


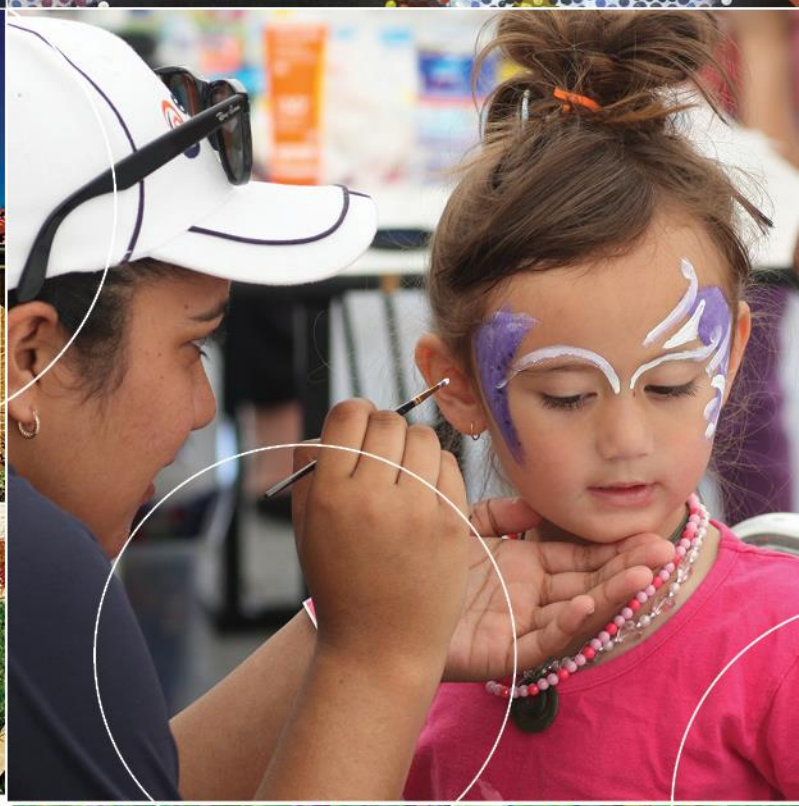

Protection for Residents of Long Term Supported Group Accommodation in NSW

Submission prepared by the NSW Federation of Housing Associations – March 2018

nsw Federation of Housing Associations inc

Introduction

The NSW Federation of Housing Associations (the Federation) welcomes the opportunity to provide comment on the Protections for Residents of Long Term Supported Group Accommodation in NSW: Technical Issues Paper.

The Federation is the industry peak body for registered community housing providers in NSW. The Federation is also supporting Aboriginal Community Housing Providers (ACHPs) in NSW in a process to establish a representative body. The community housing industry in NSW is growing and diversifying. It now manages more than 38,000 homes and is due to manage a further 14,000 homes being transferred from public housing management over the next two years.

The Federation's purpose is to support the development of a not-for-profit rental housing industry which makes a difference to the lives of lower income and disadvantaged households in NSW. An important part of the Federation's role is supporting community housing providers to provide quality homes and housing management for people with disability.

The Federation seeks to ensure that registered community housing providers are active in all housing markets, providing a full range of housing, including the provision and management of Specialist Disability Accommodation (SDA). Federation members are important players in the changing landscape of the NDIS and many of them will be managing group accommodation transitioned from NSW Government management, as well as partnering with disability service providers to manage their non-government group accommodation.

We look forward to contributing to the next stages of this process and would welcome the opportunity for the FACS consultative roundtables to be reconvened to consider draft proposals.

About Our Submission

Our submission has been prepared in consultation with members, draws on their knowledge and expertise, and has incorporated their comments. It is also informed by the useful discussion amongst participants at the FACS consultative roundtable on 21 February.

Although we have given due attention to the technical issues paper and its detailed questions, our submission begins by setting out our overarching position and contains some high level issues that will require Government to determine a policy response.

