



Protections for Residents of Long Term Supported Group Accommodation in NSW

Report on the Consultations

NSW Department of Family & Community
Services

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EXECUTIVE SUMMARY

In January 2018, the NSW Department of Family and Community Services (FACS) initiated an extensive consultation process to identify stakeholders' views on protections needed for residents living in long term supported group accommodation in NSW.

As outlined in the various FACS consultation documents that were circulated, the consultations were designed to inform the drafting of NSW legislation on resident protections, as well as to clarify the responsibilities of supported group accommodation providers.

Respondents were able to provide feedback through a variety of channels including:

- an online survey (170 responses)
- written submissions (40)
- focus groups and consultations held across NSW, specifically targeting residents, family members and carers (17 sessions were held involving 132 participants)
- a peak body round table convened by FACS (involving 15 senior representatives).

By the conclusion of the consultations in early March 2018, over 360 different individuals and organisations had provided feedback.

This report on the 2018 consultations – prepared by the independent social policy firm EJD Consulting & Associates – provides a synthesis of the feedback received, with a specific focus on the 14 topics outlined in the consultation documents.

Analysis of the feedback revealed several common themes regarding stakeholders' attitudes to protecting residents living in long term supported accommodation:

- 1) **Vulnerabilities of residents.** It was noted that many residents are unable to speak up for their own rights and therefore will need additional protections. This theme also relates to the differences that exist between residents, with some facing compounding issues associated with their cognitive impairment, their rural location, and/or their Aboriginal or cultural and linguistically diverse backgrounds.
- 2) **Importance of stable housing.** Feedback highlighted that most supported accommodation residents are not in a position to find alternative accommodation in the open housing market due to their support needs. This theme was also linked to stakeholder concerns over the termination of accommodation agreements, and the prospect of residents being exited into homelessness.
- 3) **Resident rights should not be less than those of private renters** as defined in the NSW *Residential Tenancies Act 2010* (RTA). Many stakeholders reiterated this position, while also noting that additional protections were needed to allow reasonable adjustments for people with disability.
- 4) **Standardisation and personalisation.** This theme relates to most stakeholders' desire for government to define a clear protection 'floor', that cannot be traded off. It also reflects a common view that legislated protections should not act to limit innovation; they should also provide opportunities for accommodation providers to respond to individual resident requests, specific needs or circumstances.

- 5) **Giving residents a voice.** This theme relates to stakeholders wanting to ensure residents and/or their nominated representative have a say in how their group home operates. It also links to a much-repeated principle of providing residents with ongoing choice and control.
- 6) **Interconnected role of supported independent living (SIL) services, legal guardians, family members and carers** refers to the fact that many residents are highly dependent on professional support services, plus other care and assistance delivered by third parties. As such stakeholders were keen to see the legislation acknowledge these interconnections, including in terms of how an accommodation provider issues notices or undertakes other actions.
- 7) **Independent advice, complaints and disputes process** refers to stakeholders wishing to ensure residents and/or their representatives have access to information and advice services similar to what is available to tenants in NSW. It also relates to residents having access to an independent disputes body, as well as advocacy services where needed.

Overall, the feedback strongly supported the government legislating specific protections for residents of supported group accommodation, including prescribing a standard accommodation contract that would be enforceable with or without a signed agreement between parties.

There was also strong support for the establishment of an independent complaints and disputes body, with functions similar to the NSW Civil and Administrative Tribunal, though with additional capacity and training to effectively engage with residents with disability.

While most stakeholders indicated they were supportive of the RTA being used as a base document for the legislation, they were also keen to see additional protections added, with supplementary requirements on accommodation providers due to the vulnerability of the cohort. In general, the feedback supported:

- extended notice periods and enhanced communication processes to meaningfully engage with residents and/or their representatives
- various financial protections for residents, given their low incomes and limitations on NDIS packages
- mechanisms to directly involve linked parties, including SIL services, family members/carers, guardians and advocates when needed
- exceptional circumstances criteria for termination notices, plus supplementary requirements to a) engage with SIL services, and b) ensure that alternative accommodation has been secured. Many called for the legislation to prevent evictions due to a person's disability
- opportunities for resident input on key household matters, including the selection of new residents, the addition of a companion animal, and how the application of quiet enjoyment will apply in their home.

Regarding residents with intellectual disability, and those with communication issues, many respondents also wanted to see the legislation formally recognise the role of a nominated resident representative.

The report contains detailed analysis of each of these issues, plus commentary and stakeholder quotations on other topics raised in the consultation documents. It also includes a section outlining six additional protections identified in the feedback, plus analysis of comments related to how the legislation might be implemented, including the suggestion of a communication and education program for both residents and providers.

1] INTRODUCTION

1.1 Background

This report provides an analysis of the feedback received during the early 2018 NSW Government consultation process into the rights and protections for people with disability living in long term supported group accommodation, sometimes referred to as group homes.

The feedback and consultation process was initiated by the NSW Department of Family and Community Services (FACS) to help identify options to provide NSW residents of supported group accommodation with similar rights and protections as private rental tenants or those living in boarding houses.

The NSW Government's aim is to provide legislation and regulations that define specific resident protections, as well as clarify the responsibilities of supported group accommodation providers in NSW.

EJD Consulting & Associates – a Sydney-based social policy research firm – was contracted by FACS to provide independent analysis of the feedback received through the consultation process. What follows is a synthesis of this analysis prepared by EJD Consulting's Principal – Edwina Deakin.

1.2 Scope

1.2.1 Accommodation Models

This report is focused on protections for people with disability living in 'long term supported group accommodation' in NSW, which was defined as:

Premises in which a person with disability is living in a shared living arrangement with at least one other person with disability, other than an arrangement in which one or more of the persons with disability is living with a guardian of the person or a member of the person's family who is responsible for the care of the person; and where support is provided on-site for a fee. The intention of the living arrangement is for longer than 3 months or ongoing.

It covers NSW Government operated or funded disability services, National Disability Insurance Scheme (NDIS) funded services, as well as not-for-profit and private supported group accommodation, including those that may enter the market in the future.

Specifically, this report relates to:

- specialist disability accommodation (SDA) funded by the NDIS or owned or funded by the NSW Government through an in-kind funding arrangement
- other shared accommodation models that support the tenant for a fee, such as 'drop-in' support
- any legacy large residential centres where the primary purpose is disability accommodation.

It also covers daily living support providers where they have head-leased properties for the purposes of providing group accommodation for residents with disability for a fee, and where a tenancy agreement (or a modified tenancy agreement) would have been signed between the support provider and each tenant. The report only applies to the accommodation part of their service delivery.

This report and consultation does not include or relate to:

- respite services
- temporary or short-term accommodation, such as crisis accommodation
- Commonwealth funded aged care accommodation
- assisted boarding houses where the *Boarding House Act 2012* applies
- supported accommodation where the *Residential Tenancies Act 2010* may apply, e.g. where the resident resides on their own and signs a residential tenancy agreement; or where all residents are co-tenants on the lease.

1.2.2 A Note about Protections versus Rights

The term 'protections' was included in the titles of the FACS consultation documents, while questions posed often referred to the 'rights' of residents.

Most of the comments received focused on ensuring protections, namely specific provisions that are the responsibility of the group accommodation provider to implement, rather than a right that an individual resident would need to advocate for.

It was also noted that, unlike some Australian jurisdictions, there is currently no broader human rights legislation in NSW. While rights can be legislated for, protections are necessary when the subjects of those rights may not be in a position to advocate for themselves.

For this reason, this paper generally refers to resident protections rather than rights.

1.2.3 Other Definitions

In this report, the following terms and definitions are used:

Accommodation provider refers to a person or organisation that delivers accommodation to the resident. The accommodation provider may be:

- the owner of the property, or
- someone who leases the property from the owner and then supplies the accommodation to the resident.

Accommodation agreement refers to the contract (signed or implied) between the resident and the accommodation provider (see discussion in Section 4.2).

Legislation refers to the proposed Act of the NSW Parliament, designed to set out the protections discussed; however, throughout the report *legislation* can also be taken to encompass regulations, which may extend or explain how provisions of the Act will be applied.

Resident refers to a person with disability living in supported group accommodation.

Resident's representative refers to a person who is nominated to support the resident, in cases where they are unwilling or unable to represent themselves on their own. A resident's representative may be their legal guardian, another legally endorsed representative or an advocate nominated by the resident (*see discussion in Section 5.4*).

Respondents refers to individuals and organisations that participated in the FACS consultation process described at Section 1.3.

Specialist disability accommodation (SDA) refers to NDIS funded accommodation for people with disability who need specialist housing to meet their day-to-day needs.

For NDIS funded SDA, the accommodation provider may also be called the SDA provider (see definitions above).

Supported independent living (SIL) services refers to NDIS funded services providing day-to-day living support for people with disability.

Supported group accommodation refers to long term supported group accommodation for people with disability, sometimes shortened to group accommodation or group homes (*see expanded definition at Section 1.2.1*).

Survey respondents refers to individuals who responded to the online FACS survey described at Section 1.3.3.

A full glossary of terms is provided at the end of the report.

1.3 About the Consultation Process

On 12 January 2018, FACS initiated a major consultation process on behalf of the NSW Government and the Minister for Disability Services. The purpose of the consultations was to invite stakeholders to provide input on what should be included in legislation or regulation to protect residents living in supported group accommodation.

The consultations were designed to gather feedback from all stakeholder groups, including people with disability who are residents in supported accommodation, their families, guardians and carers, supported accommodation and community accommodation providers, disability groups and advocates, peak bodies and others with views on resident rights and protections.

When the consultation period ended on 11 March 2018, over 360 different individuals or organisations had provided input.

Below is a description of the various consultation mechanisms used and the numbers of respondents. These have informed the content of this report.

1.3.1 Consultation Documents

To focus the feedback and make the consultation process accessible, FACS distributed three papers, each with a different format. These documents aimed to help different groups of stakeholders understand what resident protections were being considered, and where their feedback would be most valuable:

- **Technical Issues Paper** outlined the background to the policy objectives and provided the proposed policy as a starting point for consultation, with detailed questions to structure feedback.

- **Consultation Paper**, based on the Technical Issues Paper, was a plain English version which contained the essential components of the proposal and specific questions to indicate agreement or non-agreement with the proposal. These questions were as written in the online survey (see Section 1.3.3).
- **Easy Read Summary Paper** contained the main points with general questions to stimulate discussion among the readers.

In this report, these papers are referred to as the **consultation documents**.

1.3.2 Accessible Feedback Channels

To ensure the consultation process was inclusive and accessible, FACS provided a variety of ways for people to submit their feedback:

- Online survey
- Written submissions
- Forums and focus group discussions
- Over the phone.

Details of each of these processes are discussed below.

People were assisted to participate in the consultation process through resources and supports including:

- a frequently asked questions fact sheet
- a 'how to' fact sheet to guide people through the process of completing the online survey
- a dedicated phone line and inbox to receive and respond to queries.

FACS used a variety of channels to promote the consultation and invite participation, including:

- Ministerial media release sent to targeted media
- posters raising awareness distributed to residents in FACS operated group homes
- direct emails and phone calls to advocate groups and peak bodies
- social media
- news items and supporting content on relevant websites, including:
 - NSW Government's *Have Your Say* website
 - FACS external and intranet sites
 - NDIS providers portal
 - FACS Working Together Website
- communications to FACS staff.

1.3.3 Online survey

A FACS online survey (hosted by Survey Monkey) was published, accessible from the NSW Government's *Have Your Say* website and the FACS website.

People who could not or did not want to access the online survey had the opportunity to telephone FACS and complete the survey over the phone.

At the close of the consultation period, **170 surveys** were completed. This comprised:

- 69 responses from people with disability, residents, family members, guardians and carers (40%)
- 71 from people representing accommodation or disability support providers (42%)
- 25 from disability advocates (15%)
- 5 from individuals who indicated 'other' respondents (3%)¹.

Consolidated survey data, and the survey questions, are included in a separate compendium – see [Attachment A](#).

Unless otherwise specified, the survey data quoted relates to all categories of respondents – people with disability, family members, guardians and carers, employees of organisations, advocates and others.

1.3.4 Written submissions

People had the option to email or post written submissions to participate in the consultation process.

A total of **40 written submissions** were received, comprising:

- 16 from individuals, primarily family members, guardians and people with disability
- 24 from organisations, including:
 - government agencies (5)
 - disability service providers (4)
 - accommodation providers (3)
 - peak organisations (7)
 - advocacy and other community organisations (5).

Included at [Attachment B](#) is a list of organisations who submitted a written submission. Two organisations and one individual requested that their submissions remain confidential and therefore have not been quoted.

1.3.5 Forums and Group Discussions

To ensure the voices of people with disability and their families and carers were heard, FACS engaged four peak bodies in the disability sector to facilitate targeted consultation forums in key locations across NSW.

A total of **17 group consultations** were held:

¹ There were 20 survey respondents who indicated they were in the 'other' category, but 15 were reallocated to the first three categories based on their description of their interest. This left 5 in the 'other' category.

- NSW Centre for Intellectual Disability ran three focus groups for people with intellectual disability and their families; 26 individuals participated.
- New England Sector Support Team ran three focus groups for Aboriginal people (known as 'Yarn Ups') in Nowra, Penrith and Armidale; 21 individuals participated.
- Ethnic Community Services Cooperative ran three focus groups, for people from Vietnamese (eight participants), Arabic (eight participants) and Chinese (11 participants) backgrounds; a total of 27 people participated.
- Shelter NSW ran eight forums for families and residents of group homes, in Penrith, Newcastle, Sydney, Coffs Harbour, Wollongong, Liverpool, Newcastle and Albury; these involved 58 participants.

The organisations that facilitated the discussions used their networks to identify and invite participants. FACS also provided referrals of interested families and residents from FACS operated group home accommodation.

A total of **132 participants** attended these forums and discussions.

Each facilitating organisation compiled a report on the discussions at their forums. These have been included in the analysis that follows.

1.3.6 CEO Round Table

On 21 February 2018 FACS hosted a round table discussion attended by 15 Chief Executive Officers (CEO) or their nominees representing key disability and housing providers, plus peak bodies. The aim of the facilitated discussion was to discuss key aspects of the proposal in more detail.

A report of the round table discussions was prepared by the external facilitator, ARTD Consultants. This has also informed the preparation of this report.

1.4 About this Report

1.4.1 Structure

This report contains a distilled analysis of all feedback received from the channels described in Section 1.3. Apart from the blue quotes highlighted in boxes, the report does not attribute specific views or conclusions drawn.

The report references the same topics used in the consultation documents, with some grouped under new subheadings.

The report is divided into the six sections:

Section 1 (this section) provides an introduction and background information about the consultation process and this report.

Section 2 provides a broad context for the discussion of resident protections in supported group accommodation in NSW. It describes the interlinked roles of the NDIS and the NSW Government, as well as broader concerns that framed some of the feedback received.

Section 3 contains a summary of broader themes and concepts that emerged across the consultation process.

Section 4 addresses each of the consultation topics described in the consultation documents. Each topic follows a standard format:

- a brief description of the topic and what was asked
- a summary of the key issues and concerns raised, including reference to the survey results.

Section 5 outlines additional protection issues that were raised by respondents, though not specifically listed as topics for feedback.

Section 6 outlines other feedback received on the change process and possible issues to consider in the implementation process.

The report ends with a **Glossary** and a set of **Attachments**, including the summary of survey results and a list of submissions received.

Finally, it should be noted this report:

1. draws exclusively from the feedback received through the FACS consultation process. It does not include any independent research, or scan of options used in other jurisdictions
2. contains the outcomes of the independent analysis undertaken by EJD Consulting & Associates, the independent consultants contracted to review and synthesise the data.
At this stage it should not be read as reflecting the views of FACS or the NSW Government.

1.4.2 Quotes

Throughout the report direct quotes of respondents are included (see [blue quote](#) boxes) to highlight different stakeholders' perspectives on specific issues. They have been primarily selected to:

- highlight a specific perspective or concern on the issue
- provide a broad cross-section of diverse stakeholder voices.

1.4.3 Acknowledgements

On behalf of FACS, EJD Consulting & Associates wish to sincerely thank the hundreds of respondents who took part in the FACS consultation process.

While we have endeavoured to honestly and accurately reflect the full width and depth of views presented, we acknowledge that our report could not include direct quotes or input from every individual respondent.

* * * *

2] RESIDENT PROTECTIONS IN CONTEXT

This section provides a broad context for discussion of resident protections in supported group accommodation in NSW. It describes the interlinked roles of the NDIS and the NSW Government, as well as broader concerns that framed some of the feedback received

2.1 Interrelated Reforms

The proposed resident protections need to be understood within the context of other government processes.

In writing this report, and throughout the consultations, it was understood that the proposed NSW resident protection reforms, and the resulting legislation and regulations for residents and supported accommodation providers, will need to fit into a broader framework, including the role of the National Disability Insurance Scheme (NDIS).

