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**Rights in Specialist Disability Accommodation**

**A submission in response to the Rights in Specialist Disability Accommodation consultation paper as distributed by the Victorian Government**

**June 2017**

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# **About YDAS**

Youth Disability Advocacy Service (YDAS) is a state-wide advocacy service for young people with disability in Victoria, offering a free individual advocacy service to young people aged 12-25 who have a disability.

YDAS is a core agency of the Youth Affairs Council Victoria, the state’s youth peak body. YDAS is guided by a Steering Committee who are predominantly young people with disability aged 12 to 25.

# **About YACVic**

The Youth Affairs Council Victoria (YACVic) is the peak body and leading policy advocate on young people’s issues in Victoria. YACVic’s vision is that young Victorians have their rights upheld and are valued as active participants in their communities.

YACVic is an independent, not-for-profit, member-driven organisation that represents young people (aged 12-25 years) and the sector that works with them. Through our research, advocacy and services, we:

* lead policy responses on issues affecting young people
* represent the youth sector and elevate young people’s voices to government
* resource high-quality youth work practice

We are driven by our members and prioritise their needs and concerns.

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Table of Contents

[**About YDAS** 2](#_Toc487201948)

[**About YACVic** 2](#_Toc487201949)

[**Definitions** 3](#_Toc487201950)

[**Introductory Comments** 5](#_Toc487201951)

[**Issues and Recommendations** 7](#_Toc487201952)

[3.1 Agreements 8](#_Toc487201953)

[3.2 Housemates 10](#_Toc487201954)

[3.3 Accessing the house and room 13](#_Toc487201955)

[3.4 Paying rent and money management 14](#_Toc487201956)

[3.5 Modifying the house 16](#_Toc487201957)

[3.8 House management 17](#_Toc487201958)

[3.9 Legislation 18](#_Toc487201959)

[**Appendix** 20](#_Toc487201960)

# **Definitions**

**Commonwealth Government (the Commonwealth)** refers to the Australian Federal Government

**Disability Act 2006 (the Disability Act)** refers to the Victorian legislation that currently regulates disability services, including the residential rights of individuals living in specialist disability accommodation.

**Landlord** refers to the person who owns and leases out a property

**National Disability Insurance Agency (NDIA, Agency)** refers to the Commonwealth Government body that administers the National Disability Insurance Scheme, including assessing eligibility, creating and approving plans, and making payments to participants.

**National Disability Insurance Scheme (NDIS, Scheme)** refers to the Commonwealth Government program that provides reasonable and necessary supports to people with a permanent or significant disability under the age of 65.

**NDIS Participant (participant)** refers to a person with disability who has been deemed eligible for the NDIS and receives funding from the NDIA for their reasonable and necessary supports.

**Plan or Participant’s Plan** refers to the document agreed by the NDIA and the NDIS Participant that outlines the funding allocated to the participant and how it is proposed (but not mandated) to be used, e.g. $x for SDA, $y for transport.

**Residential Tenancies Act 1997 (RTA)** refers to the Victorian Government legislation that regulates how tenants and landlords interact.

**Specialist Disability Accommodation (SDA)** refers to specialist housing for participants required due to significant functional impairment and/or very high support needs. This type of accommodation is also known as Community Residential Units (CRUs), Shared Supported Accommodation (SSA), residential services, group homes or supported accommodation.

**Supported Independent Living (SIL)** refers to specialist support services for participants who require assistance with and/or supervision of tasks, with a focus on developing the skills of each individual to live as autonomously as possible. These services are sometimes provided inside SDA homes.

**SDA payment** refers to the payment provided by the NDIA to cover SDA provision, to be included in a participant’s plan. This is separate to rent payments.

**Tenant** refers to the person occupying (i.e. living in) a property

**Tenancy rights** refers to the right to occupy a property for a specified period of time. In this paper, tenancy rights refers to the rights guaranteed by the Victorian Government that ensure agreements between tenants and landlords are fair.

**Victorian Government (Victoria, the Government)** refers to the State Government

**Victorian Civil and Administrative Tribunal (VCAT)** refers to a tribunal that hears and decides civil and administrative legal cases in Victoria, primarily resolving disputes and deciding human rights cases.

# **Introductory Comments**

Youth Disability Advocacy Service (YDAS) represents young people with disability and assists them in the protection and realisation of their rights under the Convention on the Rights of Persons with Disabilities. The work of YDAS is guided by a steering committee. The YDAS steering committee is composed of young people aged 12-25 from across Victoria, most of whom have disabilities. The committee works with YDAS staff to make our service relevant to young people with disability and addresses their advocacy needs.