It has been prepared in accordance with the following principles:

- The rights of tenants in group accommodation should mirror the rights as those for other tenants, and those rights should be included in the Residential Tenancies Act 2010, with additional provisions to address particular needs of people with disability. We recognise that for people with a cognitive disability there may need to be additional specifications

- NCAT should be the statutory body to resolve tenancy disputes for people living in group accommodation

- Tenants living in group accommodation should have access to the same level of advice and advocacy services as tenants living in other rental accommodation – and it should be tailored to their circumstances

- The policy and legislative requirements applying to people living in supported group accommodation should align with the NSW Government policy and the regulatory framework for community housing

- All accommodation providers should ensure that they produce tenancy documents, policy and practice in formats that are accessible to people with disability

One major issue that the paper does not address is how resident's rights will be protected in practice, other than by exercising their legal rights. The Federation has argued in the past that accommodation providers should be required to register in the National Regulatory System for Community Housing (NRSCH) and become registered community housing providers (CHPs). CHPs need to meet standards for services, maintain and improve properties, respect tenants' rights, remain financially viable and be well governed.

CHPs are assessed for compliance every year and can be subject to investigation where evidence suggests non-compliance with the performance standards. Long term residents of supported group accommodation should receive the same quality of service and access to safeguards as those living in other forms of accommodation where the provider receives a direct or indirect government subsidy. This view informs our position throughout the response.

We acknowledge that on a number of issues we do not hold firm views as to the most appropriate approach as they lay outside our principle field of expertise as accommodation providers.

Overarching Position

The Federation fully supports the intention of Government to provide people with disability living in long term supported housing with similar (and not inferior) rights to people living in other long term rental accommodation.

We recognise that people with disability are not a homogenous group and that people with cognitive disabilities for example may require different and possibly enhanced protections to support decision making. Further work needs to be done to identify how the rights of people with very high support needs can best be reflected in a legal arrangement that recognises their rights as well as conferring clear responsibilities on the landlord. This is a complex issue for housing managers, for support providers, and for those in a guardianship role.

The development of tenancy rights for people with very high support needs also has to be aligned with the other assurance and complaints mechanisms operating in the context of disability rights and protections. For example how would this align with the expectations under the NDIA quality assurance framework, the role of the Ombudsman, and the role of the NSW Trustee and Guardian.

As far as possible people with disability need to be able make decisions about their living arrangements in shared accommodation consistent with those that people in other rental accommodation expect. This includes exercising choice about who lives in the accommodation as part of an allocation policy that also ensures applicants are not discriminated against on the basis of their race, gender or disability.

We believe there is scope for regulation of supported group accommodation tenancies through the Residential Tenancies Act 2010 (RTA). This will require amendments and/or the inclusion of additional clauses, which must be developed in consultation with stakeholders.

This is the key legislative framework underpinning the tenant/landlord relationship in NSW and would mean that those tenants would have the same rights as other tenants, would come under the jurisdiction of NCAT, and would have their bonds (if required) regulated through the Rental Bond Board. Regulation under the RTA would also allow people living in supported accommodation to access the services of the tenant advice and advocacy groups in the same way as other tenants from the private rental, social and affordable housing markets.

We do recognise that additional clauses and/or amendments to the RTA will be required, particularly to recognise shared accommodation arrangements given that most RTA provisions currently relate to individual or joint tenancies. It is critical that this is done in consultation with stakeholders and is a process that cannot be rushed.

The Federation has reservations about a very detailed and prescriptive written agreement being enshrined in law. A standard agreement cannot contain the detail described in the technical issues paper without constraining or discouraging accommodation providers from offering higher standards or responding to individual and local needs.

The Federation believes that accommodation providers as defined in the issues paper should be required to be registered in NRSCH. This may require some minor modifications to the performance standards to encompass particular needs for people with disability. As the system is about to be reviewed this is an ideal opportunity to have any such changes made.

If the NRSCH option is in the short term unfeasible non registered accommodation providers should be issued with supplementary guidelines and their practice against the guidelines periodically reviewed – possibly by a specialist team within the NSW Registrar's office.

In line with the Federation's position that tenancies for long term supported group accommodation should be included in the RTA, then NCAT (Consumer and Commercial Division) should hear matters regarding tenant landlord disputes in areas covered by the RTA. For tenants

housed by CHPs in NSW, there is also the provision for appealing decisions that are not covered by the RTA, to the NSW Housing Appeals Committee.

