal liability.

Who should oversee disputes about repair and maintenance of SDA?

That would depend on whether the dispute was a matter covered in the agreement between the NDIA and the SDA provider. If it was, then the NDIA Registrar (or equivalent NDIA officer) should have oversight. If the matter was solely covered in the tenancy agreement between the participant and the SDA provider, then the Residential Tenancies Tribunal or Consumer Affairs would be the most appropriate body to oversee disputes. Education and capacity building about working with people with disability would be required for the Tribunal and Consumer Affairs to ensure that systems and processes are accessible to people with disability and to ensure that tenants with disability receive a fair hearing. It is likely that the body established to manage disputes under the new SDA regime will also be required to have experience involving tenants with disability being represented by guardians/administrators, or tenants who have complex communication and may require support in making decisions. These matters would need to be taken into consideration before responsibility for dispute oversight was given to such an agency.

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

The NDIA Registrar (or equivalent NDIA officer) should have a role if there is a dispute relating to the responsibility of the SDA provider under the agreement with the NDIA. Other disputes should be referred to the appropriate government agency as outlined above. It may be appropriate to reserve powers for the NDIA Registrar to cease, suspend or reduce payments to the SDA provider pending resolution of complex disputes. The details for deciding at what point a dispute was considered "complex" would need to be worked out, but would probably include nominated contractual breaches by the SDA provider.

3.7 Notice to vacate and relocation

How should landlords consult with residents about temporary relocation?

Currently, the *Disability Services Act* (Vic) 2006 includes provisions around notices to vacate and relocation requirements. These provisions are set out under sections 76, 77 and 80. Similar provisions will need to be included in any new regime to enable the tenant and the landlord to request a notice to vacate.

There are also various considerations regarding guardianship that may also need to be involved in consultations as part of these arrangements.

Should temporary relocation continue to be regulated? How?

The *Disability Services Act* (Vic) 2006 includes provisions around notices to vacate and relocation requirements. These provisions are set out under sections 76, 77 and 80. Similar provisions will need to be included in any new regime to enable the tenant and the landlord to request a notice to vacate.
In particular, section 76 under the above mentioned act provides a range of circumstances where the service provider (and consequently the landlord under the new regime) may give the resident written notice to vacate. A key safeguard as part any relocation is to ensure that any resident affect by a notice to relocate is provided with alternative accommodation.

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

Six months.

Should a landlord require a reason to notify a resident to vacate?

As with any residential tenancy the landlord needs to advise tenants about the reasons for any vacation notice. The circumstances to request a resident to vacate will be around the following:

- If the landlord wishes to sell the premises;
- If the landlord will be entering into liquidation;
- If the premises is unsafe and cannot be repaired. That is the tenant has significant structural hardship.
- Non-compliance by the tenant. For example, non-payment, damaging the premises, unacceptable behavior etc.

What kind of reasons are acceptable?

Please see above.

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

There should be a mutual obligation. If the tenant wishes to leave the premises, then he/she must inform the landlord.

Should there be a minimum notice period?

Up to 6 months.

What should happen if a resident vacates without any notice?

Bond is withheld.

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

The resident in consultation with his/her support network as established in the Participant Agreement (between the individual client and the relevant service provider). Also, there is an expectation that the NDIA will establish a register with a list of available tenancy opportunities. Under the new regime, the

landlord will effectively need to manage any alternative accommodation arrangements through collaboration with the NDIA.

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

Please see above.

How should residents be supported to complain or request review?

This should be undertaken either through the Disability Service Commissioner or VCAT. It would be beneficial to have an:

- Informal stage similar to what is offered through Consumer Affairs that aims to support tenants and landlords mediate and resolve complaints;
- Formal proceedings through Disability Commissioner or VCAT (or similar tribunal) ;
- Depending on the nature of the complaint, then landlords may be placed on a register. This would cover serious complaints, for example not responding to maintenance, serious breach of the lease etc.

3.8 House management

Who makes decisions about how the house operates?

In shared housing situations, it is good practice to have house rules regarding how the house operates. This might include cleaning rosters, how and when bills are paid, how much notice should be given when someone wants to move out, how disputes will be managed and resolved, and whether others can stay overnight. The decisions should be made by the residents, however, they may need to be provided with information about what they might want to consider in relation to how the house operates as it is unlikely that many people in SDA would be accustomed to these sort of decisions.

The landlord might have some involvement too, for example, in relation to whether or not pets are allowed, keeping the property in a reasonably clean condition, management of garden/ lawns etc. Consultation may need to involve the relevant guardian in some circumstances.

Should decisions require agreement between housemates?

Where possible, decisions should be by agreement. Any decisions that relate to the operation of the household will need to be approved by the housemates. For example pets etc.

Does the landlord have a role in managing the house?

The landlord should not have a role in managing the house beyond what a landlord would for mainstream tenants.

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

Issues should be resolved by the residents. Support to resolve disagreements may be required.

3.8 Legislation

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

The legislation will need to protect both tenancy and landlord rights. These rights and responsibilities are to be outlined in the legislation that governs the new SDA regime. Some of the terms will mirror current standards that are in place through the Residential Tenancy Act and the Disability Services Act to cover the following expectations:

- Rights of tenants and landlords:
- Maintenance rights and attending to maintenance;
- Termination rights for landlord and tenants;
- Standards of property;
- Notice periods for vacating premises;
- Responsibility of landlord to modify premises.

In what legislation should SDA tenancy rights be regulated?

The Residential Tenancy Act may be an appropriate start and modified to meet the SDA specific requirements. There are also specific provisions relating to notices to relocate which are outlined under the *Disability Act 2006* (Vic) which may also be used as part of the new regime.

Should VCAT continue to hear and arbitrate disagreements?

VCAT may be suitable. However, consideration should be given to holding:

1. Informal proceedings to mediate and negotiate minor disputes between tenants and landlords;
2. Hotline with specific training provided to staff to navigate questions raised by tenants and landlords;
3. Building capacity of the system and VCAT staff to work with people with disability, and understand the issues.

What other options should Government consider?

The Government should consider a form of register to log serious breaches made by Landlords. This is to offer adequate protection and safeguards for tenants. It also provides a method of reporting serious breaches by landlords. This will mean that serious breaches will need to be defined.

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