OFFICE OF THE PUBLIC ADVOCATE

Office of the Public Advocate
South Australia

Submission

Social Development Committee Inquiry:
National Disability Insurance Scheme impact on South Australian participants with complex needs who are, or are at risk of, living in inappropriate accommodation for long periods

Anne Gale
Public Advocate

David Caudrey
Disability Advocate

11 August 2022

Author and Contact Person for this report:

Elizabeth Lyster
Office of the Public Advocate
GPO Box 464
Adelaide SA 5001
Phone: 08 73227613
Fax: 08 8429 6120
Email: elizabeth.lyster@sa.gov.au

CONTENTS

Social Development Committee Inquiry into NDIS and Inappropriate Accommodation

1. Introduction

The Public Advocate welcomes the opportunity to provide a submission to the Social Development Committee Inquiry into the National Disability Insurance Scheme impact on South Australian participants with complex needs who are, or are at risk of, living in inappropriate accommodation for long periods.

This is an important issue which has a significant impact on people living with disability.

Having access to appropriate housing is a human rights issue. As a signatory to the United National Convention on the Rights of Persons with Disabilities (UNCRPD), Australia has an obligation to ensure people with disability have choice in where and with whom they live on an equal basis with others and that they are not obliged to live in a particular arrangement based on their disability.

A house is more than mere shelter. Access to appropriate and affordable long-term housing provides the foundation for all other aspects of life. Having a place to call home gives a sense of belonging and supports social connection and economic participation. There is a proven link between good quality housing and improved physical, mental and emotional health.[1]

Conversely, the negative impacts resulting from a lack of access to secure housing can be significant, including physical and emotional stress, social isolation, and poverty. The Office of the Public Advocate (OPA) is particularly concerned about its clients with disability who face heightened risks of violence, abuse, neglect, and exploitation because they cannot access appropriate accommodation in a timely way.

OPA works with some of the most vulnerable adults in South Australia, many of whom have multiple and complex support needs that do not fit easily within existing service systems. As at 30 June 2022, of the 1675 people under guardianship of the Public Advocate, 1070 (64%) had a NDIS plan.

Maintaining appropriate housing for some of our most complex clients is often not a straightforward task. It requires multi-agency efforts and cooperation. As an example, OPA has established a working group to promote agency collaboration to explore strategies for supporting clients of the OPA who are homeless or are at imminent risk of homelessness. This group brings together key representatives from various agencies including the National Disability Insurance Agency (NDIA), Wellbeing SA, South Australian Housing Authority (SAHA) and the Department of Human Services (DHS).

Despite initiatives like this, it is common to encounter issues at the interface where different systems meet. Nowhere is it more challenging than at the health and NDIS interface. People with disability are often delayed in their discharge from hospital for

[1] Health-Housing-Homelessness-PAPER-1.pdf (dunstan.org.au)

a range of reasons including that a change in support needs necessitates a review of the person's NDIS plan, which can often take a significant amount of time. However, delay in hospital discharge is compounded by the current lack of Specialist Disability Accommodation (SDA), and affordable and appropriate housing.

Delayed discharge from hospital for people with complex needs is not a new issue. It pre-dates the NDIS. However, the coordination now required between different levels of government and the lengthy processes associated with the NDIS has made it more challenging to achieve timely discharge of people with complex needs into appropriate accommodation and support arrangements.

While delayed discharge from hospital is an obvious manifestation of the lack of appropriate accommodation and support, there are also numerous other examples where people with disability face living in unsuitable accommodation and support arrangements which impact on their wellbeing. These include:

- younger people with disabilities in residential aged care,
- boarding houses, hotels, and other short-term crisis accommodation,
- inaccessible housing,
- inappropriate matching in shared arrangements, and
- inadequate in-home support leading to breakdowns in tenancy.

2. Terms of reference

The Social Development Committee is inquiring into the impact of the National Disability Insurance Scheme (NDIS) on South Australians living with disability who have complex needs and are, or are at risk of, residing for long periods in inappropriate accommodation (such as hospital or residential aged care), with reference to:

a) ability to access and navigate the requirements of the NDIS;

b) the timeliness of approval for appropriate specialist disability supports, including home and living decisions through the NDIS; and processes that may lead to delays;

c) the adequacy of funding in NDIS plans to fund the supports required;

d) the ability of the NDIS workforce and market (including the specialist disability accommodation policy settings and market) in South Australia to deliver necessary accommodation and funded supports;

e) the impact on the wellbeing of participants of these inappropriate accommodation arrangements;

f) any negative impacts on state government services; and

g) any other relevant matters.

3.The Public Advocate

The South Australian Public Advocate promotes the rights and interests of people with impaired decision-making capacity. The Public Advocate is supported by the Office of the Public Advocate (OPA) to provide guardianship, investigation, advocacy, dispute resolution, and information to support people who need assistance with decision making.

The Public Advocate is a statutory officer who advocates for and on behalf of people with impaired decision-making capacity and their families, carers, and supporters. In particular, the Public Advocate administers South Australian laws that relate to guardianship for adults who are unable to make decisions for themselves, who are at risk of abuse or neglect and may require assistance with decision making.

The OPA's Dispute Resolution Service can provide preliminary assistance and mediation if a person has made an Advance Care Directive (ACD), if there is a dispute about consent to medical treatment, and if there is a disagreement about decisions or decision-makers.

The Public Advocate can be appointed by the South Australian Civil and Administrative Tribunal (SACAT) as a guardian of last resort if a person has impaired decision-making capacity, there is a lifestyle, accommodation, and/or health decision to be made and there is no other appropriate person to be appointed.

