

**Submission:****Department of Premier and Cabinet****Department of Health And Human Services**

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**Access to housing for Victorians with  
Disabilities – a growing crisis****Inquiries to:**

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## Introduction

- [1] The Disability Discrimination Legal Service (“DDLS”) is a Community Legal Centre that specialises in disability discrimination legal matters. DDLS provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy and law reform. The long term goals of the DDLS include the elimination of discrimination on the basis of disability, equal treatment before the law for people with disabilities, and to generally promote equality for those with disabilities.
- [2] Clients raising legal issues in the area of housing and tenancy have become increasingly prevalent in our legal centre over the last year. That evidence is that stable, secure, and appropriate housing for Victorians with disabilities is crucial to their wellbeing and quality of life. The number of complaints we are receiving indicates to us that lack of appropriate accommodation is negatively affecting the human rights of people with disabilities in Victoria.
- [3] The barriers Australians with disabilities face in this area generally, have recently come into the glare of the public spotlight due to the experiences of Ms Ali France, the Australian Labor Party (“ALP”) candidate for the electorate of Dickson, in trying to locate and retain appropriate accommodation.<sup>1</sup>
- [4] We write today to request the Department of Premier and Cabinet to consider exploring new ways that the Victorian Government could better ensure that Victorians with disabilities have access to a reliable supply of appropriate housing options.

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<sup>1</sup> Henry Balot, ‘Peter Dutton criticised for accusing ALP candidate Ali France of using her disability as an excuse’, *ABC News*, (online, 12<sup>th</sup> April 2019) <<https://www.abc.net.au/news/2019-04-12/peter-dutton-criticised-for-disability-comments-about-ali-france/10997832>>.

[5] We briefly outline the context of how housing is currently provided for Victorians with disabilities. We then identify two specific areas of concern, namely, the lack of accessible housing, and the difficulty in maintaining stable tenancies. Finally we recommend some potential avenues that would help to alleviate the current situation.

## Context

[6] It is well-accepted that safe and stable housing has a profound impact on an individual's physical and mental health.<sup>2</sup> There is no reason to think this is not the case for people with disabilities. In fact, it is arguably more so having regard to the historic denial of personal choice and control across all aspects of the lives of people with disabilities.

[7] The right to appropriate housing is recognised as a human right under the Convention on the Rights of Persons with Disabilities.<sup>3</sup> The Committee on the Rights of Persons with Disabilities have emphasised the importance of living independently in the community, describing it as a “*deeply rooted... human right*.”<sup>4</sup> Moreover, the Committee has explicitly criticised Australia's failure to ensure that Australians with disabilities are not “*obliged to live in residential institutions in order to receive... support*” and recommended that Australia

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<sup>2</sup>Laura Hemmingway, *Disabled People and Housing: Choices, Opportunities and Barriers* (Policy Press, 2011), 5; Lisa Wood et al, *What are the health, social and economic benefits of providing public housing and support to formerly homeless people?* (AHURI Final Report No. 265, July 2016) 12-14 <<https://www.ahuri.edu.au/research/final-reports/265>, doi:10.18408/ahuri-8202801>.

<sup>3</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature on 30 March 2007, A/RES/61/106 (entered into force 3 May 2008), art 19.

<sup>4</sup> Committee on the Rights of Persons with Disabilities, *General comment No. 5 (2017) on living independently and being included in the community*, 20<sup>th</sup> sess, UN Doc CRPD/C/GC/5 (21<sup>st</sup> September 2018) para 9.

*“take immediate action to ensure that persons with disabilities have a free choice as to where and with whom they want to live.”<sup>5</sup>*

- [8] Currently in Victoria, housing for people with disabilities is, broadly speaking, dealt with in two ways. One group of people are provided with support under the National Disability Insurance Scheme (“NDIS”). Funding is provided through the NDIS for those individuals whose complex support and care needs mean that they require Specialist Disability Accommodation (“SDA”). Those receiving SDA funding will eventually total 28,000 people, or approximately 6% of NDIS participants.<sup>6</sup>
- [9] The other 94% of NDIS participants, and those Victorians with disabilities who are not NDIS participants, do not receive any direct funding for their accommodation. The fact they receive no funding for their accommodation is not a reflection of their lack of support/care needs to safely and successfully live in the home but rather that they fail to fall within the complex care and support needs criteria required for SDA funding. For example a person may: require a ramp to facilitate their mobility device in accessing the house, handrails in the bathrooms, or need to find accommodation in a location close to accessible transport or accessible shops. While the NDIS may support an individual in funding for a ramp or handrails around the home, the responsibility of finding and maintaining accommodation is left entirely up to the individual. As outlined below this is a far from simple task.
- [10] We believe that the Victorian government needs to do more to facilitate both groups of Victorians with disabilities in locating and maintaining appropriate and stable accommodation.