2.1.1 National Disability Insurance Scheme

The implementation of the National Disability Insurance Scheme (NDIS) has led to a wholesale change of the disability system in NSW. The scheme aims to support the independence, social and economic participation of people with disability. It will enable them to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports.

The national implementation of the NDIS has produced national policies related to the provision of disability services. The assessment and planning functions related to whether a person with disability has access to funded supports have transferred from the NSW Government to the National Disability Insurance Agency (NDIA). The NDIS quality and safeguards framework will apply in NSW from 1 July 2018.

This Commission will be releasing the NDIS Practice Standard for Specialist Disability Accommodation to regulate the registration of SDA providers. The Commission does not intend to regulate the residential tenancy rights of SDA recipients, which are assumed to be protected through state and territory residential tenancy laws.

The full scheme implementation of the NDIS in NSW will commence on 1 July 2018.

2.1.2 NSW Government Transfer of Specialist Disability Services

With the NDIA taking on all former NSW Government assessment and planning functions, the NSW Government is divesting itself of the agency of government formerly responsible for the delivery of disability services, the Aging, Disability and Home Care division of the Department of Family and Community Services (FACS).

A significant aim of the NDIS is to run disability services in a market-led environment that will generate competition away from traditional, monopolistic state-owned providers. Before services were transferred, the NSW Government managed approximately 40% of disability accommodation places in the state, making it the largest provider of accommodation in NSW. The transfer of accommodation services to the non-government sector is a fast track strategy to generate growth in the disability accommodation sector.

Since September 2017, FACS has transferred the operation and management of more than 300 group homes to the non-government sector. In addition to this, there has been long-standing bipartisan support for closures of large residential centres in NSW. This will involve relocation of residents to new and more 'homelike' accommodation in the community. The process of constructing these new homes, and then assisting residents to relocate, will not be complete by June 2018, though plans are well advanced.

2.2 NDIS Requirements and Related Reforms

2.2.1 Specialist Disability Accommodation (SDA)

SDA relates to the physical building where a person with disability resides and is a cost-effective way of providing support. It is included in a participant's NDIS plan when it is reasonable and necessary; for example, when SDA is combined with other supports to better assist the participant to pursue their goals, objectives and aspirations. SDA can be provided in a group setting (two, three or more participants living together) or as individual living units.

The funding for SDA is regulated by the NDIS (Specialist Disability Accommodation) Rules 2016 and carries different levels of funding depending on the dwelling's build date, building types and design categories of SDA.

It should be noted that SDA in a group setting represents only a portion of the supported group accommodation cohort to which this consultation referred. There are also group accommodation models where residents are not approved for SDA in their plans nor is the accommodation enrolled as SDA with the NDIS, and the residents still receive supported independent living services funded by the NDIA, in either a full time or part time capacity.

2.2.2 Separation of Accommodation and Living Support Agreements

In order to increase choice and control for NDIS participants, SDA is included as a separate support from the assistance with daily living support, or supported independent living (SIL) on the participant's plan. The NDIA requires separate agreements for accommodation that is provided by the accommodation provider and for the daily living support that is provided by SIL service providers.

FACS developed an Accommodation Agreement to satisfy the requirements of the NDIS for use in the group homes it owns, as part of the services transfer arrangement. This Accommodation Agreement is not exhaustive in providing a complete set of conferred 'rights' to residents, as per the consultation, but functions as a contract between the SDA provider and the resident to enable SDA funding to flow.

2.3 Other Issues Informing Stakeholder Feedback

The consultation process generated a quantity of high quality feedback and thoughtful responses. Most of the feedback demonstrated respondents had engaged with the consultation documents (see Section 1.3.1) and provided constructive comments in response to the questions posed.

Many respondents expressed a strong commitment, at times passion and concern, for the welfare of residents, including those with intellectual disability and others not able to advocate for themselves. Some of these concerns (particularly those from family members/ carers, residents, and people with disability) were heightened by a sense of uncertainty regarding FACS's changing role in disability services, and the impact of the NDIS.

While all feedback was carefully considered in terms of the impacts on residents with disability and the future operations of supported group accommodation in NSW, a minority of comments were outside the scope of this review. For the most part they relate to the following eight topics of concern:

1. Concerns regarding the adequacy of **NDIS packages** and the capacity of individual residents to pay for the level of service they need in supported group accommodation.
2. **Uncertainty regarding NSW Government funding of disability advocacy services** and the flow-on consequences for residents, family members and carers not confident or able to fully advocate for themselves.
3. The perceived inadequacy of the **Disability Support Pension** and the potential unaffordability of supported group accommodation, particularly for those without NDIS packages.
4. The **shortage of affordable and accessible rental properties** for people with disability, resulting in a **lack of choice** in NSW, particularly in rural and regional areas, and the consequences this can pose for upholding protections when no genuine alternative is available locally.
5. The planned **closures of large residential centres** and moving to smaller group homes and the uncertainty this raises for current residents and their families, especially those who have no experience of dealing with disability services other than FACS.
6. The **unresolved issue of who, or if there will be a provider of last resort** and the challenges this poses if terminations of accommodation contracts become a reality.
7. Concern about the broader policy of **transferring government services** and the associated uncertainties, on occasion fears, particularly for residents, family members and carers with no experience or knowledge of the non-government supported group accommodation sector.

While these perspectives were noted, and they highlight issues that are the subject of ongoing discussions in the disability sector, they are nonetheless out of scope for this review. That said, Section 2.1 of this report outlines the interconnections that exist between resident protections in NSW and wider reforms.

Further, Section 6 discusses feedback received on the importance of having a major information and community education program following this consultation to ensure stakeholders are kept abreast of the proposed changes, with opportunities for further engagement in the future.

* * * *

3] BROAD THEMES FROM THE CONSULTATIONS

This section contains a summary of broad protection themes and concepts that emerged from the consultation feedback.

Description:

Analysis of all the feedback received revealed seven common themes or shared perspectives on resident protections. For the most part, these themes were raised by all stakeholder groups – people with disability, residents, family members/carers, advocates for people with disability, SIL services, SDA providers and government agencies.

These seven themes are summarised in the diagram below, and described over-page together with other shared perspectives.



Key Issues and Concerns:

1) Vulnerabilities of Residents

While a minority of respondents were keen to see residents treated the same or similarly to tenants in NSW, all noted that this cohort were highly vulnerable, especially those with intellectual disabilities, or lacking a capacity to advocate for themselves.

These vulnerabilities can often be compounded by other factors, including low socio-economic status, or being Aboriginal or from culturally or linguistically diverse (CALD) backgrounds.

Universally, respondents felt that the vulnerabilities of all residents with disability require special consideration, and additional protections, including in respect to financial matters, notice periods, communications, advocacy and assistance with decision making.

“Being least able to stand alone for themselves, they [residents with intellectual disability] are vulnerable and in need of a variety of protections “

Family member & guardian

Written submission

2) Importance of Stable Housing

Linked to the vulnerability theme was a recognition of the critical importance stable, quality accommodation plays in the lives of people with disability. This perspective was linked to the fact that many residents are not able to take advantage of the open and competitive housing market due to their support needs.

There was deep concern over the prospect of residents having their residency terminated. Many called for the inclusion of a ‘no eviction into homelessness’ clause.

Many respondents were particularly concerned about the prospect of ‘no fault’ **terminations** of accommodation agreements, as well as possible terminations resulting from behaviours that were a dimension of the resident’s disability and/or a shortcoming of their support package or SIL service.

Overall most respondents saw the need for heightened protections for residents, compared to those included in the *Residential Tenancies Act 2010* (RTA), given the vulnerability and complexity of circumstances for the cohort, especially given the present shortage of SDA in NSW.

Many wanted to see additional measures put in place to support residents to remain in their group home for life – referred to as ‘housing for life’ or linked to notions of ‘ageing in place’.

3) Resident Rights no less than private renters

Many responses, especially those from accommodation providers, were keen to see the legislative protections for residents be similar or higher than those provided under the RTA. Some called for provisions identical to the RTA, primarily for ease of administration.

Many openly stated or implied that the RTA protections provided to tenants should form the bare minimum awarded to supported group accommodation residents, with some reasonable adjustments made (for example in timeframes) in recognition of the heightened vulnerability of the cohort, and the absence of an open supported housing market in most parts of NSW.

Overall feedback indicated that the RTA provisions could serve as a legislative ‘floor’, meaning that no supported group accommodation resident should ever have less rights than NSW tenants.

4) Standardisation and Personalisation

There was near unanimous support for the NSW Government to deliver core protections to group accommodation residents through the introduction of legislation. These protections should not only define minimum terms and conditions for all residents, but also obligations on all accommodation providers regarding how they operate their group homes.

This widely held viewpoint included regulating a standard accommodation contract, or written accommodation agreement, as discussed in Section 4.2. Many wanted the accommodation contract in an accessible, easy-read format, and for the protections to be clearly explained to each resident and their support people or representatives.

While standardised protections were widely supported, a significant number of respondents also wanted to ensure the legislation did not:

- a) imply “one-size” would suit all residents, in all group homes
- b) limit the capacity of providers to innovate, and/or deliver best practice, personalised options to individual residents.

“Many attendees preferred to have a choice of signing an individual agreement as they believed such [a] document would allow flexibility for people with disability in terms of being able to negotiate their unique needs “

CALD community members
Consultation Report prepared by the
Ethnic Community Services Cooperative

These perspectives led to calls for the option of signing individual accommodation agreements. It was argued that these personalised agreements would sit along-side the legislated protections, though allow individual needs, and in some cases supplementary protections, to be negotiated and implemented by the parties.

It was widely noted however, that this kind of individualisation should not result in a trading of rights, where a person forgoes one right for better protections for another.

5) Giving Residents a Voice

Many respondents wanted the legislation to mandate that residents should have a say on a range of issues that impact the amenity or safety of the house, including the selection of a new resident. While it was frequently noted that some residents may not have the interest or capacity to be involved in decision making, the principle of giving residents a voice and decision-making opportunities was seen as fundamental to the goal of the NDIS of individual choice and control.

Many respondents raised concerns about how legislative protections would be enforceable if the resident was unable to sign a contract, or act to protect or advocate for their own rights. Others were keen to see the legislation better recognise the diversity of residents with disability in NSW at the same time as ensuring their protection regardless of their different needs, issues and circumstances.

This perspective led some to call for the legislation to recognise the role of a **resident’s representative** – be they the resident’s carer, guardian, family member or a paid advocate. Where needed, these nominated representatives would assist residents to engage in local accommodation related decision making, as well as assist in resident advocacy or complaint matters.

As expanded upon in Section 6, numerous respondents highlighted the need for the NSW Government to initiate education and information sessions following the finalisation of the legislation. There was also a common view that this campaign should continue beyond the introduction of the reforms to ensure new providers and new adult residents entering supported accommodation remain aware of the protections provided in the legislation.

6) Interconnected roles of SIL providers, legal guardians, family members and carers

When commenting on specific protections, many respondents emphasised the critical role played by **SIL** service providers in the lives of residents. On the one hand, some expressed concern about resident responsibility for accommodation related problems, if the level or type of SIL support was not appropriate to their needs or circumstances. (For example, many wanted the legislation to prohibit termination due to a lack of appropriate/adequate SIL service support).

On the other hand, some respondents wanted to see the role of SIL service providers, as well as family members, guardians and carers better reflected in the legislation, particularly in terms of being notified of any changes potentially impacting on the resident. It was frequently observed that each of these parties could play a positive role in ameliorating any negative consequences of change, and they should be explicitly referenced in the legislation.

7) Independent Advice, Complaints and Disputes Process

Many respondents commented on the importance of residents being given the opportunity to enforce their rights specifically through being able to access independent information and advice, and through a properly structured complaints and disputes resolution process.

“There needs to be an advocate person that you can go to before the tribunal. We need ongoing support to prevent them getting to that stage “

Aboriginal participant in Armidale
Consultation Report prepared by the
New England Sector Support Team

Within this context, many raised concerns about FACS’ withdrawal from funding and delivering supported accommodation services, as well as from funding resident advice and advocacy services. Some called for the funding of a specialist disability accommodation advice and advocacy service, similar to that available to tenants through the Tenants Union of NSW.

While feedback on the operations of higher level disputes involving the NSW Civil and Administrative Tribunal (NCAT) are discussed at Section 1.1, some suggested that a dispute resolution process should form part of group accommodation providers’ responsibilities, helping to resolve issues locally and informally, before the need to escalate to NCAT.

Specific comments on these issues are included at Section 5.

Section 6 includes a number of other common themes and issues related to the legislative change process, and the implementation of the reforms.

* * * *

4] ANALYSIS OF SPECIFIC CONSULTATION ISSUES

This section analyses and synthesises responses received on each of the specific supported group accommodation consultation questions. Where appropriate, some topics have been regrouped under sub-headings. Each topic follows a standard format.

4.1 Resident Protections to be covered in Legislation

Description:

The consultation documents asked if 14 core protections were the most appropriate to include in legislation.

Key Issues and Concerns:

An overwhelming majority of respondents agreed that the NSW Government should define a set of standard resident protections for people with disability living in supported group accommodation. For example, 96% of survey responses supported this option.

When respondents were asked which items should be included in legislation, the majority were keen to see all 14 items listed in the consultation papers incorporated. In descending order, the items that were most supported in the survey responses were as follows:

- Written accommodation agreement (93%)
- Maintenance (84%)
- Resident's requirement for modifications to be made to the property (82%)
- Termination of agreements (81%)
- Locks and security devices (80%)
- Change of accommodation provider or owner (79%)
- Rent (78%)
- Accommodation provider or agent's right to enter premises (78%)
- Right to quiet enjoyment (77%)
- Companion animal (73%)
- Notice of sale of premises (71%)
- Utility charges (71%)
- Bond and holding fees (66%)
- Goods left on premises after vacating (62%).

Specific provisions related to each of these items are separately discussed below. In addition, a fifteenth topic – Complaints, Disputes and the Role of NCAT – has been added in response to the quality of feedback received related to this.

Section 5 includes a list of other items that were also recommended for inclusion in the legislation.

Note that in this report, the term 'respondents' refers to any person or organisation who provided comment or a submission during consultation. Where the term 'survey respondent' is used, this is specifically a response from the online survey.

* * * *

4.2 Written Accommodation Agreement

Description:

A standard written accommodation agreement defines core provisions an accommodation provider must deliver to residents.

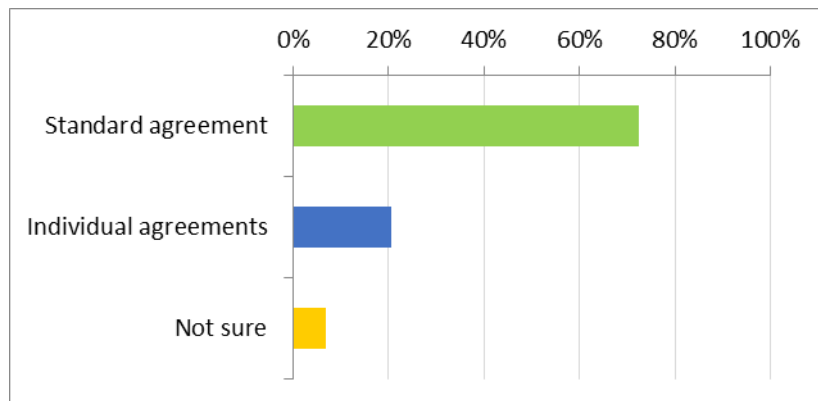
Similar to how a tenancy agreement operates in private rental or social housing, a written agreement would define the terms and conditions of the residency.

Respondents were asked if a written accommodation agreement should be prescribed in legislation, what items should be included, and if there needed to be a timeframe for the signing of agreements.

Key Issues and Concerns:

1) Legislated Standard Contract

72%² of all survey respondents supported the inclusion of a standard accommodation agreement in legislation compared with leaving it for each accommodation provider to write their own, as indicated in the graph of survey responses below.



Those in favour of the agreement being in legislation stated that it was the best means of protecting residents as it provided a ‘floor’ below which no accommodation provider could go.

Other arguments in support of inclusion included:

- It puts residents on par with NSW tenants under the RTA.
- A legislated standard contract³ would not require a signature or active consent, which is essential for many residents who may be unwilling or unable to give their ‘agreement’.

“As such it is important to ensure any new rights and obligations provided to residents of long term supported accommodation do not displace, or otherwise undermine, the rights that might already be available under the Residential Tenancies Act 2010 “

Tenants’ Union of NSW
Written submission

² Note that this percentage differs from the combined response to question 1b) (see Section 4.1), where 93% of survey respondents supported the inclusion of written accommodation agreements in legislation.

³ On this issue, various respondents preferred to use the term ‘contract’ or ‘standard contract’ in preference to agreement as it better implied protections regardless of whether the document was signed or ‘agreed to’.