What this means in practice is that the Public Advocate will only be appointed if there is no one else in a person's life able or willing to make necessary decisions, or if there is family conflict meaning that agreement on decisions is difficult or not possible. Consequently, the Public Advocate often must make decisions for people who have complex needs or experience complex situations and who may be without support networks.

4. Disability Advocate

The Disability Advocate is a position located within the Office of the Public Advocate and was established in November 2018. The purpose of the role of the Disability Advocate is to "ensure that South Australians with a disability and their families are getting a good deal from the National Disability Insurance Scheme (NDIS)."

Throughout 2019 the Disability Advocate attended over 150 meetings with people with disability, family, advocates, and carers to speak with people about their experiences with the NDIS, what was working well and areas for improvement. Regular reports were presented to Ministers and senior State and NDIA officers.

The role has since been extended with funding until 2023. COVID-19 and other work (such as the Safeguarding Taskforce) made it difficult to undertake face to face meetings in 2020. However, the Disability Advocate managed to conduct over 270 virtual meetings with external stakeholders during the year. Meetings continued in 2021 and 2022, with regular reports prepared for the NDIA and State ministers. All reports are available on the OPA website at opa.sa.gov.au.

5. Responses to the Review

5.1 NDIS Requirements and Timeframes

This section discusses issues relating to Terms of Reference:

a) ability to access and navigate the requirements of the NDIS; and

b) the timeliness of approval for appropriate specialist disability supports, including home and living decisions through the NDIS; and processes that may lead to delays.

Lack of crisis response

The NDIS is a complex system to navigate, even for the most seasoned operator. There is currently a mismatch between the time it takes to put support in place through the various NDIS processes and the rapid response needed in some circumstances. Of particular concern to the OPA is the lack of crisis response or pathway to safeguard a NDIS participant if their support services or housing fail.

Locating appropriate housing and in-home support involves a range of NDIA processes. Attachment 1 is a flow-chart prepared by OPA for internal purposes to illustrate the various requirements and timeframes involved in securing this support through the NDIA. This document was shared with the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* during their hearing in Adelaide in June 2021.

In the absence of case management driving holistic support, the administrative burden associated with NDIS requirements has fallen on to the individual. This, coupled with the ever-changing terminology and pathways, has created a situation where people are often left confused and unsure about how and where to get support. The impact of this is exacerbated when someone is in strife and requires an urgent response to their individual circumstances.

For participants with high and complex needs, finding the right accommodation in the right place can be a lengthy process. In cases where a change in circumstance takes place in relation to housing, the process can take more than 28 days. The slow and bureaucratic nature of the NDIA impedes timely crisis responses so, where there is an urgent housing need, it puts people at risk of homelessness or being placed in inappropriate housing settings (such as a hospital or hotel).

Recommendation 1: *That the NDIA review the Participant Service Guarantee in relation to certain scenarios, including admission to hospital, and design a process with a separate set of faster turn-around times.*

The case study below highlights that the State Government is often filling the gap in response to a crisis situation in order to avoid unnecessary hospital admissions, which is more costly than the alternative.

Case Study – Client A

Client A is a person with multiple diagnoses, including Intellectual Disability and Autism Spectrum Disorder and exhibits behaviours of concern. Client A was previously under the Guardianship of the Chief Executive of the Department for Child Protection and has a history of contact with the criminal justice system.

Client A's NDIS plan included Supported Independent Living (SIL) funding for 1:1 support. Despite this, Client A's provider was delivering 2:1 support which led to them drawing down quickly on the plan. Once funding ran out, the provider terminated the support arrangements. A complaint was lodged with the NDIS Quality and Safeguards Commission regarding this practice.

Client A's Specialist Support Coordinator negotiated an alternative provider who agreed to support Client A despite the lack of funding. A Change of Circumstance (COC) was lodged with the NDIA to seek more SIL funding, which required escalation to more senior officers, given the urgency. In the meantime, the second provider advised they were no longer able to support Client A given the lack of funding. Client A was at risk of homelessness or being admitted to hospital if support arrangements were terminated.

OPA made a referral to the Exceptional Needs Unit (ENU) within the Department of Human Services. ENU agreed to fund Client A's support so Client A could maintain the tenancy whilst the provider awaited an outcome from the NDIA regarding additional SIL funding in the plan.

The Exceptionally Complex Support Needs program was established by the NDIA in recognition of the needs of NDIS participants who challenge many service systems. The NDIA also established an after-hours response to assist participants with complex needs who are experiencing crisis. Marathon Health is the program provider in South Australia.

This program is only available to approved referrers such as South Australia Police, SA Ambulance Service and SA Health (hospitals). Marathon Health is an after-hours service of Specialist Support Coordinators who work with the referring agency to source available support services and put those short-term solutions in place outside standard business hours.

OPA was successful in negotiating a trial as an approved referrer to this service. Since this arrangement commenced in late 2020, OPA has interacted with Marathon Health on three occasions, two of which were referrals. One of those referrals was accepted and, in this case, Marathon Health was not able to provide an alternative outcome and the client remained as a social admission in hospital.

Recommendation 2: *That a crisis response service for people with disability to case manage circumstances arising suddenly for individuals with complex needs, who would otherwise be thrust into inappropriate accommodation, e.g. hospital emergency departments.*

System complexity

In response to system complexity, the NDIA established the Health Liaison Officer (HLO) role to support better navigation of NDIS requirements at the health interface. This, as well as other state-based system connectors like the DHS Coordination and

Assessment Team (CAT), are necessary initiatives in the circumstances but mask the bigger issue which is that the NDIS needs to address system complexity and timeliness. It has led to a proliferation of different actors none of whom have overall responsibility for ensuring an integrated and streamlined experience for the participant.