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<sup>5</sup> UN Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Australia*, 118<sup>th</sup> meeting, UN Doc CRPD/C/AUS/1 (12 September 2013) para 41-42.

<sup>6</sup> National Disability Insurance Agency, ‘SDA Provider and Investor Brief’, *Specialist Disability Accommodation* (Document on Web Page, April 2018) 5 <<https://www.ndis.gov.au/providers/essentials-providers-working-ndia/specialist-disability-accommodation>>.

## Areas of concern

### Lack of accessible housing

[11] For these Victorians who receive funding through the NDIS for SDA, there are often few housing or living arrangements in the community that can accommodate their needs. According to the Summer Foundation, a major private supplier of SDA, currently Victoria faces a shortfall of over 2,900 places in SDA which roughly equates to a third of the total demand.<sup>7</sup> The vast majority of those who cannot find accommodation in SDA end up in inappropriate living arrangements. A common example of this is a person living with family members who cannot provide the support a person with disabilities needs, placing all members of the family under immense strain. A number of people with disabilities are also forced to live in aged care facilities, regardless of their age, as these are the only places that can accommodate them. As of 2018 the Federal Department of Health reported that 5,905 people under the age of 65 were living in aged care facilities across Australia.<sup>8</sup> Of these, 3,493 are current NDIS participants.<sup>9</sup> This shows marginal improvement from 2015 where it was found that 7,194 Australians under the age of 65 were living in aged care facilities.<sup>10</sup> Ultimately, this

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<sup>7</sup> Summer Foundation, *Specialist Disability Accommodation: Market Insights* (Market report, 2018) 2 <<https://www.summerfoundation.org.au/wp-content/uploads/2018/03/sda-market-insights-web-2.pdf>>.

<sup>8</sup> Senate Estimates Committee, Parliament of Australia, *2018-19 Additional Estimates Update: Younger People in Residential Aged Care* (Media Release, 20 February 2019) 1.

<sup>9</sup> Ibid.

<sup>10</sup> Senate Community Affairs References Committee, Parliament of Australia, *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*, (Final report, 24 June 2015) 7.

demonstrates a serious lack of commitment and inaction on behalf of both federal and state governments to resolve this issue.

[12] For those individuals who are responsible for locating and securing their own appropriate accommodation, there are numerous barriers to overcome. If a person with disabilities looks to use the private rental market they face a range of difficulties. Firstly, there is a practical difficulty in finding accommodation that is accessible and meets their needs. For example, they may need to be located near the important members of their support network, or with accessible shops located close by, or close to medical facilities, or, if they don't drive a car, in an area which is relatively flat. Secondly, there are a range of damaging societal attitudes that pose barriers even if an individual locates accommodation that meets their needs. There is a perception that tenants with disabilities are more likely to demand costly alterations, may be unreliable with rental payments, and may be difficult and demanding tenants to interact with as a result. These barriers place applicants with disabilities at an immediate disadvantage, and in a very competitive rental market this is often an insurmountable issue.

[13] Nor for many is homeownership a realistic objective. It is well-accepted that Victorians with disabilities have far lower and less reliable employment prospects. The Australian Council of Social Services has consistently found that approximately 30% of Australians with disabilities live below the poverty line.<sup>11</sup> Moreover, for many Victorians with disabilities the location they need (for instance accommodation close to accessible public transport, healthcare facilities and accessible shops) also happens to exclude a large portion of affordable property. As such, for many Victorians with disabilities, purchasing a home outright is not a realistic objective.

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<sup>11</sup> Australian Council of Social Services, *Poverty in Australia* (Final Report, 2018) 58; Australian Council of Social Services, *Poverty in Australia* (Final Report, 2016) 35; Australian Council of Social Services, *Poverty in Australia* (Final Report, 2014), 27.

