

Chapter 2

Background and key issues

Introduction

2.1 Enabling people with disability to have choice and control over their lives is one of the central tenets of the National Disability Insurance Scheme (NDIS).¹ At present, Australians with disability are not assured of access to housing suitable for their needs. This has long been an issue of local, state and national concern. As noted in the committee's 2015 report, the lack of adequate housing can significantly limit people's ability to fully exercise choice and control. Ultimately it restricts their ability to participate in society and live an ordinary life.²

2.2 Addressing the shortage of suitable housing and increasing access in a meaningful way requires understanding that Australians with disability are not a homogenous group; their needs and preferences are varied. Recognition of this is the key to improving, both quantitatively and qualitatively, access to suitable housing.

2.3 This chapter discusses the barriers which impede access to suitable housing. Possible ways of improving the system are outlined in chapter three.

Background

2.4 Accommodation has been repeatedly raised with the committee by participants, families, carers, advocacy groups, providers and other stakeholders. In the past year, accommodation has been raised in public and in-camera hearings and private meetings. Subsequently, the committee sought advice from relevant government agencies on this issue.

2.5 The committee understands the Department of Social Services (DSS) and the state and territory governments are currently undertaking work around housing capacity and funding options, primarily as part of the negotiations of the bilateral agreements between the Commonwealth and state and territories for the transition to the full NDIS. Negotiations are ongoing to develop a framework for funding participants and/or providers for specialist disability housing, including the financial appreciation treatment of land acquired or land associated with existing buildings. This work may also include a suite of prices or adjustments (loadings) for geography, accommodation type, occupancy (individual or group based) or other factors as appropriate.³

1 Victorian Council of Social Service (VCOSS), *Submission 47*, p. 2.

2 Joint Standing Committee on the National Disability Insurance Scheme, *Second progress report on the implementation and administration of the National Disability Insurance Scheme*, November 2015, p. 6.

3 Council of Australian Governments, *Bilateral Agreement between the Commonwealth and New South Wales for the transition to a NDIS*; and *Bilateral Agreement between the Commonwealth and Victoria, Schedule J*, p. 1.

2.6 A 'Housing Discussion Paper'⁴ was developed by the National Disability Insurance Agency (NDIA) in early 2014. The committee was aware of the paper, but did not see a copy until July 2015 when it was released as a result of the National Disability Services' Freedom of Information request. The paper discusses what accommodation options the NDIS will support and how it will be funded.

2015 Senate Community Affairs References Committee inquiry

2.7 In 2015, the Senate Community Affairs References Committee inquired into the *Adequacy of Residential Care Arrangements Available in Australia for Young People with Severe Physical, Mental or Intellectual Disabilities*. For the purposes of the inquiry, young people were defined as those under 65 years of age. Among a series of targeted recommendations, the committee called on the NDIS committee to conduct an inquiry into the issue of disability housing.⁵

National Disability Agreement

2.8 The National Disability Agreement (NDA) was developed by the Commonwealth, state and territory governments in 2009. The Agreement is intended to be in place until the full rollout of the NDIS. The Agreement is clear in stating that:

It is the role of the states and territories to deliver specialist disability services such as disability supported accommodation, respite and community support services such as therapy, early childhood interventions, life skills and case management. These responsibilities remain in place prior to the full rollout of the National Disability Insurance Scheme.⁶

2.9 In 2011, under the NDA's auspices, a National Disability Research and Development Agenda was designed to focus on research issues that impact people with disability, across a whole range of sectors including education, transport and health. Future policy decisions are intended underpinned by evidence provided through this Agenda.⁷

Estimates of those in need of accommodation assistance

2.10 In its 2011 report, *Disability Care and Support*, the Productivity Commission (PC) calculated there were around 15 700 people in state government managed supported accommodation and a further 6500 in residential aged care. It was estimated that the existing waiting lists would add a further 25 per cent to the population

4 National Disability Insurance Agency, *Optimising the 'User Cost of Capital' for Housing as part of Delivering the NDIS sustainably and efficiently*, 2014.

5 Senate Community Affairs References Committee, [*Adequacy of Residential Care Arrangements Available in Australia for Young People with Severe Physical, Mental or Intellectual Disabilities*](#). June 2015, p. xiv.

6 Department of Social Services, *National Disability Agreement*. Available at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-agreement>, (accessed 14 April 2016).