In terms of help with finding housing and home support, this can come from a support coordinator but only if this is funded in a person's NDIS plan. However, support coordinators are not always well-versed in locating housing. OPA has found that the knowledge base of the various support coordinators varies significantly, and this can lead to different housing outcomes for participants depending on the skills of the particular support coordinator. This can also impact on the budget allocated for support coordination, especially if locating housing takes considerable time. OPA is working with the NDIS to explore opportunities to build the capacity of support coordinators through education sessions with the South Australian Housing Authority (SAHA) and other relevant agencies.

Under former state arrangements, the Disability SA Accommodation Placement Panel (APP) ensured a centralised approach to filling supported accommodation vacancies across both State government and non-government sectors. The panel had a close working relationship with various stakeholders, as well as possessing the skills and knowledge required to appropriately identify and match people to the right accommodation option. In the absence of this panel, and given the inconsistency in standards across support coordinators, it is often left to individuals and their families or carers to navigate the housing system and negotiate accommodation arrangements. Without the skills and knowledge of a unit like the APP, individuals can sometimes find themselves forced into living arrangements that are unsuitable and unsustainable.

> **Case Study – Client B**
>
> Client B is a female with Intellectual Disability and mental health conditions.
>
> Client B had been living with her grandparents but following a mental health episode, arrangements were made for her to live in a supported accommodation unit. Given her support needs and difficulties living in a group environment, it was recommended that Client B receive 1:1 SIL to live alone.
>
> Initially, the NDIA disputed this and discussed the option of sharing with a male. This was considered inappropriate given (a) the client having a mental health condition, (b) it being an incompatible match given the differing functional needs of Client B and the male, and (c) the house being too small to support a shared arrangement.
>
> OPA continued to advocate for Client B and following additional evidence, the NDIA agreed to fund 1:1 support so she could live in her supported accommodation unit.

The Summer Foundation Housing Brokerage Service is a good example of the benefits in taking a centralised and tailored approach to identifying housing options that align with a person's needs and preferences.[2] Established as a pilot during the COVID-19 pandemic, the project involved a service team working closely with

[2] Housing Brokerage Service - Summer Foundation

individuals and other professionals to support timely discharge from hospital into appropriate housing.

Recommendation 3: *That a statewide service is developed to register supported accommodation vacancies and broker placements and matching of clients, working with housing providers, support agencies and people with disability to facilitate more effective access to accommodation options.*

Recommendation 4: *That the State government lobby the Commonwealth Government to establish Housing Liaison Officers (modelled on the successful Health Liaison Officers) to assist clients in inappropriate accommodation (or at risk of inappropriate housing) to access suitable housing placements.*

Adding to challenges associated with navigating system complexity, there is currently no one source of information about specialist housing providers. The *Housing Hub* was developed as an information exchange for supply and demand, but it appears not to be well known to service providers. Accommodation is listed on the platform, but it is not known if all housing providers are listing their properties, nor is it clear whether support coordinators are making use of this information. Other sources of information that an individual may utilise to seek out accommodation options include the *SDA Finder* and *Go Nest*. This creates a confusing patchwork of information sources that adds to the administrative burden already placed on the individual or is dependent on the knowledge of a service coordinator.

Specialist Disability Accommodation (SDA) is a component of the NDIS that provides funding for a range of housing designed for eligible participants with extreme functional impairment or very high support needs. The idea is that SDA will help to stimulate the market to produce high quality, contemporary, accessible, well-designed housing for eligible participants. However, uncertainty in relation to demand, rising construction costs and the fact that SDA funding has not increased in the five years of its existence has seen the housing sector hold back from constructing SDA properties.

It is also estimated that only 6% of NDIS participants will be eligible for SDA funding to support their access to appropriate housing. Those who do not qualify for SDA must navigate the private rental market, seek public housing or (rarely) be able to purchase their own home. The SAHA *Single Housing Register* is a welcome development in South Australia, enabling people to register in one place for social housing (SAHA and community housing). There is also a need to develop a supported accommodation register which can clearly identify properties with suitable adaptation and amenities to accommodate people with disability (as per recommendation 3).

The issue of housing supply, which is discussed later in this submission, is a prime factor impacting on the ability of people to locate and secure appropriate accommodation.

Commonwealth/State Responsibilities

Delays in hospital discharge and other situations that put people with disability at risk of homelessness are exacerbated when there is dispute around what will and will not be funded in a person's NDIS plan. This is because the process to review and appeal decisions by the NDIA takes considerable time.

The *Applied Principles and Tables of Support* (APTOS) is intended to clarify the roles and responsibilities between the NDIA and key State interfaces, including health and housing. This has been in place since 2014 and would benefit from a review. A more detailed agreement is needed between the Commonwealth and the States/Territories to clarify roles and responsibilities to support more effective interface arrangements, thus avoiding lengthy and stressful disputes.

Recommendation 5: *That the Commonwealth and State/Territory governments negotiate a detailed agreement that more clearly specifies the respective roles for assisting people with disability, especially in the realms of health, housing, therapy and personal support.*

5.2 Adequacy of plans

This section discusses issues relating to Terms of Reference:

c) the adequacy of funding in NDIS plans to fund the supports required.

Adequately funded plans that include sufficient in-home support arrangements linked to need is critical for ensuring sustainable tenancies and avoiding poor outcomes like homelessness or unnecessary hospital admissions.

OPA regularly encounters situations where a person's plan has a budget that is inadequate in relation to their level of need. This invariably involves a breakdown in arrangements. At best, this leads to unnecessary disruption for people with high and complex needs who may then cycle through numerous tenancies. At worse, it can lead to devastating outcomes including violence and assaults.

These scenarios are exacerbated by the unresponsive review and appeals processes that must be followed when there is dispute over a person's NDIS plan.

