NSW GOVERNMENT

Technical Issues Paper

Protections for Residents of Long Term Supported Group Accommodation in NSW

January 2018

About the consultation process

This consultation process is being conducted by the Department of Family and Community Services (FACS) on behalf of the NSW Government and the Minister for Disability Services.

FACS invites residents, families, guardians and carers of residents, accommodation providers, and other stakeholders to share their views on the proposal to provide additional legislated resident rights to people with disability living in supported group accommodation.

FACS has released three documents for feedback:

- Technical Issues Paper – Protections for Residents of Long Term Supported Group Accommodation in NSW (this paper); and
- Consultation Paper – Protections for Residents of Long Term Supported Group Accommodation (a plain English document of specific points)
- An Easy English Summary paper

You can have your say by completing the online survey on the *Having Your Say* website https://www.nsw.gov.au/improving-nsw/have-your-say/, or you can make a more detailed submission via email to residentrightsconsult@facs.nsw.gov.au or by post to

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

For more information, or to discuss other options for participation, please email residentrightsconsult@facs.nsw.gov.au or telephone 1800 379 284.

If you need an interpreter, information about contacting TIS National is on page 32.

The consultation period is open until **2 March 2018**.

When submitting a response to this Technical Issues Paper via email or mail, please indicate if you would like FACS to keep your submission **confidential and anonymous**. Otherwise, the NSW Government reserves the right to publish your submission in its entirety. All responses provided through the online survey are anonymous and only aggregated and statistical results will be published.

A final report on the consultations will be made available in June 2018.

Ministerial foreword

This is a time of exciting change for people with disability, their families and guardians. The implementation of the National Disability Insurance Scheme (NDIS) is transforming the way people with disability are supported, giving them greater choice and control over the way they live their lives.

In NSW, the transfer of Government operated disability services to the non-government sector is supporting this process by enabling greater choice for NDIS participants. It also allows us to transfer every dollar of our disability budget directly into the NDIS, where all of it will be used to provide supports to the people who need them.

As we have worked towards the goal of transferring these services, it has become clear that we need to provide further protections for people with disability in NSW who are living in supported group accommodation.

The rights, protections and obligations for people living in rental accommodation in NSW are set out in the *Residential Tenancies Act (2010)* and the *Boarding Houses Act (2012).* Neither of these acts includes residency protections for supported group accommodation models such as group homes.

By comparison, people with disability living in long term supported group accommodation arrangements in NSW don't have easy procedural access to resolve disputes about their accommodation. We think it is important that people with disability living in long term supported group accommodation have similar rights and protections as private rental tenants and boarding house residents and for these rights to be guaranteed by statute.

The NSW Government wants to hear your views on how we can do this and what protections should be available to people living in supported group accommodation.

I encourage you to read this Technical Issues paper and tell us what you think during the consultation period, which will run until 2 March 2018. Information about how you can participate is available on page 31.

Thank you for helping us to make NSW a better place for people with disability.

Ray Williams MP

Minister for Disability Services

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Introduction

The NSW Government is proposing to establish additional resident rights and protections for people with disability renting in long term supported group accommodation similar to those provided to tenants in private rental and residents in boarding houses. It is proposed to have these rights and protections set out in legislation.

Currently, people with disability living in long term supported group accommodation arrangements have less legislated resident rights than people who rent in the private or social housing sectors.

For this consultation, only **long term supported group accommodation will be considered**. Supported group accommodation is long term if it is intended to be ongoing or to last more than three months.

In this paper, supported group accommodation includes specialist disability accommodation funded by the NDIS as well as other shared accommodation models that include support to the resident to maintain their residency, e.g. group accommodation with shared "drop-in" support or supported group accommodation for formerly homeless clients. It does not include respite and other short term accommodation arrangements.

The NSW Government invites residents of supported group accommodation, their families, advocates, guardians, accommodation providers and other stakeholders to share their views on whether resident rights should be provided to people with disability living in supported group accommodation in NSW; and if so, what should be encapsulated in these rights. The NSW Government also invites feedback on the considerations to be made on the legislative and administrative framework to support the provision of these rights.

Background

The policy context

This paper presents a suggested set of policies that could be converted to resident rights for people with disability renting in supported shared living arrangements. It is intended to complement other legislation and policies that protects the rights of people with disability to receive equal rights and protections under the law as other citizens, consistent with Article 5 of the United Nations Convention on the Rights of People with Disabilities to which Australia is a signatory.

This proposal aims to provide people with disability living in long term supported group accommodation with similar rights and protections as tenants under the *Residential Tenancies Act 2010* (RTA) and boarders under the *Boarding House Act 2012* (BHA).

Many people with disability in NSW who receive support or assistance with daily living, live independently of their family in rented supported group accommodation. This is typically accommodation where the individual has their own bedroom and shares living, dining, kitchen, laundry and garden spaces. Bathrooms may be shared or for sole use. These living

arrangements are often termed ‘group homes’ and the entire premises is the person’s home, not just their bedroom.

Residential Tenancies Act 2010

In NSW, residential residency rights are contained in the *Residential Tenancies Act 2010* (RTA), where a residential agreement grants “a person, for value, with the right of occupation of residential premises for the purpose of use as a residence.” For occupants of ‘shared accommodation’ models, the RTA specifically excludes them unless they have all signed a residential residency agreement which then means that as a group they have joint responsibility for all terms of the agreement and any disputes or transgressions that one resident may have. This is a limitation for households made up of individuals with differing lengths of residency and differing needs.

