



RIGHTS & INCLUSION
AUSTRALIA



Joint Standing Committee on the National Disability Insurance Scheme
PO Box 6100
Parliament House
Canberra ACT 2600
By email: ndis.joint@aph.gov.au

16 December 2022

Dear Joint Standing Committee,

Re: Inquiry into the Capability and Culture of the National Disability Insurance Agency (NDIA)

We write to you on behalf of Rights & Inclusion Australia and National Shelter. Rights and Inclusion Australia is a national Disabled Persons Organisation (DPO) promoting the rights and inclusion of people with disability, with a focus on accessibility in the built environment. National Shelter is a non-government peak organisation that aims to improve housing access, affordability, appropriateness, safety and security for people on low incomes.

We thank the Committee for the opportunity to provide submission about issues of concern that we hold about the National Disability Insurance Agency's (NDIA's) response to the longstanding issue of housing for people with disability in Australia. The submission has been contributed to by our partners in the Opening the Door Project, National Shelter, with specific input from Shelter WA, whose discreet submission, based on their direct interaction with people with disability in WA with regard to tenancies, is included at the end.

We would welcome the Committee holding a hearing that deals specifically with the capability of the NDIA to address the housing needs of NDIS participants, to which we would be happy to provide more detail than has been possible in this brief submission. We do not believe that there are easy or quick solutions to the entrenched disadvantage that people with disability face when attempting to obtain or maintain good homes to live in, particularly when there is a general housing crisis in Australia which has been acknowledged and which is slowly being addressed nationally. Our main focus, though, will be upon whether the NDIA has done enough over the past 9 years to make available the conditions in the community whereby access to housing and the rights of people with disability who are tenants have improved; and what needs to change in the culture of the NDIA to ensure that the situation improves dramatically and swiftly, both for participants who have housing as part of their NDIS Plan, and for the broader constituency of people with disability in Australia.

R&IA and National Shelter would like to attend a future hearing of the Committee to speak in more detail about what we know are the problems and issues confronting people with disability who wish to access housing in Australia, and where some of the solutions might

lie. It is our hope that receipt of this submission will persuade the Committee to hold a hearing that has housing as its primary focus. We believe a hearing that focuses on housing is justified in the context of the Inquiry because it will address issues of **capability** within the NDIA to address systemically the barriers that people with disability in Australia face with regard to housing. This relates to the lack of effort made and penetration gained by the NDIA in addressing the shortage of housing stock across all markets which can successfully house people with disability, and the rental conditions which further disadvantage people with disability as tenants. It also relates to the areas of specific program delivery to participants, namely the Specialist Disability Accommodation (SDA) program and the provision of Home Modifications, where there are some disturbing developments partly due to poor policy formation and partly due to a failure to engage with factors outside of the NDIS' immediate funding responsibility.

The submission will attempt to summarise these issues below after establishing the how housing is an entrenched problem that requires action across and among all levels of government in Australia.

Introduction: the context of housing as a systemic issue

R&IA and National Shelter are aware of other submissions being made to the Inquiry as well as the testimonies provided at hearings, and acknowledge the contribution made at the Perth hearing by Ms Kelly Campbell about her experience of homelessness due to the unaffordability of private rental housing, and the length of time she is required to wait as a priority for public housing in WA. Our submission takes the view that overall, the NDIA is not doing enough to assist NDIS participants, and people with disability in general in Australia, to address the significant challenges which they face in all housing markets.

The [National Disability Insurance Scheme Act 2013](#) sets out the Objects and Principles underpinning the scheme and refers to Australia's obligation to "give effect to" the United Nations [Convention on the Rights of Persons with Disability](#). It also points to the purpose of the Act being to "support the independence and social and economic participation of people with disability", in line with the approach of social model of disability outlined in the Productivity Commission's¹ *Report on Disability Care and Support Volume 1* (2011, p.274). The social model stands in contrast to previous "medical model" approaches adopted by care and support systems across the world, and which have tended to exclude people with disability from society. As well as focusing on the rights of people with disability, along all other members of society, to participate in the community, the social model identifies the "barriers" which exist in the community, not in the person themselves, which tends to stymie opportunity and inclusion. It has been identified for decades that housing is one of the fundamental barriers to the inclusion of people with disability, in its design and in the policies that have tended to assume the need for "special" options such as congregate living, managed group homes and the like (see, for example, John Stewart 2004²). The United Nations has since 1974 advocated for the building of housing to adaptable standards across the World, and it the CRPD makes specific reference to both of these aspects in Article 19:

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;

¹ Productivity Commission 2011, *Disability Care and Support*, Report No. 54, Canberra, available [online]: <https://www.pc.gov.au/inquiries/completed/disability-support/report>

² Stewart, J. 2004, *Housing and Independent Living*, in Swain, J., French, S., Barnes, C. and Thomas, C. (eds), *Disabling Barriers – Enabling Environments (Second Edition)*, Sage Publications: London

The NDIA has an obligation, under the NDIS Act 2013, to address the systemic housing barriers which continue to preclude people with disability in Australia from living in housing alongside others in the community. This submission will briefly identify what we believe are the areas of deficit of the NDIA, due to issues relating to both their capability and their culture, and provide a snapshot of evidence of the areas of need which the NDIA has routinely ignored when it comes to addressing the very real housing crisis that people with disability face in Australia here and now.

Systemic barriers to housing for people with disability

We acknowledge the initiatives that are being implemented by the NDIA, namely the Specialist Disability Accommodation program, policies and funding related to Home Modifications, and the updated Home and Living Policy, which will be rolled out in 2023. All of these initiatives, though, focus on individual NDIS participants, and are each in their own way limited by the lack of progress that has been made more broadly in the Australian community (and across other levels of government in Australia) to make the housing market more accessible, amenable and affordable to people with disability.

Our [Opening the Door project](#) has identified a number of barriers that people are facing currently, none of which are surprising, but the **impact** of which are significant on people with disability whose housing options are becoming more and not less limited than they have been in the past. These include:

- **affordability:** rental affordability is a major barrier to anyone on income support being able to live in private rental anywhere in Australia, and given the poor rates of disability employment this is exacerbated, and worthy of consideration for “gap” payments through the NDIS to participants to enable rental;
- **accessibility:** the range of housing available for purchase or rent in Australia is limited by the lack of accessibility that is built into the design of housing. This is despite the agreement forged in 2010 with the building industry that basic level accessibility (LH Silver Standard) would be the standard to which all new housing would be built by 2020, a “voluntary” agreement which was blatantly dishonoured by that industry, requiring an intervention by the Australian Building Codes Board which resulted in the regulation of this standard in the national Construction Code 2022. The availability of this stock is marginal at best, and there are few marketing engines which currently link people who need it to available stock; and, of course, no means by which accessible housing can be guaranteed to be used by those who require it;
- **discrimination:** identifying and addressing primary and secondary discrimination, and also raising awareness within the building and real estate industries about the expectation for all business and government across Australia to include people with disability in their practices and approaches;
- **lack of rights for participants in shared housing, particularly group homes:** the gains that were made under the Commonwealth Disability Services Act 1986, in increasing the rights of people living in group homes, by requiring a genuine separation between housing provider and service provider has been lost since the inception of the NDIS. The NDIA seems to regard this area as beyond its jurisdiction, and again has failed to do anything at the systemic level to influence tenancy rights regulation and legislation to protect and enhance the rights of its participants.

The submission made by Shelter WA provides detail to many of these points, in the context of WA, and the issues and potential solutions deserve scrutiny to see if there is potential for broader application across Australia.

The NDIA has been ineffective in interventions to address the above issues. In terms of the availability of suitable housing stock across Australian markets it has not engaged in the campaign for accessibility to be regulated as part of the National Construction Code (NCC), something which the community sector was successful in achieving in 2021 after 2 decades of campaigning, but which remains incomplete with NSW and WA refusing to adopt these specific aspects of the NCC. Again, there has been no intervention by the NDIA to address the discriminatory approach of the WA and NSW Governments to deny these provisions in their building regulations, and it has been left to the community sector once more to do the work that is needed to break down the housing barriers continually faced by people with disability.