Case Study – Client C

Client C is a person with psychosocial disability. Client C has complex mental health issues, including risks to self and others, and complex health needs.

The Public Advocate is appointed full guardian.

Client C was allocated a house through Renewal SA's *100 Homes Project.* Client C requires 1:1 support 24/7 to live in the property alone, given Client C's complex needs and challenges associated with living with others.

The Supported Independent Living (SIL) funding allocated through Client C's NDIS plan did not reflect the level of support needs. This meant that Client C was placed in a shared living arrangement with three others, rather than the house allocated through the *100 Homes*

Project. Whilst awaiting an outcome from the NDIA regarding additional evidence to support an increase in the SIL budget, Client C was assaulted by one of the other residents in the shared living arrangement.

Often where a person requires a high-level of support, but this is not reflected in their NDIS plan, OPA has found that service providers are still maintaining arrangements either at their own expense or to the detriment of the other services in a person's plan (i.e. running down a participant's budget). These practices are not sustainable in the long-term. This also highlights the mismatch between the level of support the NDIA is willing to provide and the reality of what is required to safely support clients with high and complex needs.

Case Study – Client D

Client D is a person with an acquired brain injury. Client D uses a wheelchair for mobility.

Client D has highly complex needs and can become aggressive and physically abusive towards staff. Initially, Client D received funding through the NDIS for 2:1 support. Following a plan review, this was reduced to 1:1.

Given Client D's behaviours of concern, staff felt unsafe working alone with Client D, particularly following an incident involving the assault of a support worker. Client D is regularly admitted to hospital for wound care given challenges associated with delivering this support at home. Client D is at risk of hospitalisation if support arrangements breakdown.

Given Client D's challenging behaviours, arrangements have been made for the State Government through DHS Disability Services to fund a second support worker until further evidence is considered by the NDIA to increase the support budget.

Case Study – Client E

Client E is a person with cerebral palsy, autism spectrum disorder and mental health issues. Client E exhibits a range of behaviours of concern including verbal and physical aggression and property damage. Client E requires a high level of support.

Client E's NDIS plan included 1:1 24/7 support. Despite this, the provider was supporting Client E in a 2:1 arrangement. Following unsuccessful attempts to increase the level of support in Client E's plan, the provider advised they were unable to continue providing support, which placed Client E at risk of being admitted to hospital.

The provider eventually agreed to support Client E at the updated level funded in Client E's plan (1:1 11 hours per day with no overnight support). However, there were concerns about Client E's behaviour and risks to others when left without adequate supports (including an instance of assaulting Client E's mother). Client E caused significant damage to their property whilst without support, rendering it uninhabitable. Client E was placed in a hotel as a result, funded by Client E's property insurance company.

Inadequate support funding has a particular impact on OPA clients who are transitioning out of child protection guardianship into adulthood. Leaving care is a critical period that requires appropriate planning, support and long-term housing to avoid poor outcomes, including homelessness and contact with the criminal justice system.

Many OPA clients who were formerly under child protection guardianship have come from high support environments, including 1:1 support. An abrupt end to these

arrangements without proper care and planning has major impacts on the wellbeing of these vulnerable clients. OPA is aware of numerous examples where the NDIA was reluctant to maintain the level of support for these clients as they move into adulthood.

Case Study – Client F

Client F is a person with an Intellectual Disability and Foetal Alcohol Spectrum Disorder.

Client F exhibits behaviours of concern, including inappropriate sexual conduct. Client F was the victim of sexual abuse as a child.

The Public Advocate was appointed full guardian upon Client F turning 18.

Client F was previously under the Guardianship of the Chief Executive of the Department for Child Protection and lived in foster care.

There was limited planning undertaken to support Client F's transition out of child protection guardianship and delays in obtaining support through the NDIS. Client F was living in a regional area and at risk of homelessness without appropriate support in place. Client F was also in contact with the criminal justice system and had charges pending in court.

Initially, Client F was funded for 1:3 support despite requesting 1:1 given the behaviours of concern. There were also limited accommodation options available in Client F's area at the 1:3 level.

OPA continued to advocate for increased support for Client F. Additional assessments and evidence was gathered to support a review of Client F's plan. After several months of advocating, Client F is now funded for 1:1 24/7 support.

5.3 NDIS workforce and market

This section discusses issues relating to Terms of Reference:

d) the ability of the NDIS workforce and market (including the specialist disability accommodation policy settings and market) in South Australia to deliver necessary accommodation and funded supports.

Housing availability

Complex and lengthy NDIS processes aside, the current lack of housing supply is a major contributing factor when it comes to people with complex needs residing in inappropriate accommodation. There is clearly an acute need for more affordable housing across the board but in particular, for people with disability. The State government has reduced its supply of social housing and does not have the resources to reverse the situation. 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. The State government's $177.5m public housing improvement program over four years will see 400 new houses built. But current commitments fall well short of the level of demand.

Recommendation 6: *That the State and Commonwealth governments commit to fund new and replacement social housing to address the current demand.*

Inaccessible stock

Even where housing is available, properties can be inappropriate or inaccessible, often requiring costly modifications. This can lead to poor outcomes including delays in discharge from hospital or safety concerns where people remain living in an inappropriately designed property.

According to a study conducted by the *Australian Human Rights Commission* in 2021, most housing in Australia currently does not meet the needs of people with disability due to poor access and unsuitable layouts, particularly inadequately designed bathrooms.[3] The study explored how systemic approaches to housing design, construction, modification, and adaption can better facilitate accessibility as compared to one-off modifications for people with disability.

Case Study – Client G

Client G is a person with complex physical disability and mental health needs.