Boarding House Act 2012

Residents of assisted boarding houses have rights set out in occupancy principles in the *Boarding House Act 2012* (BHA). These occupancy principles set out certain objects related to their use as accommodation for people with additional needs, recognising the needs of this cohort for accommodation to an appropriate standard, and consistent with the UN Convention. The BHA specifically excludes specialist disability accommodation funded by Government and the National Disability Insurance Agency (NDIA) from the definition of a boarding house.

NSW Civil and Administrative Tribunal (NCAT)

Both the RTA and BHA provide eligible tenants or residents with the right to apply to the NCAT to resolve disputes. The NCAT is a cost effective mechanism to deal with various types of matters and is particularly effective for everyday disputes involving residential property and consumer issues. The NCAT can make legally binding and enforceable orders on residency disputes and breaches of residential agreements. Accommodation providers can also make applications to the NCAT to enforce their rights.

Current residency rights and their enforcement for residents of shared accommodation models

Where residents of shared accommodation models do not sign a residential residency agreement, they are considered boarders and lodgers under Section 8 (1) (c) of the RTA. This means that these residents have no residency rights other than what is provided in civil and consumer law, e.g. the Consumer and Commercial Division (consumer claims) of the NSW Civil and Administrative Tribunal (NCAT) or the local and supreme courts.

Access to NCAT consumer claims provides very limited orders and local courts are costly. Currently residents of supported group accommodation models need to take matters to the courts to have legally enforceable decisions. This means that the estimated 6,000[1] people with disability living in supported group accommodation in NSW do not have the same occupancy rights as residential tenants under the RTA or boarders under the BHA.

[1] Based on FACS estimation of the number of group homes and large residential centres operating in NSW

The National Disability Insurance Scheme (NDIS)

Under the NDIS, participants may be eligible for specialist disability accommodation (SDA) funding. SDA may be offered in individual living units or as supported group accommodation models. Where SDA is specified in a participant's plan, the accommodation provider is governed by certain standards as set out in the NDIS National Quality and Safeguards Framework or Terms of Business as may be specified from time to time, e.g. requirements for written accommodation agreements, minimum notice periods and property design features.

However, the NDIS does not provide standards or specifications related to tenancy or occupation as property legislation is a remit of States and Territories.

This proposal for providing resident rights only relates to rights and obligations from the accommodation provider and does not impact on obligations from providers of independent living supports (SIL). In some cases, the provider of SDA and SIL may be the same organisation, but the NDIS requires separate agreements for these services and the protections suggested here only apply to the accommodation component.

Refer to the NDIS for further information on their treatment of participants' rights relating to SDA.

It should be noted that a person with disability living in NDIS funded SDA that is not a shared accommodation model (i.e. living as a sole tenant) may be covered by the RTA if a residential residency agreement is signed.

Policy objectives

This paper provides policy objectives and suggested positions, as well as related discussion questions about the rights being proposed for people with disability renting in long term supported group accommodation. Many of the policy positions are based on tenancy rights under the RTA.

The questions in this paper are not the same as the questions included in the online survey (refer page 31). The questions in the online survey have been modified to reflect the requirements of this feedback channel.

The rights being considered relate to:

1. Definition and scope
2. Written Accommodation Agreements
3. Bond and Holding fees
4. Rent
5. Utility charges
6. Right to quiet enjoyment
7. Companion animals
8. Notice of sale of premises
9. Accommodation provider or agent's right to enter premises
10. Maintenance
11. Resident's requirement for modifications to be made to the property
12. Locks and security devices
13. Change of accommodation provider or owner
14. Termination of agreements
15. Goods left on premises after vacating

The paper also suggests the use of the NSW Civil and Administrative Tribunal (NCAT) to hear these matters raised by either the resident or the accommodation provider of the long term shared group accommodation.

The form of the legislative amendment is not specifically addressed in this paper, other than a final question as to an opinion on which existing legislation will be best placed to include a set of resident rights.

1. Definition and scope

The changes to policy and legislation suggested in this document are proposed to apply to 'long term supported group accommodation' which is defined here 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.*

This definition excludes short term, temporary, crisis or respite shared living arrangements and aged care accommodation funded under the Commonwealth Aged Care Act. People with disability who are living in accommodation as sole occupants with living support may continue to have residency rights from the RTA.

The 3 month criterion to define long term accommodation is suggested due to the rental period limitations defined elsewhere in NSW legislation as the limit for holiday or serviced apartment rentals.

Supported group accommodation, as well as including group homes, will also include any legacy large residential centres used solely as disability accommodation.

This policy is not intended to apply to support providers, including NDIS funded supported independent living (SIL) providers who have 24/7 access to the rental accommodation. Their relationship with the accommodation provider including access rights and mutual responsibilities are covered by commercial agreements.

For this discussion, this paper uses the following terms

- 'Resident' – to mean the person with disability who is living in the supported group accommodation premises subject to the Accommodation Agreement. This is not a legal definition, but rather a term used for convenience for this proposal, so as not to confuse the usage of the term 'tenant', 'boarder' or 'lodger' which carries with them legal meaning. The resident may be represented by their guardian, advocate or other legally endorsed representative.
- 'Accommodation provider' – to mean the person or organisation that provides the accommodation to the person with a disability. The accommodation provider may be the owner of the premises, the landlord, a managing agent of the premises, or a lessee who then supplies the premises to two or more residents. For NDIS funded SDA, the accommodation provider may also be termed the SDA Provider.
- 'Accommodation Agreement' – to mean the agreement between the resident (or their legally endorsed representative) of the supported group accommodation and the accommodation provider.

