



**RIGHTS &  
INCLUSION  
AUSTRALIA**

# **Response to Consultation Paper: An Ordinary Life at Home**

## **September 2021**

**FINAL**

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# 1. Introduction

Rights & Inclusion Australia (R&IA) is a national Disabled Persons Organisation (DPO) promoting the rights and inclusion of people with disability. Founding members of the organisation were involved in the development of the United Nations Convention on the Rights of Persons with Disabilities, and R&IA has remained associated with the international movement of people with disability through our acceptance into the Pacific Disability Forum in 2020. Our main areas of focus in Australia are the built environment, accessible housing and achieving equity of inclusion for First Nations people with disability.

R&IA is a member of the Australian Network on Housing Design (ANUHD) and has had significant engagement about housing with Government and the community. Since late 2019 this engagement has been consolidated in the ACT, when an ACT Government grant enabled the establishment of the *Accessible Housing Innovation Project*. The project aimed to provide information and resources to people with disability and their families who were looking for housing and support solutions in the ACT, and to broker new opportunities that may arise from bringing together stakeholders from the housing disability support, community, peak and Government sectors. The project was extended to the end of 2020, after which R&IA was successful in obtaining funding to extend the project within the ACT, and nationally, through an Information Linkages and Capacity Building (ILC) grant through the Australia Department of Social Services.

R&IA welcomes the opportunity to contribute to the *Consultation Paper: An Ordinary Life at Home*, and recognises this as an attempt by the National Disability Insurance Agency (NDIA) to build the key principle of 'choice and control' into housing choices of National Disability Insurance Scheme (NDIS) participants, in line with NDIS legislation and the stated and aspirational aim of the scheme. The need for a new and managed approach does, however, speak to the failure to date of the NDIA to apply this principle in practice when addressing the issue of housing for people with disability in Australia, which is fundamental to the project of inclusion both at the individual and collective levels.

R&IA's response will engage with the detail of the Consultation Paper, but will be structured around three basic points:

- Housing that is suitable for people with disability to live in is not available generally in the community due to an absence of planning for this constituent group in the past, and this lack represents one of several significant **barriers** which serves to exclude people with disability from the community and necessitate the NDIS's need to facilitate inclusion; and these barriers need to be addressed in the

policy when considering the support packages to be made available to participants;

- The NDIS was established as a universal scheme to meet the needs of **all** people with disability in Australia, and the NDIA has a responsibility to the broader population of people with disability beyond those participants who receive individual funding; and this points to a need for much more work by the NDIA in shaping the response of generalist markets and services to include people with disability;
- Participants receiving NDIS funding to assist them as individuals to access housing choices should by now have had much greater choice in housing options; and while actual housing stock that is suitable is limited, policies and the intervention of the NDIA - in relationships which operate much better when the individual is in control of funding - have served as a considerable obstacle to solutions. This begs the question is the NDIA the right agency to deal with the issue of disability housing?

Our submission has benefitted from the collaboration we have had from colleagues who have also made submission, in particular:

- José Robertson
- Anglicare
- The SDA Alliance

It has also referenced the work of MC Two Pty Ltd, especially in relation to commentary on the current SDA scheme, and references this work accordingly.

## 2. General observations

This submission takes the lead of the consultation paper's aspirational tone, and briefly considers some of the concepts and principles which underlie and, in many ways, caused the NDIS to exist. These are worthy of reflection when considering policy reform that will impact on something as fundamental as housing for people with disability.

Firstly, the **social model** of disability is widely acknowledged now within all aspects of social policy, as it reflects a paradigm which articulates the lived experience of disability and the barriers experienced, including access to housing.

Secondly, understanding and responding to the multi-faceted aspects of **disability**, which has been extensively reclassified in recent years to achieve some level of standardisation worldwide about its many causes and, more importantly, the effects it has in terms of the participation of people with

disability (through the International Classification of Functioning, Disability and Health, 2001).

Thirdly, the human rights framework established in the **United Nations Convention on the Rights of Persons with Disabilities (CRPD)**, to which Australia is a signatory, and the specific recommendations made by the UN Committee on CRPD on the need for Australia to ensure the flow of accessible housing stock by mandating an accessible standard in the National construction Code.

### **2.1. Social model of disability**

The National Disability Insurance Scheme is an important initiative established to assist the Australian Government to meet its obligations as a signatory to the Optional Protocol of the United Nations Convention on the Rights of Persons with Disabilities, providing funding to some individuals for the purpose of procuring goods and/or services that will assist them to be on a more equal footing with other, non-disabled members of society. The approach of resourcing individuals, in recognition of their need for that support to enable participation in community life, is not new or unique to the NDIS, but is significantly different to the approach taken in Australia and across the world several decades ago, when what is known as the “medical model” of disability prevailed, and many people lived in institutional settings.