7 Department of Social Services, *National Disability Agreement*. Available at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-agreement>, (accessed 14 April 2016).

needing specialist disability accommodation. With population increases the PC working figure was now around 28 000 people, or 6.8 per cent of projected participants that may require direct assistance under the Scheme.⁸

2.11 More recently, the NDIA estimates that up to 193 000 participants are on low to very low incomes and may need housing assistance from some source (including those already with assistance). This includes:

- 6200 people under 65 in residential aged care (600 aged under 50);
- 17 000 people in specialist disability accommodation (3000 in institutions and 14 000 in group homes);
- 57 000 living in social and public housing;
- Estimated unmet need for affordable housing of between 127 000 NDIS participants.⁹

The NDIS and general housing demand

2.12 The Disability Housing Futures Working Group (DHF), a group comprising housing experts from across Australia and overseas, was formed to 'explore the availability of innovative ideas, models and research on housing for people with disability, and to contribute new thinking and new modelling, and identify opportunities for a viable disability housing market under the NDIS.'¹⁰ The group published its report in February 2016 and submitted it to this inquiry.

2.13 According to the DHF, the NDIS will affect participants in a number of ways, including their access to housing options. As the NDIS increases individually-tailored support funding for people with disability, as is expected, there may be a concurrent rise in demand for affordable, appropriate and well-located housing. Their submission described the NDIS as potentially 'the catalyst for the most transformative growth in housing supply for people with a disability in decades'.¹¹ However, it is estimated that 35 000 to 55 000 NDIS participants will not have their housing needs met in the first decade of the scheme.¹²

8 Productivity Commission, *Disability Care and Support*, Volume 2, 2011, p. 759

9 National Disability Insurance Agency, *Estimating the potential demand for affordable housing*, NSW Community Housing Federation Housing and NDIS Forum, Sydney, 26 August 2014
Available at:
<http://www.communityhousing.org.au/S4%20presentation%20attachments/Bruce%20Bonyhad%20Chair%20of%20the%20National%20Disability%20Insurance%20Agency.pdf>, accessed 14 April 2016.

10 Disability Housing Futures Working Group, *Submission 42*, Attachment 1, p. 9.

11 Disability Housing Futures Working Group, *Submission 42*, Attachment 1, p. 9.

12 Disability Housing Futures Working Group, *Submission 42*, Attachment 1, p. 3.

2.14 Sundale, a disability services and housing provider, also submitted that while there would be an impact on both consumer demand for disability housing, as well as housing and accommodation providers, the extent of this is still unclear.¹³

Options and expectations

2.15 As indicated earlier, a 'Housing Discussion Paper' was developed by the NDIA in early 2014 and was not provided to the committee at that time. The paper discusses what accommodation options the NDIS will support and how they would be funded. Options explored in this paper are discussed further in chapter three.

2.16 A submission from the NSW Disability Network Forum (DNF) sets out three important elements which DNF believes should underpin housing support. These are:

- choice and control, including choice from models other than those currently available;
- separation of housing and support; and
- high expectations of people with disability.¹⁴

2.17 Access to suitable housing is inextricably a part of exercising choice and control in any person's life, as recognised by the Convention on the Rights of Persons with Disabilities (CRPD):

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- 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;
- 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;
- c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.¹⁵

13 Sundale, *Submission 3*, p. 1.

14 NSW Disability Network Forum, *Submission 13*, p. 3.

15 Article 19, *United Nations Convention of the Rights of Persons with Disabilities*, available at: <http://www.un.org/disabilities/convention/conventionfull.shtml> (accessed 29 March 2016).

2.18 This goal, DNF explained, does not ignore the realities of the high cost of housing faced by all Australians, nor does it advocate for unlimited choice:

[W]e recognise that few people in the community have complete choice about housing. Rather, the DNF is advocating for funding models in relation to accommodation for people with disability under the NDIS that enable the tradeoffs made by people with disability (in regard to budget, needs and preferences) to mirror those made by others, rather than being circumscribed by Government policy.¹⁶

Housing assistance policy and programs

2.19 People with disability are over-represented in housing assistance programs. The committee received numerous submissions that detailed the multiple barriers people with disability face in accessing suitable housing, including barriers in the housing system and the disability support system.

2.20 The DNF submission makes the following statements regarding current support for housing options for people with disabilities:

- Most of the housing assistance programs available in Australia are funded under the National Affordable Housing Agreement (NAHA) and associated National Partnerships Agreements between the federal government, states and territories. Payments under this system totalled \$1.6 billion in 2014–15.