[14] Thus, because of the difficulties with homeownership and the rental market, for many Victorians with disabilities, social housing, whether that be community or public housing, remains the most accessible route for appropriate accommodation. The problem is that over the last decade the production of new social housing has been unable to keep pace with demand.<sup>12</sup> Currently, over 39,000 Victorian households are waiting for access to social housing.<sup>13</sup> On average the waiting time is just over 10 months.<sup>14</sup> For those with special housing needs related to a disability, the average wait time is just over 16 months, with many individuals waiting far longer than that.<sup>15</sup> This strongly indicates that while the Victorian government is struggling to provide an adequate supply of social housing in general they are particularly struggling to ensure enough social houses are available that are appropriate and accessible for Victorians with disabilities.

[15] Ultimately, for both Victorians with disabilities with SDA funding, and those without, there is a severe lack of adequate housing.

### Difficulty in maintaining tenancies under the current Residential Tenancies Act

[16] Under the current iteration of the *Residential Tenancy Act 1997*, Victorian landlords can terminate a tenancy without needing to provide a reason, as long as 120-days of notice is provided.<sup>16</sup> This power is tempered by the requirement that the notice is to have no effect if it is given “*in response to the exercise, or proposed exercise, by the tenant of a right under this act.*”<sup>17</sup> While this theoretically appears to provide some protection for residents, in practice

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<sup>12</sup> Victorian Auditor General’s Office, *Managing Victoria’s Public Housing* (Final Report, 21 June 2017) 17-18.

<sup>13</sup> HousingVic, ‘Victorian Housing Register and transfer list by local area’, Victorian Housing Register (*Register, December 2018*) <<https://housing.vic.gov.au/victorian-housing-register>>.

<sup>14</sup> Victorian Auditor General’s Office (n 10), 19.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Residential Tenancy Act 1997* (Vic) s 263.

<sup>17</sup> *Ibid.*, s 266.

the protection is fairly weak. Firstly, this is because there is a fairly limited set of rights provided under the *Residential Tenancy Act*, none of which expressly protect a person with disabilities' right to ask for reasonable adjustments. Secondly, it is difficult to prove, other than in extraordinary situations, that a notice that needs no justification is in response to a request or exercise of a right by a tenant.

[17] A recent case study provides a clear example of the situation. 'Jane' had a 12 month lease of a residential property which she had occupied for four years. During her tenancy, after consultation with a relevant medical specialist, she requested permission from the landlord to make adjustments to the home including the installation of a ramp and shower rails. No adjustment would cause permanent damage to the property. While there is a duty placed upon tenants to not make adjustments without the landlord's consent in the *Residential Tenancy Act*, there is no express right for tenants to have adjustments provided. In response the landlord denied Jane's request and immediately issued her with a notice to vacate the premises at the end of the lease. While not entirely clear, the timing of the notice to vacate does raise the question whether it was given to Jane because she asked for an adjustment. However because Jane had no right to adjustments, the protections for unfair notice to vacate would not have applied anyway.

[18] There are two problems for Jane. Firstly, that there is no right to reasonable alterations in the *Residential Tenancy Act*. Secondly, the potential for the 'no-reason' notice to be used as a retaliatory tool. Both of these have been ostensibly addressed in the *Residential Tenancies Amendment Act 2018*.<sup>18</sup> However, it remains unclear exactly when these will come into operation, and in the meantime a range of Victoria's most vulnerable tenants remain at risk.<sup>19</sup> We firmly believe that these amendments should come into operation as soon as possible and there is no justification for delaying this until 1<sup>st</sup> of July 2020.

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<sup>18</sup> *Residential Tenancies Amendment Act 2018* (Vic) s 49, 240.

<sup>19</sup> Victorian Government, 'Rent Fair - rental reforms for Victorians', *Rent Fair* (Web Page, 14 March 2019) <<https://www.vic.gov.au/rentfair-rental-reforms-victorians>>.

## Recommendations

[19] We believe that the reform to the *Residential Tenancy Act* will have a positive impact on access to housing for Victorians with disabilities. However, it does very little to combat the fundamental lack of accessible housing in Victoria. We submit that further action to relieve the situation is needed.