Likewise, the situation of tenants with disability in private rental, in terms of the precarity of their tenure, is not seen as the business of the NDIA, nor is the continued bias of rights in favour of landlords over tenants which impacts on rent prices, allowance of companion pets and home modifications, and the eviction of people with disability in favour of higher-paying tenants. In fact there has been a wholesale ignoring of the private rental market and its issues by the NDIA, leaving the majority of renters with disability to the whims of the market, leading to the crisis situation we have now. Particularly shocking for us, though, has been the lack of any tenancy or other rights of many people with disability living in group home accommodation, which in many instances continues the practice of having both the property and the support run by the same agency, and the lack of any involvement by the NDIA in addressing these anomalies while continuing to fund the agencies responsible for denying the rights of their tenants.

Limitations to NDIA programs

The NDIA does provide some housing programs and pathways to participants, in the form of the Specialist Disability Accommodation and Home Modifications programs, and there has been work throughout 2022 to design a better pathway for participants via the Home and Living Policy. The application of these programs, and possibly ultimately the Home and Living pathways, remain compromised by the rigid, insurance-based algorithms which drive decision-making in the agency, and by a lack of ability to develop policy which actually responds to the individual circumstances of participants. Briefly (and more examples can be provided at hearing), it has been impossible for one family in the ACT to utilise the SDA in the participant's (Mother) package such that a family home can be built to accommodate her, her partner and her child, despite their ability to contribute the costs for a "regular" house to the SDA allowance in order to have a house built to their requirements. A house built in this way would enable the family to get on with their lives, with minimal regular support, saving a significant amount of funds and reducing the rapid rate of decline in health and wellbeing that the participant currently is experiencing. Similarly, while the Home Modifications program is being updated and improved, it is only patchily available to participants who are tenants in public and community housing, and rarely available to the majority of renters with disability who are required to access the private rental market. This is because the NDIA requires there to be security of tenure of at least 3 years before it will deem the investment "reasonable" – yet it has done nothing to try to influence residential tenancies legislation nor the culture and practice of the real estate industry to make these conditions possible within the community.

As mentioned already the NDIA funds supports that provide accommodation to participants who have no tenancy rights, and whose placement in housing is wholly in the hands of service providers. This represents a significant step backwards from the progress made, by community organisations working with housing and tenancy experts, and means that the scheme is, unwittingly, promoting and funding conditions which are actively working against Australia's obligations under CRPD.

Impact on people with disability

The **impact** of the lack of housing on individuals is significant. Housing is the keystone to building other opportunities for inclusion, and, as we are all aware, those opportunities are harder to come by for people with disability than for others in areas such as education, employment and the chance to have a stable financial future. Lack of availability of housing in the first place, its unaffordability and the distinct lack of choice for people to live close to their family and/or support networks, lead to precarious housing situations and homelessness, which in turn undermine the ability of people with disability to live inclusive lives. The casual discrimination that is being perpetrated upon people with disability in a very constricted private rental market (and seemingly defensible by the excuse of “market forces”) serves to undermine the confidence of people with disability to even consider regular housing options, and has enabled governments (eg NSW) to focus once more upon supporting and funding congregate models.

Discussion

Our submission is critical about the lack of action taken thus far by the NDIA to address systemic barriers and, in a sense, make our community more inclusive and accessible. The NDIS was conceptualised as having three tiers, with all Australians being included at Tier 1, the 4.4 million Australians with disability in Tier 2, and those people who would require individualised supports in Tier 3. A very large bureaucracy has been built around the delivery of supports in Tier 3, one which is strongly reminiscent of the large state-run offices which were disbanded in favour of the NDIS from 2013 onwards. Having a focus solely on the “specialist” services serves to reinforce the view of other government departments, at all levels of government, and of the community, that disability is a “specialist” issue which is dealt with wholly under the banner of the NDIS, with progress toward inclusion achieved by the individual pioneering of participants funded under the scheme. The NDIA has been unsuccessful in generating any meaningful change for the population in Tier 2, who rely on progress and change in order to compete on uneven playing fields in so many aspects of their lives, housing being one of them. Other submissions will argue about the skewed focus of the NDIA upon ensuring value for money over making decisions that will actually enable people with disability to overcome the many barriers they continue to face. Our contention is that too much focus, and too many resources, have been channelled into the relentless delegation that surrounds decisions made by the NDIA, with the result that it has become a vast and powerful replica of the bureaucracies it was set up to replace.

