

Residential Tenancies Act Review  
Consumer Affairs Victoria  
GPO Box 123  
MELBOURNE VIC 3001  
Via email: [yoursay@fairersaferhousing.vic.gov.au](mailto:yoursay@fairersaferhousing.vic.gov.au)

Thursday, 9 February 2017

To whom it may concern,

We thank you for the opportunity to provide a submission to the inquiry into Heading for Home, the Residential Tenancies Act Review.

### ***About Inclusion Melbourne***

Inclusion Melbourne is a not-for-profit organisation that provides services to people with an intellectual disability, helping them to create more enjoyable and rewarding lives and participate fully in the community.

Our vision at Inclusion Melbourne is for people with intellectual disability to live in an inclusive community, where everyone has the same opportunities to participate in community life and to take their place in society as respected citizens.

We believe our role as a disability support provider is to encourage and enable people with disability to achieve and maintain a valued quality of life. We achieve this by supporting people to create highly personalised and flexible lifestyles based on their needs and desires. To achieve this we encourage people to participate in activities and develop relationships with people within their local community. This model of service delivery necessitates a localised place based response, and therefore access to suitable housing.

### ***Our response***

Inclusion Melbourne welcomes the Victorian Government's commitment to delivering a package of reforms that balances the rights and responsibilities of tenants and landlords, while ensuring a supply of rental housing that is sustainable, well-maintained and capable of catering for the needs of a variety of people from all walks of life.

Our responses are divided into the broad areas as listed in the options paper and are focussed specifically in relation to people with disability. In doing so, we note that people with disability had the lowest level of satisfaction with their rental experience in Victoria (people with a disability or health condition at 58 per cent). We would suggest that this figure is inflated as it does not include the views and experiences of 5,141 people currently residing in long term rentals in the supported accommodation sector operated by the State Government and charitable and for-profit disability support providers.

### **International Obligations**

On 30 March 2007 Australia became a signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The Convention sets out general and specific obligations for nations in relation to specific human rights and fundamental freedoms. These obligations aim to protect different types of rights: civil and political rights, economic, social and cultural rights, and rights to development.

The Convention contains traditional human rights concepts which are general protections found in other thematic human rights conventions.

For example, it outlaws discrimination in all areas of life, including employment, education, health services, transportation and access to justice. But the Convention has added, modified and transformed traditional rights concepts to give them a more specific disability focus. It has added detailed disability-specific interpretations to some of these 'traditional' human rights concepts.

The CRPD is a watershed human rights document that requires a shift in both our thinking and actions. It is a shift away from making decisions and acting in another person's best interests to enabling people with disability to be "citizens with rights" on an equal basis with others.

"People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity". (NDIS Act 2013: Ch1, Part 2, Sect 4 (8) p6).

The once in a generation review of the Residential Tenancies Act offers the opportunity for the Victorian Government to not only harmonise this piece of legislation with the UN Convention, but also to align it with the standards and frameworks present in the Disability Act (2006) and National Disability Insurance Scheme Act (2013). While direct support in the home was once indelibly intertwined with the notion of disability specific accommodation, both of these Acts separate support and accommodation. The result of this separation is that **people with disability living in supported accommodation effectively function as tenants, though without the same rights to recourse enjoyed by other Victorians.**

The Residential Tenancies Act (1997) Section 3(1) currently states in its definition of *health or residential service* that the Act "does not apply to a tenancy agreement or room if the rented premises or room are, or are situated in... (c) premises used for a residential service within the meaning of the Disability Act 2006... or (f) premises used for a supported residential service within the meaning of the Supported Residential Services (Private Proprietors) Act 2010."

As over 5,000 Victorians with disability reside in supported residential accommodation services, functioning effectively as tenants in these arrangements, Inclusion Melbourne specifically **recommends that point (c) relating to the definition of *health or residential service* in Section 3(1) be removed from the Act so that people with disability may gain access to the benefits and rights of recourse conferred by the Act.**

Inclusion Melbourne notes that the intent of reforms to the Act is to implement the two following enhancements:

- Provide balanced bargaining power between the parties involved in a residential tenancy arrangement
- Promote a positive and non-adversarial culture, which includes:
  - an appropriate balance of rights and responsibilities, and
  - effective dispute resolution functions that allow disputes to be resolved constructively.

Inclusion Melbourne also acknowledges that the development of the government's reform package will consider the need for a flexible rental market, and one that can cater for diverse groups of tenants, including low income tenants, increasing numbers of older tenants, and increasing numbers of tenants with a disability, who will be entering the private rental market with the rollout of the National Disability Insurance Scheme.

It is a commonplace occurrence for people with disability to be placed in a situation whereby they are required to live in wait-listed, government-contracted supported accommodation with

people with whom they have not chosen to reside and with support staff by whom they may have not chosen to be supported. For many, this arrangement can last decades or for the remainder of the lifespan of the individual. The provision of government funded accommodation and care is contingent upon the person's compliance with this model of supported accommodation. We note that the broadened accommodation provisions of the NDIS require improved choice and control for people with disability living in such a model, but that practices noted above represent a contravention of Article 19(a) of the United Nations Convention:

*Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.*

Up to 25% of each resident's Disability Support Pension (DSP), plus Commonwealth Rental Assistance, is spent on a functional rental payment in the above arrangements, despite the noted limitations on their choice and control and their lack of access to recourse due to their exclusion from the definition of *tenant* in the Residential Tenancies Act.

It is Inclusion Melbourne's understanding that the Residential Tenancies Act regulates the conduct of prospective tenants and landlords before a contract has been formed, and that the relevant provisions in the Act aim to balance giving the landlord the ability to select their preferred tenant with enabling prospective tenants to compete for tenancies on a level playing field. The stated modifications to the Act will improve equity by addressing concerns about the imbalance in bargaining power for tenants and landlords negotiating additional terms to a tenancy agreement, and the extent to which those terms are enforceable. Proposed options involve:

- introducing a more comprehensive prescribed tenancy agreement
- creating a 'blacklist' of terms and conditions that cannot be included in a tenancy agreement
- making it an offence to include a term in a tenancy agreement that is prohibited under the blacklist or invalid under the RTA, and
- either maintaining the status quo for enforcement of additional terms, or making additional terms enforceable at VCAT with only limited exceptions.

Were these changes to be accompanied by the removal of definitional clauses relating to supported disability accommodation in Section 3(1) from the Residential Tenancies Act, they would be commensurate with the introduction, aims, and objectives of the NDIS Act (2013) and these amendments will facilitate Victoria's equality agenda, correcting a legal inconsistency and ensure the state's compliance with the UN CRPD. Were the exclusions in Section 3(1) of the legislation to remain unchanged, the ability of the thousands of Victorians living in supported disability accommodation to benefit from these proposed options would be drastically limited.

Again, we thank you for the opportunity to provide a submission to this inquiry into Heading for Home, the Residential Tenancies Act Review.

Yours sincerely,

Daniel Leighton  
Chief Executive Officer

Nathan Despott  
Manager, Policy and Projects