As part of the process of developing this submission we have consulted with our steering committee, as well as a number of our individual advocacy clients. The feedback we have received has been included in this submission as de-identified case studies.

It is the view of YDAS that using the Disability Act 2006 to protect the accommodation rights of individuals with disability has resulted in the removal of a large amount of agency, which is freely available to those who make use of the mainstream rental market. YDAS first and foremost supports an amendment to the Residential Tenancies Act 1997 (RTA) as the best option for the reforming of rights in Specialist Disability Accommodation (SDA).

Throughout our work YDAS prioritises capacity building for young people with disability. It is the belief of YDAS that any reform of rights in SDA should assist in allowing people with disability to live full and active lives, inclusive of social and economic participation. This is in line with the principles of equality outlined in Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which the Australian Government has ratified.

To ensure that this right is realised as fully as possible for young people with disability, YDAS recommends that general education around rental agreements and independent living skills targeted at people with disability should be funded by the Victorian Government, and direct supports to engage with mainstream rental agreements should be included in NDIS plans whenever possible.

YDAS supports, in principle, the submission made by the Victorian Council of Social Services (VCOSS). Our submission will respond to key questions provided in the associated discussion paper; making recommendations that we feel are of crucial importance to the experiences of young people in particular.

YDAS recognises that SDA is only one piece of the disability housing market, and as such, we will take this opportunity to briefly bring attention to the broader issues within this space. Once the NDIS is in full operation, SDA will only service 6 per cent of NDIS participants. A recent report produced and distributed by Disability Housing Futures Working Group shows that even when assuming a healthy and competitive disability housing market there is still a significant housing gap.

This gap will leave as many as 55,000 people with disability without appropriate and affordable housing (DHF 2017). YDAS supports the call for further government investment in disability housing stock. Choice and control are a pillar of the National Disability Insurance Scheme (NDIS) however people with disability will be without the ability to choose where they live until the market can meet demand.

This should be inclusive of the promotion of innovative housing design. The work of YDAS has indicated to us the greater risk and systemic disadvantage young people with disability face due to a lack of appropriate housing. Negative outcomes are often due to a ‘catch-all system’.

*Danny (not his real name) is a young man with disability exposed to drugs and alcohol, while attempting to maintain his own sobriety while living in a Supported Residential Service (SRS). He has difficulties with co-residents that result in numerous fights. Danny has said he’s worried that staff do not make it a safe place to live, even though they promise things will get better. Danny says that he has been forced to spend more time outside the SRS to get emotional support and to feel safe. He feels like he has been forced to pay for damages to the property when there are good reasons he shouldn’t.* (YDAS client 2017)

With the principle of capacity building and consideration of the unique vulnerabilities of young people in mind, YDAS moves to make recommendations across key areas covered in the associated discussion paper.

# **Issues and Recommendations**

YDAS supports the separation of accommodation provider and supports provider. Expanding choice and control for people with disability should remain a key objective of all policy reform. This continued need for a diverse and adaptive housing market is reflected in feedback received from YDAS advocacy clients.

*Casey (not his real name) lives in a group home and currently goes to a day program every week day. He’d like to do different things during the day but it’s hard to make the jump. Casey needs support workers to be with him for other activities, and the staff at the house – who are also responsible for helping him with changes in his day to day life - aren’t always supportive, because it would change the routine in the house. If Casey’s support workers were not tied to his accommodation, he would have a better shot at living the life he wants.* (YDAS 2017)

## 3.1 Agreements

**What should new agreements with the SDA provider cover?**

In line with the adoption of standard mainstream rental agreements, YDAS recommends that agreements with SDA providers cover the standard principles of existing rental agreements inclusive of; rent to be paid, bond, duration of lease etc.

**Should agreements cover house rules?**

YDAS does not advocate for house rules to be included within a standard lease agreement outside of terms commonly found within the mainstream rental market; such as ‘no pets’.

**Should residents all have to sign the same agreement?**

YDAS advocates for choice and control to rest with the person living with disability. With this in mind YDAS recommends that individuals in a group SDA setting should be permitted to sign a lease that may vary in length when compared to other residents in order to suit their individual needs. For example, a young person with high support needs who has been living in a family environment may desire a transitional agreement of shorter length, allowing them to trial accommodation without disproportionate risk.

YDAS recommends a “hardship provision” style legal mechanism that could allow for instances where people wanted to trial accommodation, without the commitment of a full length agreement. Such a provision could encourage people to try a range of SDA to find the accommodation that best suits their needs. This would allow the individual to ensure compatibility where someone is new to living in shared housing, or has atypical behaviour that may not fit with a group. It might also encompass times where a person’s disability needs are progressive, or the family and friends who support them are thinking of moving, or are getting older.

