

NDIS Green Paper 2: Deliberations on the NDIS Housing Market and Accommodation Provisions

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Context:

This Green Paper is intended to contribute to the wider discussion relating to the roll out and management of the NDIS within the Australian Disability Services System. It supports the Not-for-profits UWA White Paper “Six Years and Counting: The NDIS and the Australian Disability Services System”.¹

Summary:

Appropriate disability accommodation has been a longstanding issue in the Australian Community and has restricted the choice of both living arrangements and location for people with disabilities. The inclusion of disability accommodation provisions and housing in the NDIS funding model through the provision of Supported Independent Living (SIL), Individual Living Options (ILO), Assistive Technology (AT) and Specialty Disability Accommodation (SDA) has been a welcomed one. However, slow budget approvals have left a transition gap between previously grant funded accommodation arrangements and those under the new funding model, leaving many participants without appropriate accommodation or supports. Furthermore, the accessible housing market is underdeveloped and, while recent changes will assist its development, these will likely be insufficient to meet the growing demand in the short- to medium-term.

Of Note:

Younger people have been housed in residential aged care facilities due to a lack of appropriate residential housing capacity for many years. This issue was broadly recognised in 2011, however, the issue is still prevalent, even for active participants of the NDIS.

Additionally, accommodation costs for people with disability constitute a considerable portion of their costs of living and we have known for some considerable time that these living costs are greater than those experienced by people without disability.²

¹ See: <http://www.research.uwa.edu.au/not-for-profits-uwa#ndis-disability-services>

² For example, see: Gilchrist, D. J. and A. Charlton, (2014), *Home Ownership and Affordability for People Living with Disability in Western Australia*, Report for National Disability Services, Perth.

Paper:

The deficit in available accommodation for people living with disabilities has long been an issue in Australia. Whilst the NDIS is working to structure their market response to facilitate the improvement in the provision of accommodation and supports to align more closely with the United Nations' Convention of the Rights of Persons with Disabilities (UN CRPD), there are certain difficulties arising from the ratification of this convention that persist. The lack of availability of fit-for-purpose accommodation and the slow transition to the new supports for NDIS participants have led to a delay in the realisation of choice and control in individual living arrangements. There is also a risk that those living with disability who are ineligible for NDIS will be overlooked in their need for appropriate accommodation.

Article 19 of the UN CRPD states that the government must ensure: “(a) 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; and (b) persons with disabilities have access to a range of in-home residential and other community support services, including personal assistance necessary to support living and inclusion in the community and to prevent isolation or segregation from the community.”

Points of clarification: The disability housing market refers to the availability of accessible housing³ for people with disabilities to live in or rent, which is location-specific and fit-for-purpose aligning with the individual's needs. Accommodation provision pertains to the facilitation of accommodation arrangements for people with disabilities. For instance, the development of Individual Living Options (ILO)⁴ is intended to increase the living options available to participants, aided where deemed eligible by Supported Independent Living (SIL) funding and potential Assistive Technology (AT) funding provided via the NDIS individualised care plan. These supports aim to meet the objectives of the NDIS by supporting participants' choice and control over their individual living arrangements, and to help transition away from grant funded institutional accommodation facilities. The NDIS provides SIL and AT to participants through their individualised budgets. However, for most participants, everyday living expenses including rent and utilities are not funded by the NDIS

³ Accessible housing is either built fit-for-purpose depending on the type of disability support infrastructure needed and the specific needs of the individual or can be adapted from an existing home through the addition of accessibility equipment and other modifications. The latter depends on the dimensions of the house and is not always feasible. This is projected to be increased to 5% of all new homes built by 2020.

⁴ The options under the NDIS for ILO are: Co-Residency (live-in support staff); Host Arrangements (non-related host provides support); and Living Alone/ Living Together (visiting support is provided).

notwithstanding they are usually more expensive than those met by people without disability in most Australian communities.⁵

Additionally, there are cases of Specialist Disability Accommodation (SDA). These are housing solutions and assistance that cater for individuals with extreme functional impairment and/or very high support needs. Yet, the funding for such supports is only provided to a small proportion of NDIS participants. The NDIS estimates that, at full-Scheme, 28,000 or 6.1% of NDIS participants would be eligible at a cost of approximately \$700m per year.⁶

What are the Issues?