The NDIS broadly applies what is known as the “social model” of disability (for one discussion of this see Barnes 2012) to the service delivery system, using principles of self-determination and empowerment through the mechanism of individualised and potentially self-managed funds, to attach to the person with disability (the NDIS participant in this case) the resources needed to overcome areas of specific disadvantage which are serving as a barrier to their broad inclusion in the community. One such “barrier” is housing, with the issue of where people with disability live, and how supports are delivered to them in that place, being fundamental to the history of disability services worldwide.

### **2.2. Understanding disability**

An underlying concern of ours is the narrow way in which disability is defined and addressed within the NDIS, at least in relation to those people who may receive funding to procure the resources they need – it is very much two-dimensional and focused on functional ability. Whilst these and other impairment-related issues are important, they do not describe the full scope of disadvantage that is experienced by many people with disability, and thus remedial measures may be missed. The World Health Organisation’s International Classification of Functioning, Disability and Health (ICF) (WHO 2001) provides a much richer set of criteria which can and, we believe, should

be considered when the social aspects of disability are assessed and then addressed by the provision of individualised supports.

In particular the environmental and personal factors which can have a negative impact on the participation restrictions experienced as part of a person's disability are not adequately included in the forms of assessment and evidence accepted by the NDIA to deem people as eligible as participants, nor to determine the types of support they are entitled to. Whilst this is a more general criticism of the way that the NDIA chooses to interact with people with disability who need funding to purchase the goods and services that will support their aspirations, it is a theme that is explored here in relation to housing, as the NDIA in its consultation paper is strident in its articulation of what it will not fund and does not have responsibility for.

It is our contention that the socio-economic status of individual people with disability does vary considerably, and is impacted variably by many factors including their location and the specific aspects of their domestic living situation, the opportunities they have had for education during their childhood and early adulthood, and their current employment status and/or access to genuine work opportunities that provide some level of financial security. The limited approach taken by the NDIA to the understanding of disability at the individual level has in turn limited what may and indeed should be funded to enable NDIS participants to access the housing they require. As Bickenbach (2012) has outlined, the ICF is orientated at all times toward the disabling factors which enable or prohibit **human functioning**, whether this be inherent to the individual or socially constructed, as is the case with housing. Housing has an intrinsic purpose to not just provide shelter, but to enable a whole range of human functions and experiences. The lack of consideration and planning around housing for people with disability assumes that they will not or cannot function in the same way as other people nor expect the same experiences. The poor design of current housing is, by this definition, an environmental factor that needs to be taken into consideration when assessing the capacity of each individual participant to access housing, and determining whether or not modifications or new construction is "reasonable and necessary" when it compares with what is available to other people in the community living without disability.

### **2.3. The UN CRPD and recommendations for Australia**

The United Nations Convention on the Rights of Persons with Disabilities was adopted in 2006, and Australia became a signatory to it and its Optional Protocol in 2008/2009. Article 19 of the CRPD (CRPD 2006) states that "(people) with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others ...". This, combined with the principles at Article 3 (c) "Full and effective participation and inclusion in society" and 3 (f) "Accessibility", articulate the

imperative to render housing available on an equal footing with others in society, which in turn requires universal housing design as a minimum standard. Further to this the Committee on the Rights of Persons with Disabilities (2019) has provided, as part of its concluding observations to reports on Australia's progress toward meeting its obligations under CRPD, that we as a nation should (p.17):

*Increase the range, affordability and accessibility of public and social housing for persons with disabilities, including by implementing a quota for social housing and by developing regulations and standards to guarantee the progressive application of universal design principles in accessible housing.*

The NDIA needs to be held to account to what it has done, as the pre-eminent agency in Australia with both responsibility for people with disability, and the resources and bargaining power, to meet these obligations, both before and after the Committee's response. This will be addressed later in the submission.

## **2.1. Addressing the principles**

The purpose in briefly summarising these principles is to draw attention to the statements of policy intent by the NDIA, both within the consultation paper and in its current practice, which serve to further exclude people with disability from housing opportunities, and to ask whether the NDIA, in its current form and mode of operations is fit for purpose in delivering outcomes that will truly assist people with disability in their goals of inclusion in the community? In other words, does the way that the NDIA operates need to change in order to deliver the outcomes it is foreshadowing in this consultation paper?