For example, young people with progressive disabilities may find that accommodation which was appropriate when the individual used crutches may no longer be appropriate when using a wheelchair. A young person who lashes out when frustrated might need some short placements as a tenant to work out what home environment suits them best.

Use of this mechanism for trialling compatibility with other residents should involve the agreement of all tenants to ensure that everyone in a house has choice. If the trial occurs because a new tenant has atypical behaviour, then all tenants should be given the opportunity to access supports to give the tenancy a good chance to work.

**What happens if a resident cannot sign an agreement?**

YDAS advocates first and foremost for the presumption of capacity. In cases where an individual has been shown (with standard evidence, such as guardianship orders) to lack the capacity to sign an agreement YDAS recommends the following:

* Where the individual is shown to lack capacity to sign, an existing guardian or administrator could perform this task, or a nominee could be appointed.
* Guardians, administrators (or appointed nominees) can assume similar responsibilities where the capacity of the individual participant must be considered (management of finances, payment of rent etc.)
* YDAS recommends that actions of guardians, administrators or nominees be continually reviewed based on evidence provided to determine the benefit to the individual participant. This would act as a safeguard to protect the rights of individuals with limited capacity.

**Should landlords be allowed to make different agreements for residents?**

As stated earlier, YDAS advocates for choice and control to rest with the person with disability, not the landlord. In order to avoid potentially discriminatory terms YDAS recommends that the power to deviate from a standard lease remain solely with the individual participant or their guardian, administrator or nominee. In the case that a guardian, administrator or nominee sets these terms the same process for reviewal of decisions would apply as outlined in the previous question.

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

YDAS recommends that a resident only be required to sign a new agreement under circumstances in which the RTA dictates new leases be signed in mainstream rental agreements. For example, a participant is given the option to sign a new lease at the conclusion of an existing agreement. YDAS recommends that participants also be afforded the ability to go ‘month to month’.

**How long should the agreement be in place for?**

Agreement length should be dictated by the standard principles of the RTA, as it exists for mainstream rental.

## 3.2 Housemates

**What role should residents have in choosing housemates?**

Every person (including those living in specialist disability accommodation) should feel comfortable and safe in their own home. Being able to choose who you live with is crucial to this process.

YDAS recognises that within the mainstream rental market it is an accepted practice for housemates to meet, discuss and decide collectively who will move in when a room becomes available. YDAS recommends that with appropriate consideration given for capacity that the process for choosing housemates be modelled as closely on the largely informal process described above as possible.

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

It is the position of YDAS that SDA participants should assume, whole heartedly, the responsibly for selecting housemates. This should include providing residents with the opportunity and skills to consider numerous factors.

For young people moving out of home for the first time, being aware of clear expectations of their behaviour and responsibilities is crucial. Although the process should be as close to informal as possible, tenants should be supported by either face-to-face education or with relevant materials, such as checklists and opportunities to role play; developing the skills to become assertive decision makers.

For young people with disability, gender, identity, age and lifestyle will be contributing factors in choosing housemates. This is very similar to young people without disability.

Although safety concerns may be heightened when multiple people with disability are living together, disclosure of atypical behaviours should not be mandatory, but should be encouraged in the context of understanding support needs, compatibility with other residents, and flexibility requirements for a lease.

Compulsory disclosure may contravene the Equal Opportunity Act. Residents can, and should, be able to access dispute resolution and enhanced safety supports as needed. Supports for young people in SDA should routinely include regular ‘check-ins’ with a worker about house dynamics, to ensure that housemate to housemate abuse can be prevented or addressed.

The process of moving out and negotiating who we live with is a key developmental experience for all people; with or without disability. Young people with disability should be encouraged to explore the same considerations as their able-bodied peers. What do they like? What do they want from a successful applicant?

YDAS recommends that SDA residents be afforded the opportunity to ask for character references. Consider the questions asked of mainstream rental applicants; Are you good at paying bills on time? What contribution can you make to house furniture? What do you like to cook?

YDAS advocates for SDA residents to feel at home. This requires moving the associated processes away from a clinically administrated system and towards the freedoms afforded to those individuals in mainstream rental.

YDAS has met a number of young people desire greater control over who they live with in order to avoid being exposed to negative behaviours.