- If enshrined in legislation, residents with legal guardians, including through the NSW Trustee and Guardianship agency, would not need to consent and sign, as would be the case if left to individual contracts alone.

The central concern of the minority not in favour of a standard contract being included in legislation related to concerns it would reduce flexibility, and also choice and control for residents.

There were also questions as to whether a legislated contract might not align with current or future standards set by the NDIS, specifically under its Terms of Business or National Quality and Safeguards Framework.

In addition, some respondents expressed concern that a standard contract could not be responsive to individual residents' needs.

Various parties requested that complaints and disputes processes also be defined in the agreement (see *Local Complaints and Resolution Processes* in Section 1.1).

2) Individualised Agreements

While there was widespread support for the establishment of a legislated standard contract, many suggested it would be beneficial to individualise the standard contract.

As presented, these agreements would be between the resident and the accommodation provider. They would provide an opportunity to define issues above and beyond the standard contract including:

- provisions specific to the accommodation provider including innovative or best practice service offerings that are included with the rent (for example, access to local day programs)
- provisions unique to the group home (for example, areas allocated for visitors or quiet enjoyment (see Section 4.6.1))
- provisions specific to an individual resident (for example, upkeep of a companion animal (see Section 1.1.1)).

"If they [the resident] cannot sign, and there is no responsible person to sign, it would be desirable for them to be able to rely upon legislated rights and the standard form agreement."

Intellectual Disability Rights Service

Written submission

"Legislating a standard form of accommodation agreement across providers has the potential to undermine this [NDIS choice and control] principle by restricting participants to only one form of agreement that is common across all providers"

New Horizons

Written submission

"Maybe a standard agreement with in part an individual agreement for the person's own rights relevant to their own needs"

Resident / person with disability

Survey response

"Several participants expressed the need to avoid a 'one size fits all' approach, preferring a model that would deliver flexibility to accommodate a diversity of need and capacity amongst people with disability"

Family members of residents

Consultation Report prepared by
Shelter NSW

When discussing individual agreements, respondents consistently emphasised the importance of not displacing or overruling standard minimum provisions.

3) Communications and Timing

Numerous respondents emphasised the importance of the standard contract being drafted in easy-read English.

Others emphasised the need for a widespread education and information campaign to ensure all parts of the sector understand the purpose and implementation issues associated with the contract (see Section 6.3).

There was widespread support for both parties signing or consenting to the agreement prior to moving in so both parties are clear about the protections and other deliverables.

“It is recommended that accommodation agreements should be signed prior to moving in to protect the rights of tenants and accommodation providers “

Summer Foundation
Written submission

4) Role of the Resident Representative

Across the consultation process, the issue of contracts and agreements raised concerns about some residents’ capacity to participate in the agreement process.

Many called for the legislation to recognise the essential advocacy and communication roles played by carers or other resident-nominated representatives.

5) Contract Period

A few respondents raised the question of contract periods and whether the legislation should protect residents in the case of a) the sale of the premise (see Section 1.1.1), or b) no-fault terminations (see Section 4.4.1).

* * * *

4.3 Financial Issues

4.3.1 Bonds and Holding Fees

Description:

In the rental market, a **bond** is a security deposit paid by the tenant at the start of a tenancy in case they breach the tenancy agreement. The bond is paid back to the resident when the residence is vacated, provided no money is owed for rent, damages or other costs.

A **holding fee** is money a prospective resident pays to an accommodation provider to hold or secure their place until they can move in. It reserves the resident's right to a place in the residence, and prevents the accommodation provider from entering into an agreement with another prospective resident within a defined time period. The fee is credited to the resident once they move in.

Respondents were asked if the option of charging bonds and holding fees should be included in legislation. If yes, should bonds be able to be paid in instalments. Respondents were also asked if the Rental Bond Board should oversee these bonds.

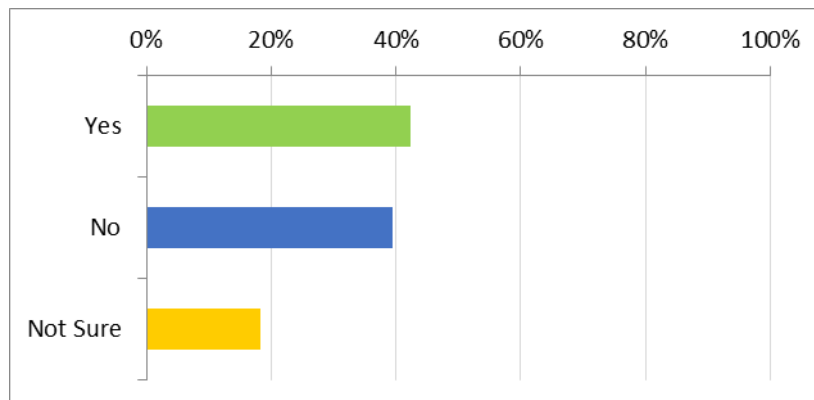
Key Issues and Concerns:

Respondent feedback on bonds and holding fees was divided. Some were either neutral or silent on their collection, while others were strongly opposed.

For example, in the survey responses, there was no clear position as to whether bonds or holding fees should be allowed, as indicated in the combined survey responses below.

"Some participants saw it [bonds] as a reasonable quid pro quo for residents receiving improved and clarified legal rights, while others saw it as an unnecessary impost that should not apply"

Family members of residents
Consultation Report prepared by
Shelter NSW



While the majority of advocates (68%) and nearly half of all employees of organisations (49%) supported the proposal, only a quarter of people with disability, residents and their family/carers (27%) said yes to the option, with 57% rejecting the proposal.

1) Bonds

Respondents' reasons for opposing the option of including a bond in the legislation included:

- prohibitive cost (assuming the standard fee of four weeks rent). It was observed that for residents on the DSP, this amount would be prohibitive
- no need for a bond as there is a lack of capacity for residents to abscond or leave. Also, some commented that if it's a home for life, the concept of a bond "becomes irrelevant"
- complexity and/or additional overheads associated with administering bonds (and also holding fees)
- questions as to whether many residents (especially those with intellectual disability) should be culpable and liable for damages when the issues may be more a function of inadequate or insufficient support. It was also noted that some NDIS packages include funding to support maintenance and upkeep
- accommodation providers should be covered by landlord insurance to protect against the need for bonds.

"Rental bonds will be a barrier to gaining accommodation and impose undue financial hardship on a group of people that are likely unable to afford to pay a bond"
People with Disability Australia
Written submission

"Protections should also be available to prevent providers recovering a bond in cases of accidental damage directly resulting from a person's disability."
Carers NSW
Written submission

"Evolve does not support the collection of rental bonds, whether by instalment or in lump sums"
Evolve Housing
Written submission

Reasons given in favour of the option of bonds included:

- residents in supported group accommodation should be treated in the same or a similar fashion to rental tenants
- cost to repair damages caused by one resident should not be borne by the provider or by other residents
- mechanisms exist (for example, the Rental Bond Board) to protect bonds being inappropriately used by unscrupulous providers.

It was also noted that the consultation documents only suggested the collection of bonds as an option available to providers. Similar to practices observed in social housing, many accommodation providers may elect not to charge residents bonds.

There were no objections received to the Rental Bond Board being responsible for registering and administering bonds, similar to the process used in private rentals.

"I understand that accommodation providers need protection too..."
Individual
Survey response

2) Instalments

On the question of whether the legislation should allow residents to pay their bonds in instalments, there was a more conclusive response, with 73% of all survey respondents being in support of this proposal.

In short, were the government to allow the charging of bonds, there was widespread support – across all stakeholder groups – that instalments be included in the legislation.

3) Holding Fees

The issue of holding fees was much less commented on than bonds.

While some respondents observed that the use of holding fees was common practice in private sector rental markets, many were keen to discourage or rule out its use in supported group accommodation given the vulnerability of the resident group.

A number of respondents recommended that better education of accommodation providers could discourage the practice of holding fees and bonds in general.

As with the issue of bonds, many were concerned about affordability issues and the capacity of residents to find fees, especially given the modest size of the DSP or capped NDIS support plans.

As an alternative, some put forward the option of using waiting lists in preference to holding fees.

“Most attendees preferred being placed on a waiting list without paying a holding fee until their application has been approved/ secured “

CALD community members

*Consultation Report prepared by the
Ethnic Community Services Cooperative*

* * * *

4.3.2 Rent

Description:

Rent is a defined amount of money paid regularly to the accommodation provider to cover use of the premises as a home. The amount of money to be paid is set out in the accommodation agreement.

In supported group accommodation, if a resident’s NDIS plan includes SDA and the rent is a percentage of the resident’s income (such as 25% of the DSP), the rent can only be increased by the same percentage and at the same time as any increase in the DSP.

Respondents were asked about notice periods for rent increases, whether receipts for payments should be issued, and what should or should not be included in supported accommodation rent.

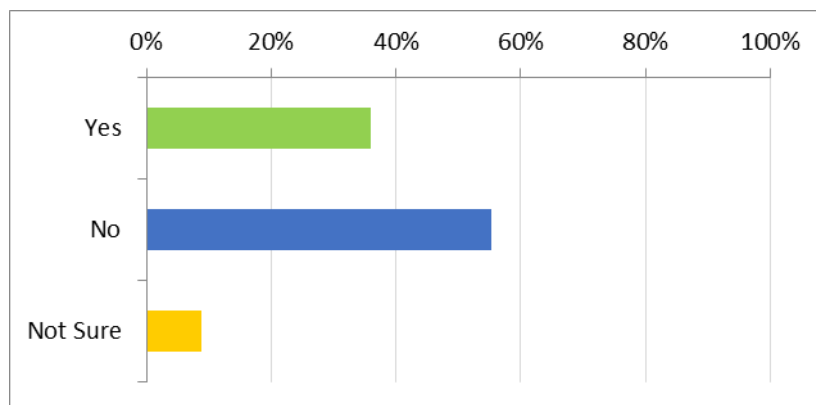
Refer to *Non-Payment of Rent* in Section 4.4.1 for the discussion on termination due to unpaid rent.

Key Issues and Concerns:

Whereas over three quarters of survey respondents (78%) agreed that rental protections should be included in the legislation, there were more divergent views from stakeholders on what exactly should be included.

1) Notice Period

For example, a majority of survey respondents (55%) felt that 28 days was not enough notice of rent increases as indicated in the combined results below.



While respondents who were employees of organisations were roughly split in their responses (46% ‘yes’ and 49% ‘no’), most advocates (60% ‘no’) and people with disability, residents and their family/carers were more strongly inclined to reject the survey proposition (61% ‘no’).

“28 days is too short a notice period, especially for people on a fixed income such as the DSP “

People with Disability Australia
Written submission

Given the observed financial and physical vulnerability of many residents, various respondents commented that adopting the RTA standard would place residents at a significant disadvantage to private renters.

“It should be a minimum of 60 days which then gives residents enough time to look at alternative accommodation if they do not agree with the price increase “

Resident/ Person with disability
Survey response

2) Rent Amounts

Many respondents raised concerns about the amount of rent that should be charged, particularly given the absence of government contracting and the prospects of more for-profit providers entering the supported group accommodation market.

“It was also suggested that legislation should set rents as a percentage of residents’ incomes, to ensure affordability is guaranteed”

Family members of residents
Consultation Report prepared by
Shelter NSW

Whereas most appeared comfortable with capping rent in respect to those on NDIS packages, some were keen to see this same provision apply to all incomes, as per social housing rents.

Various respondents were keen to see the legislation introduce caps on rental increases, with suggestions including setting a fixed percentage of the resident’s income (as per social housing tenants) and/or limiting increases to CPI rates and requiring these adjustments to be undertaken at the same time each year.

“For financial security, residents require accommodation to be rent protected...Rent increases if required need to be indexed to CPI based inflation, be activated at the same time each year, and need to be co-ordinated in time with the same CPI pension increases”

Family member of Resident
Written submission

3) Inclusions

It was observed by respondents that there appeared to be considerable variation in what was covered and what was not covered in supported group accommodation rental payments. As such, some respondents called for the legislation to either:

- a) itemise all standard items that must be covered in rental charges, or
- b) require providers to clearly itemise all components of rent and any other charges.

This issue was seen as especially important in circumstances where the SDA provider is also the SIL service provider.

4) Receipts

To protect against unscrupulous practices, most respondents supported the issuing of regular receipts (or e-receipts).

It was noted that where a resident has a financial manager, guardian or enduring power of attorney appointed, the receipt or a copy of the receipt should also be issued to them.

“The rent provisions (including rent receipts etc) applying to tenants of group accommodation should be identical to those applying for other tenants under the RTA “

NSW Federation of Housing Associations
Written submission

5) Payment Periods

Many respondents were keen for the payment of rents and other charges to be made as easy as possible for the resident, without unnecessary restrictions or rigid bureaucracy.

On this matter, there was widespread support for residents to elect to pay their rent either fortnightly or monthly and that this option should be included in legislation.

Similar to the arguments against holding fees (*see Holding Fees in Section 4.3.1*), some argued against the option of paying two weeks rent in advance, though others observed that this was a common practice and should not create challenges for most residents.

While some accommodation providers reported having 'resident friendly' rental options, some were not keen to have too much detail prescribed in legislation.

6) Non-Payment and Terminations

Finally, many family members and advocates in particular raised concerns about the prospect of terminations for the non-payment of rent.

This topic is dealt with in detail in Section 4.4.1 below.

* * * *

4.3.3 Utility Charges

Description:

Utilities charges are the usage costs of water, electricity, gas, internet and excess garbage. Currently, in most group homes, utilities are paid by the residents, but this may be taken out of the 'board' that is collected.

The accommodation agreement can include that the resident must contribute to utilities, however the accommodation provider is responsible for organising and paying for utility connections.

Respondents were asked about how accommodation providers should charge for utilities, and whether the legislation should require regular procurement reviews.

Key Issues and Concerns:

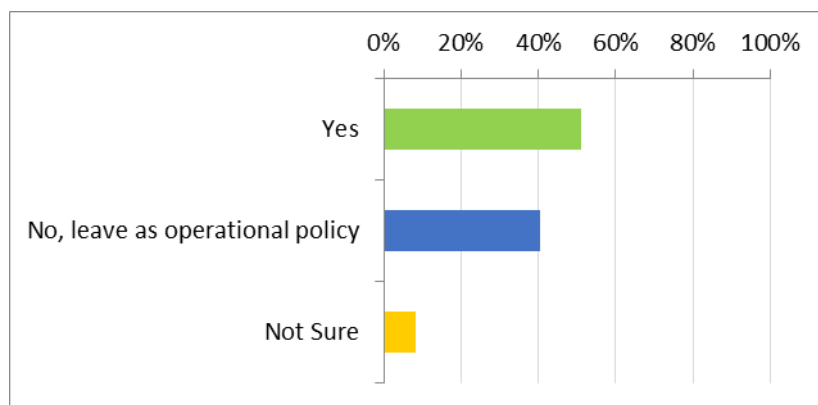
1) Charges

While a significant proportion of respondents were supportive of the draft proposals regarding utility charges, and agreed to including the capacity to split utility fees between residents, there were questions regarding how much detail should be included in legislation.

For example, on the question of whether the legislation should include how utility charges should be split amongst residents, the survey respondents were divided as indicated in the combined results below.

“Forum participants took a pragmatic view on utility charges, with most concluding that a simple legislated formula for calculating shared costs would be preferable to households determining how to share costs themselves”

Family members of residents
Consultation Report prepared by
Shelter NSW



While more respondents across most respondent groups (56% employees of organisations; 52% advocates; and 48% people with disability, residents and their family/carers) supported the proposal than not, a significant proportion of respondents indicated they were unsure (20%; 20% and 10% respectively).

Some comments indicated a degree of confusion as to who should be responsible for utility costs, especially where there was a SIL service provider in the mix.

“SIL provider current(ly) has overall responsibility [for utility charges] as it forms part of the cost of lodging; it is not manageable for the CHP to do this “

Evolve Housing
Written submission

Overall, most seemed to support the proposed formula⁴, while noting a need for “common sense variations” in cases where one resident requires more significant power usage than others (for example, in the case of major electronic medical equipment).

The issue of internet use was also commented on in this context with some questioning if all residents should share this cost, if some had much higher usage than others.

A few respondents suggested a degree of distrust in how providers may charge for utilities, raising the prospect of some profiting from resident contributions or “double dipping” if the rent already covered some services. There were also some who raised the need for SIL service providers “to pay their fair share” of utility costs where this is part of the service model.

Overall, the feedback was strongly in favour of transparency and accountability in how utility charges are passed on to residents.

“The default method of sharing utility costs should not result in an unequitable distribution of costs amongst residents and providers; some residents use energy consuming medical equipment...while others do not “

NDS

Written submission

“Some people do not use the internet, so some people who want to use internet must pay their own internet bills. “

Individual

Written submission

“I would like to know how much I pay. I would like a receipt or proof... some weeks I have less [money] than usual so I want to know where the money goes “

Resident with intellectual disability

*Consultation report prepared by the
Council for Intellectual Disability*

2) Review of Contracts

There was minimal feedback on the issue of whether the legislation should require providers to regularly review utility contracts. A few commented that these types of reviews are standard business practice, and as such may not be required in legislation as it is not a core protection issue.