It is the view of R&IA that the NDIA needs to better identify what it can usefully do, and what it is better to leave to other agencies to do, both government and non-government, in relation to addressing the systemic barriers which stymie the inclusion of people with disability. Whilst it will be argued later that the NDIA needs to be doing **more** to stimulate change across society in areas that it does not directly control, when the focus is upon individual supports and the provision of funding to resource them, there is a case for the NDIA doing **less** within its own bureaucracy and instead seeking to develop capacity in the community sector to forge solutions on the ground, in collaboration with NDIS participants. The practice of addressing presenting issues of participants by developing new "pathways" has only served to add complexity to the planning process, and turned it quickly from one which responds to the stated wishes and needs of participants to one in which participants are challenged to fit themselves into the correct funding "bucket". This is a general criticism, but one which is relevant in the context of this consultation paper, when it sets out, in Sections 3.1 – 3.3, what is generally deemed "fundable" under the Scheme. The NDIA was not set up as a policy-generating agency. It was established- to fund and enable the identified needs and aspirations of people

with disability, who in the early days of the NDIS were recognised as “experts” in their own lives and their own support.

The NDIA is making the same mistakes as did its many predecessors across the various states and territories when they had responsibility to block-fund services and address the issues faced by people with disability. Locally-based problems are best solved locally by individuals and groups whose capacity can be built to enable supports for NDIS participants to be delivered over the longer term, and not by policy units working behind closed doors in Geelong. The Information Linkages and Capacity building (ILC) grant scheme has gone some way to deliver this capability, but there needs to be a transfer of resources from the NDIA to the community to ensure that initiatives that do deliver capacity, and can be extended and/or scaled up, are funded over the long-term and not reliant upon short-term grant and contract funding to remain operational. A specific recommendation on this will be made later in the following section, which more closely addresses the points made in the consultation paper.

Where there is clearly a need for policy intervention at the government and regulatory level, the NDIA is largely missing in action. The submission will mention further on the ongoing struggle to have the newly minted accessible guidelines in the National Construction Code (NCC) recognised by the New South Wales (NSW) and South Australia (SA) Governments, and the lack of any concerted strategy by the NDIA to intervene at any level in this regard. More pertinent to many participants of the NDIS, however, is the lack of any guarantee to have the same tenancy rights as others in the community enjoy when it comes to their tenancies in group living housing. The NDIA is perhaps not best placed to be developing or administering policies that provide a guarantee of equal rights in this regard, but it is arguable that their funding of options might be contingent upon the existence of basic tenancy rights for the participant.

### **3. Housing – NDIA’s offer to individuals**

Section 3.4 of the consultation paper sets out issues that the NDIA have heard and are here reporting back on. R&IA does not contest these issues, and acknowledges that they exist widely, and in the main have done so since before the NDIS came into existence. The issue of “greater NDIA market stewardship” will be discussed in more detail below, but it is noted here that the Agency is banking on “hope” rather than strategy for a market-led recovery in housing that is suitable for people with disability. There is little evidence to support this stewardship.

The criticism of planning meetings seeking to “fit” participants into pre-established (group) housing models is valid, but also raises a more pertinent issue about the nature of planning and the bureaucratic way in which it has



been institutionalised within the NDIA, resulting in a less than optimal experience for participants. A truly individualised system should enable people with disability, and their families, to express their aspirations and needs **in their own terms**, and then **negotiate** how package of funding can be built to support these, and how it can be best administered to ensure **choice and control** over those supports, and flexibility to change when circumstances change. A system working well would result in a much more dynamic environment where change was welcome and anticipated, and the way in which the planning is done now, with multiple levels of bureaucracy, works strongly against the delivery of plans which can in any way be said to be “owned” by the participants.

Our main concern is with the content of Sections 3.1 – 3.3, and the limitations the NDIA is putting on the funding and support that it will provide to eligible individuals to procure housing. The opening statement “Generally, the home you live in is not the responsibility of the NDIS” is a truism that nonetheless seeks to abrogate the NDIA of its broader responsibility to implement resources that will enable individuals with disability to overcome barriers to inclusion. Housing and control of the home environment is one such barrier, and given how fundamental this aspect of daily life is to the achievement of almost every other goal, then it surely cannot be the case that the NDIA has no level of responsibility to ensure that people have this addressed. Arguably **nothing** relating to the private lives of individual participants is the responsibility of the NDIA, but its purpose is to facilitate the achievement of these things so people can exercise their rights to participation.

The NDIA is attempting here to draw lines in the sand which it hopes will limit its responsibility to fund individuals and their housing. Like many other disability service administrations in the past, it is more comfortable in devising mechanisms to fund the delivery of personal supports, and is less so when it comes to innovation in its provision of infrastructure – such as with home ownership by the individual with disability. This is exacerbated when the NDIA attempts to delineate responsibility for costs that it believes **should** be borne by other government agencies, and by the participants themselves. Our submission deals with this by briefly focusing on real-life situations which a) demonstrate how in practice this ends up as a traditional cost-shifting exercise amongst jurisdictions, to the detriment of individual participants; and b) significantly limits options for participants which squarely fit within the objects, principles and aspiration of the NDIS.

