

6 March 2018



Department of Family and Community Services
Attn: Resident Rights Consultation Process
Level 13, 4-6 Bligh Street
Sydney NSW 2000

By email: residentrightsconsult@facs.nsw.gov.au

Dear Sir/Madam,

Thank you for the opportunity to respond to the draft proposals to improve resident protections for people with disability living in supported group accommodation.

The NSW Council of Social Service (NCOSS) works with and for people experiencing poverty and disadvantage to see positive change in our communities. When rates of poverty and inequality are low, everyone in NSW benefits. With 80 years of knowledge and experience informing our vision, NCOSS is uniquely placed to bring together civil society to work with government and business to ensure communities in NSW are strong for everyone. As the peak body for health and community services in NSW, we support the sector to deliver innovative services that grow and evolve as needs and circumstances develop.

Acknowledging context and complex needs

NCOSS supports the overall proposal to extend the protections of tenancy law to the residents of group homes; a standard agreement providing protection against unfair terms.

However, in formulating these proposals, it is important to acknowledge the context and vulnerability of residents with the most complex needs. Prior to the transfer of Ageing, Disability and Home Care (ADHC) residences to the non-government sector, residents had the right to live in the same home for life, and many did so. This was not a 'housing choice', but accommodation of last resort.

NCOSS emphasises it is critical that the NSW Government continue to work with the National Disability Insurance Agency (NDIA) to ensure agreement is reached on a provider of last resort for the most vulnerable residents.

Recommendation 1

That the NSW Government continue to work with the National Disability Insurance Agency (NDIA) to ensure agreement is reached on a provider of last resort for the most vulnerable residents, and to determine the responsibilities of this provider.

Safeguarding against unfair evictions

The proposals would allow a provider to evict a resident with 90 days' notice at any time, or with 30 days' notice if a resident "cannot be supported at the property without causing serious risk to staff or other occupants" or has breached other requirements of the accommodation agreement. As discussed above, this represents a deterioration of rights when compared with lifetime tenure.

We share the concerns of our members that the proposals could leave residents open to eviction due to external circumstances connected to their disability (for example, inadequate behaviour support, or lack of dexterity causing damage to property).

To mitigate these risks, NCOSS proposes that the legislation specify that certain safeguards be required both before and during an eviction process.

Eviction as last resort; alternative options considered

Eviction should be a last resort, with the provider obligated to prove other options have been considered, including liaising with a resident's Supported Independent Living provider and supporters about whether behaviour support should be modified, and liaising with all parties about alternative solutions.

To ensure no resident is evicted into homelessness, a provider should be required to organise alternative accommodation before evicting a resident.

Additionally, legislation should ensure that a resident is not evicted due to circumstantial effects of their disability. For example, residents should only be evicted for property damage which is caused 'knowingly and intentionally' and is not the 'result of fair wear and tear'.

Recommendation 2

That residential agreements/guidelines reaffirm that eviction of a resident is an action of last resort, and require a provider to demonstrate they have investigated alternative solutions.

Recommendation 3

That before evicting a resident, a provider be required to investigate alternative accommodation options.

Recommendation 4

That the legislation specify that evictions for property damage can only be the result of damage caused 'knowingly and intentionally' rather than the 'result of fair wear and tear'.

NSW Civil and Administrative Tribunal should adopt a flexible approach

In recognition of the power imbalance between residents and providers, when hearing cases relating to eviction from group homes, we believe the NSW Civil and Administrative Tribunal (NCAT) should:

- adopt a flexible approach, having a broad discretion to refuse eviction in circumstances which would be unfair to the resident;
- consist of three members with expertise in disability as well as law (following the model used in the Guardianship Division of NCAT);
- where relevant, have access to information from the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission concerning reportable incidents and use of restrictive practices.

Recommendation 5

That the NSW Civil and Administrative Tribunal (NCAT) adopt a flexible approach when hearing cases involving evictions of group home residents, in line with the points above.

Access to advocacy

It is crucial that residents in danger of eviction are provided with independent support and advocacy so they are aware of accommodation options and their rights are protected. This may be a challenge in the context of no guaranteed NSW Government funding for disability advocacy beyond 30 June this year. This is a demonstration of the important role advocacy plays in assisting the Government to fulfil its obligations towards people with disability.

Recommendation 6

That the NSW Government continue to fund independent disability advocacy and information services beyond 30 June 2018, in recognition of the crucial role played by these organisations in facilitating people with disability to access mainstream services and assistance, including advocacy and tenancy matters.

Rights and responsibilities must be implemented in a way residents can understand

It is critical that residents are assisted to understand their legislative rights and responsibilities. This involves making agreements available in Easy English, and ensuring the residents have an ongoing understanding of the rights, for example around access to their room, and payment of rent.

While there should be a presumption that residents can sign contracts, we also recommend the legislation guarantee certain minimum rights for residents in situations where they are unable to sign a contract.

Recommendation 7

That tenancy agreements and documents associated with the legislation are made available in Easy English.

Recommendation 8

That providers be required to provide residents with ongoing education about their tenancy rights, in a way they can understand. Supported Independent Living providers should also be educated about the residents' tenancy rights.

Changes to proposals which would benefit all vulnerable tenants

We recommend two changes to the proposals which should apply across the *Residential Tenancies Act 2010* as they would benefit all vulnerable tenants.

- No grounds eviction should be abolished: this is critical to ensuring tenants of group homes are not evicted because of their disability.
- No bond should be payable. This should apply to all social housing tenants, who by nature of their disadvantage do not have access to 4 weeks rents in advance.

Recommendation 9

That “no grounds evictions” be removed from the *Residential Tenancies Act 2010*, which has a particular impact on residents in group homes.

Recommendation 10

That residents of group homes not be required to pay a bond, and that this exemption extend to cover all social housing tenants.

If you have any questions about points raised above, please email Ya’el Frisch (NCOSS Policy Officer, Disability and Ageing) at yael@ncoss.org.au.

Yours sincerely,



Melanie Fernandez
Acting Chief Executive Officer