The current state of housing markets and accommodation provision within the disability sector, for both participants of the NDIS and for those outside of the scheme, has markedly improved. However, significant issues persist. Problems with the delayed confirmation and activation of personalised budgets for NDIS participants and uncertainty about the boundaries of responsibility at the different levels of government have created gaps in service provision.⁷ As a result, the provision of appropriate accommodation supports has been delayed. This has, amongst other things, created an increased burden on hospitals and other care facilities that have nowhere to discharge those people with disability occupying beds, and left many young NDIS participants in aged residential care facilities.⁸ The true magnitude of the problem is not discernible as there is currently no reliable aggregated data on people with disabilities receiving care from hospitals that could otherwise be provided by appropriate accommodation facilities, notwithstanding this data is relatively easily identifiable and aggregable.⁹ Additionally, there is a disparity in provision for participants who require accommodation assistance and are eligible for the NDIS and those on the margin who are not eligible for the NDIS.

Consequently, there are three main issues that need to be addressed in this area:

⁵ These are to be funded by personal income, the Disability Support Pension or Commonwealth Rent Assistance.

⁶ Media release from the Minister, 28 October 2019: <https://www.ndis.gov.au/news/3894-new-design-standard-puts-ndis-specialist-disability-accommodation-solid-foundations> [Accessed 07 Nov 2019]

⁷ Joint Standing Committee (JSC) on the NDIS, Transitional Arrangements for the NDIS 2018: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Transition/Report [Accessed 07 Nov 2019]; Reiterated in the 2019 Progress report: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/General_NDIS/Report [Accessed 06 Apr 2020]

⁸ Disability Services Royal Commission Melbourne Hearing 1: Younger people in Residential Aged Care, 11 September 2019 <https://agedcare.royalcommission.gov.au/hearings/Documents/transcripts-2019/transcript-11-september-2019.pdf> [Accessed 06 Apr 2020]; and see note 7.

⁹ The authors have arrived at this conclusion through discussions with relevant bodies and also as a result of several failed FOI requests seeking this data.

- i) Identifying the appropriate models of accommodation;
- ii) Provision of an adequate supply of appropriate accommodation supports; and
- iii) Creating stock in the housing market for accessible homes.

The NDIS has already implemented several strategies to deal with and improve upon the current circumstances, and the following discussion takes these into account and seeks to build on them to ensure the best, fit-for-purpose, outcomes are achieved.

1. The Appropriate Model of Accommodation

There is a strong consensus on the need for improvements in disability accommodation broadly. However, there is some difference of opinion regarding the best model of provision. An example of this issue can be found in NSW. In 2001, the NSW Community Services Commission conducted a review into the characteristics and circumstances of 211 cases of the death of individuals with disability in care between 1991 and 1998.¹⁰ The findings raise questions about the clinical and care provision in large residential centres and point to the need for other accommodation. This has also been highlighted by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability currently underway.¹¹ Additionally, in 2018, the NSW Ombudsman published a report on *The Abuse and Neglect of Vulnerable Adults in NSW*.¹² This report detailed the abuse and neglect of adults with disability in community settings between August 2015 and October 2018 relating to the conduct of family, informal supports and members of the community. Taken together, these reports highlight the risks in disability accommodation faced by some individuals: large accommodation facilities may provide inadequate supervision, whilst community/informal care can, in certain circumstances, lead to neglect and abuse. NDIS participants caught at the intersection of these two issues require the provision of other reasonable options. This is made significantly more difficult given the broad range of individual needs and levels of family and community supports that exist.

Another factor that needs to be addressed is the use of ‘unorthodox’ accommodation, such as residential aged care, as a last resort. The Council of Australian Governments (COAG) began an initiative in February 2006 to move younger people in residential aged care (YPIRAC) living with disabilities to housing and support services that are more appropriate to their needs.¹³ After limited success, the issue has been revisited by the NDIS which

¹⁰ New South Wales Community Services Commission. (2001). Disability, death, and the responsibility of care. NSW: Sydney.

¹¹ Melbourne Hearing Day 2: Homes and Living, 3 December 2019.