CHPs are required to have accessible complaints procedures and non-registered providers should also be required to have these mechanisms in place.

Technical Issues

This submission addresses the specific questions of each section of the paper.

1. Definition and scope

The landlord and tenant relationship of people with a disability should be included in, and governed by, the Residential Tenancies Act 2010. People living in shared group accommodation should not have fewer rights than those renting in the social, affordable, or private rental markets. The Federation does not support the use of the Boarding Housing Act 2012 as the legislative base for tenants in group accommodation as this will not confer sufficient rights.

The major issue for CHPs in relation to the classification of tenants living in supported group accommodation is whether or not they are regarded as social housing tenants for the purposes of policy setting, such as rent, or in relation to the requirements for Social Housing Tenancy Agreement as set out in Part 7 of the RTA 2010. The Federation would support clear guidance for CHPs about the policy settings that apply to the tenants of specialist disability and group accommodation. It is understood that people who are eligible for receipt of SDA are not considered eligible for social housing, but how does this affect their treatment in relation to being a tenant. Are they social housing tenants for the purposes of other policy settings such as rents or access to appeal mechanisms?

The definition of accommodation provider is supported. The definition of 'long term supported accommodation' is also supported. Many people live in crisis accommodation for longer than three months due to the lack of affordable housing for people to move on to. For this reason the distinction might need to be clearer than just one of time.

2. Written accommodation agreement

In line with the recommendation that the tenancy arrangements for people in long term supported group accommodation are included in the RTA, the Federation does not recommend a standard agreement be included in the legislation.

Most Federation members currently use the Real Estate Institute standard lease and adapt it for their purposes. It is a regulatory requirement that their policy and practice are available to all tenants in an accessible format. Any lease agreement should allow inclusions to accommodate particular programs, services or property type. The RTA does not allow such inclusions to diminish

tenant rights. As a matter of good practice accommodation agreements should be signed before occupancy to protect the rights of both the landlord and the tenant.

There is scope to investigate how the RTA can address the rights of people whose capacity to enter into legal agreements is constrained by their disability. This work should look at who can enter into an agreement on their behalf and what the roles of the NSW Trustee and Guardian, an NCAT appointed guardian, or family members such as parents and siblings should be considered. Who would have the legal authority to enter into a tenancy agreement and what would be the legal implications of this? There is a shift away from the model of substitute decision making towards supported decision making and this will have implications for accommodation providers.

In addition there may be elements of the RTA that cannot be applied in the context of people with really complex or challenging behaviors, for example tenant damage. In these circumstances, and where the tenant has an NDIS plan in place that addresses damage costs, the tenant will pay for the damage and will receive funding to cover that cost through the NDIS.

Any tenancy agreement for an individual tenant has to align with the service agreement signed between the accommodation provider and the support provider for the SDA.

3 Bond and holding fees

CHPs establish their own policies about the requirement for a bond. The options are governed by the current RTA requirement, i.e. not more than four weeks of rent can be required.

Where an accommodation provider decides to require a bond payment bond payments it should be deposited with the Rental Bond Board. The bond payment process should be exactly the same for tenants of supported group accommodation as it is for other tenants covered by the RTA. The schedule of bond payments is an operational decision for CHPs and should not be mandated in legislation as there needs to be operational flexibility to respond to individuals. Proper regulation for all accommodation providers would obviate the need for such prescription.

There should be no capacity to charge a holding fee.

4 Rent

The rent provisions (including rent receipts etc) applying to the tenants of group accommodation should be identical to those applying for other tenants under the RTA. CHPs have additional requirements with regard to social housing tenants which are set out in the NSW Community Housing Rent Policy. These would apply to people with disability should they be classified as social housing tenants.

The RTA stipulates that no tenant should be required to pay more than two weeks advance rent. There should be no requirement that tenants pay more than two weeks rent in advance and the RTA provision should apply to tenants living in supported group accommodation.

There should be no difference in the timeframes for notice periods for tenants in supported group accommodation than for other tenants. Community housing systems are automated around the current legislated and reasonable timeframes under the RTA and there would be an administrative cost associated with having variable timeframes.