### Recommendation 1 – Bringing forward the introduction of the relevant reforms for tenants with disabilities

[20] As noted above, the new reform package for the *Residential Tenancy Act* will provide significantly more protections for those Victorians with disabilities who are lucky enough to have secured rental accommodation.<sup>20</sup> However, the Victorian government has decided to have a staggered rollout of these reforms to allow for community consultation as to how this rollout should occur.<sup>21</sup>

[21] We submit that the reforms that provide increased protections for tenants with disabilities should be implemented immediately. There is no pressing need for community consultation on this aspect of the reform package; there is no valid reason that landlords should not be required to consent to non-invasive adjustments today.

[22] While the changes to the *Residential Tenancy Act* are commendable, it must be stressed that they will not resolve the general lack of accessible and appropriate accommodation for Victorians with disabilities.

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<sup>20</sup> Refer to paragraph 18 of this submission.

<sup>21</sup> Victorian Government (no 17).

## Recommendation 2 –Enacting a Victoria-specific building code that incorporates universal housing principles

[23] Universal housing is a set of principles that essentially encourages the design and creation of buildings, products and environments that are as useable and effective for everyone to the greatest extent possible.<sup>22</sup> An important aspect of the principles is that buildings are flexible enough, with the least amount of retrofitting possible, to be adapted or adjusted for a particular individual's needs.

[24] In a 2009 report, the Victorian Department of Planning and Community Development identified four key features that would dramatically improve the accessibility of residential buildings at a minimal cost. These key features were: a clear path to a level entry, wider doorways and passages, a toilet suitable for people with limited mobility on the entry level, and reinforced bathroom walls to allow grab rails to be fitted inexpensively if they are needed later.<sup>23</sup> The Department estimated that the cost to incorporate these four accessibility features would be less than a third of a percent of the cost of the building.<sup>24</sup> Importantly, implementing these features at construction was estimated to be twenty times cheaper than retrofitting.<sup>25</sup>

[25] The current *Disability (Access to Premises – Buildings) Standards 2010* provide the access requirements for Australian buildings.<sup>26</sup> These are

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<sup>22</sup> Landcom, 'universal housing design guidelines fact sheet' (Fact sheet, 2015) 1 <<http://universaldesignaustralia.net.au/wp-content/uploads/2015/05/LandcomUniversalHousingGuidelines4page.pdf>>.

<sup>23</sup> Department of Planning and Community Development, *Visitable and Adaptable Features in Housing* (Regulatory impact statement), 11 <<http://www.betterregulation.vic.gov.au/files/c96a0c9a-58c1-44b6-a3e0-a3b2010e9721/RIS-Visitable-and-adaptable-features-in-housing-Regulations-2009.pdf>>.

<sup>24</sup> *Ibid*, 66.

<sup>25</sup> *Ibid*, 98.

<sup>26</sup> Attorney- General, *Disability (Access to Premises – Buildings) Standards 2010* ('Disability Access Standards').

effectively incorporated into Victoria under the *Building Regulations 2018*.<sup>27</sup> The *Disability (Access to Premises – Buildings) Standards* provides that the listed classes of buildings are required to have certain minimum requirements in regards to access and accessible toilets.<sup>28</sup> While useful, it is worth noting that the requirements are fairly limited and the majority of homes being built, as single dwellings, do not come under the list of proscribed buildings.<sup>29</sup> As such, further efforts are needed.

[26] We recommend that the Victorian Government implement the core recommendation of the Regulatory Impact Statement from the Department of Planning and Community Development: enacting and rigorously enforcing a Victorian specific variation to the Building Code of Australia which mandates that all new buildings, both private dwelling and public, include the four identified accessibility features. By doing this Victoria would dramatically increase the number of accessible accommodation options available for Victorians with disabilities and thus reduce the strain on the social housing system.

### Recommendation 3 – Government support for new-home builders

[27] As has been established, for many Victorians with disabilities the private home-ownership and rental market is an unrealistic route to secure stable accommodation at this point in time. This is primarily because the majority of available rental properties are inaccessible and, of those that are accessible, landlords are unlikely to want to make adjustments or risk having to make adjustments by leasing to an applicant with disabilities.