<https://disability.royalcommission.gov.au/publications/transcript-3-december-2019> [Accessed 24 Apr 2020]

¹² New South Wales Ombudsman (2018). Abuse and neglect of vulnerable adults in NSW: The need for action. A Special Report to Parliament, NSW: Sydney. <https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/community-and-disability-services/abuse-and-neglect-of-vulnerable-adults-in-nsw-the-need-for-action-2-november-2018> [Accessed 17 Apr 2020]

¹³ See <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/commonwealth-state-and-territory-disability-agreements#6> [Accessed 07 Nov 2019]

developed an Action Plan in 2019 aiming to halve the number of YPIRAC by 2025.¹⁴ As of June, 2019, the number of NDIS participants under the age of 65 with approved NDIS plans who are, or have been, living in residential aged care facilities was 4,721.¹⁵ The Royal Commission into Aged Care (“the Commission”) was critical of the lack of consultation with the states and territories in development of the Action Plan, as well as the significant time taken by the Commonwealth government to address the issue properly.¹⁶ It is worth also noting that the program will only act on behalf of those eligible for NDIS supports.¹⁷ The Prime Minister’s response to the interim report of the Commission was to strengthen the targets of the initial Action Plan, pledging \$4.7 Million and a Joint Agency Taskforce to oversee the program.¹⁸

There are a further two issues that need to be addressed to achieve the optimal outcomes in the medium- to long-term. The first is the maintenance of transparency in the progress that is being made, which will need clearly defined targets agreed upon by COAG and a monitoring and enforcement mechanism. The second is to ensure that any YRIRAC who are ineligible for the NDIS have adequate support to find alternative living arrangements if desired. This will minimize the likelihood of individuals falling through a gap due to circumstances such as the inadequate provision of respite services for the families of participants.

2. The Adequate Supply of Appropriate Accommodation Supports

The supply of appropriate accommodation supports encompasses meeting the needs and desires of people living with disability, including adequate options for crisis and respite accommodation. In addition to defining what is reasonable and necessary with regards to individual accommodation supports, the NDIA is also tasked with collecting and providing data that helps with understanding the demand for accessible housing.

The provision of accommodation supports has not increased fast enough to meet the volume required, despite early evidence of how much was required and reflecting the housing crisis in affordable accommodation across the broader Australian community.

¹⁴ See <https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability-younger-people-with-disability-in-residential-aged-care-initiative/younger-people-in-residential-aged-care-action-plan> [Accessed 07 Apr 2020]

¹⁵ Information from NDIS FOI: FOI 19/20-0135. See <https://www.ndis.gov.au/about-us/policies/freedom-information/foi-disclosure-log> [Accessed 07 Apr 2020]

¹⁶ Disability Services Royal Commission, Melbourne Hearing 1: Younger people in Residential Aged Care, 11 September 2019. See <https://agedcare.royalcommission.gov.au/hearings/Documents/transcripts-2019/transcript-11-september-2019.pdf> [Accessed 06 Apr 2020]

¹⁷ By acting CEO of the NDIA, Vicky Rundle. See *Note 11, above*, P.5061.

¹⁸ See <https://www.pm.gov.au/media/response-aged-care-royal-commission-interim-report> [Accessed 08 Apr 2019]

Additionally, there are many people living with disability who are ineligible for the NDIS but require fit-for-purpose accommodation.

In terms of initial assumptions relating to NDIS participants in 2014, 174,000 were under 25 and lived with their parents.¹⁹ Of those aged between 25 and 64, 88,000 were estimated to have enough income to afford their own housing, and 71,000 were already living in social housing or SDA. This left around 127,000 participants in need of some form of supported living,²⁰ which the NDIS has sought to fund by setting appropriate prices for the market to provide, improving participant access through SIL and SDA. As at 2019, there were 13,683 active participants with SDA supports and 22,277 participants with SIL supports.²¹ This means a significant number of those eligible for the NDIS, who were estimated to need supports, are either not actually needing them or are not yet receiving them. Approximately 8% of people with disabilities still live in accommodation facilities—5.2% in cared accommodation and 2.8% in supported accommodation.²²

3. The Housing Market for Accessible Homes

Finally, the inadequate housing supply for accommodation fit-for-purpose for people with disabilities is an issue of equity as is the lack of affordable accommodation across the broader Australian community. As SDA is only expected to be needed by 6% of NDIS participants, and such accommodation is limited for others, those participants in need of accessible housing may not have access.

Information on the demand and supply of appropriate housing, including in relation to cost, is important in both matching the demand to the supply and, given the long-term nature of housing markets, it is equally important ensuring adequate ongoing investment and construction is undertaken. Importantly, the actual demand for housing options is not apparent in market mechanism terms, so the sharing of data is critical here otherwise demand simply goes unreported.

