

Office of the Public Advocate South Australia

Key messages: Housing for adults with decision-making impairment, including clients of the Public Advocate

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1. The Public Advocate

The Public Advocate (PA) has over 2000 South Australian adults under guardianship, over two-thirds of whom are participants in the National Disability Insurance Scheme (NDIS). These are adults with a decision-making impairment for whom no other suitable adult can be found to take on the guardianship role. The Public Advocate also advises the government and parliament of systemic issues that impact on South Australian adults with decision-making impairment, as part of statutory responsibilities. This paper proposes 14 key messages to government decision-makers on housing challenges for adults under Public Advocate guardianship.

For the past three years the Public Advocate has chaired an across-government working group – *Housing for Exceptionally Complex Clients*. The group comprises representatives from across state government, the National Disability Insurance Agency (NDIA) and the NDIS Quality and Safeguards Commission. This work culminated in a successful workshop which Minister Cook attended on 1 March 2023. As well as highlighting systemic issues requiring an across-government response, the group identifies pathways to avoid homelessness for Public Advocate clients living in unstable accommodation, particularly those at risk of eviction (see Attachment 1).

2. Housing Options

Housing for clients of the Public Advocate continues to be one of the greatest challenges with scarcity of disability housing options, particularly for people with complex needs. Only 6% of NDIS participants are expected to receive Specialist Disability Accommodation (SDA) funding in their NDIS plan. For clients of the Public Advocate the percentage of NDIS participants with SDA in their plan is 32%. That means that 68% are not eligible for SDA but often still have complex needs, sometimes with challenging behaviours.

Those who do not qualify for SDA must navigate the private rental market, seek public housing or (very rarely) be able to purchase their own home. Housing options through SDA funding, community housing and the SA Housing Authority (SAHA) remain the only realistic accommodation options for Public Advocate clients, who generally rely on the Disability Support Pension for their income. The increasing cost of rent in the private rental market has removed this option from the reach of most Public Advocate clients. Public/social and community housing are the only viable options for people living with disability due to their income levels and the need to benefit from social and community housing rent policies whereby a maximum of 25% of their pension income (plus Commonwealth Rent Assistance) charged as rent. Additionally, they would have a greater security of tenure, including the tenancy being in their name rather than a service provider (as occurs in SIL-provided housing).

Clients with SDA in their NDIS plan must source an SDA registered property that meets their needs and matches the quantum of funding in their plan. There is hesitancy and slow uptake in the community housing sector around the development of SDA properties and, when they are developed, a preference for high physical support housing. This means that PA clients

with complex behaviours struggle to find a robust SDA property which matches their funding and their preferred location. There is also a specific group of clients that need individualised, tailored, and customised housing solutions and this is difficult to achieve. Many providers are still adjusting to a market-based, choice-oriented system.

When the doors to community and public housing begin to close on PA clients, due to their complex needs and circumstances, the PA has frequently been advised to seek “SIL Housing.” There is no such thing as “SIL Housing.” Supported Independent Living (SIL) is about the supports that a NDIS participant needs and can be provided in any housing arrangements whether supplied by SDA, community housing, SAHA, or the private market.

Key Message 1: OPA clients usually rely on pension income and require access to social housing (SAHA, Community Housing or SDA). Renting in the private market is unaffordable.

Key Message 2: The concept of “SIL housing” is misguided – SIL is about support and can occur in any type of housing (SAHA, Community, SDA, private rental, or own home).

Key Message 3: People living with disability on pension income should have access to social housing rent being a maximum of 25% of their income charged in rent (i.e., public/social or community housing), plus Commonwealth Rent Assistance (CRA).

3. Regulation of Tenant Rights

To assist Public Advocate clients to secure housing, service providers (usually offering SIL) sometimes resort to renting a property in their name and sub-letting to the client. Under this arrangement the rights of the tenant are often not well-protected under the *Residential Tenancies Act 1995 (SA)*. This sub-lease arrangement must at times be accepted by the Public Advocate to address the imminent need of a client who might otherwise be homeless. However, these arrangements place clients in a vulnerable position. Often, a housing provider demands use of a particular home support provider (usually the housing provider itself) so that the tenant is not free to choose their home support provider.