* * * *

⁴ Contribution per resident = $\frac{\text{total (excess) usage charge}}{\text{the number of long term residents} + \text{SIL Provider}}$

4.4 Tenure Issues and Protections

4.4.1 Termination

Description:

Termination relates to how a residency can be ended by either the accommodation provider or the resident.

Currently the rules relating to terminations included in rental accommodation agreements and boarding house agreements are complex and may not provide sufficient protection to vulnerable residents with disability.

Respondents were asked about the grounds and conditions under which a termination notice could be issued in a supported group accommodation setting, and whether NCAT should be involved. They were also asked for feedback on notice periods regarding no-fault terminations.

Key Issues and Concerns:

Of all the matters consulted on and discussed in this report, the issue of terminations created the most concern in the sector and was covered in most, if not all, written responses received.

In short, the proposed provisions in the consultation documents were generally viewed as insufficient to protect the rights of this vulnerable cohort.

As with many other consultation issues, the issue of termination by the accommodation provider raised for many the need to ensure residents have access to a local advocate (for example, a family member, carer or resident representative), as well as access to an effective external independent advocacy service if the matter was to escalate.

(See discussion of advocacy in Section 5.5 and complaints and disputes at Section 1.1).

“People with disability should not lose their home or incur liabilities for acts or omissions that can be attributed to their disability”

Consultation with family members of residents
Consultation Report prepared by
Shelter NSW

“[Recommend that] independent support and advocacy for a person who is in danger of eviction so that the person’s rights are protected, and the person is aware of accommodation options”

NSW Council for Intellectual Disability
Written submission

1) Negative Consequences including Homelessness

On the question of terminations by accommodation providers (what many termed ‘evictions’) many respondents raised concerns including:

- the vulnerability of the resident group and the lack of opportunity to readily find alternative accommodation, even with adequate notice
- the impacts of commercial operating principles (i.e. no-fault terminations) being at odds with current SDA practice to not terminate unless “under

“Before any termination notice is effected, current practice from NGO providers is to first consider the availability of alternative accommodation for the resident, their risk of homelessness, and the potential contacts with the criminal justice system as well as solutions. These considerations are paramount and must continue to be reflected in any policy or legislative framework “

NDS
Written submission

exceptional circumstances such as where there is risk of harm” (NDS, March 2018)

- a present lack of clarity regarding the **provider of last resort** and what this means for residents and their family and carers should their agreement be terminated, and no alternative accommodation has been secured.

Following on from the above point, there was also significant concern expressed that terminations will increase homelessness and/or incarceration of residents if there is no requirement to prevent this.

“Now that these ADHC protections are gone, there should be legislation protecting residents from homelessness and requiring alternative suitable accommodation to be provided before the resident is evicted “

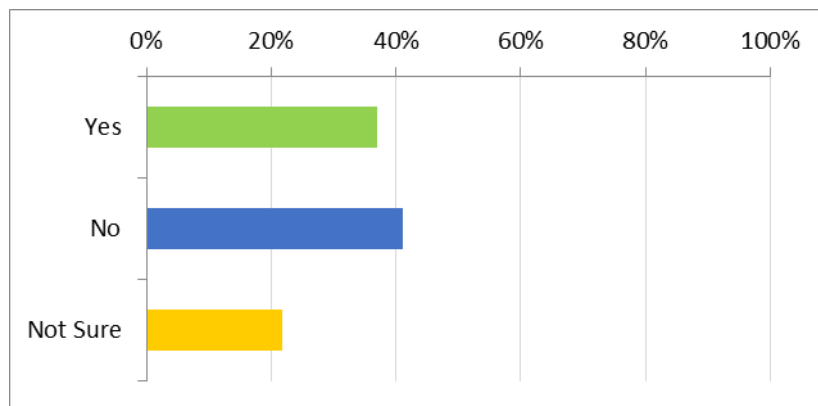
Intellectual Disability Rights Services
Written submission

“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 “

NCOSS
Written submission

2) Non-Payment of Rent

Survey respondents were divided on whether the non-payment of two rent periods was sufficient for an accommodation provider to issue a non-payment of rent termination notice. For example, 41% of respondents stated ‘no’, 38% stated ‘yes’ and a sizeable 22% indicated they were ‘not sure’, as indicated in the combined survey responses below.



While employees of organisations were slightly more evenly spread (47% ‘yes’ and 37% ‘no’), 52% of advocates stated ‘no’ compared to only 24% ‘yes’, with people of disability, residents and family members/carers showing a narrower margin – 42% ‘no’, 33% ‘yes’ and 25% ‘not sure’.

The qualitative feedback on this issue was generally opposed to the two-week period and recommended a longer period.

The feedback also indicated the importance of formally notifying not just the resident, but others with responsibility or capacity to respond to the issue, namely the resident’s representative, their financial manager and/or their SIL service provider.

“People with developmental disability often obtain assistance to organise rent and other payments... It would be unjust to then impose negative repercussions, such as a rent termination notice, on a person who was not responsible for the issue at hand “

Family Advocacy
Written submission

As commented upon under other topics, given that many residents are not directly responsible for managing their finances, any hiatus in rent should not result in the automatic issuing of a termination notice. Instead, the accommodation provider should immediately initiate discussions with the resident, their SIL service provider, or others (including the resident representative, their guardian, family members or carers) to take steps to rectify the situation as soon as possible.

“Participants at forums observed that failure of [residents] to pay rent on time tends to indicate the breaking down of support providers’ systems rather than an intentional breach of an accommodation agreement. It was suggested that accommodation providers should make sensible inquires before issuing notices or letters of demand to residents on the ground of non-payment of rent”

Family members of residents
Consultation Report prepared by
Shelter NSW

3) Notice Periods and No-fault termination

While many respondents were uncomfortable with the inclusion of a ‘no-fault’ termination per se, others noted it was a necessary inclusion as the sector moves towards a market-driven model.

“While tenancy agreements must remain separate to support agreements, the proposal need to consider the interface between tenancy agreements and support provider agreements to ensure that residents are not compromised in their tenancy because a lack of adequate support “

People with Disability Australia
Written submission

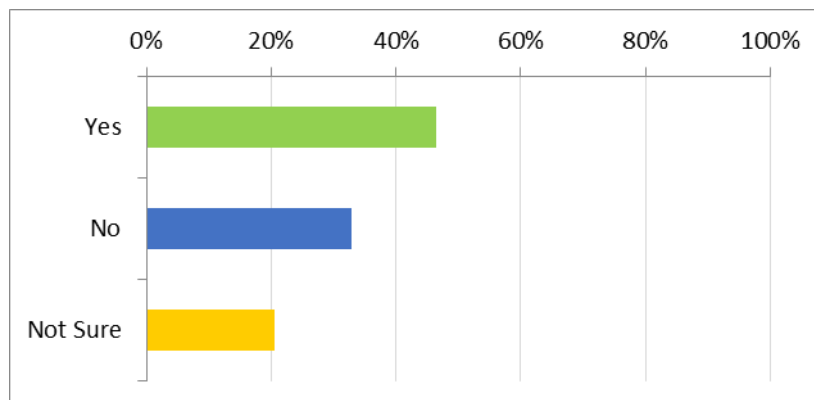
One common suggestion was to extend the 30-day notice period and/or seek the involvement of NCAT (or equivalent) to oversee a process. It was argued that this would ensure:

- a) residents and their representatives are aware of the process and the timeframes
- b) residents are being provided with options to safely relocate to suitable premises.

“We recommend that the requirement for accommodation providers to seek approval from NCAT before terminating an agreement to be a standard practice, not just for residents who are in hospital or detention, but for all residents at risk of evictions at the behest of the accommodation provider “

Family Advocacy
Written submission

As above, survey respondents were divided on whether the no-fault notice period of 60 days for residents, and 90 days for accommodation providers, was long enough for providers to fill vacancies and for residents to find alternative accommodation, as indicated in the combined survey responses below.



Where a majority of employees of organisations (55%) supported the notice propositions, followed by the largest proportion of people with disability, residents and family members/carers (43%), only a third of advocates were in favour (36%) with 44% opposed. A fifth of all respondents (21%) were 'not sure', the highest proportion of whom were people with disability, residents and family members/carers (23% indicated 'not sure').

Feedback showed most advocacy organisations, and residents, people with disability, their family members and carers were troubled by accommodation providers being 'allowed to' issue notices, not to mention imposing prescribed timeframes.

It was widely proposed that only under exceptional circumstances, and with due cause, should accommodation providers be allowed to issue such notices and only with the consent and oversight of NCAT.

While the issue of residents terminating their agreement was far less frequently commented on, it was noted by some that 30 days was too short a period for most providers to find a suitable replacement resident, given the specialised nature of the accommodation. It was suggested that a 60-day period may be more appropriate

*"People thought the accommodation provider should **not** be able to terminate for any reason"*

**Consultation with resident,
family members and advocates**
Consultation Report prepared by the
Council for Intellectual Disability

"While 90 days may appear generous, our experience is that it not always sufficient time to find alternative accommodation, particularly where the customer has complex support needs that impact on others"

House with No Steps
Written submission

4) With cause terminations

Overall, respondents were very concerned about terminations for non-compliance with service agreements, including non-payment of rent, or failing to uphold the right to quiet enjoyment. It was repeatedly commented on that such compliance issues were usually out of the control of residents, being, for example, the responsibility of a guardian or financial manager in the case of rent, or a SIL service provider in the case of a behavioural support plan.

Some suggested that a special fund or insurance program be established to cover damages caused by residents due to the nature of their disability.

"External scrutiny of a decision to terminate in these circumstances is desirable. We therefore consider that in this circumstance the accommodation provider should be required to apply to NCAT for termination of agreement"

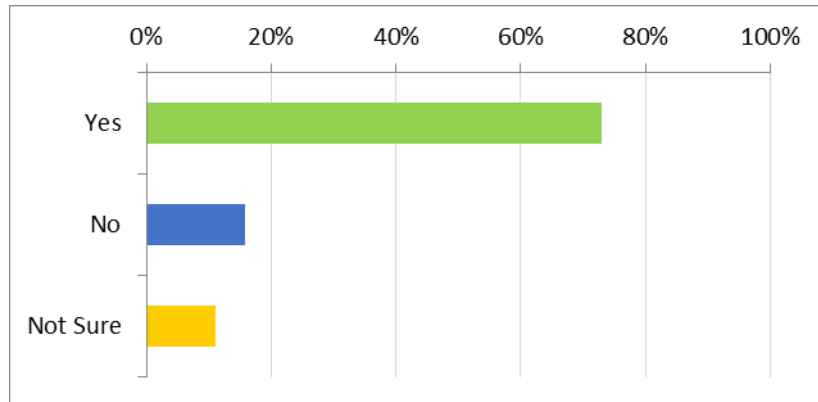
Legal Aid NSW
Written submission

"A resident who has a disability should have an extra layer of protection include in the legislation to prevent their tenancy agreement being terminated based on behavioural issues"

Individual
Written submission

5) Hospital and Detention Termination

A significant majority of survey respondents (73%) stated it was reasonable to require the accommodation provider to ask NCAT’s permission if they wanted to terminate an agreement when the resident is in hospital or detention, as indicated in the combined survey responses below.



Employees of organisations were slightly less in favour of the proposition (66% ‘yes’) than people with disability, residents and family members/carers (80%), closely followed by advocates (76%).

Generally, the written submissions from advocacy groups were opposed to accommodation providers having the option to terminate an agreement when the resident is in hospital or detention.

Once again, most respondents were keen to see these decisions be a determination of NCAT and not the provider.

6) NCAT role in final decision

As with tenants in NSW, many respondents noted the importance of making termination an action of “last resort” after all alternative pathways and supports have been tried without success. To this end, there was strong support for NCAT to be involved in making any final termination.

It was also suggested that NCAT should be entrusted with reviewing how a resident was being exited, to protect against homelessness (see above) or being relocated to unsafe or inappropriate housing.

Overall, respondents want to see much tighter protections for residents in respect to termination than those proposed in the consultation documents.

(See Section 4.8 for further discussion on the role and processes of NCAT).

* * * *

*“We believe there is a need to include processes that involve a requirement on accommodation providers to notify the following parties of an intention to terminate an accommodation agreement:
SIL provider, the NDIA, the support coordinator, NDIS Quality and Safeguards Commission, and the person’s decision support/ guardian (if applicable)”*
Ombudsman NSW
Written submission

“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”
NSW Federation of Housing Associations
Written submission

“NCOSS proposes that the legislation specify that certain safeguards be required both before and during an eviction process”
NCOSS
Written submission

4.4.2 Goods Left on Premises after Vacating

Description:

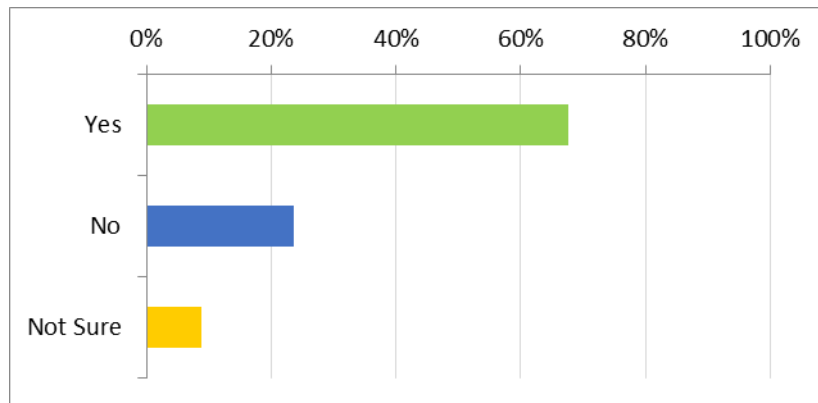
Supported accommodation providers can be faced with having goods left in their group homes after a resident has vacated the premises.

Respondents were asked how long an accommodation provider should be required to hold on to the belongings.

Key Issues and Concerns:

In general, respondents were keen to ensure that every effort is made to reunite the resident with goods left on premises.

While a majority of survey respondents (68%) reported that 30 days was long enough before the accommodation provider can seek permission from NCAT to dispose of items left behind (as indicated in the combined results below), the qualitative feedback generally called for much longer timeframes.



Employees of organisations were most strongly in favour of the 30-day proposition (75% ‘yes’).

A number of respondents stated a preference for either 60 or 90 days’ notice, with the majority reinforcing that the final disposal of goods should require a decision of NCAT, rather than be left to the accommodation provider.

Some want to see the legislation outline what actual steps a provider would have to take (including contacting all support services and other resident contacts) prior to their application to NCAT for disposal being considered.

“Yes, if the provider has made adequate attempts to notify the resident/ guardian that the possessions have been left “

‘Concerned Guardian’
Written submission

* * * *

4.5 Property Management

4.5.1 Maintenance

Description:

In the RTA, if a landlord does not respond to urgent requests for repairs within a reasonable time, tenants can organise repairs themselves and ask the landlord to reimburse them for the costs.

However, as group home residents are less likely to be able to organise repairs for themselves, alternative arrangements may be required for both urgent repairs, and non-urgent maintenance requests.

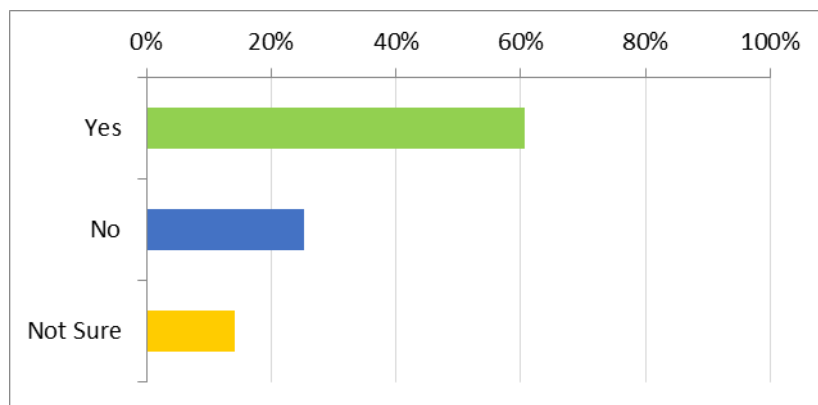
Respondents were asked about the definition of urgent repairs, and also about what a reasonable timeframe for repairs should be. They were also asked about the role of the SIL service in facilitating maintenance on the property.

Key Issues and Concerns:

In general, the feedback on repairs and maintenance paralleled the two survey questions.

1) Urgent Repairs

The majority of survey respondents (61%) agreed that 12 hours is enough time for the accommodation provider to respond to urgent repairs, as indicated in the combined results below.