Social housing

- Access to the 427 600 social housing dwellings across Australia is means tested and prioritised to those considered to be in greatest need. The waiting list for social housing was over 200 000 in June 2014, meaning that demand is considerably greater than supply. 76 000 of the 200 000 on the waiting list were assessed as being 'in greatest need'.

Commonwealth Rent Assistance

- Commonwealth Rent Assistance (CRA) is a supplementary payment available to Australian residents who rent accommodation, whether in the private rental market or community housing. It is not available to public housing tenants, and recipients must meet eligibility requirements for a social security income support payment.

National Rental Affordability Scheme (NRAS)

- The National Rental Affordability Scheme (NRAS) is a joint federal and state government commitment, offering annual subsidies for investors to lease their NRAS-allocated properties to low and moderate income households at a discounted rate. The offered rate must be at least 20 per cent below the market rate, and the subsidy is available for up to 10 years.¹⁷

16 NSW Disability Network Forum, *Submission 13*, pp 3–4.

17 Disability Housing Futures Working Group, *Submission 42*, Attachment 1, pp 13–14.

Barriers in the housing system

2.21 Barriers to accessing suitable accommodation options for people with disability within the housing system include cost, disadvantage or discrimination in competition for private rental properties, and a limited supply of 'accessible' housing.

2.22 In 2012, 53 per cent of Australians with disability were in paid employment. In comparison 83 per cent of the working population [those without disability] participate in the workforce.¹⁸ These low employment participation rates impacts their ability to pay private market rentals rates.

2.23 Those not employed are often reliant on the Disability Support Pension (DSP), as their principal source of income, which carries a maximum payable amount of \$22 500 per annum. As pointed out by the DHF, less than one per cent of suitable rental properties are accessible for people on such low incomes. As a consequence, DHF states in its submission, most people on low incomes have to spend close to 50 per cent of their DSP plus CRA for one bedroom rentals in the private market.¹⁹

Disability Support Pension

2.24 While the NDIS generally will have no impact on the receipt or amount of Disability Support Pension (DSP) someone is likely to receive, how it is used to service specialised accommodation costs is an issue that is frequently raised.

2.25 The NDIA recently published a Position Paper on Draft Pricing and Payments for Specialist Disability Accommodation (SDA) which has proposed calculating the individual's rent contribution to SDA as 25 per cent of their DSP:

In formulating a resident contribution in the benchmark prices as per the SDA Framework, the Agency has assumed residents will contribute 25 per cent of the base rate of the Disability Support Pension plus any Commonwealth Rent Assistance (CRA) for which they are eligible...The reasonable rent contribution component of the benchmark prices will be adjusted if Disability Support Pension or CRA payment rates are changed.²⁰

What the NDIS will pay for

2.26 The NDIA is a funder of individual disability supports. It does not have assets to invest directly in housing and cannot borrow or use its balance sheet. It will therefore need to work with partners to implement new disability housing solutions. However, the NDIA have said that the capital costs of certain specialist disability housing would be covered under the Scheme. In addition, there is agreement that the NDIA will also contribute to the life cycle costs of possible future accommodation.

18 Disability Housing Futures Working Group, *Submission 42*, Attachment 1, p. 15.

19 Disability Housing Futures Working Group, *Submission 42*, Attachment 1, p. 15.

20 National Disability Insurance Agency, *Specialist Disability Accommodation - Position Paper on Draft Pricing and Payments*, p. 12.

2.27 This concept of the NDIA paying for capital and life cycle costs evolved from the 2011 PC report that envisaged the Scheme could pay for the 'User Cost of Capital' to cover the higher costs a participant may be subject to as a result of their disability.

2.28 Nevertheless, the costs of housing for people with disability who do not require specialist housing solutions would remain the responsibility of other housing systems, such as social housing and Commonwealth rent assistance. The NDIS will complement, but not replace, the efforts of the housing sector, the Commonwealth, state and local governments, and families.

2.29 The role of the NDIS with respect to housing infrastructure is set out in sections 7.19 and 7.20 of the NDIS (Support for Participants) Rules 2013:

7.19 The NDIS will be responsible for:

- a) supports to assist a person with disability to live independently in the community, including by building their capacity to maintain a tenancy, and support for appropriate behaviour management; and
- b) home modifications for accessibility for a person in private dwellings; and
- c) home modifications for accessibility for a person in legacy public and community housing dwellings on a case-by-case basis but not to the extent that it would compromise the responsibility of housing authorities to develop, maintain and refurbish stock that meets the needs of people with disability; and
- d) user cost of capital in some situations where a person requires an integrated housing and support model and the cost of the accommodation component exceeds a reasonable contribution from individuals.