Additionally, several factors lead to the supply of disability accommodation decreasing in real terms over time:

- Someone without a disability can live in a house with accessibility supports, whereas the reverse is not the case;

¹⁹ Bonyhady, B. (2014). Presentations from the Community Housing Federation of Australia's (CHFA) forum 'Housing, Disability and the NDIS', held on 27 March 2014

²⁰ This included those living in institutional settings, YPIRAC, hospitals, mental health facilities, the justice system, or homeless. See *Bonyhady (2014) note 18*.

²¹ COAG Disability Reform Council (2019), *Quarterly Report Q2 2019-20*, p. 431.

²² Australian Civil Society CRPD Shadow Report Working Group (2019), *Disability Rights Now 2019*, p. 31.

- Accessibility modifications on a house typically decreases its value during resale and are therefore often not advertised or may be reversed to convert the property back to a mainstream housing configuration;²³
- Often, the real estate industry is not cognisant of the needs and how to respond; and
- Lack of centralised data makes it difficult to determine the number of accessible homes available at any given time.²⁴

The development of the market for disability accommodation requires adequate information be made available to potential buyers or renters and information regarding demand, including in relation to affordability, location and infrastructure needs is required for the industry to respond adequately. Hence, greater information availability to people seeking accessible homes is needed to ensure the market can function effectively. Legislation requiring the centralisation of data on accessibility and other infrastructure supports present in homes, agreed common nomenclature as well as the advertisement of the supports would help alleviate communications issues and understanding across the real estate and housing construction sectors.

Finally, where there is need for economic stimulus, as in the current COVID-19 crisis, transparency in demand, including in relation to location, type and costs, would also support state and Commonwealth governments in deciding how to allocate stimulus resources for better investment outcomes and to support a cohort of people in the Australian community that would benefit greatly.

The commitment to the provision of SDA represents a fundamental improvement in outcomes for people with highly complex needs.²⁵ A point worth noting is that individuals with high support needs who do not have informal support, or adequate advocacy on their behalf, risk receiving the worst outcomes.²⁶ Adequate oversight is necessary to ensure beneficial outcomes for all NDIS participants with complex needs and that the value from the additional funding is not short-lived, as the implementation of adequate SDA provision has been slower than other parts of the NDIS.²⁷ Recent increases in the delivery of SDA,

²³ Sharam, A., Byford, M., Karabay, B., McNelis, S., & Burke, T. (2018). Matching markets in housing and housing assistance (AHURI Final Report No. 307). Melbourne: Australian Housing and Urban Research Institute.

²⁴ The NDIA is in the process of accumulating and providing comprehensive data.

²⁵ PricewaterhouseCoopers & Summer Foundation (2017). *NDIS specialist disability accommodation: Pathway to a mature market*. PricewaterhouseCoopers and Summer Foundation.

²⁶ Office of the Public Advocate (OPA). (2018). The illusion of 'choice and control', Victorian Government: Carlton. <https://www.publicadvocate.vic.gov.au/resources/research-reports/ndis/519-the-illusion-of-choice-and-control/file> [Accessed 27 Apr 20]. The report highlights that OPA clients who are also NDIS participants in Victoria with complex and challenging support needs are not fully seeing the benefits that the scheme is intended to deliver.

²⁷ See note 7.

including a nationalised SDA Design Standard,²⁸ are intended to support the achievement of the target for new disability-appropriate housing construction. This is an important advance.

Why it Matters?

The underdevelopment of the accessible housing market and accommodation provisions adversely impacts people with disabilities and their families and reduces their opportunity for choice and control, the fundamental objective of the NDIS. Moreover, in the medium- to long-term, it also affects the efficient running of the Australian Disability Services System and the wider healthcare sector. There is also a large potential for market growth in other sectors related to SDA and AT, such as building, manufacturing, research and development and retail that can only be fully realised if the system is functioning at capacity.

The NDIS uses a market response to encourage the improvement of disability housing and accommodation into the scheme's funding model, including, but not limited to, SDA for participants meeting the eligibility criteria. This NDIS-specific improvement has the potential to offer better outcomes in the wider Australian Disability Services System by increasing the availability of information on accessible housing options. Community integration for people with disabilities is a significant driver of reforms to disability services and funding policy, with accommodation being an important factor in its facilitation. As it stands, participants are denied choice and control due to insufficient accessible housing availability.²⁹ The temporary use of residential aged care facilities during the transition gap may seem efficient and cost-effective. However, it undermines the individual rights afforded to people living with significant disability.³⁰

Further, broader economic benefits exist in the provision of suitable housing. However, the high once-off costs associated with the development of accommodation means any investor would require confidence in sustained demand to ensure adequate returns on investment. Such confidence requires a government commitment to continue to fund these supports in the medium- to long-term³¹ and maintain a viable database to ensure investors have the best data upon which to base their decisions.

