

Submissions to
Renter Services Review

Consumer Affairs Victoria

30 October 2024

About Us

Villamanta Disability Rights Legal Centre (**Villamanta**) has been assisting Victorians with their disability related legal justice issues for over thirty years. We aspire to a Victorian community where people with disability (**PWD**) have equality of rights, opportunity and voice. We promote laws and systems which better protect the human rights of PWD. We work alongside PWD to navigate legal problems.

Our priority outcomes are:

- Improved access to legal advocacy for PWD, especially cognitive impairment
- That PWD have increased confidence to assert their rights
- Improvement in the capability of the legal assistance sector to provide accessible services to PWD
- That our laws, policies and systems better protect equality of rights

Our current priority disability related issues are:

- Specialist Disability Accommodation (SDA) – access to, funding for, and rights of residents living in SDA
- Residential rights of people living in disability specific accommodation (including SDA and SRS)
- Residential rights of people in “SIL houses”
- Disability service complaints
- Supervised Treatment Orders and restrictive practices
- Guardianship and administration
- Financial abuse
- NDIS access and appeals
- Sexual harassment in supported employment

Villamanta has specialised legal knowledge and experience regarding resident rights in SDA due to our long history of working with this population. Our experience in NDIS matters provides us with a sound understanding of the intersections between Commonwealth and State legislation and regulation, which often forms the basis of the tenancy issue.

Our service response is tailored to the needs of our clients. Representing people who are non verbal, who are unable to leave their home, or who have others making decisions for them unlawfully requires us to be where the client needs us, and operate in a way that meets their needs. If we did not, they would have no assistance at all.

Contact

Naomi Anderson, Legal Practice Manager

naomi.anderson@villamanta.org.au

0481 091 061

Contents

About Us	2
Introduction.....	4
Relevant Royal Commission Recommendations	4
<i>Recommendation 7.37 Increase tenancy and occupancy protections for people with disability</i>	<i>4</i>
<i>Recommendation 7.40 Address homelessness for people with disability in the National Housing and Homelessness Plan.....</i>	<i>5</i>
<i>Recommendation 7.43 A roadmap to phase out group homes within 15 years</i>	<i>5</i>
Demand for services	7
Our Tenancy Work.....	7
Tenancy support services for people with disability	7
Specialist Disability Accommodation (SDA) - legacy.....	7
Service accessibility and design	10
Workforce and sector needs.....	11
Program management and governance.....	12

Introduction

*A person's home is the place where they should be safe, secure and able to choose how to live their daily life. A home is central to a person's dignity, autonomy, independence and wellbeing. It is also a fundamental human right.*¹

We thank you for the opportunity to provide feedback to the Renter Services Review 2024.

We note the absence of any mention of people with disability in the discussion paper, despite the accessibility issues for this population which have been canvassed and discussed with Consumer Affairs Victoria.

In 2023 the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Royal Commission**) released its final report, which included significant recommendations in relation to housing accessibility for people with disability, including tenancy rights.

The following recommendations were made to state governments.

RELEVANT ROYAL COMMISSION RECOMMENDATIONS

*Recommendation 7.33 Prioritise people with disability in key national housing and homelessness approaches*²

*Recommendation 7.36 Improve social housing operational policy and processes*³

Recommendation 7.37 Increase tenancy and occupancy protections for people with disability⁴

States and territories should review legislation governing the tenancy and occupancy rights of people with disability and adopt the best regulatory and legislative models currently in force, including:

(a) in the case of tenancies:

- enacting legislation to replace landlords' 'no-grounds' termination rights with 'reasonable grounds' as currently specified in Victoria, Queensland and Tasmania*
- for both social housing and private housing tenancies, where a tribunal has discretion whether or not to order termination of the tenancy or that the tenant give up possession, empowering the tribunal to take the tenant's or a co-occupier's disability and the nature of that disability into account.*

(b) in the case of non-tenancy accommodation:

- adopting the provisions included in the Residential Tenancies Act 1997 (Vic) Part 12A to protect residents of Specialist Disability Accommodation (SDA) under the National Disability Insurance Scheme*
- introducing 'occupancy principles' similar to those under the Boarding Houses Act 2012 (NSW), to cover all non-SDA housing, such as assisted boarding houses in New South Wales and supported residential services in Victoria*
- extending these occupancy principles to cover 'general boarding houses' in New South Wales and unsupported boarding and rooming houses in other jurisdictions where many people with disability live. This reform should include conferring jurisdiction on the appropriate tribunal to resolve disputes, particularly in relation to eviction.*

¹ Commonwealth, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability , *Final Report* (2023) Vol 7, 536 (**DRC Report**)

² Accepted in principle by the Victorian government

³ Accepted in full by the Victorian government.

⁴ Accepted in principle by the Victorian government.

- *in hearing disputes about eviction, tribunals be required when determining whether to make an eviction order to consider the occupant's disability, the nature of that disability, the possibility of retaliatory eviction, and the likelihood of finding suitable alternative accommodation.*

Recommendation 7.39 Preventing homelessness when people with disability transition from service or institutional settings⁵

Recommendation 7.40 Address homelessness for people with disability in the National Housing and Homelessness Plan⁶

In developing the National Housing and Homelessness Plan, the Australian Government, working with state and territory governments, should:

- identify people with disability, particularly people with intellectual disability or cognitive impairment, as a discrete cohort or cohorts for intensive homelessness support, recognising their needs, circumstances and diversity*
- review the adequacy of funding for homelessness, with particular regard to the cost of providing more intensive homelessness support for people with disability and complex needs, and current levels of unmet demand*
- expand pathways and support for people with disability out of homelessness, including through Housing First programs*
- consider establishing free, independent legal advice and advocacy services for people with disability experiencing homelessness to help them navigate the different homelessness supports to which they are entitled at state or territory and Australian Government levels.*

In response to recommendation 7.40, the Victorian government stated:

We support the intent of this recommendation. We will look for ways to address the unique needs of people with disability who are experiencing or at risk of homelessness.

However at this time there is no funded tenancy support for disabled people facing eviction from disability specific accommodation settings.

Recommendation 7.42 Improve access to alternative housing options⁷

Recommendation 7.43 A roadmap to phase out group homes within 15 years⁸

Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government and state and territory governments develop and implement a comprehensive roadmap to phase out group homes within the next 15 years. This roadmap should address delivering inclusive housing supply to meet demand, transition support for people with disability, and implementation planning for phasing out group homes. It should include:

- delivery of inclusive housing supply to meet demand, by:*
 - *undertaking a comprehensive assessment of existing service demand (including people with disability who are currently living in group homes and current unmet needs) and*

⁵ Accepted in principle by the Victorian government

⁶ The Victorian government stated they will consider this recommendation further.

⁷ Accepted in principle by the Victorian government

⁸ The Victorian government stated they will consider this recommendation further.

	<p><i>projected service demand (forecasted demand for supported accommodation over the next 30 years)</i></p> <ul style="list-style-type: none">• <i>assessing projected supply of alternative housing to inform planning for the transition of people out of group homes, including conducting a stocktake of existing disability housing assets that may be repurposed or used to increase the supply of inclusive housing</i>• <i>piloting alternative housing models with increased investment to roll out successful models in line with supply and demand modelling to meet future housing needs for people with disability (see also recommendation 7.42).</i>
(c)	<p><i>transition support for people currently living in group homes, including through:</i></p> <ul style="list-style-type: none">• <i>a transition pathway that provides access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition (see also recommendation 7.42)</i>• <i>interim improvements in group home oversight and practices to ensure that people with disability living in group homes are safe and have greater choice and control during this transition period (see also recommendation 7.41)</i>• <i>grandfathering arrangements for those people who wish to stay in their group home, including consideration of additional financial support to maintain financially viable group home arrangements where necessary</i>
(d)	<p><i>implementation planning undertaken through co-design with people with disability and the disability community, including:</i></p> <ul style="list-style-type: none">• <i>a specific timeframe for ceasing construction of any new group homes (within the next 2 years)</i>• <i>a specific timeframe for ceasing placement of new residents in group homes (within 5 years)</i>• <i>a specific timeframe for completing transition of those residents who wish to move from group homes to alternative housing options (within 15 years)</i>• <i>development of an outcomes-based evaluation framework, tool and processes to track short-, medium- and long-term outcomes across the roadmap, and build an understanding of emerging best practice.</i>