*Abby (not her real name) is really unhappy with the lack of choice she has in her group home. She can’t choose when to go out and have fun, and she doesn’t like the staff in the house. It’s hard for her to find out how much money there is in her support package for the staff to take her out, and she doesn’t feel like she gets a lot of privacy. One of the staff members is always looking over her shoulder, even when she texts. Because all her issues are with the staff in the house, Abby feels like it’s very difficult to complain. She’d love to live somewhere she chose, with people she likes.*

While a young person has a disability this should not overshadow other elements of the individual’s identity, such as their cultural background, sexual preferences or even their hobbies. SDA residents should feel comfortable to express all aspects of their identity.

YDAS knows that as disabilities vary, the needs and safety concerns of the individual will also vary.

*Matt (not his real name) has high physical support needs and wants to move out of his family’s house one day. Matt knows that his physical disability means he’d have to choose more housemates carefully, so he doesn’t end up with someone who will make him feel unsafe. He’d ideally like housemates who were okay with his support workers coming and going.*

**Who should oversee disputes about this process?**

YDAS recommends that disputes be overseen by a housing ombudsman, with appropriate disability awareness training.

**Who makes the final decision?**

Taking into account issues of capacity, YDAS feels that when at all possible the final decision should be made by or in consultation with SDA participants.

## 3.3 Accessing the house and room

YDAS recommends that the power of community visitors be retained and included within an amendment to the RTA. This amendment would need to incorporate some changes:

* Participants living in individual accommodation (on their own) should have the right to refuse entry.
* In this case if a community visitor suspects that the participant is being coerced into refusing entry the community visitor should be empowered to refer the issue to the independent ADR body or VCAT.

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

YDAS supports the current protections found within the RTA to provide SDA participants with the same rights as individuals using mainstream rental.

YDAS recommends that landlords be required to provide notice to all tenants, using accessible forms of communication, such as Easy English, where required.

In the case of service providers; entry should be negotiated on a case-by-case basis with the resident receiving the services. It is that residents’ responsibility to inform other house mates, where needed, of service provider’s scheduled visits, taking into account the resident’s capacity to do so.

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

See previous question.

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

Notice periods should be consistent with existing clauses in the RTA.

## 3.4 Paying rent and money management

YDAS feels that building the capacity of young people with disability to manage their own finances whenever possible is a crucial step in their development. It should be presumed that young people can have some choice and control over their money management, until it is clear that they are not able to do so. We acknowledge, however, that some young people will not be able to manage their finances and they require extensive support in this regard. Recommendations here will, for this reason, balance the assumption of responsibility with the removal of unnecessary barriers to independent living.

*Rob (not his real name) lives with his family, but never sees any of his pension money, which goes straight to his parents. The only money he has to buy food or to save up to move out is the minimum wage he makes in a part time job. Rob has been known to buy his ‘friends’ expensive things because they have asked him to. Although Rob admits that bills and money are tough to understand sometimes, he believes he makes good decisions about what to do with the money he has.*

This case study is included here to illustrate the need for checks and balances where money management has been passed to a guardian, administrator or nominee. It also illustrates the fine balance between safety checks and the need for capacity building. In time, Rob may be able to spot when he’s making financial decisions under pressure.

**Should SDA residents have to pay a bond?**

In the interest of keeping SDA in line with mainstream rental, YDAS feels that a bond should be required. However, to avoid placing undue financial burden on residents, YDAS recommends that the bond be equal to no more than two weeks of rent. It is the experience of YDAS that many young people with disability require the informal financial assistance of friends or family in order to afford bond under the mainstream rental system. The costs incurred by a resident under SDA are meant to be no greater than 25 per cent of the resident’s income.

YDAS feels that a bond of no greater than two weeks rent would be consistent with this policy. This is to account for the limited financial resources of individuals receiving income support such as Newstart or the Disability Support Pension. Youth rates for income support payments are significantly lower than full adult rates, which creates a higher barrier for young people saving up to move out of home.

**Who should manage disputes about rent?**

Where possible, disputes should be managed in line with the RTA. Tenants who have capacity should be provided with access to manage their finances when they first move into an SDA. This will be especially important for young people.

If it is clear that money management and/or financial abuse are presenting ongoing issues with rental payments, a review of a person’s NDIS plan should be requested when the matter referred to the appropriate body. The review should be made on the basis that the individual’s accommodation is at risk. The review should look at the need for financial management supports.

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

It is the understanding of YDAS that with the separation of accommodation and supports, financial exploitation would be policed by the national Code of Conduct being developed under the NDIS Quality and Safeguarding Framework. YDAS advocates strongly for a balanced Code of Conduct, with strong advocacy resources to ensure it is well implemented and enforced.

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

A 60-day notice period should be required prior to any rent increases, consistent with policies currently enforced by the Act.