### **3.1. Housing and young people with medical needs**

The NDIA’s proposed allocation of responsibility for housing, in the consultation paper, is fraught with difficulty, and the ugly contest between departments is played out in front of traumatised participants and their families.

### **Real-life example**

The ADACAS Annual Report 2020 provides a brief summary (p.37) of an ultimately successful housing solution developed for four young people with significant medical conditions in addition to disability, who had been living for a number of years in hospital (3 of them) or an aged care residential facility (1 of them). The story illustrates four years of struggle with the NDIA to get the house built with SDA funding, and the support funded through SIL, with the last year prior to the four young people finally moving into their home being taken up with disputation between the NDIA and the local health authority about whose responsibility it was to fund the nursing care required. A combination of Advocacy and Support Coordination, and moments of genuine collaboration amongst all parties, did resolve this eventually, but it took far too long, and from the time the project was conceived to its delivery four young people originally identified as the participants who needed the housing, including Alex after whom the house is named, had died. The experience did very much illustrate the strong prosecution by the NDIA of the principle that other government agencies should be funding some goods and services, and also how the NDIA will pursue that principle.

The example of inter-departmental disputation demonstrates three things:

- 1) There is and possibly can be no absolute clarity about where the responsibility lies for funding of goods and services that have historically been lacking from general provision to people with disability – and housing and the delivery of medical support in the home are areas where innovation and not cost-shifting is required;
- 2) Despite this being such a high priority for the NDIA, it does not have well-developed mechanisms for addressing and solving these types of disputes, without involving and negatively impacting upon the individual participants who need the issue resolved for them to be able to action their NDIS plans; and
- 3) It highlights how little the NDIA has done as an agency, at the broad, systemic level, to forge pathways that will bring generic services, such as health departments, more toward the delivery of supports to people with disability as part of the general population, instead of relying upon specialist supports and funding from the NDIA to facilitate all aspects of access and inclusion.

### **3.2. Personal Home Ownership**

The consultation paper states:

*When trying to decide if something is your responsibility to pay for, you should ask yourself “would someone without a disability be expected to pay for this?” if the answer is “yes” then you will most likely need to fund it yourself. We call these ordinary or day to day living costs.*

This demonstrates a marked lack of understanding, or a wilful ignorance of the parlous state of affairs when it comes to housing for people with disability, and the barriers to accessing housing which are often significantly impacted by lack of access to adequate finances. The relative poverty of people with disability generally (AFDO 2019) compounds the problem of lack of housing generally and the acute lack of suitable housing for people with disability across all markets. It also does not recognise the current additional cost of building to an adequate accessible standard, given that this does not come into effect across Australian housing until September 2022, when the national Construction Code will be amended to include basic, Silver Level features in most Australian jurisdictions. And it appears to rule out options that could, based on circumstances, enable people to purchase their own home, when that is demonstrably a better outcome for the participant, their family and for the financial wellbeing of the NDIS.

The submission of José Robertson details the difference in average cost to build a standard 3-bedroom house (\$383,073) to that of a full accessible 3-bedroom house (\$725,966), and how this clearly demonstrates a “cost of disability” amounting to an additional 89.5% over and above what a person/family has to pay for regular “inaccessible” housing. What needs to be considered here is the development of a policy, and mechanism, which enables a participant to contribute the “normal” cost toward a house, through the traditional mortgage loan schemes, and have the NDIS fund the “gap”, which addresses the cost of disability and renders the house functional. José goes further in his submission to describe how current SDA policy has engendered perverse incentives to break up families, because of the convoluted and confusing policy path it has taken to try and facilitate this type of option. To put it simply:

- home ownership has to be a seriously considered option for participant to have funded under the NDIS, in those instances where they have the means to purchase or build a “regular” dwelling;
- the NDIA should fund the “gap” that equates to the additional “cost of disability” that currently appends to building the dwelling to an accessible standard;
- the NDIA should recognise and record the savings in ongoing supports and services that will accrue from the delivery of an up-front expensive housing option, but which will repay itself many times over.

The consultation paper itself remarks on the annual SIL cost in 2020 of \$325,000 per participant, roughly the same as the one-off cost of funding the building of a regular house to accessible standards. The potential reduction in cost for participants who are able to exercise this option is significant, and the benefit that living in a totally accessible house that enables functioning either individually or as a member of a family, also will have positive cost benefits for the NDIS as well as personal benefits for the participant.