Client G had been residing in a SAHA property. Due to Client G's increasing and complex physical and health needs, the property was deemed inaccessible. Client G was unable to access the kitchen and driveway.

Despite being on the SAHA Category 1 Urgent Transfer List, OPA was advised there were no other properties available to accommodate Client G. In the interim, Client G had been living with Client G's mother which is unsuitable for Client G's complex needs. During this time, Client G was twice admitted to hospital due to the accommodation circumstances and complex care needs.

Client G has recently moved into shared supported accommodation. However, given past experiences of living with others, it remains unclear whether this arrangement will be suitable. Further assessments are being undertaken to ensure Client G receives the right level of support.

OPA will continue to monitor Client G's situation.

Universal design is an important concept in driving an inclusive built environment that benefits not only people with disability but also older people and people with other accessibility requirements. Universal design also benefits visitors who may have access requirements. The 2022 edition of the *National Construction Code* (NCC) will include updated standards for all new housing. It is due to come into effect in September 2022. This will closely align with the *Liveable Housing Design Silver Level*. Whilst gold standard is preferrable, Silver Level still requires several key structural and spatial elements to ensure future flexibility and adaptability of the home. Incorporating these features will avoid more costly home modifications in the future. It includes measures such as a step-free path from the street to the door, wider doorways, reinforced walls in bathrooms to support future installation of rails and a toilet at entry level. States and Territories are responsible for ensuring

[3] Adaptable housing for people with disability in Australia: a scoping study (2021) | Australian Human Rights Commission

implementation of the NCC. While Northern Territory, Queensland, ACT, Victoria and Tasmania have all chosen the follow the silver standards in the NCC, the South Australian Government has not yet adopted the new standard.

Access to inclusive, accessible and well-designed homes is a key outcome of Australia's Disability Strategy. Failure to adopt the updated NCC will impede South Australia's ability to meet the obligations under this Strategy. It also means South Australia risks falling behind other jurisdictions when it comes to accessible housing impacting on people with disability in this state.

Recommendation 7: *That the State government adopt the new minimum silver standard in the revised National Construction Code.*

Provider of last resort

In the NDIS market environment, "choice" is not just available to participants. Service providers can also choose to whom they will provide support and when that support may be terminated. This means that people with more complex needs (particularly those who exhibit behaviours that challenge services providers) can be easily excluded from non-government services.

Many OPA clients require highly specialised support and have significant funding packages through the NDIS. Some service providers may agree to take on clients with complex needs and later withdraw services when they are unable to adequately provide the level of support needed. For some OPA clients, this failure of supports results in a disruptive and destabilising cycling through a number of service providers and accommodation. When services are withdrawn for clients with complex needs, it is often difficult to source an alternative provider at short notice. This demonstrates that there is a need for retaining a provider of last resort who will not exclude anyone in need or walk away when situations become too complex. This is critical to avoid repeat hospital admissions and the use of hotels where the market has proven ineffective for this client group.

There are a wide variety of service providers active in the market. However, for OPA clients with very high and complex support needs, many service providers do not succeed. OPA looks to providers with highly skilled staff who will not discontinue services, of which there are few in South Australia.

Case Study – Client H

> Client H is a person with Intellectual Disability, Autism Spectrum Disorder, and a range of complex mental health issues.
>
> Client H requires a high level of specialised support and can be physically and verbally aggressive towards staff. Client H had been residing in supported accommodation for several years. During this time, Client H was regularly admitted to hospital because of incidents involving self-injurious behaviour. Following an admission to hospital in 2019, the service provider advised it could no longer support Client H. Client H remained in hospital as a result while alternative arrangements were sourced.

During this period in hospital, Client H required a high level of staff support (3:1 24/7) in addition to a security presence. There were multiple incidents including numerous 'Code Blacks' due to Client H's behaviour which put Client H and others at risk. Responses often involved physical, chemical, and mechanical restraint.

Numerous housing and support options were explored by both Client H's specialist support coordinator and OPA staff. Over a period of almost 2 years no suitable vacancy was identified for Client H. Eventually, the OPA was able to secure a property a property for Client H through the Department of Human Services.

Recommendation 8: *That an accommodation and in-home support provider of last resort and a timely process be developed and implemented in South Australia.*

Tenancy security

A concerning trend in the NDIS market being observed by OPA more and more is the combining of support arrangements and tenancy agreements. In these arrangements the lease is in the name of the support provider and the client becomes a 'sub-tenant' (or similar) with fewer rights than if the property was in their name.

Linking in-home support with tenancy arrangements prevents a person from choosing another support provider and creates clear issues around conflict of interest. It also unnecessarily places a person's tenancy at risk if the support arrangement breaks down. If a provider can no longer support the client and withdraws service, they will generally also terminate the tenancy arrangement. In OPA's experience, many agencies will not allow another provider to support the client in the home as the lease is in the agency's name. The client is left to either source alternative accommodation or face homelessness. Also, in the case of a dispute between the landlord and the tenant in relation to property damage, it is far less likely that an in-home support provider will assist the tenant in pursuing maintenance or seeking appropriate advice from a tenancy advocate if they are from the same organisation as the landlord.

This also raises safeguarding concerns when in-home support and housing is provided by the same organisation. A further conflict of interest arises when the agency also provides support coordination. Having a range of different service providers involved in a person's life provides additional eyes to monitor the person's safety and wellbeing. A single service provider reduces the external oversight around those services and creates barriers for a person to raise concerns about the support they are receiving.

Linking support services and housing also heightens the risk of financial exploitation. SAHA and Community Housing Providers in South Australia charge rent at 25% of the tenant's disability support pension. OPA has examples of providers combining in-home support, accommodation and other living expenses, with rent higher than social housing rates and comparable market rates. OPA regularly raises concerns relating to combined tenancy and support agreements with the NDIS Quality and

Safeguards Commission. Recently, OPA has also escalated a particular example to the Commissioner for Consumer Affairs.