What the NDIS will not pay for

2.30 Under section 7.20 of the Rules, the Scheme will not be responsible for:

- a) the provision of accommodation for people in need of housing assistance, including routine tenancy support and ensuring that appropriate and accessible housing is provided for people with disability; or
- b) ensuring that new publicly-funded housing stock, where the site allows, incorporates Liveable Housing Design features; or
- c) homelessness-specific services including homelessness prevention and outreach, or access to temporary or long term housing for participants who are homeless or at risk of homelessness; or
- d) the improvement of community infrastructure, ie accessibility of the built and natural environment, where this is managed through other planning and regulatory systems and through building modifications and reasonable adjustment where required.²¹

21 NDIS (Support for Participants) Rules, 2013, p. 19.

Available funding

2.31 The PC recommended \$565m for accommodation costs at full scheme terms in 2011-12 dollars. This has been indexed to around \$700m in 2019-20, for a cohort of around 31 280 participants (i.e. 6.8 per cent of 460 000 participants across Australia in 2019-20, recognising growth in the population).²²

2.32 In preparation for its roundtable on disability accommodation, the committee received evidence from the Department of Social Services explaining the status of the money allocated for supported accommodation:

Around 80 per cent of the \$565m in 2011-12 terms or the \$700m in 2019-20 terms is committed to meeting the existing costs of supported accommodation places and the accommodation costs of people residing in aged care facilities. This 80 per cent comes from the supported accommodation residents and aged care residents in the need estimate above.

In the initial trial and transition phases of the NDIS, only a proportion of the population will be able to access the NDIS. Because these funds were calculated as part of the package costs for individuals, the funds notionally available for housing will grow as more people come into the NDIS and the budget for the NDIS grows commensurately.²³

Bilateral agreements between the Commonwealth and the states and territories for the transition to a NDIS

2.33 The Commonwealth has so far signed new bilateral agreements for the transition period with NSW, Victoria, South Australia, Tasmania and Queensland. These agreements outline the funding principles which all parties will be guided by:

- a mix of potential funding streams may be utilised to address existing and new specialist disability housing;
- funding would be based on the efficient lifecycle cost of delivery of specialist disability housing representative of typical providers;
- residents will be expected to provide a reasonable contribution towards their accommodation;
- funding is provided for both existing and new supply of specialist disability housing, as well as for both private and publicly owned specialist disability housing;
- providers of specialist disability housing will be expected to finance ('cash-flow') the purchase or build of accommodation and their operations; and

22 Department of Social Services, *NDIS housing paper for Parliamentary Joint Standing Committee*, 20 October 2015, p. 3.

23 Department of Social Services, *NDIS housing paper for Parliamentary Joint Standing Committee*, 20 October 2015, p. 3.

- funding will allow for the continuity of supply from providers and also ensure there is scope for change and innovation over time.

2.34 With regard to the lifecycle costs of accommodation that will need to be covered between the NDIS and the participant, the following principles apply:

- an efficient cost of purchase, lease or construction for new specialist disability housing, including land and buildings;
- an efficient cost of capital (finance) for new and existing specialist disability housing;
- an efficient cost of depreciation, which allows for the replacement of specialist disability housing (existing and new supply) at the end of their useful life; and
- an efficient accommodation-related operational cost of specialist disability housing, including facilities management, rates, insurance, utilities, repairs and maintenance.

Therefore, the NDIS funding support for specialist disability housing will be based on the following formula:

- $\text{NDIS funding support} = (\text{asset base} \times \text{cost of capital}) + \text{accommodation related operating costs} + \text{depreciation} - \text{land appreciation} - \text{resident contribution}.$ ²⁴

2.35 The agreement between the Commonwealth and NSW also recognises that NSW is moving the direct provision of specialist disability housing to the non-government sector, and that NSW government will no longer be the service provider for these clients.

2.36 The NDIA will also support access to affordable housing options for people with disability through local area coordination and information, linkages and capacity (formerly Tier 2) building, by helping people with a disability link to other systems such as social and community housing; and support people with disability to engage with the private rental market to identify appropriate options.

2.37 The Community Affairs References Committee acknowledged the complexities of the provision of specialist housing for people with disability under the NDIS. While welcoming the concept of individualised funding for those people in need of accommodation, the committee was concerned that this type of funding alone could not adequately fund the capital element of disability housing:

The committee recognises the importance of individualised care packages for young people with disability as part of the NDIS's movement to person-centred care. However, the committee also notes the difficulties that arise with respect to funding capital works. State and Commonwealth

24 COAG, *Bilateral Agreement between the Commonwealth and Victoria for the transition to an NDIS*, Attachment J, para 8.