Note that this proposal to provide residents of long term supported group accommodation is to apply to all such accommodation in NSW, within the definition provided above, and not just to NSW Government owned accommodation that is being managed by non Government providers or just to NDIS funded specialist disability accommodation.

1.1 Should the rights and protections of people with disability living in shared supported accommodation be protected through legislation, like those living in boarding houses and private rentals? Or would a set of non legally binding guidelines or something similar be sufficient? Or is no change appropriate?

1.2 Does the definition for "long term supported group accommodation" provided above adequately convey the scope of applicability? If not, how would you change the definition?

1.3 Are the 15 areas listed on the page above essential to the set of resident rights? Are there any further rights that should be included? Are there any that could be addressed through operational practice by providers and excluded in the set of rights? Why?

2. Written Accommodation Agreement

Residents of boarding houses and tenants of private or social rental accommodation currently have standard form agreements available for use for those accommodation models. The NDIS requires all specialist disability accommodation to have a written agreement between the resident and the accommodation provider. The terms that the NDIS has stipulated must be included in any agreement are extensive and are defined in policy in the NDIS Provider Toolkit Module 3: Terms of Business. The NDIS has not specified fixed conditions or a standard form.

The proposed policy below is to only legislate for agreements to include key terms in accommodation agreements, which allows for variation as policy is updated from time to time.

Proposed policy

The accommodation provider must provide a written and signed accommodation agreement to the resident at the commencement of the residency. The resident should sign the agreement and return a signed copy to the accommodation provider. The agreement must include all terms applicable to the agreement including:

i. The commencement date of the residency;
ii. The duration of the agreement, which will be longer than 3 months and can be a continuous residency with no fixed end date;
iii. The rent to be paid;
iv. The address of the premises; and
v. The names of the resident and accommodation provider.

Where no other terms are included, the minimum terms set out in the policy and legislation for supported group accommodation will be assumed.

The terms of the agreement must not result in lesser protections for the resident than that provided by this statute for supported group accommodation, including where it is prescribed by the NDIS in Specialist Disability Accommodation Rules or Terms of Business where the accommodation is funded by the NDIS.

2.1 Should a standard form of an accommodation agreement be provided in the legislation? Or is it better to have minimum standards and leave flexibility to the accommodation provider?

2.2 Are there other items that should be included in the accommodation agreement, under legislation?

2.3 Do timeframes for signing of agreements by both parties need to be stipulated? e.g. prior to moving in or finalised no later than 2 weeks after moving in?

3. Bond and holding fees

It is proposed that the protections will include a section that specifies a limit on the amount of pre-agreement payments that may be imposed on a resident. The NDIS allows for bonds to be paid as long as the terms are clearly spelled out.

Proposed policy

An accommodation provider must not require or receive from a resident, before or when the resident enters into an accommodation agreement, a payment other than:

i. a holding fee, which will not exceed one week's rent (based on the rent of the proposed accommodation agreement) and the fee must be held against the rent of the first rental period that the resident must pay; or

ii. rental bond, which will not exceed four week's rent (based on the rent of the proposed accommodation agreement) and must not be required before the resident has signed the accommodation agreement.

An accommodation provider must not require or receive from a resident, an amount for the cost of preparation of a written accommodation agreement.

An accommodation provider must provide a written receipt to the resident for the holding fee setting out the amount paid, the date on which it was paid, the address of the residential premises, the names of the accommodation provider and the resident.

If the resident has paid the holding fee, the accommodation provider must not enter into another accommodation agreement for the same place unless the resident advises the accommodation provider that the resident no longer wishes to enter into the accommodation agreement.

Any rental bond accepted by the accommodation provider must be deposited with the Rental Bond Board, as administered by NSW Fair Trading. The bond may be paid by the resident in instalments.

3.1 Should accommodation providers be allowed to charge holding fees and rental bonds for residents of group homes? If so, what do you think the maximum limit permissible should be?

3.2 Should it be mandatory that rental bonds, if collected, be deposited with the Rental Bond Board? Should the policy allowing bonds to be paid in instalments be in legislation or should it be treated as an operational decision?

4. Rent

Proposed policy

A resident must pay the rent set out in the accommodation agreement on or before the day set out in the agreement. The accommodation provider must not require a resident to pay more than two weeks rent in advance under an accommodation agreement or to pay rent for a period of the residency before the end of the previous period for which rent has been paid.

The accommodation provider must provide the resident a way to pay the rent that doesn't incur charges for the resident (other than standard bank or account fees). Either party may change the method of paying rent by agreement.

The accommodation provider must provide the resident with a receipt for all rent received from the resident and must keep records of rent received under the accommodation agreement.

An accommodation provider must accept payment of unpaid rent by a resident if the accommodation provider has given a termination notice on the ground of failure to pay rent under the accommodation agreement and the resident has not vacated the premises. If the rent is brought up to date, the accommodation provider must revoke the termination notice if given on grounds of unpaid rent.

Specialist Disability Accommodation

For specialist disability accommodation specified in a resident's NDIS plan, rent set out in the accommodation agreement will not exceed the 'reasonable rent contribution' specified by the NDIS Specialist Disability Accommodation Rules, unless otherwise approved by the NDIS as permissible as a 'discretionary rent contribution' that satisfies the requirements set out in the NDIS Specialist Disability Accommodation Rules.