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<sup>27</sup> *Building Regulations 2018* (Vic), s 236.

<sup>28</sup> *Disability Access standards (no 24)*, Part D3.

<sup>29</sup> *Ibid*, Part 2.1 , Part D3.1.

- [28] As has been noted above, the Department of Planning and Community Development has identified four accessibility features which would significantly help to ensure that all new buildings were accessible.<sup>30</sup>
- [29] We submit that to address the issue of maximising the number of accessible properties, the Victorian government needs to incentivise building accessible houses. This could potentially be achieved in two ways.
- [30] Firstly, the Victorian government could tie these accessibility features to the First Home Owner Grant. The First Home Owner Grant can be used for either helping to purchase an already existing home, or to help fund the construction of a new home. By requiring individuals who plan to use the grant to help fund the cost of constructing a new home to incorporate the identified accessibility features, the Victorian government would dramatically increase the number of accessible housing available. This would neither be onerous nor undermine the practical benefit of the First Home Owner Grant. The Department of Planning and Community Development estimated that incorporating these features would, on average,<sup>31</sup> cost less than a third of a percent of the total build cost. Thus, for a construction valued at \$750,000 AUD (the maximum available to be eligible for the grant) the total cost of incorporation would approximately be \$1500 AUD. This would not meaningful detract from the \$10,000 AUD grant available for urban properties, or the \$20,000 AUD grant available for rural properties. The statistics available from the State Revenue Office do not break the information down into those who use the grant to purchase a home and those who use it to help fund a construction. However, it is clear that this could have a profound effect on the private home-ownership and rental markets as the grant has been provided 182,765 times since 2000.<sup>32</sup>

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<sup>30</sup> Refer to paragraph 24 of this submission.

<sup>31</sup> Department of Planning and Community Development (no 21), 66.

<sup>32</sup> State Revenue Office of Victoria, 'First home owner statistics for new homes – first home owner grant', *First home owner statistics* (Statistics table, 4 April 2019) <<https://www.e-business.sro.vic.gov.au/corporate/statistics/faces/fhog/summary.jsp>>.

[31] Secondly, the Victorian government could mandate that all residential buildings built in the future in Victoria must incorporate these four accessibility features, but provide a grant to cover the estimated costs of incorporation. Using the Urban Development Institute of Australia's estimated number of required new dwellings for Victoria as 75,000 per year, and the estimated average cost of a new construction of \$320,000 AUD, this grant would approximately total \$48 million AUD per year.<sup>33</sup> While this is a significant sum it likely dwarfs the cost of not acting proactively to resolve this issue. As the Department of Planning and Community development have pointed out, many of these adjustments will be needed at some point in the life of the house and it will cost up to twenty times more to retrofit rather than incorporate during construction.<sup>34</sup>

[32] By ensuring all new builds have these basic accessibility features, the private rental and ownership market will be opened up for Victorians with disabilities and thus reduce the need for, and strain on, Victoria's social housing supplies.

#### Recommendation 4 – Commitment to increasing the supply of Specialist Disability Accommodation

[33] When the NDIS is fully rolled out it will provide funding for SDA for 28,000 participants. Using this as a rough guide and assuming that the need for SDA is evenly spread geographically across Victoria, the Summer Foundation has

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<sup>33</sup> Urban Development Institute of Australia, *Residential Development Index: Measuring the Activity of Victoria's Residential Development Industry* (Residential Development Index, March 2018), 10 <<https://udiavic.com.au/getmedia/3a4c3f50-f3d0-4cbe-9296-c89e7fb59fff/180315-RDI-Report-March-2018.pdf>>; Newin, 'How much does it cost to build in Melbourne?' (Web Page, 2018) <<https://newin.com.au/how-much-does-it-cost-to-build-in-melbourne/>>.

<sup>34</sup> Department of Planning and Community Development (no 21), 98.

estimated that there is a current shortfall of over 2,900 spaces which equates to roughly a third of the needed supply.<sup>35</sup>

[34] SDA is important as for many individuals as it is the only real option for them to achieve appropriate accommodation that caters for their support/care needs. Without it, Victorians with disabilities are forced into inappropriate accommodation arrangements including in: unsuitable housing, living with family, and living in aged care facilities.