This is a common situation especially with non-government organisations that have built group homes or clusters and want to be the service provider for any person with a disability living there. This creates a conflict of interest for the agency concerned and means that the participant does not have choice over their support provider so long as they live in those premises. There have been instances where the service provider is no longer able to support a client resulting in the client becoming homeless as they lose both their support and their housing in these arrangements.

The NDIS Quality and Safeguards Commission, as regulator of the sector, requires that registered service providers of *both* housing *and* home support declare a conflict of interest.

However, the Commission does not prohibit the practice and it is not clear if this is actively regulated.

When a participant is in a group home and the home support agency is the head tenant, then the participant is not adequately protected by the *Residential Tenancies Act 1995*. Similarly, the protection offered to a resident in a Supported Residential Facility (SRF) or under a boarding house agreement does not give security of tenure. The amendments to the *Residential Tenancies Act 1995* should require separate agreements for the tenant with the housing property owner and with the home support provider, with the former agreement subject to the *Residential Tenancies Act 1995*.

Also, there is no protection for these tenants regarding rents charged, unlike the rent policies of SAHA, the community housing sector, and SDA of charging no more than 25% of the pension (plus Commonwealth Rent Assistance).

A further issue that arises in these arrangements is the amount of money charged for daily living expenses by the SIL provider and other housing providers such as Supported Residential Facilities. Many accommodation providers charge a percentage of between 79% and 86% of pension income for such expenses, arrangements which appear to be adopted from former state government policies relating to Supported Residential Facilities, when board and care payments were made. This no longer operates and there is little oversight or regulation of what SIL providers charge participants for daily living costs. This has been raised with the NDIA Policy division who indicate this may be a gap in regulation.

Key Message 4: There is no regulation of the rent to be paid and tenant rights where an OPA client is a “sub-tenant” of a service provider (usually a SIL provider).

Key Message 5: Support for clients (usually SIL) is separate from housing provision. Agencies that provide both have a conflict of interest.

Key Message 6: The regulation of charges for the cost of daily living expenses from clients’ pension should be examined and developed.

4. NDIA Processes

NDIA housing processes are not responsive and timely enough, especially when housing arrangements break down. NDIA funding, assessment and approval processes for home and living requests are complex. Firstly, the participant’s NDIS plan must include a goal related to home and living supports. Secondly, a request for home and living supports (including SDA) is made which will involve further assessments and subsequent approvals by the Home and Living Team.

NDIA approval processes are sequential rather than concurrent, resulting in lengthy wait times that can take months.

Once approval is granted, locating suitable accommodation then commences, undertaken by a support coordinator. Interim housing or alternative placement may be required, sometimes with short-term accommodation assistance. Interim placements can be in a hospital due to lack of alternative accommodation, sometimes for months.

Attachment 2: 'Housing pathway for NDIS participants' is a flow chart, which the Public Advocate presented in the statement to the Disability Royal Commission. This flow chart demonstrates the lengthy indicative timelines for NDIS processes required to secure funding in a participant's plan for SDA funding and subsequent housing.

The NDIA will not approve Short Term Accommodation and, until recently, Medium Term Accommodation (MTA) options unless a long-term accommodation option has also been identified. Amendments to the NDIA Operational Guideline relating to MTA in January 2023 remove the requirement for having a longer-term housing option for participants exiting hospital or correctional facilities. This amendment should be extended to other participants. In a marketised disability sector without an accommodation provider of last resort, people with disabilities including behaviours of concern often face homelessness and/or extended stays in inappropriate accommodation including hospitals when housing arrangements break down.

This is also relevant for clients who are experiencing potential eviction or non-renewal of leases. Where the landlord is SAHA or a community housing provider, it is often acknowledged that a client needs to relocate, however the NDIA processes are such that alternative accommodation or additional support is not approved prior to the eviction or renewal date. In these circumstances, the social housing provider should extend the date until a review by the NDIA is completed (rather than the client becoming homeless). Further, MTA should also be an option and made available whilst alternative accommodation is being sought.

Key Message 7: NDIA accommodation approval processes are slow and cumbersome and need to be streamlined to avoid unnecessary long stays in inappropriate accommodation, including hospitals.

Key Message 8: Clients who may be facing eviction or non-renewal of leases in social housing, should receive extensions whilst NDIA plans are being reviewed and have access to MTA if necessary whilst alternative housing is being sought.