All three groups of respondents – employees of organisations; advocates; and people with disability, residents and family members/carers – had similar response ratios, notwithstanding between 13% and 16% of all groups indicated ‘not sure’.

Some respondents called for the legislation to also include reference to ‘as soon as possible’ in respect to urgent repairs, commenting that “12 hours is too long” if the repairs related to electricity supply, access to water or sewage leakages.

This perspective led some respondents to recommend that accommodation providers be required to adopt a person-centred and flexible approach to repairs, noting that not all group homes or all residents would have the same needs in terms of the urgent nature of repairs.

“We need flexibility, some understanding and some respect- this is a home”

Aboriginal resident, Armidale

*Consultation Report prepared by the
New England Sector Support Team*

For example, some wanted to see the inclusion of additional items, such as television and internet connections, in the list of urgent matters, given the importance these services have in the lives of some group home residents.

“Technical issues paper could be expanded upon. Some people discussed that a TV and TV connection, like Foxtel, are essential appliances”
Council for Intellectual Disability
Consultation Report prepared by the
Council for Intellectual Disability

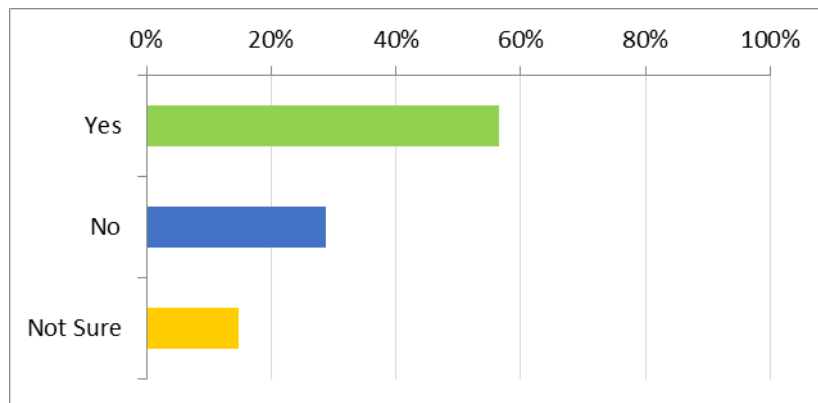
Most other feedback related to practical considerations such as:

- the option for the accommodation provider to reimburse the SIL service or even a resident if urgent repairs were organised directly, for example, over a weekend
- recognition that in some regional and remote areas, securing a tradesperson, even for urgent repairs, can take longer than 12 hours.

“We believe that it would be reasonable for the accommodation provider to reimburse the SIL provider or resident in those [urgent] situations”
Ombudsman NSW
Written submission

2) Repairs and Upgrades

While a majority of survey respondents (56%) agreed that 24 hours was enough notice for residents to receive before repairs and upgrades are carried out (as indicated in the combined results below), there was more diversity of opinion in the other feedback received.



In the surveys, employees of organisations were more strongly in favour of the 24-hour notice period (73% support), followed by people with disability, residents and family members/carers (51% support).

Advocates on the other hand were the only survey cohort where a slight majority rejected the 24-hour notice period (52%) with only 40% in favour.

As per other feedback in this report, many respondents were keen to see the notice period extended. Reasons given mainly related to the need to get SIL services or other resident support people involved in helping ameliorate disruptions from repairs. In some instances, this would require time to plan adjustments to a resident’s routine or modify the location or level of service to be delivered.

On this score, a number of respondents wanted to see the option for accommodation providers to adjust and tailor repair and upgrade provisions through negotiation with the local SIL service or, in some limited circumstances, individual residents where essential (for example, access to a power supply to run essential medical equipment).

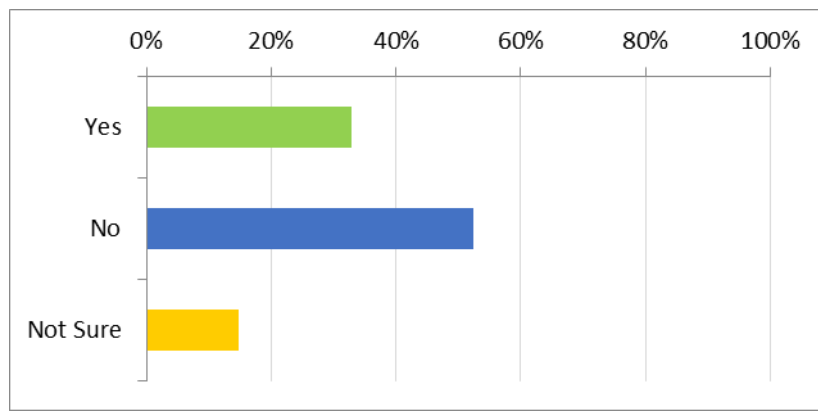
“Yes, it is appropriate to stipulate that the SIL may act on behalf of the resident. However, the practical details of how this is managed day-to-day should be agreed in the partnership between the SDA and SIL”

Northcott

Written submission

3) Repairs in Resident’s Room

Fifty-two percent of survey respondents disagreed that the resident needs longer notice periods for repairs and inspections in their own room compared to those in shared areas of the home, as indicated in the combined results below.



Employees of organisations were slightly more against the proposition (56% ‘no’), followed by advocates (52% ‘no’), then people with disability, residents and family members/carers (48% ‘no’), with this latter group also showing approximately a fifth being ‘not sure’ (17%).

Several organisations, as well as family members and people with disability, commented in their written submission that it was essential to involve residents in any repair and maintenance processes.

Some also suggested that accommodation providers should be required to develop clear and accessible policy and procedures regarding repairs and upgrades, that included the steps and timeframes that will be used.

A number of respondents recommended that residents, in conjunction with their SIL services and other support people, be given a direct say in setting timeframes and then scheduling repairs.

(Also see feedback and quotes included in Section 4.5.2 regarding modifications).

* * * *

4.5.2 Residents’ Requirements for Modifications to be made to Property

Description:

Modifications are upgrades to a property that may be aesthetic or essential from an accessibility point of view (for example ramps).

Resident-requested modifications are when a resident asks their accommodation provider to make modifications to the home or to their own room.

Respondents were asked about cost-sharing arrangements for resident-requested modifications and what happens to these modifications if the resident vacates the room or house.

Key Issues and Concerns:

While the consultation documents focused on resident-requested modifications, some comments were also received on provider-initiated modifications as discussed below.

1) Resident-initiated Modifications

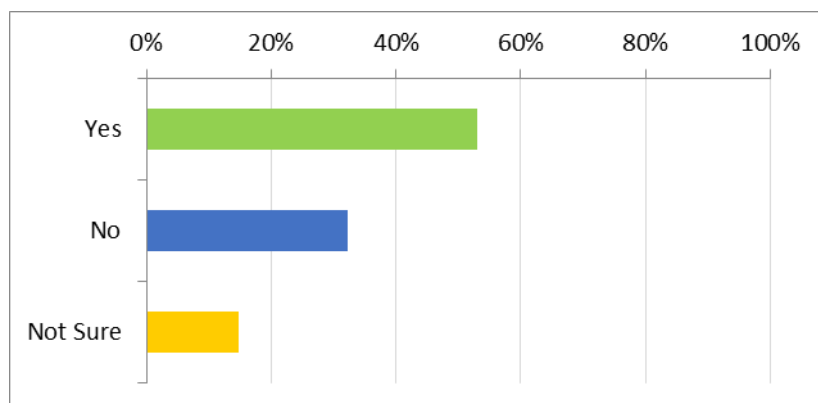
While a slim majority of survey respondents (53%) agreed it was reasonable that in some cases the cost of modifications could be shared by the accommodation provider and residents (as indicated in the combined results below), others commented that supported accommodation properties should already be ‘fit-for-purpose’ and generally not require the need for any cost-sharing.

“All three sites spoke of the need to have accommodation that was suitable for purpose and thus not generally needing modification”

Aboriginal consultations

Consultation Report prepared by the New England Sector Support Team

Further, survey respondents who were either people with disability, residents or family members/carers were less positive about the proposal with only 45% indicating ‘yes’ and 39% indicating ‘no’.



Advocates were most in favour of the cost-sharing proposal (68% ‘yes’), while 56% of employees of organisations indicated ‘yes’, and 31% ‘no’.

In respect to cost-sharing, various respondents raised questions about affordability and whether residents on the DSP or other modest incomes could cover any expected costs.

While not the subject of extensive commentary in written feedback and consultations, some family members, carers and organisations in particular noted that the issue of “resident-required” modifications should be the responsibility of the NDIS. As such the costs of essential modifications should not fall to either the resident or the SDA provider.

It was also observed that:

- NDIS packages should cover the costs of most essential residential modifications
- resident modifications can often be a positive feature of vacant rooms, making cost recovery questionable.

In general, most respondents thought it “unreasonable” that residents be asked to remove modifications made to their own room upon departure.

Another group of responses raised the issue of the resident’s right to take modifications and fit-outs with them when they left the premises. Particularly in cases where their NDIS package or personal funds had paid for the fixtures, the accommodation provider could reasonably “be asked to compensate” the resident on their departure.

In short, the feedback provided in the focus groups and written submissions highlighted that the issue of modifications was more complex than suggested in the consultation documents. As such, the survey results above should not be seen as a full indication of what should be included in the legislation.

“[Attendees thought that] people with disability should not be paying for any home modifications as they do not earn income, plus they are usually experiencing financial difficulties”

CALD Focus Group Feedback
Consultation Report prepared by the
Ethnic Community Services Cooperative

“We do not support the inclusion in the proposed policy that the accommodation provider may require the resident to remove the fixture, at the resident’s cost, when they vacate the premises”

Ombudsman NSW
Written submission

“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

NSW Federation of Housing Associations
Written submission

“Most people thought that the person who asked for a fixture to be installed or a modification made, and paid for it, should have the right to keep it”

Consultation Report
Council for Intellectual Disability
Written submission

2) Provider-initiated Modifications

While not extensively commented on, a common message to emerge in comments relating to property management was the importance of involving SIL services in the modification process, regardless of who is initiating the change.

Ideally, this should include negotiations on the timeframes, but as a minimum, also include requirements to notify all linked SIL services and family members/carers regarding what is proposed, so appropriate preparation can be made.

As noted in Section 4.5.1, these negotiations were considered essential given:

- SIL services' role in assisting residents to prepare for disruptions or adjust to change in procedures
- potential impacts modifications can have on SIL services' access to premises, or ability to deliver particular kinds of support
- the potential need to modify support schedules or staffing rosters, if the modifications are significant.

“Access to the premises by an accommodation provider also needs to be approved by the SIL provider or, at a minimum, notice should be given to the SIL provider as they may have to adjust supports and rosters. “

NDS

Written submission

* * * *

There was also feedback received recommending the legislation clarify what constitutes major and minor modifications, to remove any potential for confusion or inconsistent application.

4.5.3 Locks and Security Devices

Description:

While it is the responsibility of the accommodation provider to provide and maintain locks and security devices necessary to ensure external security, locks on internal doors are generally not provided.

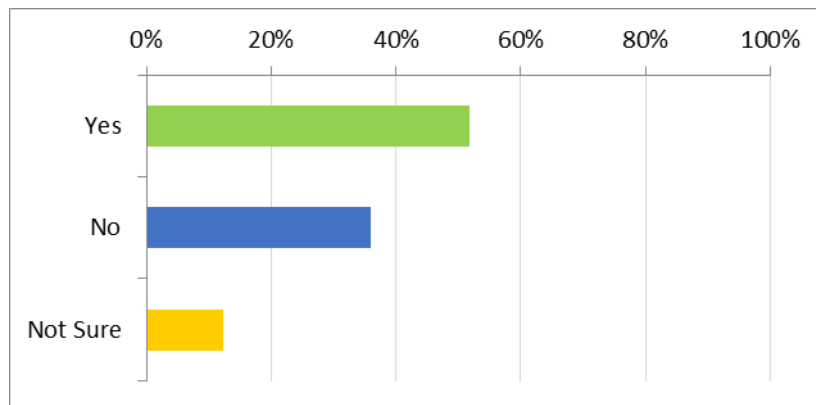
The exception is where certain restrictive practices have been included in an individual's approved behavioural support plan.

Respondents were asked about internal locks on bedroom doors and how requests for locks and other security devices should be managed.

Key Issues and Concerns:

There was widespread support for accommodation providers taking full responsibility for securing the premise and for maintaining external locks and security devices to meet their duty of care obligations. On the issue of internal locks however, there was a range of opinions expressed.

While 52% of survey respondents agreed it was reasonable that locks on internal doors only be provided in exceptional cases, as indicated in the combined results below, respondent groups were somewhat divided on the issue.



People with disability, residents and family members/carers were most supportive of the proposition (59% 'yes'); however, when distilling other feedback from this cohort, their views become more divided.

On the one hand, some viewed locks negatively due to their association with poor management of restrictive practices in the past. On the other hand, some residents, family members and carers were highly supportive of having the option for internal locks as they viewed it as a right to privacy issue and as a personal security matter.

The option of internal locks on an exceptional basis also split survey respondents who were employees of organisations, with roughly half each supporting the yes and no case, once again with a range of reasons being offered in their submissions and comments.

“Locks on internal rooms in group homes can never be used for locking or confining residents against their will. This is unlawful “
Guardian
 Written submission

“An accommodation provider should not be able to deny a person the security and privacy that can come from a resident being able to lock their bedroom door “
People with Disability Australia
 Written submission

While in general feedback on internal locks highlighted that the topic was not straightforward, overall there was solid support for:

- involving the SIL service in any decisions related to internal locks in case there were unanticipated health and safety issues
- having a clear policy and procedure regarding the installation of internal locks requested by a resident
- ensuring that at all times staff are able to open locked doors in case of emergency and/or to meet work health and safety requirements.

“Rather than requiring that all premises have locks on bedroom doors, we propose that there should be provision for providers to provide internal locks by negotiation. That means, where safety can be accommodated, privacy should be ensured “

House with No Steps

Written submission

* * * *

4.6 Amenity Issues

4.6.1 Right to Quiet Enjoyment

Description:

Amenity refers to a resident’s right to live in peace and comfort and privacy without substantial disturbance from the accommodation provider. This is legally defined as ‘quiet enjoyment’ and in the RTA and the *Boarding House Act 2012* (BHA), tenants and residents have this right.

Respondents were asked if the right to quiet enjoyment should relate to the home or just the resident’s bedroom. They were also asked how this provision might relate to behaviours of co-residents.

Key Issues and Concerns:

The topic of quiet enjoyment was extensively commented on in the focus groups and submissions.

While the principle of quiet enjoyment was widely supported, a significant number of respondents raised concerns about its application in practice. This primarily related to:

- a) the complex needs of some residents, and their capacity to control behaviours that could undermine others’ right to quiet enjoyment
- b) the design and layout of some supported group accommodation homes.

“It is inevitably the case, however, that when one resident becomes violent or aggressive towards other residents or staff, providers face a tension between upholding the individual’s right to stay in the house, another individual’s right to live free from violence and the provider’s obligation to ensure safe and enjoyable environment for other residents, in addition to meeting

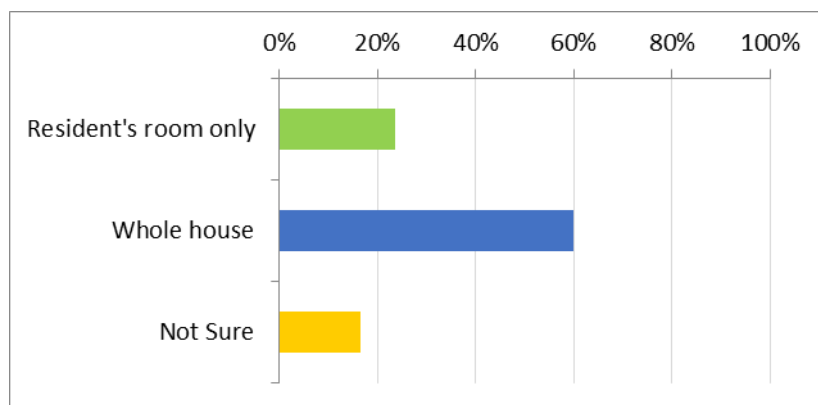
WHS obligations. “

NDS

Written submission

1) Quiet Enjoyment of House or Room

The majority of survey respondents (60%) indicated that the right to quiet enjoyment should apply to the whole house, rather than just the resident’s room, as indicated in the combined results below.



People with disability, residents and family members/carers were more strongly in favour of the whole house (with 70% support), followed by 60% of advocates, and just over half of employees of organisations (51%).

Despite the survey results, various respondents noted practical difficulties in terms of enshrining provisions in legislation, particularly given:

- a) accommodation providers may not have influence over or responsibility for the behaviours of residents in the house
- b) the interrelationships between a resident’s behaviour and the adequacy of:
 - i) level and type of SIL services
 - ii) quality and implementation of behavioural support plans.