Governments should give consideration to capital funding for construction of specialised disability accommodation.²⁵

Specialist disability accommodation - position paper on draft pricing and payments

2.38 On 1 April 2016 the NDIA published a position paper on draft pricing and payments for comment by stakeholders by 15 April 2016. The paper incorporated the Pricing and Payments Framework which sets out some of the policy background and thinking behind the setting of pricing.

2.39 The Framework discusses establishing benchmark prices for all specialist disability accommodation using the following formula:

Dwelling price =

- Consumption costs²⁶
- + Opportunity costs of capital²⁷
- + Costs of ownership²⁸
- Land price inflation²⁹
- Resident rent contributions (from all participants in dwelling)

Benchmark price = Dwelling price / Anticipated number of dwelling residents.³⁰

2.40 According to the paper, a number of other factors will be considered when setting the benchmark price, to take account of a number of additional variables:

The benchmark prices will have additive and/or multiplicative factors or weights for classes of dwellings (determined by the Agency) that can be applied by the Agency as necessary including for:

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- 25 Senate Community Affairs References Committee, [*Adequacy of Residential Care Arrangements Available in Australia for Young People with Severe Physical, Mental or Intellectual Disabilities*](#), June 2015, p. 63.
 - 26 The consumption cost equates with depreciation of the dwelling to the end of its useful life. This price component will be set to cover the capital cost over the useful life of the building.
 - 27 The opportunity cost of capital component would recognise the typical sources of capital (debt or equity) and associated costs (at an efficient price), across all aspects of the capital investment in the accommodation (land, buildings, plant and equipment).
 - 28 The costs of ownership component would make provision for costs that are legally required, e.g. facilities management, rates, insurance, utilities not met by the tenants, repairs and maintenance, and tenancy management.
 - 29 The land price inflation component recognises the gain or loss the accommodation owner incurs over time due to changes in the value of land.
 - 30 National Disability Insurance Agency, *Specialist Disability Accommodation - Position Paper on Draft Pricing and Payments*, pp 35–36.

Geographical location³¹ (recognising – for example – that land costs, building costs and maintenance costs can be higher or lower in various locations);

Number of bedrooms (recognising that the size of a dwelling affects costs);

Whether the dwelling is furnished or unfurnished;

Specific building/dwelling features requiring additional build costs to address disability requirements;

Price inflation in the second and subsequent years of an established benchmark price; and/or

Any other factor the Agency determines to be necessary.³²

Treatment of publicly owned land in setting the benchmark prices

2.41 The committee is aware of the difficulties in negotiations between the Commonwealth and states and territories over the cost of making land available for specialist disability housing. In its deliberations over benchmark pricing, the NDIA has attempted to provide a consistent approach to the treatment of publicly owned land and where the costs involved would lie.

2.42 It is relatively common for state and territory governments to release land at below market cost, or even at nil cost, to organisations for a specific purpose, e.g. the supply of specialist housing. However each scenario is different, which creates a difficulty for the NDIA in its attempts to create a benchmark pricing structure.

2.43 To equitably address these different procurement circumstances, the NDIA has indicated that it will endeavour to treat all land costs in the same way, regardless of their provenance. The NDIA will have a land cost element in its benchmark price, and if the providers' land costs are less than this price, the state or territory government will be required to 'charge and recover' this difference and pass it on to the NDIA. This difference between the market price charged by the state or territory government and the benchmark price paid by the NDIA will comprise part of that government's 'in-kind' contribution.

2.44 The NDIA proposes that if the state or territory government are charging the market rental costs, the provider will receive the full benchmark price and the government will recoup the market rent. This will form part of that government's cash contribution to the NDIS, but not the in-kind contribution. In the NDIA proposal, if state and territory governments do not wish to participate in the 'pass back mechanism', other bilateral arrangements will be made.³³

31 This would include weights or factors for remoteness.

32 National Disability Insurance Agency, *Specialist Disability Accommodation - Position Paper on Draft Pricing and Payments*, pp 35–36.

33 National Disability Insurance Agency, *Specialist Disability Accommodation - Position Paper on Draft Pricing and Payments*, pp 37–38.

Accommodation options for people with disability

2.45 Chapter three considers various housing options for people with disability, as well as the funding and investment avenues available to those looking to develop these options.