5. Risk of Violence and Exploitation

The Public Advocate has concerns about clients with disability who face heightened risks because they cannot access appropriate housing in a timely way. The PA convenes the bi-monthly *Public Advocate Clients and Domestic Family Violence Working Group*, which brings together stakeholders from across state government, the NDIA, NDIS Quality and Safeguards Commission and the key non-government organisation (Women's Safety Service of SA). The agencies work collaboratively to address issues for a small group of Public Advocate clients who are socially mobile and find themselves in situations that place them at risk of abuse, neglect, violence, and exploitation (including sexual exploitation). These clients are also at heightened risk of housing instability due to the circumstances they find themselves in.

Key Message 9: PA clients are vulnerable to abuse and exploitation, and the risk is exacerbated by unstable housing arrangements.

Key Message 10: PA clients are clients of the state and cannot be left homeless or evicted from social housing or health services into homelessness.

6. Finding appropriate housing

In the former state-run system, there was a centralised approach to filling supported accommodation vacancies across both the government and non-government sectors. This was the Disability SA Accommodation Placement Panel (APP) which focussed on placing people who had an urgent need for supported accommodation including those facing homelessness or imminent risk of homelessness. This mechanism no longer exists because the NDIS operates a market system rather than a central planning system.

The Single Housing Register developed by SAHA is a welcome development, enabling people to register in one place for social housing (SAHA and community housing). There is also a need to develop a companion supported accommodation register which can clearly identify properties with suitable adaptation and amenities to accommodate people with disability.

Under the current system, there is no one source of information about housing availability. The *Housing Hub* and *SDA Finder* were developed as information exchanges for supply and demand for disability accommodation, but many participants and their families need more personalised assistance. Many of the properties on those websites are shared accommodation with a bedroom vacancy, which is often not suitable for Public Advocate clients with complex support needs.

The PA staff are reliant on support coordinators or specialist support coordinators for:

- making a Request for Home and Living Supports assessment,
- finding suitable accommodation that meets the client's needs,
- advocating for SDA funding in the client's plan when required, and
- undertaking a raft of other associated tasks to source housing.

In the absence of case management, the role in the NDIS charged with assisting an individual to access services (both home support and housing) is support coordination. This is problematic. A participant must obtain support coordination in their plan and have an idea in advance of how much support coordination they will need and for how long.

Additionally, the NDIA does not prohibit home support providers and housing providers also offering support coordination. This creates issues around conflict of interest. The participant is clearly not receiving impartial, independent advice from a support coordinator attached to a provider of services that the participant needs to access. Also support coordinators are employees of non-government organisations and they do not usually have an overview of the housing market. Support coordinators, in their role of assisting participants to access services, need to have access to information on vacancies and matching of participant needs through a supported accommodation register.

While it is critical that support coordinators are well-informed about housing options, a dedicated role within the NDIA to assist with sourcing housing and educating the sector would benefit participants facing these challenges.

It would be a significant help if the NDIA established housing liaison officers, modelled on the successful establishment of health liaison officers and justice liaison officers.

There are examples where the NDIA has responded to identified gaps or challenges in navigating the interface between the NDIS and other service systems. Health liaison officers and justice liaison officers were established to support more streamlined and timely coordination of support in these critical areas. The NDIA needs to establish mechanisms to assist NDIS participants to access appropriate housing and home support i.e., housing liaison officers. Ideally though, the NDIS would be structured around a case management framework whereby a participant is allocated a single contact person who assists them in all

aspects of their journey if required from access and planning, through to identifying their support providers.

Key Message 11: Support coordinators have a conflict of interest if they are employees of the same agency that supplies SDA or SIL services – that conflict of interest needs to be managed.

Key Message 12: There is a need for a supported accommodation register and for the NDIA to employ “housing liaison officers”.

7. Social Housing Availability

The current lack of social housing supply is a major contributing factor when it comes to people with complex needs residing in inappropriate accommodation. There is an acute need for more social and affordable housing, particularly for people with disability.

Over the past generation successive state governments have reduced the supply of social housing and the current state government does not have the resources to quickly reverse the situation. The Australian Government has committed to fund new and replacement social housing to assist states and territories to address the current demand. There are currently approximately 32,000 SAHA properties, down from around 63,000 a generation ago. The community housing sector is stepping up e.g., Anglicare is spending \$100m over 10 years on affordable housing, but more effort is needed. The state government’s \$177.5m public housing improvement program over four years will see 400 new houses built. But current supply commitments fall well short of the level of demand.