5 Utilities charges

Water charging practice should be transparent and easy to understand. CHPs are required to administer water charging in accordance with the NSW Ministerial Guidelines on Water Charging and referenced in Division 3 of the RTA – Water usage charges, rent and other payments.

We accept that the accommodation provider be responsible for utility connections in a group home given that not one person living in the home is responsible for the services for the whole home.

The charging formulas in the paper should be set out in operational guidance as per Division 3 of the RTA while also considering to include the option for NCAT to hear tenant disputes about the amount of water they have been charged for and the use of an inappropriate formula for establishing the debt. The Federation considers that assisting tenants in budgeting for utility charges should be an operational provision rather than one that is enshrined in legislation.

The charges that can be levied in relation to someone's tenancy agreement should be as per the current requirements in the RTA. One of the central aims of the transition of group accommodation to new management arrangements is to ensure the separation of housing and support services. The inclusion of additional service related charges in a tenancy would blur that distinction again. Other service charges should form part of a resident's payments to a support provider/s.

6 Right to quiet enjoyment

The requirements in relation to quite enjoyment should reflect the current provisions in the RTA with some operational flexibility.

The approach outlined in the paper seems reasonable and will require accommodation managers and support providers to work closely together to find a solution that works for the tenant, for other tenants living in the property, for neighbours, and for contractors. Policies developed by CHPs should have the capacity for flexibility based on the needs of the residents, their proximity to neighbours, the types of behaviour displayed and its impact on others.

The right to quiet enjoyment should extend to the whole home as tenants are paying rent for the use of the whole home not just their room.

7 Companion animal

Tenants should have the right to request permission to have a companion animal and a request should not be unreasonably refused by a landlord.

Managing the introduction of a pet into a shared group home will require negotiation and consent from all members of the household. CHPs would expect to produce policy and practice guidelines around permissions, management issues, allocations and handling disputes and complaints. Requiring cleaning fees from tenants seems unduly harsh when tenants in other rental accommodation are not so charged though pets may use communal areas.

8 Notice of sale of premises

CHPs are unlikely to be selling group accommodation that they own, and if they do, they would be (required indeed) to be sensitive to the needs of residents in that process. A longer minimum notice period than 14 days is supported. Three months seems more appropriate.

The practice for prospective buyers should be as per the current RTA. Guidelines could suggest that visits be confined to a particular day of the week, but this should not be legislated.

9 Accommodation provider or agent's right to enter the group home

The provisions covering the notice period for entering a property should be the same as those for all tenants and as set out in the RTA. There should not be any additional specifications than are currently in the RTA about the number of inspections or visits that can be made and for what purposes. As the accommodation relationship is between the tenant and the landlord the Supported Independent Living (SIL) provider should be unable to veto a visit. Arrangements should be set out in the service agreement between the accommodation provider and the SIL.

The common areas are part of someone's home and the same notice period should apply as for a room inspection.

10 Maintenance

The classification of urgent repairs under the RTA should be amended for supported group accommodation to include provision for essential assistive technology or accessibility modifications where these are supplied by the accommodation provider. Otherwise the classification should be as per the current RTA to avoid different standards being applied to different groups of tenants.

We believe these asset management provisions are extremely weak and considerably less than a CHP would be required to undertake under the NRSCH. By focusing exclusively on responsive maintenance they allow accommodation providers to neglect planned maintenance. We recommend that guidance is issued to non-registered accommodation providers that set out clear and strong standards.

The role of the SIL provider should not be included in legislation as again this blurs the responsibilities and relationships between the landlord and tenant and the support provider. How this could work should be included in operational guidelines, as circumstances can also be different in different shared living arrangements.

11 Resident's requirements for modifications to be made to property

This is a complex area of tenancy and asset management as it involves the intersection of different funding agencies. Some of the key issues are:

- there is currently no clear definition of what a home modification is, no definition of what assistive technology is, and no clarity about what is required for a dwelling
- there should be clear guidance to landlords about what constitutes major and minor work in the context of a supported group home
- the separation of responsibilities for minor and major modifications needs to be clearly defined as this affects who pays
- applications for major modification funding needs to be done in consultation with the accommodation provider to ensure that it is structurally feasible
- lack of clarity around financial responsibility for modifications in circumstances where CHPs are managing the property on behalf of a landlord

Organising modifications should be co-ordinated by the landlord so that work to the property of both a major and a minor nature is done at the same time.