[35] Victoria has taken the decision to privatise the provision of SDA by transferring the State's previous SDA assets to five not-for-profit providers.<sup>36</sup> This accords with the general principles behind the NDIS to provide greater choice for participants in the provision of their support/care needs. However, this does not absolve Victoria's responsibility to ensure that there is an adequate supply of SDA.

[36] We recommend that Victoria use its position on the Council of Australian Governments Disability Reform Council to advocate for further state and federal government investment in SDA to immediately tackle the current shortfall.

## Recommendation 5 – Increasing the supply of accessible social housing

[37] As demonstrated above, the realities of searching for appropriate accommodation in the private home-ownership or rental markets means that many Victorians with disabilities depend on social housing.

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<sup>35</sup> Summer Foundation (no 6), 2.

<sup>36</sup> Minister for Housing (Vic) 'Not-For-Profit Providers to Deliver Disability Services' (Media Release, 28 August 2018) <<https://www.premier.vic.gov.au/not-for-profit-providers-to-deliver-disability-services/>>.

[38] In “Absolutely Everyone”, Victoria’s 2017-2020 State Disability Plan, key priority 6 stated that “as new public housing is progressively built, we will work towards better meeting the accessibility and adaptability needs of people with a disability.”<sup>37</sup> However, the evidence outlined above suggests that the Victorian government has so far failed to commit to this objective. Waiting times for Victorians with disabilities for social housing is almost twice as long as for other Victorians and this figure is increasing rather than decreasing.

[39] The failure to provide adequate social housing has forced Victorians with disabilities into inappropriate and in some cases demeaning living arrangements including housing, as stated, with inappropriate and inadequate supports and adjustments, with families that are unable to adequately support them, or into aged care facilities. The benefits for stable and appropriate housing has been demonstrated both for people with disabilities and those without disabilities.<sup>38</sup>

[40] As such, we recommend that Victoria keep to its commitment in “Absolutely Everyone” and ensure that Victorians with disabilities are not disadvantaged when trying to access social housing. This should be done by ensuring that all new social housing projects abide by universal housing standards.

## Summary of recommendations

**Recommendation 1 – Bringing forward the introduction of the relevant reforms for tenants with disabilities:** That the reforms that provide increased protections for tenants with disabilities should be implemented immediately.

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<sup>37</sup> Government of Victoria, *Absolutely Everyone: State Disability Plan 2017-2020* (State disability plan, 3 December 2016) 34  
<[http://www.statedisabilityplan.vic.gov.au/application/files/2314/8062/9382/1610033\\_Victorian\\_state\\_disability\\_plan\\_2017-2020\\_Text\\_WEB.pdf](http://www.statedisabilityplan.vic.gov.au/application/files/2314/8062/9382/1610033_Victorian_state_disability_plan_2017-2020_Text_WEB.pdf)>.

<sup>38</sup> Laura Hemmingway (no 2), 5; Lisa Wood et al (no 2), 12-14.

**Recommendation 2 – Enacting a Victoria-specific building code that incorporates universal housing principles:** That the Victorian Government implement the core recommendation of the Regulatory Impact Statement from the Department of Planning and Community Development: enacting and rigorously enforcing a Victorian specific variation to the Building Code of Australia which mandates that all new buildings, both private dwelling and public, include the four identified accessibility features.

**Recommendation 3 – Government for new-home builders:** That the Victorian government incentivise building accessible houses. This could potentially be achieved in two ways:

- A) tie the identified accessibility features to the First Home Owner Grant by requiring individuals who plan to apply for the grant to help fund the cost of building a new home to incorporate these design features into the home.
- B) mandate that all residential buildings built in the future in Victoria incorporate the identified accessibility features but provide a grant to cover the estimated costs of incorporation.

**Recommendation 4 – Commitment to increasing the supply of Specialist Disability Accommodation:** That Victoria use its position on the Council of Australian Governments Disability Reform Council to advocate for further state and federal government investment in SDA to immediately tackle the current shortfall.

**Recommendation 5 – Increasing the supply of accessible social housing:** That Victoria honour its commitment in “Absolutely Everyone” and ensure that Victorians with disabilities are not disadvantaged when trying to access social housing. This should be done by ensuring that all new social housing projects abide by universal housing standards.