In response to Recommendation 7.43 the Victorian government stated:

We support the intent of this recommendation. We support the staged phasing-out of group homes (4+ bedrooms), in partnership with current residents and the disability sector. We are already working to provide high-quality, secure and affordable housing for people with disability through Inclusive Victoria: state disability plan 2022–2026. The plan commits to an ambitious renewal program to improve the range and quality of government-owned Specialist Disability Accommodation in Victoria. As a Specialist Disability Accommodation provider, the Victorian Government is no longer building Specialist Disability Accommodation homes with more than 4 bedrooms. We have successfully worked with residents who want to move from a larger home to more contemporary-sized options.

However at this time there is no funded tenancy support for disabled people who are looking to understand their rights and options in relation to group home accommodation.

Demand for services

OUR TENANCY WORK

Tenancy support services for people with disability

Tenancy issues for people with disability have not been well understood by mainstream services, tenancy specialists or government departments, due to the historical positioning of their tenancy rights outside of the *Residential Tenancies Act 1997 (RTA)*.

Despite recent changes placing tenancy rights for specific settings in the RTA, there remains an absence of accessible tenancy support for residents of those settings. Villamanta is not funded to provide tenancy support services, but is the only service in Victoria representing the following populations:

- Residents of Specialist Disability Accommodation
- Residents of so-called “SIL houses” (or “pop-up housing”)
- Residents of Supported Residential Services (**SRS**)

There is also a need for support for mainstream tenants who need modifications or adjustments to the property for disability accessibility.

The specific factors affecting demand for services in these populations are as follows.

Specialist Disability Accommodation (SDA) - legacy

This accommodation type consists mostly of housing that was previously managed by the Department of Families Fairness and Housing (**DFFH**) as group homes under the *Disability Act 2006*. The transition of residential rights to the *Residential Tenancies Act 1997 (RTA)* was intended to separate tenancy rights from provision of services, however in the majority of residences the SDA provider and the service provider are the same entity. As noted by the Royal Commission:

People with disability in group homes can experience various forms of violence, abuse, neglect and exploitation. Current practices in group homes can fail to keep people with disability safe and empowered to exercise choice and control, with a lack of opportunities to develop and build capacity.⁹

Tenants in these settings have not had strong rights awareness, in significant part because there were no real tenancy protections when they were reliant on DFFH funding allocations. With the introduction of the National Disability Insurance Scheme (**NDIS**) and consumer choice and control about services purchased with individualised funding, this is beginning to shift. More SDA residents and their supporters are seeking assistance to assert their rights.

The interface between the NDIS, the NDIS Quality and Safeguards Commission, tenancy rights, consumer rights and even guardianship and administration makes this space highly specialised.

Specialist Disability Accommodation (SDA) – new properties

The introduction of specific funding for SDA under the NDIS has achieved the objective of increasing the stock of accessible housing for people with disability accessibility needs. Many of these tenants have never lived in group homes and are more likely to have an awareness that they have tenancy rights.

We are seeing providers attempt to include unenforceable provisions in tenancy agreements, but the interface between the NDIS, the NDIS Quality and Safeguards Commission, tenancy rights, consumer rights and even guardianship and administration makes this space highly specialised.

⁹ DRC report, 615

“SIL houses” or “pop-up housing”

These provide services and accommodation to people with disability, but in practice avoid regulation or scrutiny. ...The Royal Commission heard reports of people with disability being moved away from their accommodation or the facilities where they were receiving treatment and into pop-up accommodation.¹⁰

We receive ongoing requests for assistance in relation to this issue.

In short, a person needs a home in order to receive their NDIS supports, for which they have significant funding. A provider offers them tenancy in a property in order to provide the NDIS supports. When something changes, for example the person wishing to use a different service provider better aligned with their support needs, the provider immediately tells the resident they need to move out.