Where the resident thinks that the rent or 'discretionary rent contribution' is excessive due to a withdrawal of a facility or service that was originally included in the accommodation agreement for that additional fee, the resident may seek to reduce the rent or 'discretionary rent contribution' either in whole or in part, with the accommodation provider. Review may be made to the Tribunal where resolution is not satisfactory.

Rent increases

Where rent is charged as a percentage of statutory income, e.g. 25% of the Disability Support Pension (DSP), rent may be increased by the percentage of the increase in income and at the frequency at which the income is increased. For example, Centrelink may adjust the DSP with CPI twice yearly in March and September; this means that rent may also be adjusted after each DSP adjustment. The accommodation provider must notify the resident in writing of the increase in rent with at least 28 days notice.

NOTE: Discussion and questions relating to conditions for termination are covered in s14.

4.1 Are the proposed rent provisions in this policy reasonable for providers and residents? If not, why not?

4.2 Is the two week rent in advance limit a reasonable limit? Should we allow monthly rent collections?

4.3 Notice periods for rent increases vary under the RTA (60 days) and BHA (4 weeks). Is 28 days enough notice for rent increases for supported group accommodation?

5. Utilities charges

In supported group accommodation, it is expected that the accommodation provider is the body responsible for utilities connections and residents will contribute to usage charges, where specified in the accommodation agreement. Whether it is the accommodation provider or the daily living support provider who is responsible for collection of utilities usage charges is to be determined operationally between the two providers. In FACS operated supported group accommodation, utilities were paid from board payments, but this practice may vary with different providers.

The NDIS has not specified how utility charges may be collected but has included in policy (in the SDA Terms of Business) that if maximum allowable board payments are charged that it includes all utilities.

A fair and equitable method of assigning usage charges could be included in legislation.

Proposed policy

Where specified in the accommodation agreement, the resident must pay usage charges related to water, electricity, gas, internet and excess garbage. If no other payment amount or formula is agreed, the formula prescribed below will be used:

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

where 'SIL Provider' means the supported independent living provider funded by the NDIS who provides 24/7 care, or where an onsite office is provided

Where there is no onsite office provided for the support provider and support is not provided as a 24/7 service, then the contribution per resident will be calculated by

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

All fixed fee connection charges are paid by the accommodation provider and may not be separately charged to residents. The accommodation provider must provide the resident with a copy of the utility bill when requested to do so.

The resident may pay these utility charges from board payments collected or as a separate charge invoiced to the resident from the accommodation provider as and when invoiced by the utility provider. The accommodation provider must provide the resident with at least 21 days notice to pay the utility usage charges.

Local Government rates and taxes must not be levied by the accommodation provider to the residents for payment.

5.1 Are the proposed provisions regarding utility charges reasonable for both accommodation providers and residents? If not, what would you change?

5.2 Is it reasonable to assume that the accommodation provider is responsible for utility connections? If not, who would be?

5.3 Should the suggested division of utility bills between residents be included in legislation? Or is this more suitable for inclusion in operational provisions?

5.4 Is it practical to include in legislation that the SDA Provider must regularly review utility contracts with utility suppliers to minimise charges for residents?

5.5 Should we include in legislation that providers can assist residents in budgeting for utility charges by levying a regular utility charge to be collected with rent, to avoid the seasonal or quarterly spikes in charges? Or would this be more suitable as an operational provision?

5.6 Are there any other charges apart from utilities and rent that an accommodation provider might levy on a resident? If so, what are they and should there be a limit on these included in legislation?

6. Right to quiet enjoyment

In the RTA and BHA, residents are provided with the right to quiet enjoyment by the landlord or boarding house operator. This right can be similarly provided to residents of supported group accommodation. The access that support providers need to enter the resident's room and premises to administer support services and temporarily disturb the quiet enjoyment of the resident is not included in this policy. This right to quiet enjoyment may also be qualified from any lawfully approved restrictive practice.

It is expected that individual residents, including those with complex behavioural needs, will have appropriate behaviour support plans with adequately funded supports to enable 'quiet enjoyment' of the premises for all residents.

Proposed policy

A resident is entitled to quiet enjoyment of the residential premises without interruption by the accommodation provider or the accommodation provider's agent (eg maintenance worker or building inspector) and to the reasonable peace, comfort and privacy of the resident in using the residential premises.

Equally, the resident must not cause or permit a nuisance to the reasonable peace, comfort and privacy of any co-resident in the premises.

6.1 In what circumstances might it be appropriate for the accommodation provider or agent to not observe or to qualify a person's 'right to quiet enjoyment' of the premises?

6.2 Should the 'right to quiet enjoyment' be limited to the resident's room or extend to the whole home?

6.3 Is it reasonable to include an expectation on residents to allow co-residents 'quiet enjoyment' of the premises?

7. Companion animal

Under the Commonwealth *Disability Discrimination Act 1992*, persons with disability cannot be prohibited from renting accommodation on the basis of ownership of an assistance or therapy animal. However, in supported group accommodation, a suitability matching of the animal with other residents needs to occur prior to agreement. The input of the daily living support (e.g. supported independent living) provider can also be sought prior to agreement (especially if the support provider will need to assist in the care of the animal). Where the accommodation provider deems it unsuitable for the person with an assistance or therapy animal to live in that home, rights of appeal fall under the jurisdiction of the Australian Human Rights Commission.

The right to bring a companion animal is not covered by the *Disability Discrimination Act 1992*. Companion animals are essentially pets that may have some therapy training, but does not meet the accreditation requirements of an assistance animal. The following policy is proposed.