This means there is no mechanism currently available to enable a participant who has the means, through income and ongoing work, to purchase a home and to have the NDIS pay for the surplus cost to them for having it converted into an accessible dwelling - where they can function fully as they might be expected to as a contributing member of a family household. The current policy framework for home modifications also precludes the option of buying a non-accessible house on the proviso that modifications will be carried out in order for the participant to live there, and also sets very specific limits on the extent of modifications which can be done in a dwelling, focusing mainly on a participant's bedroom and bathroom, with little consideration for their role within the broader household. The "reasonable and necessary" test is applied by the NDIA without consideration of the lack of available housing built to a suitable accessible standard, such that it is deemed "unreasonable for someone to purchase a house that is going to require the NDIA to pay significant amounts (and for arguments sake let's assume the "gap" figure of \$383,073 for an "accessible 3-bedroom home) for a complete home modification. This seems to ignore any possibility of a cost-saving to be made on specific individual participants due to the increased functionality and improved quality of life they would obtain by such a solution.

#### **4. Housing – NDIA's contribution to the stock of suitable housing**

R&IA has been involved in projects engaged with housing and support for people with disability since November 2019, and has come against problems in the ACT which are mirrored throughout Australia, in the chronic shortage of suitable housing for people with disability. Lack of access to housing in the first place will place significant restrictions on the options available to people with disability and their families, and stymie the aspirations expressed in the consultation paper.

The solution is once quite simple and yet seemingly impossible, with governments across Australia reluctant to intervene in the housing market, where profits to the industry are high and huge personal wealth of the Australian population is invested. Accepting that the solution lies in the building of more housing, to dampen demand and suppress prices, and that the

housing needs to be built to universal design standards that will enable most people to live and visit, and make adaptation more affordable – then what specific issues need to be addressed, and how, to bring about the genuine solutions the consultation paper is seeking?

#### **4.1. Points from R&IA's (ACT) Accessible Housing Project (2019-2020)**

The project undertaken in the ACT for a year by R&IA identified a range of factors that worked against people with disability and their families successfully identifying, finding and securing housing and support options of their choice. Some of these are very briefly summarised below, noting that some aspects have been discussed in the consultation paper and that the NDIA has been a contributing participant, amongst many, throughout the project:

- *Lack of universal access to/inadequate information on housing-related supports for people with disability, family, carers and others*
- *Inadequate conversations regarding their housing goals*
- *Lack of universal access to advocacy, and tools for self-advocacy, on housing-related supports for people with disability, family, carers and others*
- *People with disability/carers are reticent to flag innovations with support service delivery for fear of having funding pulled*
- *Congregate housing, including SIL group homes, typically not compatible with addressing holistic need – they do not provide the choice and control proposed through the NDIS*
- *Inadequate allowance for precarity of circumstances and matching of housing supports for people with psychosocial disability*
- *Inadequate housing to meet the needs of people with disability in the ACT; this has longer-term health and funding implications*
- *Inadequate allowance of housing-based responses for people with disability in times of crisis and emergency; for example, with the COVID-19 pandemic, bushfires and escaping domestic violence*
- *Undersupply of housing to meet demand, including affordable housing*
- *Inequity in market access*
- *Shortfall in technical proficiency within housing industry re accessible housing, SDA and home modifications*

This list was developed after many (ongoing) conversations with people with disability, Advocates, peak organisations, community housing providers, disability service providers, officers from various ACT Government departments and others, meeting as the ACT Housing Solutions Innovation Group (HSIG). This intentional grouping has generated much greater awareness of the primacy of housing for people with disability, not just for NDIS participants who are in receipt of funding, but for those in the general

population for whom housing remains a significant barrier. The project is aiming to collate and distribute information that will enable people with disability and their families to better understand what options are available, and how to access those options, and to build the capacity of those consumers. One of the more intractable of the barriers is the lack of supply of suitable housing, and the project has sought to foster an environment where this can be practically addressed across all markets by proposing possible solutions:

- *Develop a comprehensive overview of the undersupply of housing for people with disability*
- *Increase the supply of new housing for people with disability through support of the community housing industry housing industry and investment sectors; and through the public housing authority*
- *Support people with disability to purchase or rent housing*
- *Develop housing industry technical proficiency to deliver housing to meet universal design criteria and the needs of people with disability.*

The project is ongoing, and has now extended to other jurisdictions outside of the ACT. Its importance and relevance to this consultation is that it establishes a model for community-based discussion and negotiation where the identified problems and solutions are shared, and the agents who are capable of reaching those solutions, either individually or collaboratively, are actively involved, either from the start or co-opted by the larger group as the need arises.

#### **4.2. The role of the NDIA in ensuring Australia meets its CRPD obligations**

The shortage of housing stock, and the possible remedies of this using the various agencies, government and non-government, which can be said to constitute the housing “sector”, are widely known and discussed as an underlying problem to which there appears to be no single government of market mechanism to solve. The impetus to resolve this problem has been given to Australia by the UN Committee on the Rights of Persons with Disabilities’ recommendation on regulating universal housing design in our National Construction Code (NCC).