Recommendation 9: *That the State government lobby the NDIA and the NDIS Quality and Safeguards Commission to (a) require that support coordinators are independent of any services that they assist a participant to access, and (b) ensure tenancy and support agreements are kept separate and conflicts of interest are addressed.*

Recommendation 10: *That the State government review the Residential Tenancies Act 1995, so that (a) tenancy protection is afforded to residents in sub-let arrangements with a service provider, in an SRF or in a boarding house, and (b) rents are set at an affordable level (maximum 25% of pension plus CRA).*

Psychosocial disability

Psychosocial disability refers to a disability that may arise from a mental health condition. Not everyone who has a mental health condition will have a psychosocial disability, but for people who do, it can be severe, long lasting and impact on their recovery. Previously, this type of diagnosis was not captured by state-based disability systems so its inclusion in the NDIS is welcomed. The development of this stream of the NDIS has been challenging and it continues to require further refinement.

One of the main challenges in the psychosocial realm is the often-fluctuating nature of the disability. For many NDIS participants, there will be days when they are unwell and require a high level of support, while on other days they are more independent and require limited support. A flexible approach to support and funding is required to ensure that participants can exercise their independence but have the support they need when it is required.

Underutilisation of the NDIS for people with a psychosocial disability is another significant issue.[4] This is both in terms of eligible people with psychosocial disability actually being on the scheme and the underspending of plan budgets for those who do become participants. This means that people with psychosocial disability are missing out on much-needed support to enable greater independence and social and economic participation. The impact of this is people with psychosocial disability presenting to, and becoming stuck in, hospital because the disability system is unable to respond quickly to their changing needs.

There are multiple reasons for the low uptake of the NDIS by people with psychosocial disability. Diagnosis and eligibility have been challenging, particularly in relation to the competing paradigms that underpin disability (i.e. permanency of impairment and ongoing needs) and mental health (focus on recovery). Engaging

[4] 'Nearly gave up on it to be honest': Utilisation of individualised budgets by people with psychosocial disability within Australia's National Disability Insurance Scheme - Devine - Social Policy & Administration - Wiley Online Library

people with psychosocial disability in the NDIS can also be difficult and assertive/proactive outreach is particularly needed for this cohort.

Often people with psychosocial disability end up in hospital with no prior engagement with the NDIS. This results in lengthy hospital stays while access applications are made by hospital staff, followed by required assessments to ascertain support needs and locating accommodation options. This could be improved through better early identification of eligibility for the NDIS and assistance to access the scheme while in the community. Stronger working relationships at the interface between mental health and the NDIA, as well as clear roles and responsibilities between the Commonwealth and State governments, would also improve responsiveness when there is a change in circumstance for people with psychosocial disability.

Recommendation 11: *That the State government support access to the NDIS for people with psychosocial disability by building the capacity of staff in community mental health to understand and navigate NDIS processes.*

NDIS workforce

Workforce shortages are impacting on the ability of the market to meet the demand for NDIS-funded services. The effect of this can mean that some participants are not having their most basic needs met, such as assistance to get out of bed each day or access to essential assistive technology.[5]

It can also mean that people have prolonged stays in hospital because there are not enough allied health staff to undertake the required assessments to ensure participants receive the support they need upon discharge. An area of particular need is a shortage of skilled Positive Behaviour Support (PBS) clinicians who work with participants to develop intervention plans and strategies that help reduce or manage behaviours of concern.

Currently it can take between four and twelve weeks to develop a PBS Plan, which can mean people are waiting in hospital for assessments to be completed and subsequent support arrangements to be put in place. The additional requirement of people who work on SA Health worksites to be credentialed is another factor that can contributes to delays. Plan quality is another area of concern that impacts on the effectiveness of strategies to help people to participate in social and economic activities and reduce the likelihood of poor outcomes, like breakdowns in tenancies or admission to hospital.

Recommendation 12: *That the State government work with the NDIA and NDIS Quality and Safeguards Commission to build sector capacity in positive behaviour*

[5] Workforce shortages are putting NDIS participants at risk. Here are 3 ways to attract more disability sector workers (theconversation.com)
Clients waiting years for crucial equipment as providers battle 'bureaucratic' NDIS system - ABC News

support, including protocols for access to health facilities and options to partner with the university sector.

This could also include opportunities to increase placements for new graduates and mentoring with experienced PBS clinicians to increase confidence, support greater retention in the sector and drive quality.

Skill-level within the sector is another factor which requires increased efforts to drive better outcomes. Early detection and identification of health issues by support workers will help prevent hospital admission. They often lack the skills to identify the early stages of a health issue so they can be addressed before they become significant problems that require hospitalisation. More opportunities for professional development are needed to equip staff with the skills to do this, as well as supporting people with disability to have healthy lifestyles.

The SA Intellectual Disability Health Service (SAIDHS) replaces the former Centre for Disability Health and is led by SA Health. It is designed to provide better health outcomes for people with intellectual disability and complex health needs or behaviours. Key services provided by SAIDHS includes time limited specialised assessment and planning to address health issues for people with intellectual disability; provision of education, training, advice, support and information for mainstream clinicians; and development of strong pathways with primary health services and local health networks. SAIDHS also provides advice, support and information for consumers, paid workers and carers.

Recommendation 13: *That the SAIDHS be supported to expand its interface with the broader health system and explore opportunities to build the capacity and understanding of health practitioners and staff to support people with disability; and the capacity of disability support workers to develop the skills needed for early identification of health issues.*

5.5 Impact on participants

This section discusses issues relating to Terms of Reference:

e) the impact on the wellbeing of participants of these inappropriate accommodation arrangements.