Proposed policy

The rights of a person with disability with an assistance or therapy animal are covered under Commonwealth's *Disability Discrimination Act 1992*. This policy is about the rights of a person with disability with a companion animal.

A resident has the right to ask the accommodation provider for permission to have a companion animal live in the premises, but must not bring the animal into the premises without the accommodation provider's prior consent.

The accommodation provider must not unreasonably withhold consent to the companion animal giving due regard to the suitability of the premises for the animal, compatibility with other companion animals already resident in the premises and needs of other co-residents in the premises. The accommodation provider may seek reports from a therapist or other medical authority as to the prescribed benefit of the animal to the resident to inform the decision. The resident may need to prove to the accommodation provider that they are capable of managing and looking after the animal or that the daily living support provider has agreed to undertake these tasks.

The accommodation provider may seek an additional one off fee to be levied to cover potential cleaning costs or damages that may be expected to be incurred by the companion or therapy animal. This fee will not exceed one week's rent.

7.1 Companion animals have not been included in any prior tenancy legislation. Is it appropriate to include the right to ask permission to keep such animals in supported group accommodation?

7.2 What should be considered legitimate reasons for accommodation providers to refuse the keeping of a companion animal? Should guidelines as to what these reasons are be provided?

7.3 Is it appropriate to seek cleaning or potential damage fees as a condition of allowing companion animals to live in the premises? Is it appropriate to limit the amount of fee withheld?

7.4 Is it appropriate to have guidelines for termination of consent for companion animals, should there be a change in circumstances? If so, under what change of circumstances?

8. Notice of sale of premises

This protection is modelled on the coverage provided to tenants in the RTA. The intent to advise the resident of the prospective sale is to bring to attention the fact that the home may be required to have 'open for inspection' times and conditions of use of the home may change under new ownership. Considering the varying support needs of residents of supported disability accommodation, any inspection process preceding a sale must be conducted in a sensitive manner which takes into account that some residents may not respond well to visits by large groups of people who they do not know.

Proposed policy

The accommodation provider must give the resident written notice of the owner's intention to sell the residential premises, at least 30 days notice before the premises are first made available for inspection by prospective purchasers.

The resident has the right to request to limit the days and times of inspection visits and the accommodation provider and owner must make all reasonable efforts to agree with the resident and the household as to the days and times when the premises are to be available for inspection by prospective buyers.

Where agreement between the accommodation provider or owner and residents cannot be reached, the Tribunal may be called upon to decide fair access days and times for inspection visits.

8.1 The RTA specifies a 14 day notice period of the first inspection by prospective buyers for private rental. What should the minimum notice period be for residents of supported group accommodation?

8.2 Is it appropriate to involve NCAT in specifying the frequency and number of visits of this nature, or should legislation specify a limit?

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

The RTA and BHA provide landlords and operators with the ability to enter premises provided notice periods are met. Specified notice periods vary from 24 hours to 7 days notice depending upon the legislation and the purpose. The NDIS has not specified fixed notice periods, other than a requirement that one is specified.

This proposal here is to simplify the notice periods required for access to supported group accommodation.

Proposed policy

The accommodation provider may only enter the property without notice to the resident in an emergency or to carry out emergency repairs or by order of the Tribunal. All other access will require a written notice with at least 24 hours notice to carry out the following activities:

- For general repairs and maintenance; or
- For property upgrades and structural works.

The accommodation provider will be required to give at least 48 hours notice for the following activities:

- To show the room to a prospective resident after the residing resident has provided notice to terminate; or
- To carry out periodic inspections.

The resident has the right to request to limit the days and times of inspection and preventive maintenance visits and the accommodation provider must make all reasonable efforts to agree with the resident and household as to the days and times when the premises are to be available for inspections or preventive maintenance visits. The resident also has the right to request that the number of visits for inspections and preventive maintenance is limited to four visits in a year.

The receipt of the written notice within the required minimum notice period will imply consent has been provided by the resident to the visit unless the resident has notified the accommodation provider to seek an alternative time.

All visits arranged by the accommodation provider must be between the hours of 8am and 5pm and during the days of Monday to Saturday, except where visits are for urgent or emergency repairs. The Tribunal may be called upon to decide fair access days and times for inspection visits when the accommodation provider and resident cannot reach prior agreement.

9.1 Are the notice periods set out above, 24 hours or 48 hours, sufficient for the resident? The RTA generally specifies 2 days' notice.

9.2 Is the limit of four times a year for preventative maintenance and inspection visits too limited? Should the maximum number of inspection visits that can be agreed to be specified in legislation?

9.3 Is it necessary to specify the times and days of the week that visits can be held, or leave it to individual arrangement? The RTA specifies that visits must be between 8am to 8pm and not on Sundays or public holidays. Are the times and days suggested here reasonable?

9.4 Should it be included in legislation that the supported independent living provider also be notified and/or consulted prior to arranging visiting times?

9.5 Is it practical to have a separation of notice periods for inspections to be carried out in common areas and private individual areas, such as less notice periods for common areas and more notice periods for private bedrooms?

10. Maintenance

The RTA provides for the tenant to organise urgent repairs themselves and then to seek reimbursement of the repair from the landlord if the landlord does not respond in a reasonable enough time. The time to respond is not specified. The NDIS only includes in policy that a process is explained. Given that residents of supported group accommodation are not likely to be able to organise repairs by themselves, it is proposed here that the accommodation provider should be given a certain timeframe to respond to urgent repairs.

It is recognised that the daily living support provider will most likely represent the resident in their request for urgent repairs.