At no point in the consultation paper is the issue of the responsibility of the NDIA’s responsibility to work toward a resolution of the current lack of impetus toward ensuring housing stock is built to universal design (accessible) standards cited. Whilst a large community of individuals with disability, together with supporters, peak organisation and Advocacy agencies, have been successful in lobbying over many years to finally have basic (Silver level) provisions adopted in the NCC from 2022, the NSW and South Australian Governments have decided to vary out and to rely on a voluntary approach instead. R&IA believes that there is a role for the NDIA to fight for this and

other housing initiatives, particularly in specific jurisdictions, given the benefit to people with disability, the delivery of equity and consistency in the development of new housing, and also the NDIA budget over time.

#### **4.3. NDIA's program to build suitable housing to scale - SDA**

The NDIA has taken on a responsibility for increasing the availability of housing of a type that is not readily available in any markets through its Specialist Disability Accommodation (SDA) program. The consultation paper itself has not delivered a coherent strategy for achieving this outcome at scale, and it would appear that the new Home and Living policy will not be setting targets for the NDIA to meet in this regard.

Data about the progress of the SDA suggests that it is not as effective as it needs to be, if the current demand for housing is to be met, and if the aspirations encouraged by the consultation paper generate more demand. Other submissions have pointed to data estimating an unmet need of between 35,000 and 55,000 in affordable housing for people with disability. Whilst the SDA scheme is not meant to solely fill that gap, the fact that only 3,220 new dwellings have been developed in the past six years (Connellan 2021) suggests that the required scale of building has not been forthcoming from the SDA as it currently operates. Connellan (2021 a&b) points to other data which R&IA believes represent a fundamental problem for the SDA scheme in its current form:

- The SDA is meant to deliver housing to 28,000 participants, but by the end of 2020 there were only 15,667 participants with SDA in their plans
- Around 11,000 participants with SDA are in “legacy” housing, largely group housing stock previously funded by state and territory government
- Of the 3,220 new places 720 of these have been in group homes, which suggests that the SDA scheme is unlikely to deliver the options and outcomes that the consultation paper is promoting

The SDA Alliance and others have pointed out that the current SDA model has encouraged the adding on of accessible units (generally) to already planned developments, which are not necessarily placed optimally for people with disability, in relation to access to family and/or services, specialist and generic. This leads to the perception that the scheme is “Developer-driven”, in that it produces stock that is “the most valuable to developers, not what is required by NDIS participants” (Connellan 2021b, 1).

It would appear that on a number of fronts the SDA scheme, in its current form, is working against the impetus for change and greater options that the Home and Living consultation paper is advocating. In terms of its responsibility to deliver volume housing that meets the needs of people with disability the NDIA's SDA scheme does not appear to be delivering, and, in addition the

NDIA is not doing enough to encourage the building industry to produce these houses as part of their mandate to reduce barriers more generally and facilitate inclusion.

#### **4.4. Alternative options – do SDA differently**

While R&IA can claim only limited expertise in the disability housing and support sector, especially when it comes to detailed analysis of the housing sector and its cost drivers, it has become apparent through its project work that the SDA is not fulfilling its promise to deliver specialist housing at scale. This section will only partially address this issue and is grateful to the expertise of others in the alternative options suggested. Overall, though, R&IA encourages the NDIA to engage collaboratively with housing and homelessness sector, and the community, in seeking solutions, and not to attempt to address this in-house within the Agency itself.

The SDA represents a significant investment of funds, which is being channelled through individuals currently in a strategy which fits into the plans of developers and which may not meet the requirements of people with disability. We join with others in advocating a direct commissioning approach instead. There is also a role for the NDIA to work more purposefully with state and territory governments who still retain significant equity in legacy homes under SDA, to utilise this as leverage for more progressive models of housing, and encourage building of suitable housing to scale in each jurisdiction.

The funding of expertise in the housing and homelessness sector should, in the view of R&IA, also be combined with an ongoing funding of organisations which have expertise in disability, and through this combination develop a genuine and ongoing capacity-building capability which can be scaled up, but which will need a secure funding source to maintain.

## **5. Housing supports and protections**

R&IA is concerned that there is not enough expertise available to people with disability to solve a problem whose roots are so systemic. Both the Anglicare and SDA Alliance submissions have highlighted the need for specialised supports to be available to NDIS participants to address housing barriers and to forge housing and support solutions. This section asks the question, is the NDIA the right agency to be addressing and solving these issues?