Many residents, family members/ carers, and people with disability linked the concept of quiet enjoyment to privacy and their right to enjoy their own room (and in some cases other parts of the house) without interruptions and intrusions from other residents.

A number of respondents noted that the application of ‘quiet enjoyment’ required good matching of residents to properties. For example, various respondents raised the need for co-residents to be matched for compatibility, thereby reducing potential tensions and conflicts over noise levels.

“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 “

NSW Federation of Housing Associations
Written submission

“... because the behaviour between residents and co-residents may be best handled by their SIL services provider or their support persons, these matters are not appropriate to include in an agreement between the resident and the accommodation provider.”

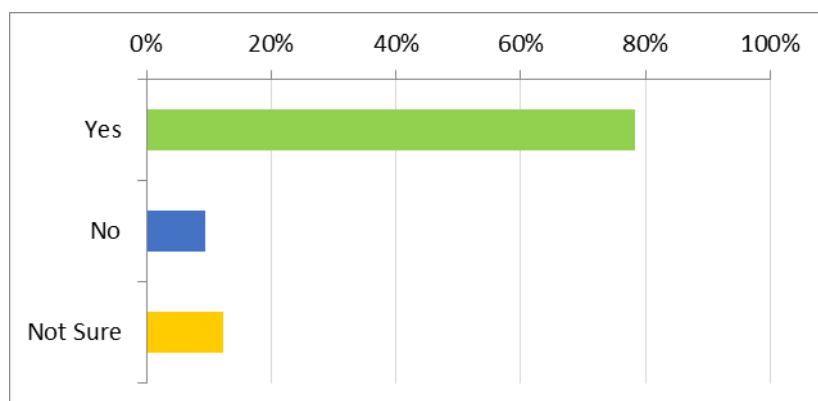
Intellectual Disability Rights Service
Written submission

“[A] few attendees suggested that an assessment should be conducted to consider the needs of people that might not be able to tolerate a noisy environment to separate them from those that do welcome noise “

CALD community members
Consultation Report prepared by the
Ethnic Community Services Cooperative

2) Co-Residents’ Rights

On the question of whether the legislation should include that a resident must allow other residents to enjoy reasonable peace, comfort and privacy without being unnecessarily disturbed, a significant majority of survey respondents (78%) supported the proposal, as indicated in the combined results below.



The strongest supporters of this proposal were people with disability, residents and family members/ carers (at 86% support), followed by employees of organisations (80%), and advocates (56%).

Some respondents were also keen to emphasise that upholding the principle and practice of quiet enjoyment should also be applied to other people in the home, including staff, support workers, the property manager, family members, carers and other visitors.

Feedback from accommodation providers and a number of residents, family members/ carers, and people with disability expressed concerns about potential consequences should one resident's behaviour impact adversely on another resident's right to quiet enjoyment. Some directly linked this concern to involuntary behaviour due to disability and whether a resident could be found to be in breach of an accommodation agreement if they exhibit such behaviours, regardless of the cause.

In general, while there was widespread support to enshrine the right to quiet enjoyment from the accommodation provider in the legislation, there may be a need to clarify how this might apply with respect to co-residents and support providers.

“Rather than legislating for an obligation that co-residents provide for ‘quiet enjoyment’ we propose this is implemented through operational measures such as an agreed set of ‘House rules’, housing discussions on what a quiet environment looks like in common areas...”

House with No Steps
Written submission

* * * *

4.6.2 Companion Animals

Description:

Current Commonwealth legislation protects a person with disability from being discriminated against for having an assistance or therapy animal, including in rental accommodation.

Respondents were asked if the right to request a companion animal should be included in legislation and also the process for decision making, including refusals and the withdrawal of consent.

Key Issues and Concerns:

There was a substantial amount of feedback on the topic of companion animals across all consultation modes.

In general, feedback fell into two distinct camps:

- those who thought the resident should have the right to request permission to have a companion animal and that a request “should not be unreasonably refused” by the accommodation provider
- those that were worried about potential negative impacts for other residents from having a pet in the home. Reasons for this opposing perspective included:
 - fear of animals
 - potential for pets to trigger negative behaviours in other residents
 - allergic reactions
 - hygiene and cleanliness impacts
 - cost-sharing issues
 - “animal rights” and whether, in some instances, group homes were suitable for pets.

“Most forum participants saw pets and companion animals as good for health and wellbeing -particularly for people with disability – and would support giving residents a clear right to keep a pet...”

“It was a consistent view that providers should not be given an outright right to refuse pets”

Family members of residents
Consultation Report prepared by
Shelter NSW

“No pets (due to client’s extensive mental health behaviours “

Parents of Resident
Written submission

Some noted that there would be differences in impact depending on the type of pet or companion animal being requested. This would mean the accommodation provider may need the right to apply “common sense” to an application, rather than have it defined as a legislated right.

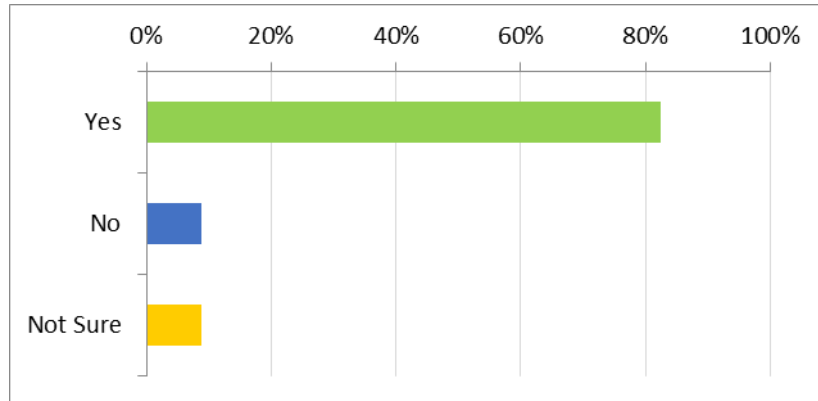
“Depends on the pet. Cat, dog, goldfish, bird. Noise considerations and hygiene considerations i.e. house-trained animal, access to yard area; this would have to vary place to place “

Resident/ Person with Disability
Survey response

It was widely commented on that the legislation should clearly and explicitly exempt therapy animals, which are already covered by disability discrimination legislation.

1) Consultation on Pets

A significant majority (82%) of survey responses agreed that other residents should have a say on whether a resident can have a pet in the home, as indicated in the combined results below.



Employees of organisations were most strongly in favour of the residents having a say (89% support), followed by people with disability, residents and family members/carers (81%) and advocates (68%).

The written submissions and focus group feedback also indicated strong support for the involvement of other residents, with numerous respondents also calling for input from SIL services and resident representatives where needed.

“A final decision in relation of whether a pet should be allowed in the property should lie with the residents “

CALD community members

*Consultation Report prepared by the
Ethnic Community Services Cooperative*

Some called for a “compatibility assessment” to be conducted prior to a person with a companion animal being approved to move into the house.

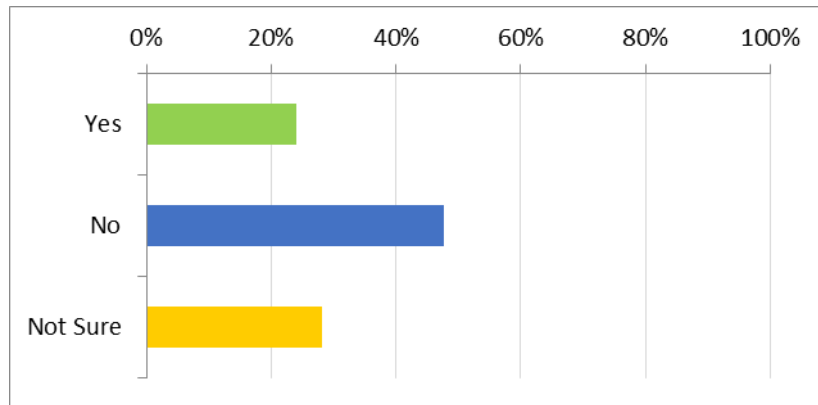
2) Pet Fees

On the question of charging residents for additional cleaning fees for pets, there appeared to be little support. For example, the majority of survey respondents disagreed that there should be a limit of one week’s rent the accommodation provider could charge as a fee for allowing a pet in the home, as indicated in the combined results below. It should be noted however that over one quarter of all survey respondents were ‘not sure’ about the proposition (28%).

“...additional provision to decline a request should include: where all occupants have voted against the request; where an animal will impact on other resident’s physical/ mental health; where the property is not configured to accommodate a pet; if the pet is on the restricted animal list”

Evolve Housing

Written submission



Advocates were slightly stronger objectors to the pet fee proposal (56% ‘no’), followed by employees of organisations (48% ‘no’) and then people with disability, residents and family members/carers (45% ‘no’).

The written submissions and focus groups raised other dimensions and issues related to companion animals including:

- one week’s rent being a lot of money for some residents
- who will be responsible for damage caused by a pet, and prospects of cost-sharing with other residents
- who is responsible for the pet when the resident is absent or no longer lives at the premises (for example, hospitalisation)
- impacts of pets on quiet enjoyment provisions and the responsibility for noisy pets.

“Managing the introduction of a pet into a shared group home will require negotiation and consent from all members of the household “
NSW Federation of Housing Associations
Written submission

“The legislation should include guidelines setting out the reasons for allowing or refusing pets so that the resident, other residents, the SIL provider and the accommodation provider are aware of the relevant matters for making the decision or changing the decision “
Intellectual Disability Rights Services
Written submission

Some respondents recommended that any costs should be left to individual residency agreements, rather than be prescribed in a standardised contract and “locked into legislation”.

Overall, most respondents appeared to want some flexibility in how companion animal policy was implemented at a household level.

* * * *

4.7 Notice Periods for Visits and Other Changes

4.7.1 Accommodation Provider or Agent’s Right to Enter the Group Home

Description:

From time to time, at the invitation of the accommodation provider, visitors or external professionals may need to enter the group home. These situations may include:

- tradespeople to do repairs, maintenance or structural works
- prospective residents and their families/carers to see if the premises are suitable.

Respondents were asked about the notice periods and conditions for the accommodation provider or agent to enter the group home, including whether there should be a limit on the number of visits per year and times of day.

Key Issues and Concerns:

The issue of periodic inspections did not elicit significant commentary or feedback.

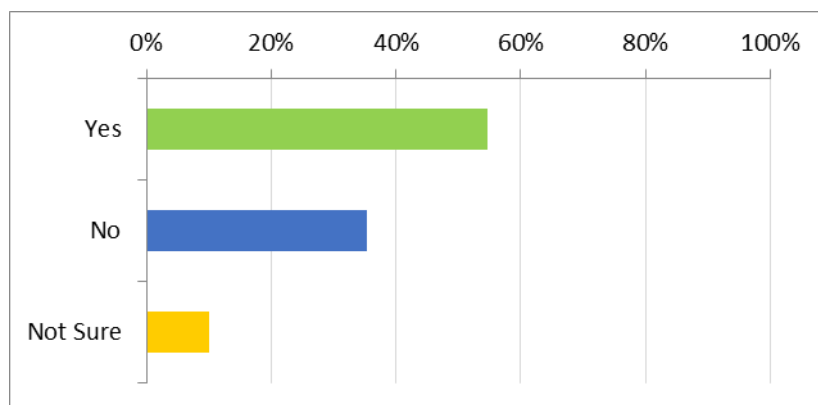
1) Notice Periods

While some respondents thought the notice period for entering a property should be the same as the RTA (for example, the NSW Federation of Housing Association and a number of community housing providers), others raised overall concerns about any short notice periods given the potential negative impacts of disruptions to routine for some residents (see *Repairs and Upgrades* in Section 4.5.1 and *Notice Periods* in Section 1.1.1).

“People thought that if the RTA and BHA are being used as reference points, it [the legislation] should instead double or triple the amount of notice that is provided...”

Council for Intellectual Disability
Consultation Report prepared by the
Council for Intellectual Disability

For example, 55% of survey respondents agreed that 48 hours was enough notice before periodic inspections or showing the home to a potential resident, as indicated in the combined results below.



People with disability, residents, family members/ carers were most positive about the timeframe proposition (62% ‘yes’), followed by employees of organisations (54% ‘yes’); however, only a minority of advocates (40%) supported the 48-hour notice proposal.

As per other notice period comments, feedback across all modes illustrated that a significant number of disability service providers, residents, advocates and family and carers were keen to see longer notice periods due to the potential disruptions caused to vulnerable clients.

2) **Limits on Visits**

While not the subject of extensive feedback, most comments received supported some limits on the number of visits per year, noting that on occasion there may be extenuating circumstances.

There was also consistent feedback that visits should be limited to business hours, and not include morning peak periods or meal times, given the potential disruption to residents' routines.

* * * *

4.7.2 Notice of Sale of Premises

Description:

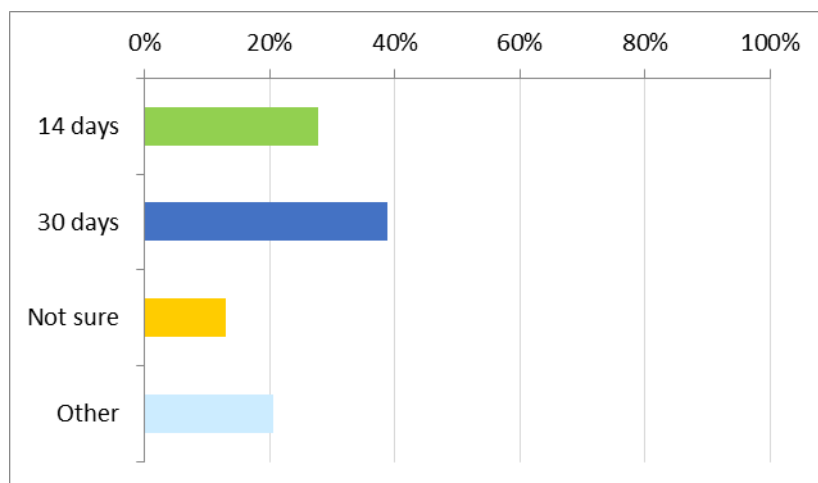
When a property is to be made available for sale, the property may be inspected by prospective buyers.

Respondents were asked about the required notice period for the first inspection for sale of the premises and also whether it is appropriate for NCAT to specify the frequency and number of visits related to a property sale when the resident and owner/accommodation provider cannot agree.

Key Issues and Concerns:

1) Notice Periods

While the largest proportion of survey respondents (39%) supported a 30-day notice period before the first inspection by a potential buyer, as indicated in the combined results below, over a quarter (28%) indicated only 14 days, and a sizable proportion (21%) indicated 'other'.



As previously commented on in relation to other notice periods (see Sections 4.4.2 and 4.7.1), many respondents raised concerns about short notice periods given potential impacts on vulnerable residents and the negative impact of disruption to routines for some residents.

On the other hand, some housing providers were keen for group home legislation to mirror provisions in the RTA (which is 14 days' notice).

Overall, the feedback seemed to support having longer periods to encourage adjustment, potentially with the structured support of the SIL service, families and carers.

Some commented on the need to require the accommodation provider to give reasons for the sale, and explain how the sale process and inspections will be carried out.

"A longer minimum notice period than 14 days is supported. Three months seems more appropriate"

NSW Federation of Housing Associations

Written submission

Existing RTA provisions for accessing property should apply i.e. 7 days for inspections with limits of four inspections in a 12-month period or 2 days' notice for statutory health and safety obligations"

Evolve Housing

Written submission

A number of respondents also commented that some residents and/or some types of group homes may require longer notice periods, or different inspection patterns, to what is normally allowed under the RTA.

Whatever the case, the option for a party to apply to NCAT for a variation on legislated periods, under special conditions, did appear to have some support.

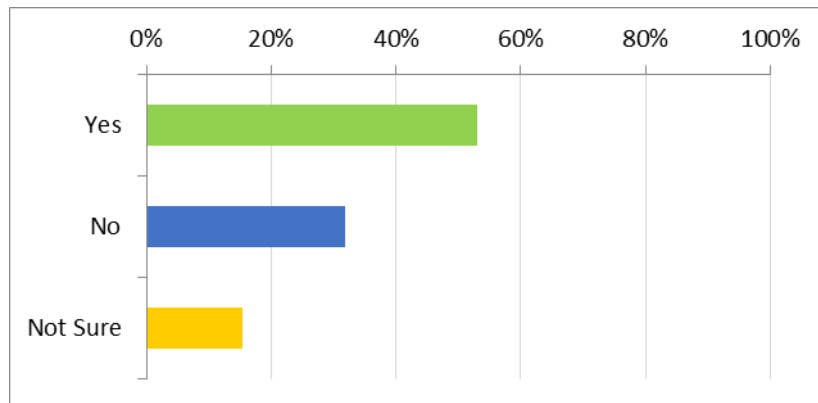
“Reasons for which a person acting on behalf of an accommodation provider could be allowed to enter a group household should be clearly specified in legislation”

Family members of residents
Consultation Report prepared by
Shelter NSW

2) Number of Inspections

There were a number of comments about the disruptive nature of property inspections, and the need to limit the number of inspections.