We are concerned that the NDIA has not yet proven itself to be the best vehicle to achieve systemic change, and there is an argument that this responsibility in many instances may be better contracted out to community organisations that have actually succeeded in pushing for positive change in housing for people with disability (see the campaign by the [Australian Network for Universal Housing Design](#) to have minimum accessibility standards included in the National Construction Code; and the current [Building Better Homes campaign](#) to push WA and NSW to adopt these standards). The Information Linkages and Capacity Building (ILC) grant program has enabled some initiatives, such as Opening the Door and the WA Building Tenancy Skills project, to begin to address the capacity of individuals and groups with disability around a number of issues and barriers, but these are short-term and are not strategically linked with any intention to have them remain functioning within the community. There are now many more organisations who may be described as “mainstream”, such as National Shelter and its various state and territory affiliates, who can be regarded as having some real understanding and expertise in housing, and by extension the area of disability housing, and who are committed to breaking down the barriers that exist. The Community Housing Industry Association is

forming a national network to look at how it and the housing sector generally can better provide housing and tenancies for people with disability. And we are hopeful that we can similarly generate a campaign addressing the lack of tenancy rights of people with disability, again led by those community organisations who specialise in tenancy rights issues.

Conclusion

We would like to discuss these issues in more detail with the Joint Committee, but have made some strong points here about what we believe to be the limitations of the NDIA, based on its lack of performance to date on the key issue of housing provision for people with disability. It is our view that the NDIA should be reduced in its size and mandate, and significant funds redirected to (currently unfunded) organisations such as National Shelter, to lead a strategic and national campaign that will identify and address the specific problem experienced by people with disability who wish to access housing. That said, we do not agree that the mandate for the NDIA to address and attempt to resolve systemic issues be abandoned, as this would condemn it to the same fate as the state-based offices it was set up to replace. The submission from Shelter WA below does provide some suggestions about how the NDIA can be usefully involved in activities that contribute to systemic change, and we are happy to contribute more at the hearing.

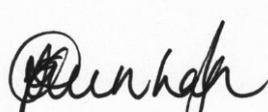
We do favour the much greater resourcing of the community sector, as community development is a necessary corollary to individualised funding, and government can fund but rarely deliver this. We are mindful that community organisations do not hold the decision-making levers necessary to change government policy, legislation and regulation, and that work done to identify solutions will need to have the backing of a government agency, at the very least, to push solutions through to fruition. Our recommendation is that this may be best achieved through the Australian Disability Strategy, in cooperation with the equivalent strategies of other states and territories. Currently the ADS has not prioritised housing as one of the key areas to address, but we propose that it in fact highlights housing as an area where a targeted working group is allocated. Whilst this will not immediately create lines of accountability by areas of government which have responsibility for regulating housing in Australia, it can set targets and benchmarks which need to be adopted by the Australian Government, and the hard work of getting state and territory government to toe the line can be again undertaken by those organisations which have been responsible for change thus far – the community organisations.

We hope that this submission is found to be useful to the Joint Committee and we look forward to having the opportunity to speak to you about these matters in more detail in future.

Yours sincerely,



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**Executive Officer, Rights & Inclusion
Australia**



Emma Greenhalgh
CEO, National Shelter

The potential of the NDIS to prevent homelessness and contribute to tenancy sustainment for people with disability

In Western Australia, over 110,000 people with disability are renting.³ Of those, 70 per cent are renting in the private rental market and approximately 25 per cent are in social housing. A growing number are living in NDIS funded housing arrangements including SDA and SIL.

People with disability are over-represented amongst people who are homeless. Evictions from rentals and boarding houses/lodgings are a frequent pathway to homelessness for people with disability.

For these reasons, Shelter WA and People With disability WA were successful in receiving an ILC Grant to undertake a project to support people to feel more confident as tenants and to support organisations to increase their capacity in working with tenants with disability. The Building Tenancy Skills Project has been underway since mid-2021 and this submission is based on systemic issues identified through interactions with people with lived experience and service providers in the tenancy support, private and social rental housing and NDIS sectors.

The NDIS has potential to support the sustainment of tenancies for people with disability, not only for those who are currently NDIS participants, but also for those who are yet to test their eligibility or who are in the process of doing so. The following are areas where a better resourced and more informed NDIS could achieve outcomes that would improve the range of housing options available to people with disability in various rental situations and increase their level of control over their housing situations.