Compared to other OECD countries, Australia has only 4% of dwellings as social housing (with capped rents linked to pension levels) compared to 37% in the Netherlands.

Key Message 13: The supply of social housing is well below the level of demand and OPA clients are particularly disadvantaged.

8. Policy leadership on housing

There is a need to:

- address social and supported disability housing supply
- document demand for social housing and disability housing
- provide information on supported accommodation, and
- design the process for the placement of people needing supported accommodation.

The only way that NDIA funding will be available to assist a participant with housing is (a) if the participant is able to include SDA in their NDIS plan (which requires that the participant has high support needs), and (b) the participant can locate housing which meets SDA standards.

The NDIA is nervous of any further involvement in housing, which it sees as a state responsibility. Currently, the uptake of SDA is much lower than was anticipated. It was expected that, nationally, the spend on SDA would be \$700M p.a. Currently the spend is only \$231M p.a. and the number of participants with SDA in their plans is just over half that which was anticipated (only 60% of the anticipated 6% of adult NDIS participants). Clearly the SDA program is heavily under-utilised, to the detriment of many NDIS participants.

Key Message 14: A clear state government lead is needed for developing and implementing systemic policy on social, affordable, and supported disability housing in South Australia.

9. Conclusion

While the state is loath to get embroiled in plugging gaps left by the NDIS, housing is one of the areas where the state has a key role, i.e. provision of appropriate housing for NDIS participants. It is in the state's interests to (a) ensure that everything is done for the participant to ensure they have all they need in their NDIS plan, (b) that a participant can access affordable housing (thus avoiding pressures on other state systems e.g. health, homelessness), and (c) that a participant does not have their tenancy rights abrogated and fall into the hands of service providers with conflicts of interests.

10. Glossary

APP	Accommodation Placement Panel
MTA	Medium Term Accommodation
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
OECD	Organisation for Economic Cooperation and Development
OPA	Office of the Public Advocate
PA	Public Advocate
SAHA	South Australian Housing Authority
SDA	Specialist Disability Accommodation
SIL	Supported Independent Living
SRF	Supported Residential Facility

11. Key Messages

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Attachment 1: Pathways to avoid homelessness

OPA seeks to strengthen collaborative processes between State Government agencies for clients under the guardianship of the Public Advocate who are, or are at risk of, homelessness. Early intervention, sustainable housing outcomes and continuity of care are essential for this highly vulnerable client group.

Clients under the guardianship of the Public Advocate lack decision-making capacity and live with complex health needs, mental health conditions, disability, trauma, vulnerability and/or aged-related conditions. Often, they have poor family or social connections, or are experiencing conflict with family members. It is also common for this cohort to have multiple government agencies and support providers involved in their life at different stages.

The **Housing and Homelessness Operational Working Group** (HHOWG) was established in May 2023 as an outcome of the Housing Roundtable opened by the Minister for Human Services and hosted by the Public Advocate. The HHOWG brings together connected government agencies to overcome barriers to housing for State clients who are chronically homeless or at immediate risk of homelessness. The HHOWG focuses on 1-3 State clients per monthly meeting and is the operational counterpart to the systemically focused Housing for Exceptionally Complex Clients Working Group.

Through the working groups, OPA has identified three key needs:

1. **Early advice** (*of tenancy issues*)
When a State client's tenancy is at risk, early and collaborative action is critical in allowing all options to be explored. With early advice of tenancy concerns, the responsible parties will have greater opportunity to seek additional or alternative services or identify more supportive living arrangements.
2. **Pathway window** (*time to work with others and find a solution*)
People under guardianship of the Public Advocate are vulnerable and should be assisted to avoid homelessness. Collaboration with other agencies is needed to find pathways into accommodation for these clients, with the supports needed to maintain tenancy.
3. **Navigation** (*clarity and ownership of responsibilities*)
A clearer understanding of process and responsibilities, dependant on client circumstances, will promote early and pro-active action to support clients. The HHOWG operates as a safeguard, bringing together multiple agencies to play time-critical roles for clients who are immediately at risk of homelessness. The Homelessness Alliances will be asked to join the working group.