Major modifications and installations for supported group accommodation are funded by the NDIS through the NDIA, and it is the resident's responsibility to apply for funds to pay for major work. Minor modifications to group accommodation will be the responsibility of the landlord. CHPs currently pay for this work following an assessment of need, and there should be no charge to a tenant for this work.

It is not possible for tenants to remove major modifications when they leave a property – by definition these are changes to a property that are significant such as those requiring structural change. The impact of the modification on the future 'lettability' of the property should be considered when approval is being given, and options should be looked at that provide flexibility for the property and future tenants. Minor modifications could be removed by the landlord prior to reletting if they are no longer required, but if they are generic modifications it is more likely that they would be left in place as good enhancements to the property.

There are tenant and property 'matching' platforms currently being developed that could assist tenants with disabilities to find suitable specialist disability accommodation that is designed and located to meet their needs. CHPs will generally attempt to facilitate their tenants to move to more appropriate accommodation where the required modifications cannot be made.

12 Locks and security devices

CHPs are subject to fire safety requirements, and have not traditionally put locks on internal doors other than bathroom doors as a fire safety precaution. Requests for locks and security devices made by 'live in' or 24 hour support providers must be made to, and approved by, the tenants of the group accommodation.

The conditions pertaining to locks and security devices should be in line with those currently in the RTA which clearly sets out roles and responsibilities for the tenant and landlord. SIL providers should not be permitted to install locks or security devices and this should be addressed in operation guidelines as well as the service agreement between the accommodation provider and the SIL provider.

13 Change of accommodation provider or owner

The Federation believes that 21 days as a minimum period of notice is sufficient to enable payment processes to change to a new accommodation provider.

In general a new tenancy agreement would have to be signed as the landlord entity would have changed. The exception to this could be in some fee for service arrangements where the managing agent is changing but not the landlord as listed on the tenancy agreement.

14 Termination

The termination provisions currently contained in the RTA should apply. There should not be additional or different provisions for supported group accommodation. The only change to the termination clauses in the Act should be that the 'no fault' or 'no cause' eviction, Section 85 in the RTA, should not apply to supported group accommodation tenants. Tenants should be able to give notice that they are moving out without cause and should not be penalised for this.
The Federation does not support 'no fault' terminations by landlords, and there is no basis for a landlord to terminate the tenancy of someone in group accommodation without identifying an actual ground for termination.

Where a tenant living in a group home is no longer eligible for a specialist disability accommodation payment and they are classified as a social housing tenant (see comments on the classification of tenants in SDA above), a CHP could use the provisions of part 7 of the RTA, Social Housing Tenancy Agreements, sub-division 2: Alternative Premises Ground.

For social housing tenants, NCAT is already required to take into account a number of factors when determining whether or not to make a termination order. These are addressed in *Section 145E: Exercise discretion to make termination order*. The same factors should be applied to the supported group accommodation.

The provisions around non-payment of rent should be in line with the current provisions in the RTA. CHPs have rent policies that reflect these requirements alongside those of the NSW Community Housing Rent Policy. Providers can adapt their policy settings to reflect issues around

the collection and maintenance of rent for people with disability to enable more flexibility if required, and to enable earlier intervention.

The Federation does not think that any of the requirements around notice periods for termination or rent payment should be different to those set out in the current RTA, and the proposal in the paper is confusing and should be simplified. Terminations are fully covered in the agreement and all of the issues listed in the paper are already addressed. Duplicating this, or changing it for a different cohort, is not necessary.

The Federation does not support 'no fault' clause for landlords. The 60 day notice required from tenants wanting to move out is considered adequate.

15 Goods left on premises after vacating

Goods left on premises should be addressed in line with the current RTA provisions. CHPs have the flexibility to act over and above those provisions on a case by case basis which may be necessary in the case of someone moving from supported group accommodation.