### **5.1. Tenancy Rights**

Tenancy rights for people with disability have traditionally been lacking, particularly in shared housing arrangements which are paired with support providers. Pre-NDIS the focus for advocacy in this area was the state and territory departments which funded and administered disability services. Under the NDIS, the NDIA does not appear to have a policy function, at least



not in relation to aspects of housing policy which are outside its direct funding focus. There remains, however, an onus upon the NDIA, in its broader stewardship role, to be concerned about tenancy and other rights matters when it comes to housing, and to work more purposefully with the mechanisms that support and protect these rights in the community - to ensure that they are extending this support to people with disability, whether funded by the NDIS or not. The consultation paper does not make explicit mention of tenancy rights being an issue of concern, and it is the view of R&IA that there are mechanisms the NDIA can employ, through its funding of individual participants, to require housing providers and support agencies to provide tenants with appropriate residential tenancy agreements as a prerequisite for being in receipt of NDIS funds.

## **5.2. Specialist housing support**

In terms of the provision of specialist support, the SDA Alliance in particular has highlighted elements that would contribute to a much higher quality support being delivered to NDIS participants, and this should be referenced in relation to the comments here. The question is where in the system will this expertise be available, how can we achieve scale, and how will it be available to people with disability who are not eligible for individualised funding under the NDIS? Currently the only obvious options are Support Coordinators and, if their focus shifts back to their original purpose, the NDIS Local Area Coordinators. Aiming for specialists working in both of these areas would allow for expertise to work inside the NDIS and also beyond it, to be available more systemically to people with disability who are attempting to find housing solutions without the benefit of funding. Both, however, would require some level of modification to achieve this.

*Support Coordination* is constrained by being available only through individual funding, and prior to that, decisions by planners who in turn may not have sufficient housing expertise to understand the benefit to participants, and who may also be working toward reducing support coordination in plans of those who have been on the NDIS for some time. Given the NDIA is not directly concerned with the sustainability of providers, including Support Coordinators, there appears to be little scope to develop and make this expertise generally available within Support Coordination unless specific, targeted grants are made available to the sector to do so, and for this to be sustained.

*Local Area Coordinators* have been sub-contracted into a planning role by the NDIA and are working very much as sub-agents of the Agency - very different to the function that was meant to have a strong community development focus when the NDIA was conceived. There always has been a need for a community development role in an initiative which was going to empower individuals with disability to forge their own paths via funding, and there is a significant trove of scholarship devoted to this function, most of which remains

unknown and unreferenced in the only national jurisdiction which has actually ventured into an individualised funding regime. The LAC function, adapted from the very successful Western Australian Government model, was much debated internationally, but seen to be too close to government to be truly successful when building capacity amongst people with disability, and forging links in the community which could build the bridges needed for genuine inclusion.

*Alternative options* may include contracting to specialist housing and homelessness services to develop a greater capability and strength that directly targets the housing issues confronting people with disability, using their existing infrastructure. Again this would be best done via grant-based funding with guarantee of extended support, to assist identified people with their housing careers.

## **6. Discussion and recommendations**

The submission has laid out some problems and possible solutions throughout. This section will summarise and clarify these further and make some recommendations for change that R&IA believes will have a positive impact on the housing circumstances of NDIS participants and Australians with disability more generally.

### **6.1. Discussion of General Principles**

The Home and Living consultation paper has laid out an approach which is broadly in line with the principles of the NDIS, at least in terms of what it seeks to attain for participants and their families. Its focus on extending the range of housing options, working toward people with disability having housing that will provide the basis for an “ordinary life”, and recognising that housing needs and aspirations will change as people grow and develop, are all welcome and lay out the benchmarks to which the subsequent policy will be held to account.

There are problems, however, with the way that participants experience the administration of the NDIA, and the propensity of the NDIA to seek to standardise individual responses by reducing eligibility criteria for the Scheme, and for access to particular goods and services in the Scheme, to reductive measures of functional impairment – which in turn define the funding amounts awarded. This runs contrary both to the social model of disability and its understanding of the impact of external factors upon the disadvantage experienced by people with disability, and also to the adoption of similar principles within the WHO’s ICF (2001), where environmental factors are a consideration when assessing someone’s participation limitations. Access to adequate housing is clearly a very significant environmental barrier to people

with disability due to failures of public policy historically across the world, and is fundamental in its importance to the inclusion of all individuals with disability. This in turn brings into contention the limited options for people with disability as being a “reasonable and necessary” factor in their being eligible for support from the NDIS, and the range of housing and housing-related supports they can receive under the Scheme.

***Recommendation One:***

***Assessments for eligibility for the NDIS and for specific housing and housing-related supports within the NDIS need to consider and validate the unique (environmental) circumstances of each individual applicant.***

Related to the above, and based on the limited confidence R&IA has in the current processes implemented by the NDIA to address individual needs and aspirations:

***Recommendation Two:***

***NDIA systems and processes need to be significantly amended to reverse the current trend toward aggregating participant circumstances, experiences, aspirations and needs into categories which can then be translated into standardised funding allocations.***

## **6.2. Discussion of NDIS housing offer to individuals**

The consultation paper has attempted to clarify the NDIA’s role in delivering housing solutions, and to narrow its responsibility in this regard. Whilst it is understandable, given the lack of control the NDIA wields over housing resources, the referencing of responsibility back to individual participants to find and fund housing in a market lacking accessibility and affordability on the basis that it is the same for everyone else in the community denies the lack of universality of access to housing as a barrier confronting people with disability. This points to the need for some costs of housing for some participants to be met by the NDIS, and the responsibility of the NDIA to make decisions based on individual circumstances rather than seeking to “fit” participants into pre-determined funding categories.