There is a difficult trade-off between the cost of provision in the context of the sustainability of the NDIS itself and the facilitation of greater choice in accommodation for people with disabilities. One of the principal tenets for the introduction of the NDIS was to decrease the use of tertiary care for overflow resulting from inadequate accommodation availability for

²⁸ Released in October 2019. See <https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/housing/specialist-disability-accommodation/sda-design-standard> [Accessed 12 Nov 2019]

²⁹ It is expected that there are limitations on the availability of accessible housing. However, it is reasonable to expect a minimum standard of mobility in choosing appropriate accommodation.

³⁰ If the same outcome is not feasible in foster care, whereby the guardianship of individuals was relegated to an aged care facility, it is not an acceptable outcome for people living with disabilities.

³¹ See note 25.

people with disabilities. Accommodation supports, including respite services for families, provided promptly are significantly less expensive than providing the full-time emergency care that results from inadequate supports over an extended period.

As such, focused investment and transparent reporting of needs and subsequent resulting amelioration would go a long way to ensuring the NDIS is both efficient and effective.

There is no 'quick-fix' solution to these issues and it is therefore imperative that the decisions made now are on the right trajectory. This includes in relation to the appropriate reporting of results over time to the broader Australian community.

Outcome if not resolved:

Understanding and implementing the best options within a sustainable price frame is complex, yet, if a comprehensive and forward-looking policy framework is not developed and financial resources made available, the costs will increase significantly. This includes a balancing of choice and control with what is reasonable and necessary. For example, roughly 31% of the NDIS' total funding is used for SIL, despite it only being available to 6.6% of participants.³² A substantive increase in eligibility would likely have a similarly proportioned response in cost, requiring either a significant increase in funding for the NDIS or a reportioning of the currently available funds away from other service provision – which is more likely given the 'capped' nature of the NDIS funding envelope. This will lead to a loss of confidence in the Australian Disability Services System, of which the NDIS is a significant component, as other sectors are forced to absorb the costs.³³ This has the potential to undermine the sustainability of the scheme in the medium- to long-run.

For the Australian Disability Services System, providers will need to consider that the current trajectory will represent "situation normal" as they will need to continue to manage with the under-availability of adequate accommodation.³⁴ For those reliant on state/territory funded supports, there is a risk of losing these provisions as service gaps widen during the transition period. The outcomes for NDIS participants will get worse as the NDIS extends its roll out. Insufficient market development will drive up the cost of existing accessible accommodation and push the current options to breaking point. Tertiary care and the healthcare sector will be adversely overwhelmed as their services are needed to supply supported accommodation due to the insufficient availability of alternatives.

³² Joint Standing Committee (JSC) on the NDIS. (2020). *Report into Supported Independent Living*. Retrieved from https://www.aph.gov.au/-/media/Committees/ndis_ctte/Independentliving/report.pdf?la=en&hash=6435B4FA6A396F8645117D08BBE3B4FA1680C37C

³³ Hospitals, allied health providers, aged care facilities, etc.

³⁴ Wiesel, I., Laragy, C., Gendera, S., Fisher, K.R., Jenkinson, S., Hill, T., Finch, K., Shaw, W., & Bridge, C. (2015). *Moving to my home: Housing aspirations, transitions and outcomes of people with disability (AHURI Final Report No.246)*. Melbourne: Australian Housing and Urban Research Institute.

Not-for-profits UWA
Australian Disability Services System Research Project
Green Paper 2: Deliberations on the NDIS Housing Market and
Accommodation Provisions



Finally, without adequate oversight of new and existing SDA, any additional value from the initiative will be short-lived and potentially disappear due to the negative pressures affecting the supply market.

Acronyms Used:

AT	Assistive Technology
ILO	Independent Living Options
JSC	Joint Standing Committee on the NDIS
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
PC	Productivity Commission
the Scheme	The National Disability Insurance Scheme
SDA	Specialist Disability Accommodation
SIL	Supported Independent Living
UN CRPD	United Nations Convention on the Rights of Persons with Disabilities
YPIRAC	Young People in Residential Aged Care