1. Lack of clarity in state residential tenancy legislation about the status of SDA and SIL living arrangements

In WA the Residential Tenancies Act makes no mention of NDIS funded living arrangements. There is a level of confusion as to whether SIL funded living arrangements are tenancies or boarding house arrangements. This means, in effect, that individuals living in these settings may not have clarity about their rights as tenants and that tenancy support advocates may feel unclear as to how to support someone in these settings.

Efforts to address this will require expertise from NDIS so that state legislators understand the contractual requirements on SDA and SIL providers so that any protections offered are accurately captured in residential tenancy legislation. This is the legislation that guides the work of tenancy advocates. If protections for NDIS funded tenants exist outside of state residential tenancy legislation, it leaves tenants of NDIS funded living arrangements in a more vulnerable situation if their tenancy rights are not protected by state tenancy legislation. It also creates another layer of complexity to advocacy training and delivery.

2. Complexity of NDIS funded modifications to rented properties and the need for cross jurisdictional collaboration

Being able to live in a home that meets accessibility needs has a profound impact on tenants, increasing their capacity to manage many other aspects of life including parenting, employment, and community participation. It significantly reduces the need for informal

³ ABS. 2019. Survey of Disability, Ageing and Carers.

and formal supports.⁴ People with lower level of support needs, with lower income, or renting privately were most likely to live in inaccessible housing.

A significant administrative burden surrounds the process for NDIS participants seeking to use NDIS funding to sustain their tenancy by modifying their house. Participants who rent their home must comply with both state residential tenancy legislation and NDIS approval requirements. In some cases, they must also comply with local government requirements and have building plans approved before modifications can occur.

Additionally, there are inconsistencies in approval processes for modifications between each housing sector, private, community and government housing. Engagement with and across these sectors is vital to creating a less burdensome pathway for participants wanting to access this funding.

3. Low uptake of item number 08_005_0160_2_3 Assistance with accommodation and tenancy obligations

Anecdotally, NDIS staff at various levels have advised that few participants have this line item in their plans. This view is also matched by individual NDIS participants who have engaged with our project because they are struggling with sustaining their tenancy, but have no tenancy support actions in their NDIS plan.

We ask that this anecdotal evidence be explored through an analysis of NDIS data and that actions to ensure a more holistic planning process ensure that the participant is able to raise their housing needs as part of their initial planning discussions and reviews, and that relevant NDIS staff are made aware of the need to consider tenancy sustainment.

4. The difficulties in communicating with and providing support to people living in remote and regional areas and the impact on their housing

Recent visits to the Kimberley, Pilbara, Mid-West, Goldfields and Great Southern areas of WA have highlighted the shortages or complete absence of NDIS service providers in these regions. Secondly, many people do not use or have access to mobiles. Thirdly, many people do not read English and need information in their first language but in 'plain' language. This is an ongoing reality, the solutions to which need to be considered at a local level with local knowledge from both NDIS participants and state funded organisations that provide tenancy sustainment. In the absence of building this networking and knowledge, people with disability will continue to be unable to access their NDIS funding and will continue to be evicted from their homes as they struggle to comply with the requirements of their rental agreements in the absence of tenancy support that they should be receiving through their NDIS funding.

5. The benefits of greater lived experience expertise in the NDIS at various levels and across locations

The Building Tenancy Skills Project has a lived experience team of 13 people with various experiences of disability and renting. There is also an Advisory Group of service providers across the many sectors relevant to the tenancy sustainment of people with disability. Bringing these areas of expertise together has achieved results that would not otherwise have been possible. This project, and many other ILC funded projects, have demonstrated the need and effectiveness, of using a codesign approach. Embedding this lived experience knowledge within the NDIS, in the form of paid employment at various levels

⁴ Wiesel, I. 2020. *Living with disability in inaccessible housing: social, health and economic impacts*. University of Melbourne.

of the organisation and in various locations such that local knowledge is gained, is vital. Additional support needs to be provided to non-government organisations to engage with the NDIS as they bring with them the practical knowledge of delivering services in the local area.

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Building Tenancy Skills Project <https://www.shelterwa.org.au/our-work/advocacy/housing-for-people-living-with-a-disability/building-tenancy-skills/>