The legal basis for this statement is, in every case we have seen, non-existent. However the majority of people who are told this proceed to depart the premises (generally becoming homeless) because they can't access legal representation. The volume of enquiries about these properties has been steadily increasing over the past 48 months.

Supported Residential Services

While tenancy in an SRS is not covered under the RTA, we note that:

- This is an accommodation of last resort; and
- The support provided is generally overpriced and poor quality, while SRS providers are meanwhile accessing resident's NDIS funding; and
- People tend to find themselves in an SRS because of homelessness caused by scenarios as described above.

SPECIFIC CAV QUESTIONS

How has demand for services changed as a result of cost-of-living and housing pressures, natural disasters etc?

The demand for tenancy assistance in the disability space has increased considerably due to the factors outlined above. No doubt cost of living and housing pressures, as well as natural disasters, are compounding factors.

Our intake service has invested significant time in attempting to locate appropriate referral options for individuals who we are unable to assist. They have not found a service that provides the type of accessible support that is needed.

¹⁰ DRC Report, 547-48

Case study: Accessibility requirements

We were contacted about an NDIS participant “Carla”¹¹ whose administrator had signed an SDA residency agreement for a new build SDA, and was attempting to relocate her there. Carla was living in an SRS which housed up to 40 residents, and could not access the individuals supports and therapies funded by the NDIS.

The SRS proprietor refused access to the resident and would not allow the relocation, stating that Carla did not want to move and had not been consulted. There was clearly an entrenched dispute between the SRS proprietor and the support co-ordinator, both of whom had a vested interest in the almost \$1 million of NDIS funding in Carla’s plan.

Carla was non verbal and had an intellectual disability. Our intake was unable to identify a service that could assist with advising on Carla’s rights and obligations to each residence.

Are there areas of demand that CAV funded renter services are not currently reaching and any type of consumer who is not currently receiving the renter services they need?

Yes. As above, tenants of disability specific accommodation.

Due to the historical combining of tenancy and services into one agreement, many service providers continue this tradition when offering accommodation in a SIL House. Although the RTA changes which took effect 1 July 2024 mean that residents of such properties have the right to elect either a standard tenancy or an SDA residency, in reality the majority of providers and residents are completely unaware of the RTA and its application at all.

These tenants do not reach out to tenancy services because they do not understand they are tenants. Those that have are turned away because they don’t have a tenancy agreement, they have a “residential service agreement” (or other similar terminology).

Who are the priority groups in the community that would benefit from increased access to renter services?

People with disability.

¹¹ Not her real name

Service accessibility and design

What is different about how and when clients might access renter services now compared to a few years ago?

Renter services were not expected to be accessible to residents of SDA properties or SIL houses when these settings either didn't exist or were regulated under the *Disability Act 2006*. In our experience renter services have not adjusted to be available to these populations.

What are the opportunities to co-locate or integrate services to ensure clients receive support that meets all of their needs?

The majority of residents of these settings require supports to come to them, rather than a one stop shop.

How can innovation and joined-up services be better used in service model and program design?

Connection between renter services and disability specialists would provide greater coverage to those tenants who can access mainstream services but have issues which interact with disability specific matters such as the NDIS and SDA.

How can services be designed to continue to meet the current needs of Victorians experiencing vulnerability in the market, while also having the flexibility to adapt to emerging ones?

The voice of people with lived experience of disability specific accommodation settings needs to be incorporated into discussion about Victorian tenancy issues.

How can services be designed to minimise overlap and ensure consistency both in delivery and reporting requirements?

N/A

Workforce and sector needs

What are the key workforce challenges for renter services?

The key workforce challenges in relation to supporting residents of disability specific settings relate to the level of specialist knowledge of the multiple interacting systems and regulatory environments.

What support or change is needed to continue to enhance the professionalism of the sector in Victoria and ensure its long-term sustainability?

N/A

Program management and governance

What opportunities are available to change program reporting and data gathering to improve rental service offerings? In your response, please consider the use of data in measuring the impact of renter services, what sort of data should be collected and any opportunities to maximise the use of data for the sector and system advocacy.

N/A

What changes can be made to funding arrangements to support the development of the service response?

N/A