**How often should landlords be allowed to increase the rent?**

YDAS supports moves to strengthen protections beyond those currently found in both the *Victorian Disability Act (2006)* and the *Residential Tenancies Act (1997)*. YDAS recommends that rent increases for SDA residents be limited to once per year. This would protect residents from financial instability and undue hardship.

## 3.5 Modifying the house

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

SDA residents should not carry an unduly high burden for arranging or paying for home modifications. This will help residents to have maximum choice in where they live, especially given that current housing stock in Victoria is not built or modified with accessibility in mind. Although the longer term goal should be accessible mainstream housing, reducing the burden on people with disability in the short term will require adequate funding for home modifications through the NDIS.

Although modifications required by one resident are relatively straightforward, modifications needed by more than one resident, such as an accessible shower, are more complex. In these cases, ‘ownership’ should be with one resident by agreement if the modification can be removed and taken away (such as handrails). Structural modifications should be negotiated from one package if possible. This would reduce administrative burden and lag-time. If different specifications are required by different residents the person with highest and/or most-costly level of support needs should have the costs in their package.

Young people may require additional reviews of their NDIS supports and their home modification needs to account for their still-growing bodies. Alternatively, it is reasonable in these circumstances for a young person’s NDIS plan to include funding to update modifications. This foresight would reduce the administrative burden on the NDIA and the SDA system, especially if it prevents multiple house moves for the sake of accessibility.

**Recommendations**

YDAS advocates for people with disability to have greater control over their lives and the environments in which they live. SDA tenants should be enabled to make non-structural modifications without the consent of their landlord.

YDAS maintains that landlords are not permitted to unreasonably refuse consent to structural modifications that support disability, health or safety. An oversight body should ensure that decisions in this area are fair to both landlords and tenants. Home modifications made at the initiation of the landlord should take into account modification needs. These modifications should ultimately not reduce the accessibility of the property.

SDA residents should not be legally required to remove non-structural modifications at the conclusion of their lease or when required by other circumstances to vacate as long as the modifications in question were made to support disability, health or safety.

## 3.8 House management

**Who makes decisions about how the house operates?**

Whenever possible, decisions regarding the day to day operation of the house should be made collectively by residents. The outcome of discussions should be made clear to ensure that young people are well aware of expectations imposed on them. Transparency is this regard will ensure that the transition to independent living (from a family or institutional setting) is made as accessible as possible for young people.

**Should decisions require agreement between housemates?**

Yes, but only when the decision impacts those who live in the house, what happens in communal spaces or quiet enjoyment. In the case of young people, it is particularly important to build capacity for social interaction, negotiation and decision making. This is necessary to account for the fact that many young people with disability have had the majority of decisions made for them.

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

With the separation of accommodation and supports the role of the landlord in relation to house management should become minimal. YDAS supports the minimisation of external ‘authority figures’ in favour of promoting independence for young people with disability.

Where external decision makers are required due to a lack of capacity YDAS supports the involvement of parents/ guardians rather than a landlord. This recommendation is made with the understanding that YDAS ultimately supports the best interests of the young person with disability.

## 3.9 Legislation

**In what legislation should SDA tenancy rights be regulated?**

YDAS recommends that SDA tenancy right be regulated within an amendment to the RTA. This will ensure that at minimum people in SDA have the same protections as people in mainstream rental.

YDAS also recommends a new section be added within the RTA for SDA in order to maintain all necessary specialist protections.

**Should VCAT continue to hear and arbitrate disagreements?**

YDAS recommends that disputes be heard by either a newly appointed housing ombudsman (as recommended by VCOSS) or to continue to be heard by VCAT. In both cases YDAS recommends that disability awareness training be provided as well as completely accessible information.

**What other options should government consider?**

YDAS recommends a newly appointed Housing Ombudsman. In a recent submission to the *Residential Tenancies Act Options Paper*, the Victorian Council of Social Services made reference to the Housing Ombudsman in the United Kingdom. However, this body only has the power to resolve disputes as they pertain to social and institutional housing (not private landlords). VCOSS suggests that this could be avoided in Australia by modelling our ombudsman on the existing Fair Work Ombudsman which has the power to oversee disputes between private individuals as well as make systemic investigations (VCOSS 2017).

# **Appendix**

*Victorian Residential Tenancies Act (1997)*

*Victorian Disability Act (2006)*

VCOSS 2017, *‘Strengthening Rental Laws; a response to the Residential Tenancies Act Options Paper’*, Victorian Council of Social Services, published February 2017.

DHF2017. ‘*Report 1, April 2017’ Disability Housing Futures Working Group*, published April 2017.