Proposed policy

The accommodation provider must maintain the residential premises in a reasonable state of repair, having regard to the age of and prospective life of the premises, and well-being of the residents. The accommodation provider's obligation to maintain the premises to a reasonable state exists regardless of the state of disrepair that the premises might have been in prior to the resident moving in.

The accommodation provider must advise the resident of the process for requesting urgent and non urgent repairs and maintenance.

Urgent Repairs

Urgent repairs are considered repairs of a nature like the following:

1. Burst water service or appliance, fitting or fixture that uses water or is used to supply water, that is broken or not functioning properly, so that a substantial amount of water is being wasted;
2. Blocked or broken lavatory, where there is no other working lavatory in the dwelling;
3. A gas leak;
4. Dangerous electrical fault;
5. Flooding, fire or storm damage;
6. Failure or breakdown of any utility supply to the premises;
7. Failure or breakdown of any essential appliance or service to the premise for hot water, cooking, heating, cooling, laundering, where these are provided by the accommodation provider;
8. Any fault or damage that causes the premises to be unsafe or insecure;
9. Failure or breakdown of any essential assistive technology or modifications that is supplied as part of the accommodation and is required by the resident as part of daily life.

Upon being notified of the requirement for urgent repair, the accommodation provider must respond to the repair within a practicable period of time, giving

regard to the health and well being of the resident that might be impacted by the loss of service, but that which will not exceed 12 hours.

If the accommodation provider does not respond to the request for urgent repair within 12 hours, the resident is authorised to seek repair and the accommodation provider must reimburse the resident the expense of the repair.

Non urgent maintenance requests

Upon receiving a maintenance request, the accommodation provider must consider the request and advise the resident the remedy the accommodation provider will apply to the request.

The resident can not fix non urgent maintenance requests themselves and expect a reimbursement from the accommodation provider. The resident may make request to the Tribunal for an order for the accommodation provider to make the specified repair.

10.1 Are the categories of urgent repairs sufficient?

10.2 Is the proposed time of 12 hours for responding to urgent repairs appropriate? This takes into account that the work in an initial response may be to make the premises safe or habitable again, but that a permanent repair may involve a delay.

10.3 Does legislation need to note that the daily living support provider will act on behalf of the resident in most maintenance requests or is inclusion of this in operational guidelines adequate?

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

This section is about giving the resident the right to ask for modifications to be made to the home and for the accommodation provider to duly consider them. Some modifications cannot be the accommodation provider's sole decision and the owner or landlord may have the right of consideration (e.g. modifications requiring structural changes), depending upon the agreement between the two parties. In such cases, the accommodation provider may act as the representative of the owner including where the resident subsequently takes the request to NCAT for orders. Any order made by NCAT against the accommodation provider may equally apply to the owner.

Proposed policy

The resident must not make any renovations, modifications or install any fixtures to the home without the accommodation provider's prior written consent, or unless the accommodation agreement otherwise permits. Any such renovations, modifications or installations consented to by the accommodation provider may be paid for by either the resident or the accommodation provider or cost shared, as agreed between the two parties.

An accommodation provider must not unreasonably withhold consent to a fixture or alteration that is minor in nature or that increases the accessibility of the home for the resident or which is specified and funded in the resident's NDIS plan as a reasonable and necessary support. Any maintenance of the fixture or modification must be at the resident's expense, if not maintained by the NDIS, unless otherwise agreed in writing.

If the premises is unable to accommodate the modification due to household needs, Environmental Planning legislation, structural or property lifecycle reasons or similar, then the accommodation provider may assist the resident to find alternative suitable accommodation where their requirement can be met.

The accommodation provider may require the resident to remove the fixture, at the resident's cost when they vacates the premises, if the fixture does not increase the amenity of the dwelling or if the presence of the fixture will adversely affect the ability to let the premises. This requirement must be specified in writing at the time of granting of consent.

The resident may apply to the Tribunal to make orders for the accommodation provider to install the fixture, or make the alteration. The Tribunal may order the accommodation provider to install the fixture or make the alteration if it is satisfied that the accommodation provider's failure to give consent is unreasonable. The Tribunal may also make an order as to who is to pay for the fixture or modification and if the fixture or modification is to be removed by the resident upon vacating.

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11.1 Is it reasonable to include a proposal for cost sharing between the resident and accommodation provider for modifications and installations, especially if other residents might benefit?

11.2 Is the inclusion that the resident may be asked to remove the modification upon leaving creating an overly unfair burden for the resident given that the NDIS does not fund removal of equipment?

11.3 Are there other situations where an accommodation provider might not be able to agree to an alteration or modification? If so what are they?

11.4 Is it too onerous to expect accommodation providers to assist the resident to find alternative accommodation which will meet the resident's modification need?

12. Locks and security devices

There are two types of locks and security devices – one regarding the external building access points and the other referring to internal doors to private bedrooms or shared areas. Generally, in the majority of supported group accommodation, there is no requirement for internal locks on doors. Some homes will have locked medication cupboards (supplied and maintained by the Accommodation Provider) where access is controlled solely by the daily living support provider.

Where locks may be required internally usually relates to the need for restrictive practice that will be included in approved behaviour support plans, in accordance with NSW Restrictive Practices policies and the NDIS National Quality and Safeguards Commission requirements.

Proposed policy

The accommodation provider must provide and maintain necessary locks and security devices to ensure that the premises are reasonably secure. In supported group accommodation, this refers to the external access points.