The majority of survey respondents (53%) supported the legislation including a limit on the number of inspections by potential buyers, as indicated in the combined results below.



Advocates were the most supportive of this proposal (68% ‘yes’), followed by people with disability, residents and family members/carers (at 59% ‘yes’).

Employees of organisations were divided on the issue with only 42% supporting the proposal, and 44% rejecting it.

One suggestion was to set the maximum at four inspections per year, again noting that the accommodation provider could appeal to NCAT should extenuating circumstances exist.

Overall, respondents supported NCAT playing an active role in defining notice of sale conditions.

* * * *

4.7.3 Change of Accommodation Provider or Owner

Description:

From time to time there may be changes in who owns the accommodation or provides the accommodation service. In these circumstances residents need to be informed.

Respondents were asked about the notice periods needed to advise of a change in provider and processes for how new agreements with residents might be put in place.

Key Issues and Concerns:

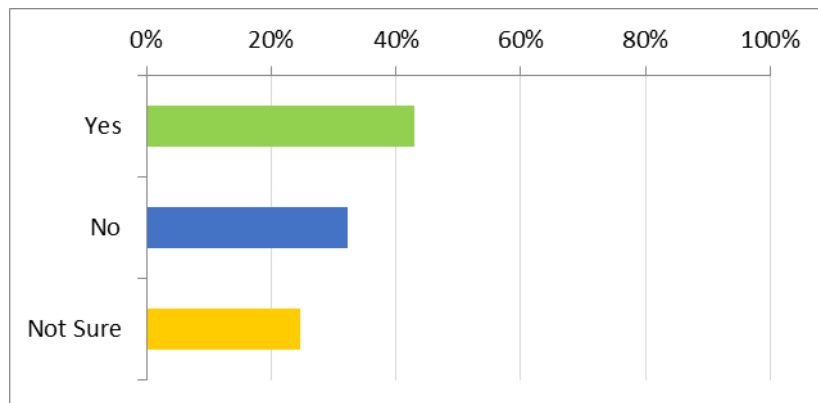
The prospect of the sale of a group home raised widespread concern from many respondents – particularly residents, family members/ carers and people with disability – with some calling for the government to disallow this option given that many have been purpose-built.

“...the idea that accommodation providers might change was not something many forum participants seemed comfortable with”

Family members of residents
Consultation Report prepared by
Shelter NSW

1) Notice Periods

The issue of providing 21 days’ notice to enable payment processes to change to a new accommodation provider produced a mixed survey result, as indicated in the combined results below, with one quarter of all respondents (25%) indicating they were ‘not sure’.



Where a slim majority (52%) of advocates supported the 21-day notice period proposition, the two other cohorts – employees of organisations and people with disability, residents, and family members/carers – both had a minority supporting the proposal (at 47% and 41% respectively). A significant proportion across all groups were ‘not sure’ (40%).

[In respect to drawing up a new accommodation agreement] “There needs to be government funding for advocacy and legal advice to help residents and their support persons with accommodation agreements”

Intellectual Disability Rights Services
Written submission

That said, numerous written submissions indicated that 21 days’ notice was sufficient without further comment, while others wanted a longer period (for example 28 days or longer) consistent with other comments on notice periods reflected across all consultation topics.

2) Transition Concerns

Rather than focus on notice periods alone however, various respondents focused on the potential negative consequences for residents of having a new owner or accommodation provider.

A number suggested establishing a mechanism to assist residents to prepare for the change, including where new individual residency agreements are required, and to make any other required adjustments.

* * * *

4.8 Complaints, Disputes and the Role of NCAT

Description:

It is necessary to define where residents or residents' representatives can take their disputes and complaints regarding their accommodation provider, and vice versa.

Currently, the Consumer and Commercial Division of NCAT is the forum for resolving residential tenancy disputes between landlords and tenants in NSW.

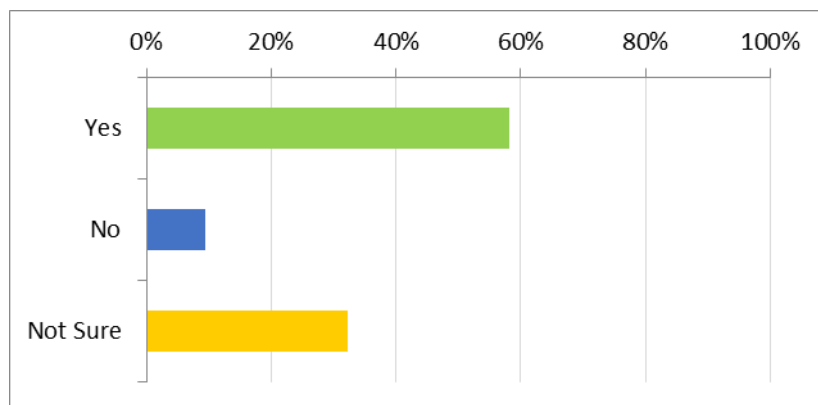
While the consultation paper did not have a specific section on complaints and disputes, under the topic of terminations, respondents were asked about the role of NCAT. In addition, the question of complaints and disputes was raised in feedback on various other protection provisions. This feedback has been consolidated in the discussion below.

Key Issues and Concerns:

The issue of complaints and disputes, and the mechanisms for acting on breaches of resident protections, was a major issue of concern to most stakeholder groups. The feedback went much wider than who the appropriate body was to manage these issues.

1) Role of NCAT

Across all the feedback received, NCAT was widely supported as the most appropriate body to hear higher level complaints and disputes related to supported group accommodation. For example, the majority of survey respondents (58%) agreed that NCAT is the right body to hear accommodation disputes between residents and accommodation providers, as indicated in the combined results below⁵.



Advocates were most strongly in favour of the proposition (68% 'yes'), followed by employees of organisations (58% 'yes'). People with disability, residents and family members/carers were 55% in favour, though 43% reported they were 'not sure'.

"NCAT will need to undertake work to ensure that it is fully accessible to people with disability in terms of its facilities and proceedings"

People with Disability Australia
Written submission

⁵ Note that the proportion of respondents in favour of NCAT rises to 89% if the one third (32%) who indicated 'not sure' is removed from the feedback.

Accommodation providers, government agencies and other peak groups expressed their support for NCAT, with most commenting on the benefits of working with a known and credible entity, with established systems and processes.

Many family members, residents and people with disability commented that they were not familiar with NCAT and its functions. Further, some respondents commented that they were unsure of NCAT's current expertise in working with people with disability and managing group home arrangements. This perspective led to the suggestion that NCAT establish a specialist tribunal, focused on inclusive practice, similar to its Guardianship Division.

Two survey respondents suggested the NSW Ombudsman as an alternative body to NCAT, though a third recommended the Ombudsman be used as a "recourse" if a party was unsatisfied with a Tribunal's decision. No other dispute body was identified in responses.

2) NCAT Processes

A wide range of feedback was provided on how to make complaints and disputes processes "open", "accessible", "fair" and "appropriate" to people with disability. Many suggestions were raised in the feedback including:

- ensuring NCAT adopts an "inclusive model" for handling matters, which would include providing all staff with disability and inclusiveness training
- using Easy English and other accessible information modes to communicate with parties and their representatives
- having the capacity to make binding orders (and potentially penalties)
- having the option to extend normal review and appeal timeframes in circumstances where the resident has been unable to engage a suitable representative or advocate to assist in the review or appeal process
- redirecting and assisting complainants to attempt to resolve the issue locally including opting for independent alternative dispute resolution processes
- offering residents the option to nominate a representative able to assist them in advocacy and decision making related to their accommodation agreement and other residency related matters (see Section 5.4).

"We recommend that a specialist NCAT division be established with experience, resources and expertise to support people with disabilities with tenancy disputes"

Summer Foundation
Written submission

"It [NCAT] should have broad discretion to consider matters, seek solutions from parties to assist residents to maintain their tenancy, and be able to make orders to stop termination of accommodation agreements"

Ombudsman NSW
Written submission

"The need for access to external support will also need to consider where residents have time limits on applications to Tribunal and correspondence regarding the same- - the default time limit to NCAT is 28 days, and review periods within NCAT can be as little as seven days. Any legislation drafted will need to make clear and reasonable time limits, and may require complementary amendment of NCAT legislation"

Tenants' Union of NSW
Written submission

Many also wanted to see NCAT, or another independent body, being proactive in educating the sector about NCAT's role in protecting resident rights, and promoting good complaints and dispute management practices⁶.

3) Local Complaints and Resolution Processes

As noted elsewhere in this report, numerous respondents raised questions regarding the role of the SIL service in matters where a complaint may be brought against a resident. It was widely acknowledged that any complaints or disputes against residents must also directly involve the SIL service, as well as family members/ carers, given their core role in most matters likely to be the subject of a complaint, including failure to pay rent, damages, or breaches of quiet enjoyment.

To facilitate this collaborative approach, a number of respondents called for accommodation providers to have an accessible, "problem solving" complaints and appeals process for initially dealing with any resident problems, preferably before a formal complaint or issue has emerged.

"Unlike maintenance and repair issues, NDS would not deem it appropriate for a SIL provider to represent residents in termination matters. However, such matters, including those that are mediated or brought before a tribunal, must also include the views and evidence presented by a SIL provider"

NDS

Written submission

This suggestion included requiring accommodation providers to implement local alternative dispute resolution processes in recognition of:

- a) the challenges posed by requiring residents to work through external, unfamiliar and formal tribunal processes
- b) the limited choice and alternative accommodation options available to many residents, regardless of the determination outcome.

"Others stresses the need to consider alternative dispute resolution processes as a precursor to a Tribunal hearing, to give people with disability every opportunity to resolve disputes through informal processes where possible"

Family members of residents

Consultation Report prepared by Shelter NSW

Some respondents also noted that while it was important for the resident to be well represented at any complaints or disputes process, it was not appropriate for a SIL service to perform this role, given the potential for conflicts of interest.

This said, many wanted to ensure that both internal and external complaints processes allow linked SIL services (and where relevant other stakeholders nominated by the resident – see *Section 5.4*) to present evidence and views, as well as potential remedies, prior to any decision or final ruling being made.

It was also noted that there needed to be different steps and processes for how different types of disputes and complaints are handled locally, including:

⁶ It is noted that this is not an appropriate role for NCAT.

- complaints by a resident against the accommodation provider
- complaints by the accommodation provider against one or more residents
- co-resident disputes.

A few respondents articulated the need for a collaborative, “early intervention approach” to complaints and one that only escalates to NCAT when “all other reasonable measures” and alternative dispute resolution processes have been exhausted.

Finally, many respondents’ feedback on complaints and disputes included reference to residents having access to independent resident advice and information services, as well as advocacy services (similar to the Tenants Union). Both these topics are further discussed in Section 5.

* * * *

5] OTHER PROTECTIONS FOR INCLUSION

This section outlines additional resident projections raised in the consultation process that were not covered in the consultation topics discussed in Section 4.

5.1 Introduction

The consultation documents asked if there were other protections or criteria that should be considered for inclusion in a legislated set of rights.

While the majority of survey respondents (58%) indicated that there were no other protections that should be included in a set of rights for residents, a wide range of issues emerged from their open-ended comments and from the wider consultation process.

Those not already discussed in Section 4 have been analysed and consolidated under six headings below. It should be noted that most directly link the broad consultation themes listed in Section 3. These links are referenced in bold (see →).

5.2 Vacancy Management

While there was no survey question directly on the issue of vacancy management, a number of survey respondents and other stakeholders directly commented on the issue, particularly in terms of the flow-on consequences of a termination (see

Negative Consequences including Homelessness in Section 4.4.1).

Various concerns were raised regarding vacancy management practice and options to improve impacts for residents, including:

- as previously discussed (see Section 4.6.1), the need for providers to conduct thorough matching assessments of potential new residents to minimise the potential for incompatibility or conflict with existing residents
- the need to maximise the time provided for existing residents to find alternative accommodation, with most stating or implying 90 days' notice is more reasonable than 60 days, given the shortage or alternative options
- the requirement for residents to be actively involved in selecting new residents given the shared accommodation arrangements, and the potential for friction if an unsuitable or poorly matched individual moves in.

“Residents’ and families’ input into strategies around vacancy management, and access to decision making processes about household composition, could play a critical role in helping to minimise issues that could lead to attempts to end accommodation agreements”

Family members of residents
Consultation Report prepared by
Shelter NSW

→ **5] Giving Residents a Voice in Section 3.**

The role of SIL service providers was also frequently raised in respect to discussions of vacancy management.

Some issues raised included:

- vacancies in supported group accommodation have impacts for SIL service providers as they are obliged to maintain existing staffing and rosters (on the assumption of a full house), yet only receive funding based on combined household income
- as SIL services are directly involved in supporting residents in group accommodation, it is essential they be consulted for their views on vacancies.

“SIL providers receive no compensation for vacancies but are immediately affected if a vacancy arises, while SDA providers receive between 60-90 days payment from the NDIA for a vacancy...”

NDS

Written submission

➔ **6] Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3.**

A number of respondents, including peak body representatives, raised concerns regarding what supports would be available to residents needing to find themselves new accommodation or negotiate a new accommodation agreement. As discussed below, this point was directly linked to the need to establish and fund an independent advice and advocacy service to assist residents where needed.

“Round table participants had strong concerns that the benefits of resident rights legislation would be undermined without an appropriate system for vacancy management and allocations- recognising that potential residents may need support to navigate the process of finding vacancies and participating in vacancy assessment processes and negotiating the terms of the accommodation agreement with future housemates.”

Peak Body Representatives

ARTD Round Table Consultation Report

February 2018

➔ **7] Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3.**

5.3 Accessible Notices and Communication Protections

A number of submissions expressed concern regarding how residents and their family members/ carers will be made aware of the protections and other issues covered under the legislation.

➔ **7] Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3.**

Many respondents, particularly residents, family members/ carers and people with disability were concerned about protections related to access to information and ensuring residents understand the protections that will be available to them. These concerns were frequently linked to:

- the overall vulnerability of residents in supported group accommodation.

“This proposal should include a requirement for the use of plain English when drafting legislation, the use of plain language in any written agreement and need for plain language and Easy English information for people who are seeking to make written accommodation agreements.”

People with Disability Australia

Written submission

- major communication barriers faced by many residents, including those with intellectual disability, those from CALD backgrounds, or others with insufficient:
 - literacy skills or experience to read key documents (such as notices or details in a residency agreement), or
 - verbal skills or experience to advocate for themselves
- an “uneven playing field” when residents are expected to negotiating agreements or understand notices if the format is inaccessible or “intimidating”.

“How do I make sure the tenants agreement is fair if my child is unable to understand the agreement? The system may suit people with physical disability but doesn’t not suit people with intellectual disability”

Gosford participant
Consultation Report prepared by the
Council for Intellectual Disability

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

NSW Federation of Housing Associations
Written submission

➔ **1] Vulnerabilities of Residents in Section 3.**

➔ **4] Standardisation and Personalisation in Section 3.**

These respondents want to see the legislation include a requirement for accommodation providers to ensure accessible options are consistently used when communicating with residents. It was suggested that there be a requirement to:

- adopt Easy English formats
- involve and notify SIL services, family/ carers and/or the resident representative in all accommodation or protection related communications
- take active steps in other ways to engage, inform and update residents in the operations of the group home and any specific protection issues that may arise.

“People with disability and their families should not be presented with complex or onerous legal documents...”

Family members of residents
Consultation Report prepared by
Shelter NSW

5.4 Recognition of a Resident Representative

As previously commented on, many submissions raised concerns regarding what happens to residents who are unwilling or unable to advocate for their own protections given their disability.

This concern was also linked to situations where the SIL service was also the SDA provider and as a consequence, has a potential conflict of interest when attempting to act on the resident’s behalf.

In NSW, even in cases where the Public Guardian has been appointed, they are not able to perform these advocacy functions. For some, this suggested the need to have the legislation recognise the role of a “resident representative” to, as needed:

“It is vital that people seeking to enter SDA be provided with the necessary support to communicate their decisions and negotiate their proposed terms of residence with SDA providers “

Legal Aid NSW
Written submission

- a) communicate with the resident to get their informed consent
 - b) assist them in making decisions on accommodation matters that are in the resident's best interest.
- ➔ **7] *Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3.***
- ➔ **1] *Vulnerabilities of Residents in Section 3.***

5.5 Advice, Information and Advocacy Service

Across a number of the consultation topics, respondents regularly raised questions regarding resident access to independent advice and information about their rights, particularly after being issued a notice or having any form of issue or dispute with their service provider. The present lack of such a service was especially “worrying” to some advocacy groups, residents and family members/ carers who also raised concerns about FACS’ reduced role in the provision and oversight of supported group homes from mid-2018 onwards.