The impact of inappropriate accommodation on people with disability has been well-documented. In addition to the impact on the individual's health and social wellbeing, is a breach of obligations under the UNCRPD.

Efforts to reduce the number of younger people with disability in residential aged care, for example, recognise that these types of settings are inappropriate for the developmental and independent-living needs of younger people with disability.

In 2015, the *Senate Standing Committee on Community Affairs* conducted an inquiry into young people with disability living in residential aged care.[6] Throughout this

[6] Chapter 6 – Parliament of Australia (aph.gov.au)

inquiry the Committee was presented with evidence, including personal accounts, of the inappropriateness of these arrangements in terms of limiting choice, access to age-appropriate services and activities, and the continued segregation of people from the community.

Similarly, settings like hospitals are not appropriate for people who no longer have a clinical need to be there. Independent living skills atrophy and learned helplessness sets in – the very obverse of what good quality disability support is about. The disability sector has fought for many years for a social model of disability where health needs are met by the health system, but people do not live in institutional health care settings. With the closure of all disability institutions in SA it is inappropriate for a person with disability with stable health care needs to be in a hospital setting which is nothing like home.

It is also important to highlight the impact of inappropriate accommodation on those without a voice or someone to advocate on their behalf. This includes people with high and complex communication needs who are stuck in inappropriate shared arrangements without any choice as to with whom they live. A lack of suitable housing options means that people must accept accommodation arrangements that may not best suit their wishes or needs.

The instability caused by lack of housing security can be distressing for the individual. For many OPA clients in particular, the impact is compounded because they often lack the social connections and safety net that others take for granted, including relying on family and friends for short-term support. What this means, in reality, is that without access to appropriate housing and support, many face homelessness or other serious implications including avoidable contact with the criminal justice system.

Lack of access to appropriate housing and support arrangements that are responsive to changing needs have a particular impact on the safety of women with disability who are experiencing domestic and family violence. Women can be forced to remain in unsafe situations because there are no other appropriate or timely options.

The Public Advocate is particularly concerned about a group of women under guardianship who are at heightened risk of sexual exploitation and domestic and family violence. Due to the complexities involved, service providers often struggle to deliver the support needed to keep them safe. They require a highly tailored approach based on strong partnerships across different sectors to avoid them being at risk of harm.

Case Study – Client I

Client I is a female with significant intellectual disability. Her nature renders her highly vulnerable and at risk of exploitation. She has two children who have been removed from her care.

Client I has a history of domestic violence. Her housing if often driven by her relationships. She is registered for housing on the Single Housing Register and is currently residing at her partner's supported accommodation. Both receive daily drop-in support through the NDIS. They have a child together who was removed whilst they undertook a parenting course and regular drug testing. The Department of Child Protection are now seeking for the child to be placed under the guardianship of the Chief Executive until they attain 18 years of age.

OPA is aware of allegations of domestic violence in her current relationship, including an incident involving a knife.

OPA continues to monitor the situation closely and is regularly engaging with Client I to ensure she is safe.

5.7 Impact on state government agencies

This section discusses issues relating to Terms of Reference:

f) any negative impacts on state government services.

The NDIS is not set up to be responsive to people with high and complex needs who may require an urgent response or pathway if their support services or housing fail.

Where the NDIS fails the individual, the situation inevitably falls back onto the State government whether that be through the hospital and health system, police, corrections, or housing and homelessness services.

These costs are borne by the state and the most common emergency response is access to the emergency departments of hospitals.

5.8 Other matters

The OPA is also concerned about the impact of congregate accommodation settings such as group homes on the wellbeing of people with disability.

Congregate settings such as group homes are generally characterised by the features of an institution rather than a home and do not deliver choice and control for NDIS participants. The current default SIL funding allocation methodology encourages support provisions to be locked into such shared arrangements. This constrains participants wanting to take up more flexible and contemporary options. It is imperative to move towards offering participants with SIL more flexible support arrangements through increased investment in innovative approaches such as assistive technology and cluster arrangements where support can be shared but people are afforded the dignity of privacy.

Under the former State arrangements, it was the policy that those who require 24-hour support would, because of funding constraints, have to live in a shared arrangement. In the early days of the NDIS, promises were made that people with disability requiring 24-hour support could choose to live alone if that was their preference. Since then, arrangements are increasingly being offered only on a shared basis in order to achieve ‘value for money’ but without openly acknowledging this as NDIS official policy.

6. Conclusion

Despite the many shortcomings and challenges associated with the NDIS, which is contributing to the issues under examination by this inquiry, there are other factors at play that need to be recognised. These includes issues around supply of affordable and social housing, the need for an accommodation support provider of last resort, the need for a 24-hour emergency response, and developing a statewide service tasked with matching individuals to vacancies and assisting people who are hard to engage.

The NDIS is a complex system to navigate. This makes it difficult for people in crisis to know where to go for help to get a timely response. There are also numerous and lengthy review processes required when there are disputes over things like the level of in-home or housing support included in a person's plan. Justification on the basis of 'value for money' is contributing to a range of poor outcomes like unnecessary emergency department presentations, delays in hospital discharge, forced sharing and other inappropriate arrangements.

Processes need to be more flexible and simplified to support better crisis responses. Collaboration between mainstream service systems and the NDIS is also vital, supported by clear roles and responsibilities at critical interfaces.