Use of locks and security devices in internal doors will depend upon the individual resident, the nature of their disability, any requirement included in approved behaviour support plans and the ability of the resident to self manage the use of locks. If an internal lock will be supplied and maintained by the accommodation provider (including on cupboards and on the refrigerator), this will be included in the accommodation agreement.

The accommodation provider and resident may not alter, remove or add a lock or other security device without the express permission of the other party except in emergency situations where there is risk of harm.

12.1 Is it reasonable to assume that in the majority of supported group accommodation premises that internal locks on bedroom doors will not be provided?

12.2 Do we need to include in legislation the role of supported independent living providers in installing internal locks and security devices? E.g. that support providers can not install internal locks without the permission of the accommodation provider, as an additional check and balance against restrictive practice?

13. Change of accommodation provider or owner

This is modelled on similar terms in the RTA.

Proposed policy

Change of owner

The accommodation provider must give the resident a notice of change of owner with the name of the new owner. The accommodation provider may need to amend the accommodation agreement at the end of the current agreement, depending upon the agreement with the new owner. If the agreement is continuous the accommodation agreement may be terminated, with notice periods as required by legislation or as specified in the accommodation agreement, whichever is the greater, and a new agreement signed.

Change of accommodation provider

The owner or outgoing accommodation provider must advise the resident that the provider will be changing on the specified date together with a direction that the resident must pay all rent from the changeover date to the new accommodation provider. The notice period will be at least 21 days.

The current accommodation agreement will assume to transfer over to the new accommodation provider until the end of the term of the accommodation agreement. If the agreement is continuous the accommodation agreement may be terminated, with notice periods as required by legislation or as specified in the accommodation agreement, whichever is the greater, and a new agreement signed, if required by either party. The new accommodation agreement may have different terms and conditions and must be agreed by both the resident and accommodation provider.

13.1 Is 21 days enough notice to enable payment processes to change to the new accommodation provider?

13.2 Is it reasonable that new owners may necessitate the drawing up of a new accommodation agreement with residents?

14. Termination

The RTA and BHA have very specific reasons for termination. The reasons for termination of agreements in supported group accommodation are fewer in number and rely on NCAT to be called upon to make orders for termination in many cases. This is deliberate to enable appropriate due process for vulnerable residents.

Note that residents in group accommodation owned by the NSW Government have an initial two year "no cause" non-termination agreement. Other providers may have alternative agreements in place.

Proposed policy

An accommodation agreement may terminate if any of the following occurs:

1. A mortgagee of the premises becomes entitled to possession of the premises to the exclusion of the resident;
2. The resident abandons the premises (abandonment means the resident vacates the premises and has no longer paid rent for some period);
3. The resident gives up possession of the residential premises with the accommodation provider's consent;
4. The accommodation provider gives notice of termination to the resident in accordance with legislation;
5. The Tribunal makes an order terminating the accommodation agreement.

All termination notices provided by either party must be in writing and contain the following information:

1. The address of the premises
2. The day which the accommodation agreement will terminate and by which vacant possession is to be given
3. The grounds for the notice
4. Any other requirements by legislation

The resident may appeal all termination orders to the Tribunal.

Termination by resident

The resident may terminate the accommodation agreement at any time after the end of the term of the agreement or during a continuous lease period by giving notice in writing with at least 60 days notice.

The resident may give termination notice with a period of 14 days notice, with no liability for any compensation to the accommodation provider, on the following grounds:

1. The resident has been offered and accepted accommodation in social housing premises;

2. The resident has been offered and accepted accommodation in other SDA;
3. The resident has accepted a place in an aged care facility or requires care in such a facility or hospital or hospice;
4. The accommodation provider has notified the resident of the intention to sell the premises;
5. The resident ceases to have that SDA premises approved in their NDIS plan.

The resident may also make application to the Tribunal to terminate the accommodation agreement if the resident would suffer undue hardship if the agreement was not terminated.

Termination by accommodation provider

The accommodation provider may terminate the accommodation agreement for any reason at the end of the term or during a continuous lease period by giving notice in writing with at least 90 days notice.

A shorter notice period of 30 days notice may be provided for the following reasons, if the resident:

1. Is using the property for an illegal purpose;
2. Cannot be supported at the property without causing serious risk to staff or other occupants;
3. Has not paid the rent for more than 2 rent periods and an overdue notice of payment has been issued and has not been responded to within 14 days;
4. Has breached other requirements of the accommodation agreement.
5. Or, by order of the Tribunal when applied for by the accommodation provider.

The accommodation provider must apply to the Tribunal for termination if the resident is in hospital or detention, notwithstanding the 90 day no fault termination period.

Non payment of rent terminations

The Tribunal may, on application by the accommodation provider, make a termination order if the Tribunal is satisfied that the termination notice was given in accordance with legislation and the resident has not vacated the premises as required by the notice. The Tribunal will also take due consideration of the complex needs of the resident and may issue orders that additional support be provided by relevant agencies to support the resident to find alternate accommodation.

For non payment of rent termination notices, the Tribunal may revoke the notice if the resident has paid all rent owing or enters into an agreed repayment plan with the accommodation provider.

Specialist disability accommodation funded by NDIS

From time to time the NDIS may issue Rules, Policies and Terms of Business that specify requirements that must be followed by participants or providers as a

condition of funding. Where the conditions of funding differ from this legislation, then the policy that provides the greater right to the resident will apply. The Tribunal must take into account the requirement set out by the NDIS in determining termination orders.