“Carers NSW recommends that appropriate support be provided to enable people with disability to access dispute resolution mechanisms “

Carers NSW

Written submission

While most of the advocacy comments were focused on terminations, and potential dealings with a disputes tribunal (see Section 4.8), many respondents commented on having ongoing access to advocacy, advice and information services throughout the residency. Specifically, respondents identified the potential need for independent advice and advocacy when:

- entering into an accommodation agreement
- enforcing their rights while living in the home
- responding to potential complaints or actions made against them, either by the provider or by another resident.

In addition to accessing independent information and advice, many respondents were keen to see the legislation or other government instrument establish and fund an advocacy service to assist those residents who need support in managing complaints and disputes with their accommodation provider or taking actions before NCAT.

“Regulation under the RTA would 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”

NSW Federation of Housing Associations

Written submission

In short, there was widespread support for the legislation (or another government instrument) to establish an independent resident information, advice and advocacy service able to provide accessible and appropriate services similar to that available to tenants through the Tenants Union of NSW.

- ➔ **7] *Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3.***

5.6 Provider of Last Resort

Key Issues and Concerns:

As mentioned elsewhere in this report, many respondents were concerned that currently there is no government decision or agreement with the NDIA as to the provider of last resort.

Various peak bodies in particular, argued that prior to the legislation being implemented, a policy decision on the provider of last resort needs to be made and reflected in the legislation in the provisions related to terminations (see Section 4.4.1).

It was frequently observed that without a nominated provider of last resort, residents could be exited into homelessness. This point was specifically linked to observations on the limited number of supported accommodation group homes available and that few presently had capacity to keep open vacancies for this purpose.

➔ 1] **Vulnerabilities of Residents in Section 3.**

“That the NSW Government continue to work with 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 “

NCOSS

Written submission

“The NSW Government should continue to provide an option for housing of last resort to people with disability”

Family members of residents

Consultation Report prepared by

Shelter NSW

“Carers NSW recommends that legislated rights in supported group accommodation be framed within the context of limited choice availability to people with disability and their carers. “

Carers NSW

Written submission

5.7 Compliance Monitoring and Quality Assurance Provisions

Using a variety of language and descriptors, numerous respondents were keen to see the legislation include specific measures related to compliance monitoring of the statutory protections and quality assurance of all accommodation providers in NSW more generally.

As previously noted, a concern for quality and safeguarding was particularly acute amongst some residents, family members/ carers and disability groups, given the changing role of the government in overseeing group homes in general.

While it was noted that the NDIA is in the process of finalising a national quality and safeguarding system, a number of respondents still wanted to see the NSW legislation include its own compliance monitoring and safeguarding process in regard to protections, and as such not rely solely on individual complaints processes and determinations of NCAT to demonstrate sector-wide adherence to the law.

“Carers NSW believes that any legislative changes regarding supported group accommodation should embed quality and safeguarding “

Carers NSW

Written submission

- ➔ **7] *Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3.***
- ➔ **4] *Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3.***

Naturally, as pointed out, these provisions would need to be limited to ensuring the NSW legislation is being consistently applied across the state, and not “stray” into the roles and functions of the NDIA.

* * * *

6] CHANGE PROCESS CONSIDERATIONS

This section summarises feedback received related to introducing new legislation and managing the change process more broadly.

6.1 Introduction

Across the consultation process, numerous respondents provided comments on how the legislative reforms should be implemented, along with other dimensions of the change process.

Those not already discussed in Sections 4 and 5 have been analysed and consolidated under six headings below. Some of this feedback directly links to the broad consultation themes listed in Section 3. These links are referenced in bold (see ➔).

6.2 Managing the Change-Over to the New Legislation

A few submissions, survey responses and focus groups raised questions regarding how current residents and accommodation providers would transition into the new legislative arrangements, especially those with existing accommodation agreements or government contracts.

Specific issues raised included:

- providers with current FACS contracts and how the new provisions could “clash” or impact on:
 - their current service operations
 - existing agreements with residents, including those on modified rental agreements.

“These differing approaches [need to be] reconciled before legislation or policy seeks to override existing agreement between service providers and the NSW Government “
NDS
Written submission

For example, it was noted that some group homes funded under previous ADHC group home policy, are unable to terminate a resident’s accommodation agreement, except under exceptional circumstances. This is different to what is proposed in the consultation documents and may impact on existing agreements signed with residents and/or their family members/ carers

- the prospect of unscrupulous operators terminating the residency of some residents prior to the new protections and NCAT oversight provisions coming into law.

“This proposal may also result in evictions before the laws come into effect. It provides an incentive for service providers to get rid of the residents it deems likely to be difficult under the new arrangements “
People with Disability Australia
Written submission

These issues led some respondents to request FACS implement a transition plan that clearly outlines the steps and processes for transitioning into the new regulatory environment, to ensure the process is as smooth as possible.

Some also called for the establishment of an interim complaints and disputes process, in anticipation of some confusion or differences of opinion.

6.3 Communication, Education and Training Strategy

One repeated issue raised throughout the consultations related to how the sector will be informed of the legislative changes, and the mechanisms for upholding resident rights and protections.

In response to the number and complexity of issues raised in the consultation documents many respondents – particularly advocacy groups, residents and family members/ carers – commented on their current “unpreparedness” for adjusting to the changes, especially given the flux already impacting the disability sector due to the NDIS roll-out.

“It is critical that the introduction of any legislation or other protections for residents of supported group accommodation is accompanied by comprehensive and ongoing education and support for residents and their supporters to enable them to understand and promote residents’ rights”

Ombudsman NSW
Written submission

It was also observed that staff working in the sector – including in SIL services and for accommodation providers – will need to be educated and trained in the new legislative provisions, and what it means in terms of their day-to-day practice.

Updating qualifications and disability training curricula was also commented on.

These types of observations led many to call on the government to undertake communication, education and training linked to the introduction of the new legislation.

While this suggestion was sometimes linked to accessible information for residents (see Section 5.3), various respondents wanted to see the government (rather than just individual accommodation providers) take responsibility for “upskilling” and informing the sector.

*“Ensuring any legislation that is enacted is supported by:
- Accessible information and education for people with disability to ensure they understand their rights and choices under the legislation...
- Education and training available to accommodation and support providers to ensure they understand their separate and overlapping roles in promoting the rights of residents living in shared supported housing”*

Peak Body Participants
Round Table report prepared by
ARDT Consultants

➔ 1] Vulnerability of Residents in Section 3.

This included calls for workshops and information sessions to be held across NSW, targeted to different stakeholder groups, including culturally appropriate sessions for Aboriginal and CALD residents and their families/carers, and others tailored to residents with intellectual disability.

“Information session[s] and workshop[s] should be held covering such issues as ‘rights and responsibilities of residents in supported accommodation straight after the new law is passed...”

CALD community members
Consultation Report prepared by
Ethnic Community Services Cooperative

6.4 Good Practice Advice for Accommodation Providers

To accompany the legislation, many respondents alluded to, or directly called for the drafting of good practice guidelines or model policies to provide practical assistance to accommodation providers on how to implement the protection provisions at a local level.

Some specific examples of where good practice advice was called for (as noted elsewhere in this report) included:

- communicating with residents and their representatives, including:
 - standard information on protections covered by the legislation
 - ‘what to do if you think your rights have been compromised’ (for example, a model local complaints and disputes process)
 - easy English notice formats
- companion animal policy
- quiet enjoyment policy.

➔ 7] **Independent Advice, Complaints and Disputes Process in Section 3.**

In addition to these topics focused on areas of good practice, some respondents also wanted providers to be given guidance on more complex or “trickier” dimensions of protecting residents’ rights, including issues that cannot be legislation for, though are nonetheless important.

Suggestions here included practical guidance on how to:

- adopt a **collaborative approach** to supporting residents.

This might include advice on how to maximise opportunities and “meaningfully involve” parties in joint decision making, or resolving issues impacting on a resident’s safety, wellbeing, or their life goals. This might require different approaches for different parties discussed, for example:

- involving the resident and/or their representative
 - family members/ carers/ legal guardians
 - SIL services
 - advocates or independent complaints personnel (see Section 4.8.3).
- ➔ 5] **Giving Residents a Voice in Section 3**
- ➔ 6] **Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3**

“NDS supports the need for clear principles or standards that require accommodation providers to have clear policies and procedures in place ...”

NDS

Written submission

“For example, the right of one tenant to be safe may be in conflict with another tenant’s rights to not be evicted...”

Family member of person with disability

Survey response

- recognise and manage situations where **co-residents have competing interests**
- adopt an **early intervention and prevention approach**, that addresses an issue or challenges at the earliest possible opportunity and helps all parties arrive at a positive, “non-punitive” outcome

➔ **4] Standardisation and Personalisation in Section 3.**

6.5 Promoting Innovation across the Sector

While there was near unanimous support for codifying resident protections, and including them in legislation, some respondents, including peak body representatives, questioned if this could have unforeseen consequences in terms of limiting innovation and service flexibility.

To prevent this in happening, some called for the government and/or the disability sector to play an active role in promoting innovation, in raising sector standards, and in other ways encouraging improvement on an ongoing basis.

“...minimum requirements need to be framed in a way that does not inhibit innovation and better outcomes for people with disability ...”

Peak Body Participants

*Round Table report prepared by
ARDT Consultants*

➔ **4] Standardisation and Personalisation in Section 3.**

6.6 Formal Review of the Legislation

As noted in Section 2, many respondents raised questions regarding the interconnections between the proposed NSW reforms and the operations of the NDIS, including in respect to the forthcoming quality and safeguarding policy, and the operations of its commission.

Some called for the legislation to better acknowledge this relationship, and also the potential overlaps, while others commented on the importance of not creating policy inconsistencies or compliance challenges for NSW accommodation providers in respect to the operations of the NDIS.

“Participants highlighted that any legislation that is implemented needs to be reviewed after a short period of time (2-3 years) – to allow an assessment of the adequacy of the protections put in place”

Peak Body Participants

*Round Table report prepared by
ARDT Consultants*

These observations led some respondents to call for the NSW legislation to be reviewed after a relatively brief period (for example two years). Such a review would enable the Act to be assessed against its aims.

It would also ensure the Act has not produced “unforeseen consequences” identified by respondents, including:

- constraints on innovation (*see Section 6.5*)
- the creation of an inflexible group accommodation sector (*see Section 4.2 regarding the Written Accommodation Agreement*), or
- overlaps or confusion with NDIA functions (*see Section 2*).

➔ **6] Interconnected roles of SIL providers, legal guardians, family members and carers in Section 3**

6.7 Intersections with the Aged Care Sector

Key Issues and Concerns:

One final consideration raised by a few family members and carers related to how the proposed resident protections in disability services will intersect with the aged care sector.

These respondents expressed a strong desire for the legislation to protect residents' capacity to "age in place".

Further, these respondents wanted to ensure that an individual with specific protections in one form of accommodation (namely supported group accommodation), did not have reduced protections as they aged, and/or were moved into aged care premises, which are subject to different regulations.

In short, there was a call to ensure the legislative protections available to NSW residents with disability were not age limited.

➔ **4] Standardisation and Personalisation in Section 3.**

"People with disability should be able to age in place

Family members of residents

Consultation Report prepared by

Shelter NSW

* * * *

GLOSSARY OF TERMS

Accommodation agreement/ contract	<p>The contract (signed or implied) between the resident and the accommodation provider.</p> <p>In the consultation documents this was referred to a 'Written Accommodation Agreement' (see <i>Section 4.2</i>). Based on feedback, this report often refers to a 'Standard Accommodation Contract'.</p>
Accommodation provider	<p>A person or organisation that delivers accommodation to the resident. The accommodation provider may be:</p> <ul style="list-style-type: none">• the owner of the property, or• someone who leases the property from the owner and then supplies the accommodation to the resident. <p>See <i>Section 1.2.1</i> for the full definition.</p>
Boarding House Act 2012 (BHA)	<p>An Act to provide for the registration and regulation of certain boarding houses and the licensing and regulation of assisted boarding houses.</p>
Bond	<p>A security deposit paid by the tenant at the start of a tenancy in case they breach the tenancy agreement. The bond is paid back to the resident when the residence is vacated, provided no money is owed for rent, damages or other costs.</p>
Culturally and linguistically diverse (CALD)	<p>A broad and inclusive descriptor for communities with diverse language, ethnic background, nationality, dress, traditions, food, societal structures, art and religion characteristics.</p>
Disability support pension (DSP)	<p>A means tested benefit provided by the Australian Department of Human Services to people between 16 years and age pension age who have a permanent physical, intellectual or psychiatric condition that stops them from working.</p>
Holding fee	<p>Money paid by a prospective resident to an accommodation provider to hold or secure their place before they move in. It prevents the accommodation provider from entering into an agreement with another prospective resident within a defined timeframe. The fee is credited to the resident after they have moved in.</p>
Individualised contract/agreement	<p>A locally negotiated contract or agreement between an individual resident, the group home, and/or the accommodation provider.</p>
Legislation	<p>For the purposes of this report, 'legislation' is taken to encompass both Acts and Regulations.</p> <p>An Act is legislation passed by Parliament, which can only be amended by another Act of Parliament.</p> <p>Regulations are commonly known as 'subsidiary legislation'. These are the guidelines that dictate how the provisions of the relevant Act are applied.</p>

Modifications	Upgrades to a property that may be aesthetic or essential from an accessibility point of view, for example, ramps.
National Disability Insurance Agency (NDIA)	An independent statutory agency established to implement the National Disability Insurance Scheme.
National Disability Insurance Scheme (NDIS)	An Australian Government program to provide all Australians under the age of 65 who have a permanent and significant disability with the reasonable and necessary supports they need to enjoy an ordinary life. The scheme also provides people with disability, their family and carers with information and referrals to existing support services in the community.
NSW Civil and Administrative Tribunal (NCAT)	A specialist Tribunal in NSW that deals with a broad and diverse range of matters, from tenancy issues and building works, to decisions on guardianship and administrative review of government decisions.
Quiet enjoyment	A right to undisturbed occupation and possession of the premises. Physical interference with the premises by the accommodation provider can amount to a breach of a right to quiet enjoyment.
<i>Residential Tenancies Act 2010 (RTA)</i>	An Act with respect to the rights and obligations of landlords and tenants, rents, rental bonds and other matters relating to residential tenancy agreements; and for other purposes.
Resident	A person with disability living in supported group accommodation.
Resident's representative	A person who is nominated to support the resident, in cases where they are unwilling or unable to represent themselves on their own. A resident's representative may be their legal guardian, another legally endorsed representative or an advocate nominated by the resident.
Respondents	Individuals and organisations that participated in the FACS consultation process described at Section 1.3 of the report.
Specialist disability accommodation (SDA)	NDIS funded accommodation for people with disability who need specialist housing to meet their day-to-day needs. For NDIS funded SDA, the accommodation provider may also be called the SDA provider.
Standard accommodation contract	<i>See Accommodation Agreement definition.</i>

Supported group accommodation	<p>Premises in which a person with disability is living in a shared living arrangement with at least one other person with disability, and where support is provided on-site for a fee.</p> <p>Long term supported group accommodation is where the intention of the living arrangement is for longer than 3 months or ongoing.</p> <p>In this report also often referred to as group homes.</p> <p><i>See Section 1.2.1 for the full definition.</i></p>
Supported independent living (SIL)	<p>NDIS funded services providing day-to-day living support for people with disability.</p>
Survey respondents	<p>Individuals who responded to the online FACS survey described at Section 1.3.3 of the report.</p>
Written accommodation agreement	<p>Similar to a tenancy agreement in the private rental or social housing sectors, a written accommodation agreement would define the terms and conditions of the residency, including the core provisions the provider must deliver to the resident. See also <i>Standard accommodation contract</i>.</p>

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ATTACHMENTS

ATTACHMENT A- Survey Questions and Consolidated Data

See separate compendium.

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ATTACHMENT B- Written Submissions

FACS received a total of 40 submissions:

- 16 submissions were from individuals (not listed)
- 24 were from organisations, two of which requested they remain confidential and therefore are not listed below.

Government Agencies

- NSW Ombudsman
- NSW Trustee & Guardian
- Legal Aid NSW
- FACS - Housing Appeals Committee

Disability Service based Organisations

- Northcott
- House With No Steps
- New Horizons
- Cranes

Accommodation based Organisations

- Evolve Housing
- Summer Foundation

Peak Organisations

- NSW Federation of Housing Associations
- NSW Council for Intellectual Disability
- National Disability Services
- People with Disability Australia
- Carers NSW
- Tenants Union of NSW
- NSW Council of Social Service

Advocacy and other Community Organisations

- Community Educare & Advocacy
- Family Advocacy
- Intellectual Disability Rights Service
- Western Sydney Community Forum
- Community Industry Group

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