The NDIS alone cannot be relied upon to solve all the systemic issues that face people with high and complex disabilities, including access to quality, timely and coordinated support that prevents situations deteriorating to the point of homelessness. Since it commenced in 2013, focus on the NDIS has in effect taken over all other priorities in relation to disability policy. The State Government, through the *Disability Inclusion Act 2018* and in line with Australia's Disability Strategy, still has an obligation to ensure mainstream services are responsive to needs of all South Australians with disability, through fostering access and inclusion.

7. Recommendations

Recommendation 1: That the NDIA review the Participant Service Guarantee in relation to certain scenarios, including admission to hospital, and design a process with a separate set of faster turn-around times.

Recommendation 2: That a crisis response service for people with disability to case manage circumstances arising suddenly for individuals with complex needs, who would otherwise be thrust into inappropriate accommodation, e.g. hospital emergency departments.

Recommendation 3: That a state-wide service is developed to register supported accommodation vacancies and broker placements and matching of clients, working with housing providers, support agencies and people with disability to facilitate more effective access to accommodation options.

Recommendation 4: That the State government lobby the Commonwealth Government to establish Housing Liaison Officers (modelled on the successful

Health Liaison Officers) to assist clients in inappropriate accommodation (or at risk of inappropriate housing) to access suitable housing placements.

Recommendation 5: That the Commonwealth and State/Territory governments negotiate a detailed agreement that more clearly specifies the respective roles for assisting people with disability, especially in the realms of health, housing, therapy and personal support.

Recommendation 6: That the State and Commonwealth governments commit to fund new and replacement social housing to address the current demand.

Recommendation 7: That the State government adopt the new minimum silver standard in the revised National Construction Code.

Recommendation 8: That an accommodation and in-home support provider of last resort and a timely process be developed and implemented in South Australia.

Recommendation 9: That the State government lobby the NDIA and the NDIS Quality and Safeguards Commission to (a) require that support coordinators are independent of any services that they assist a participant to access, and (b) ensure tenancy and support agreements are kept separate and conflicts of interest are addressed.

Recommendation 10: That the State government review the *Residential Tenancies Act 1995*, so that (a) tenancy protection is afforded to residents in sub-let arrangements with a service provider, in an SRF or in a boarding house, and (b) rents are set at an affordable level (maximum 25% of pension plus CRA).

Recommendation 11: That the State government support access to the NDIS for people with psychosocial disability by building the capacity of staff in community mental health to understand and navigate NDIS processes.

Recommendation 12: That the State government work with the NDIA and NDIS Quality and Safeguards Commission to build sector capacity in positive behaviour support, including protocols for access to health facilities and options to partner with the university sector.

Recommendation 13: That the SAIDHS be supported to expand its interface with the broader health system and explore opportunities to build the capacity and understanding of health practitioners and staff to support people with disability; and the capacity of disability support workers to develop the skills needed for early identification of health issues.

8. Glossary

ACRONYM	FULL TERM
APP	Accommodation Placement Panel
APTOS	Applied Principles and Tables of Support
CAT	Coordination and Assessment Team
COC	Change of Circumstance
DHS	Department of Human Services
ENU	Exceptional Needs Unit
HLO	Housing Liaison Officer
NCC	National Construction Code
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
OPA	Office of the Public Advocate
PBS	Positive Behaviour Support
SACAT	South Australian Civil and Administrative Tribunal
SAHA	South Australian Housing Authority
SDA	Specialist Disability Accommodation
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities

9. Attachment 1: Housing pathway for NDIS Participants

The client needs housing (They may want to move out of home or are homeless or in crisis)	
If the client is not already an NDIS participant, they will need to join. To become a participant involves: • Gathering evidence (28 days) • Assessments • NDIS Access Request • Meet NDIS Eligibility criteria Access confirmed	90 days for participant to provide evidence. 21 days for access decision 28 days to explain a decision 14 days to make a decision about who can use the NDIS after receiving more information.
For existing participants, a Change of Circumstances is submitted if required.	21 days minor, 50 days larger changes
NDIS Planning meeting held. Participant needs to request that the following be included in plan: • A goal related to Home and Living Supports in your plan • An allocation for allied health assessments • Specialist Support Coordination (SSC)	21 days to start making plan Making meeting time – ASAP 28 days to have meeting 7 days to give you a copy of the plan
Plan needs to be approved by the NDIA.	70 days to approve a plan
The Request for Home and Living Supports Form needs to be completed by the individual or person on their behalf and submitted to the NDIA.	Dependent on individual guardian/ nominee
Once the NDIA has reviewed the request and if further information required the NDIA will advise what is needed. This may include further assessments.	This is a new process so timeframes not clear. This may also be depending on whether the participant engages with therapists for assessments if they are required.
If approved, the NDIA may provide funding for: Assisted Daily Living Individualised Living Option Short Term Accommodation Medium Term Accommodation Supported Independent Living Capacity Building Home Modifications Specialist Disability Accommodation Assistive Technology	
Support Coordinator or Specialist Support Coordinator utilise the plan and connect them with services. Note: The SSC needs to have appropriate skills and experience in the following: culturally appropriate/ have capacity/ Mental Health and adequately trained.	Variable
Housing • Community Housing The participant needs to register and be eligible for Community Housing • Public Housing • Private rental • SDA If SDA approved in plan and property is not an SDA property • SDA providers need to be registered with the NDIS Quality and Safeguards Commission • Property needs to be enrolled with the Commission.	If SIL quote needs to be submitted and approved by the NDIA • Participant profile • property profile • Participant outcomes • Roster of support (inclusive of all house participants)
	21 days depending on complexity and agreement on funding. There are often discrepancies about what is in the EHO, what the NDIS will fund and what the Service Provider will accept for the safety of participants and staff. This can delay transition.
Housing modifications to be undertaken if required.	Variable
The participant commences transition to the new home	Variable
Please note time frames are an estimation only and vary from client to client	