14.1 Are the grounds for termination adequately explained?

14.2 Is it reasonable for NCAT to consider the individual needs of residents in determining termination orders?

14.3 Is the non payment of two rent periods the right length of time for the accommodation provider to issue a non payment of rent termination notice?

14.4 Is the 30 day notice period fair for the reasons outlined above?

14.5 Are the varying notice periods (14 days, 30 days, 60 days, and 90 days) considered fair and reasonable for the reasons provided, or should they be simplified?

14.6 Is the no fault notice period of 60 days for residents and 90 days for accommodation providers long enough to enable residents to find alternative accommodation and for accommodation providers to fill vacancies?

15. Goods left on premises after vacating

Proposed policy

Where a resident has vacated the premises, all belongings must be removed from the property by the date required. If the resident has left belongings in the home, the accommodation provider will only be required to hold onto their belongings for 30 days. After this time, if the belongings are not removed, the accommodation provider may make application to the Tribunal to dispose of belongings left behind. When granted, the accommodation provider may dispose of the items without recourse for compensation.

Note that if rent is still being paid by the resident, the premises are not said to be vacated.

15.1 Is 30 days a reasonable length of time before the accommodation provider can seek permission from the Tribunal to dispose of items left behind?

Other questions for consideration

16.1 Is it reasonable to have NCAT hear matters raised by either the resident or the accommodation provider? If so, which division should hear these types of disputes? Should there be alternate dispute resolution forums other than NCAT?

16.2 Are there other criteria that should be considered to be included in a legislated set of rights?

16.3 This Technical Issues paper does not say how these rights could be guaranteed in legislation. One option would be to amend existing legislation relating to residency or disability such as the RTA or the BHA or the Disability Inclusion Act 2013 or to create a new statute. If these protections were guaranteed by amending existing legislation, which legislation should be amended?

16.4 Do you have any further comment on the proposal to include a set of resident rights for people with disability living in rented supported group accommodation?

Have your say

You can have your say by:

- completing the online survey on the Having Your Say website https://www.nsw.gov.au/improving-nsw/have-your-say/
- Emailing residentrightsconsult@facs.nsw.gov.au if you want to give more detailed feedback
- Mailing your feedback to

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

Please telephone **1800 379 284** if you need any further information including assistance with accessing the consultation process.

The consultation period is open until **2 March 2018**.

When submitting a response to this Technical Issues Paper via email or mail, please indicate if you would like FACS to keep your submission **confidential and anonymous**. Otherwise, the NSW Government reserves the right to publish your submission in its entirety. All responses provided through the online survey are anonymous and only aggregated and statistical results will be published.

A final report about the consultation will be published in June 2018.

Contacting Translating & Interpreting Service

If you need an interpreter, please call the Translating and Interpreting Service (TIS National) on **131 450** and ask them to telephone ADHC 1800 379 284.

Arabic

إذا كنتم بحاجة إلى مترجم، الرجاء الاتصال بخدمة الترجمة الخطية والشفهية (TIS National) على الرقم **131 450**، والطلب منهم الاتصال بوكالتكم ADHC على الرقم 1800 379 284. أوقات عملنا هي .

Cantonese

若你需要口譯員，請致電131 450聯絡翻譯和口譯服務署 (TIS National),

要求他們致電 1800 379 284 聯絡 ADHC.

Mandarin

如果你需要口译员，请致电131 450联系翻译和口译服务署(TIS National),

要求他们致电1800 379 284 联系 ADHC.

Greek

Αν χρειάζεστε διερμηνέα, παρακαλείστε να τηλεφωνήσετε στην Υπηρεσία Μετάφρασης και Διερμηνείας (Εθνική Υπηρεσία TIS) στο **131 450** και ζητήστε να τηλεφωνήσουν ADHC στο 1800 379 284.

Italian

Se avete bisogno di un interprete, si prega di chiamare il Servizio Traduzioni e Interpreti (TIS Nazionale) al numero **131 450** e chiedere loro di telefonare ADHC al numero 1800 379 284.

Korean

통역사가 필요하시면 번역통역서비스 (TIS National)에 **131 450**으로 연락하여 이들에게1800 379 284 번으로 ADHC 에 전화하도록 요청하십시오. 저희의 근무시간은.

Persian

اگر به مترجم شفاهی نیاز دارید لطفاً به "خدمات ترجمه کتبی و شفاهی" (TIS National) شماره 131 450 – تلفن کنید و از آنها بخواهید به ADHC شماره 1800 379 284 –

Russian

Если вам нужен переводчик, то позвоните в Службу письменного и устного перевода (TIS National) по номеру **131 450** и скажите переводчику, что вам нужно позвонить в ADHC по номеру 1800 379 284.

Serbian

Ако вам је потребан тумач, молимо вас да позовете Службу преводилаца и тумача (Translating and Interpreting Service - TIS National) на **131 450** и замолите их да позову ADHC на 1800 379 284.

Spanish

Si necesita intérprete, llame al Servicio de Traducción e Interpretación - Translating and Interpreting Service (TIS National) al **131 450** y pídales que llamen a ADHC al 1800 379 284.

Turkish

Tercümana ihtiyacınız varsa, **131 450** numaralı telefondan Yazılı ve Sözlü Tercüme Servisini (TIS National) arayınız ve sizi 1800 379 284 numaralı telefondan ADHC ile görüştürmelerini isteyiniz.

Vietnamese

Nếu cần thông ngôn viên, xin quý vị gọi cho Dịch Vụ Thông Phiên Dịch (TIS Toàn Quốc) qua số **131 450** và nhờ họ gọi cho ADHC qua số 1800 379 284.