***Recommendation Three:***

***Personal costs of housing, such as rent or mortgage payments, or related to repairs, and other maintenance requirements, or for some utilities, should be considered as coming under the scope of NDIS funding when individual circumstances, either or both historical and current, warrant it.***

Whilst they may be considered a minority, participants who are employed and have an income which could sustain a mortgage, must be considered within the new NDIA policy; and a suitable funding mechanism established. This may be within SDA in the case of new-build housing, although the consultation

paper seems to suggest that it is moving away from such a focus. Or it may be through home modifications, but done differently to how the Scheme currently operates, as it will need to provide a guarantee of work done in a dwelling yet to be purchased. And, again, the decision to purchase an “inaccessible” home needs to be viewed in the context of the majority of Australian housing being built to a standard which does not facilitate access, so a decision based on relative affordability, location and other factors that can enhance the inclusion of a participant should not be deemed “unreasonable” by the NDIA.

Funding the purchase of a new home, whether this be an existing home that requires extensive modification to render it fully accessible for the participant, or a new home built from scratch, should be facilitated by a NDIS pathway that recognises and is able to fund the current gap in price between “regular” housing and its accessible counterpart.

***Recommendation Four:***

***The NDIA should, as part of its Home and Living Policy, ensure there is a funding pathway that enables participants to receive the “gap” funding to build in (either as new build or modifications) accessible features to a “regular” dwelling, where the participant is in a position to fund the cost of the “regular” dwelling.***

In addition, the NDIA does not adequately consider the way in which participants function at home when they are a contributing member of their household (for example, a parent), and their need to have access throughout the home in order for them to undertake their roles fully. The limitations of “reasonable and necessary” which hone the need for funding only on participant bedrooms, bathrooms and some general access for travel into and around the home, expresses a deficit-based understanding of disability, denies the potential for growth and development within homes, and, we believe, will ultimately be less cost effective for the NDIA as it is required to fund ongoing support costs in these circumstances.

***Recommendation Five:***

***The NDIA must develop a funding mechanism that is capable of assessing an individual participant’s aspirations and needs with regard to having a wholly accessible home, when the costs of funding this are weighed up against the benefits that will accrue to the participant and the ongoing costs of support which may be significantly reduced.***

**6.3. Discussion on NDIA’s contribution to the national housing stock**

The submission has discussed the need for significant impact by the NDIA in driving the increase in suitable housing for people with disability to access, to make possible the aspirations of its consultation paper. The SDA scheme is

having minimal impact, and is developing some options which may not accord with the requirements of participants, in the main because its approach aligns with the interests of developers.

***Recommendation Six:***

***The NDIA should consider revising its SDA scheme (while honouring its current commitments to protect participants), to a direct commissioning scheme which targets areas of housing need and funds these.***

The NDIA is also failing in its obligation to push for changes to the broader societal institutions and markets which constitute barriers to the inclusion of people with disability, housing being a significant one.

***Recommendation Seven:***

***The NDIA needs to take on a more visibly stronger role in pushing for reforms across all sectors of society, and in particular here housing, to lobby for reform, including the adoption of all states and territories of accessible (Silver level) guidelines in the 2022 National Construction Code.***

***Recommendation Eight:***

***The NDIA should take on the role of negotiating with states and territories about the potential re-use of its legacy properties (for people with disability) to be redeveloped to models more in line with those articulated in the consultation paper.***

#### **6.4. Discussion on housing supports and protections**

Projects such as Opening the Door, and the many other ILC funded projects with which it interacts, are evidence of an approach which can generate true community development, a missing feature when the NDIS was operationalised in 2013. The LACs were the, perhaps misguided, articulation of this commitment, but these were swiftly commandeered into bolstering the under-resourced planners within the NDIA, and perhaps the opportunity to re-imagine this role to the original vision is lost. Nonetheless, R&IA believes that community development is a necessary concomitant to individualised funding, and that much more should have been, and now needs to be invested in this nationally, not through one-off grant funding, but by committed funding over the long term to guarantee an expert resource.

***Recommendation Nine:***

***The Australian Government, through a mechanism other than the NDIS, needs to fund ongoing capacity-building initiatives nationally and available to all who require it, and ensure there is housing-related expertise within these initiatives.***

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