



Submission to the NSW Government

Discussion Paper – ‘A Housing Strategy for NSW’

24 July 2020

Physical Disability Council of NSW
3/184 Glebe Point Road, Glebe NSW 2037

02 9552 1606
www.pdcnsw.org.au

hayley.stone@pdcnsw.org.au



Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW.

Our core function is to influence and advocate for the achievement of systemic change to ensure the rights of all people with a physical disability are improved and upheld.

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship.
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (i.e. self-advocate).
- To educate and inform stakeholders (i.e.: about the needs of people with a physical disability) so that they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

Introduction

A physical disability is a physical condition that affects a person's mobility, physical capacity, stamina, or dexterity. This can include brain or spinal cord injuries, multiple sclerosis, cerebral palsy, respiratory disorders, epilepsy, hearing and visual impairments and more.¹ People may be born with physical disabilities, or acquire them throughout life, for example through an accident, or as a result of aging.² Physical disabilities can be temporary, long term or permanent.

Whilst it is important to recognise that our members have a diverse range of physical capacities and life situations, there are some key commonalities in terms the types of housing persons with physical disability aspire to live in, including:

- **Accessibility** – people with disability want housing that is either built to purpose or is able to be adapted to be accessible. An important aspect of retrofitting is the capacity to gain consent to make the adaptations, either from landlords, strata or LGAs. It is important to recognise that accessibility does not stop at the threshold of a home – accessibility of surrounding environment external to the home is equally important;
- **Choice** -people with physical disability want to be able to choose from homes across a variety of locations, sizes, designs and price ranges. For persons with higher care needs, choice in terms of the services and facilities offered in supported living environments (that still allow them to live independently) and aged care homes are equally important;
- **Proximity** - people with physical disability want to be close to community facilities, like hospitals, supermarkets, and entertainment venues. They also want to be close to accessible public transport, their places of employment, schools, their family and friends;
- **Suitability and/or adaptability** – people with physical disability want homes that can support their needs as they change over time, with little to no need to modify the existing structure of the premises. If modifications are required, they want to be able to make these modifications easily, with a minimum of “red tape” or structural changes;
- **Security** - People want security of tenure/ownership, including the capacity to ‘age in place’. This is particularly important as physically relocating and finding a suitable new home can be extremely challenging for people with physical disability;
- **Inclusion** - People want housing that facilitates their inclusion within the broader community

PDCN appreciates the opportunity to comment on the discussion paper relating to the NSW Housing Strategy for 2020-2040. We commend the Minister and the NSW Department of Planning, Infrastructure and Environment in recognising the needs of specific groups within

¹ Achieve Australia Website, *What is a physical disability?* < <https://achieveaustralia.org.au/ndis-overview-and-faqs/physical-disability/> > accessed 22 July 2020

²Ibid.

the community – including persons with physical disability. Much of the dialogue within the discussion paper resonates with our members’ housing experiences.

Our submission will primarily focus and expand on the issues already identified in the Discussion Paper’s section “*Diverse Housing for Diverse Needs*” as they apply to persons with physical disability. We will particularly focus on social and community housing, the need for additional Specialist Disability Accommodation (SDA), challenges to be addressed for persons with physical disability renting within the private rental market and the importance of facilitating liveable housing design across all new builds.

Social and community housing

Social and community housing is vitally important as a low-cost housing option for those who cannot afford to buy or rent within the private housing market - currently 2 out of every 5 social housing households across Australia include a tenant with a disability³ and 20% of people with disability rent from State or Territory Housing Authorities, as opposed to 5% of renters without disability.⁴

With massive increases in the cost of homes and renting in the private market becoming increasingly inaccessible for those on mid to low incomes⁵, social and community housing is an important safety net, as rents are fixed as a proportion of overall household income. Social and community housing also offers a greater security of tenure for renters as opposed to the private rental market – providing that an individual’s circumstances do not change, it is not unreasonable to expect that they will be able to remain in social or community housing (though not necessarily the same premises) until they transition into aged care.

We identify two issues across social and community housing for our membership – firstly, demand far exceeds supply, and secondly, particularly within social housing – there is limited housing stock that meets the level of accessibility many of our members need.

We welcome plans for the renewal of social housing under projects such as Communities Plus, and see these projects as an opportunity for the NSW Government to address social housing shortages and achieve greater accessibility across the social housing portfolio as a whole - it is our observation that there has been an underinvestment in social housing for many years – to the detriment of those both living within social housing in aging stock and those waiting to access this form of housing.

³ Australian Government, Australian Institute of Health and Welfare, *Housing Assistance in Australia 2019*, web report, 18 July 2019 <<https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2019/contents/social-housing-tenants>> accessed 22 July 2020.

⁴ Australian Government, Australian Institute of Health and Welfare, *People with Disability in Australia*, web report, 3 Sept 2019< <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/housing>> > accessed 22 July 2020.

⁵ Anglicare Australia, *Rental Affordability Snapshot – National Report – April 2019* <<https://www.anglicare.asn.au/docs/default-source/default-document-library/final---rental-affordability-snapshota302da309d6962baacc1ff0000899bca.pdf?sfvrsn=4>> accessed 22 July 2020

PDCN would also welcome a more considered approach to the planning of communities, such that new developments were a mix of social, affordable and mainstream housing, rather than isolating any particular cohort in one place, as such planning would greatly enhance the inclusion of people with disability within the broader community.

With the introduction of the NDIS, we are concerned by what may potentially be a further divestment of responsibility for providing social and community housing which is suitable for the needs of persons with disabilities.⁶

We are particularly uncomfortable with the concept that NDIS funds should be utilised for the modification of State owned housing, for various reasons – firstly, because tenancy within social housing is not linked to the premises – tenants can and are, relocated for operational reasons⁷, secondly, tenancies are not secure – tenants are no longer offered continuous leases and are assessed in terms of their eligibility for social housing⁸ and tenants can be evicted for breaches of the residential agreement.⁹ A further concern relates to the fact that the utilisation of NDIS funding is an investment in a property that will benefit social housing, both in terms of potentially adding value to a premises, and also in creating a more desirable premises given the current trends in terms of social housing tenants.

As of 30 June 2019 there were 46,530 applicants on the General NSW Housing Register¹⁰ – we see the increase in social and community housing stock – both to address the current shortfall and also to manage the anticipated acceleration in the proportion of the population aged 65 years and over next 30 years¹¹ as one of the greatest challenges to be addressed

6 For instance, we note that the Home Modifications Guidelines published by LAHC sets capped limits on disability related modifications, but provides that more major works can be undertaken if the tenant has a substantiated need for the modification on account of a disability and the modifications can be part funded via the NDIS. Given that approximately 9% of persons with physical disability are participants of the NDIS, and the NDIS eligibility cut off is 65 years, we are concerned about the equitable implications of such guidelines.

7 NSW Government, Department of Communities and Justice, Relocating tenants for management purposes, 25 Oct 2019 <<https://www.facs.nsw.gov.au/housing/living/move-swap-transfer/relocating-tenants-for-management-purposes>> accessed 22 July 2020.

8 NSW Government, Department of Communities and Justice, Fixed term leases and lease review, 1 Jun 2020 <<https://www.facs.nsw.gov.au/housing/living/rights-responsibilities/fixed-term-leases-and-lease-review>> accessed 22 July 2020 - we note that leases can be up to 10 years, however most new lease agreements have a probationary 12 month initial lease - <https://www.facs.nsw.gov.au/housing/policies/types-length-of-lease-policy>.

9 Residential Tenancies Act 2010 (NSW) Divisions 2 & 5.

10 NSW Government, Department of Communities and Justice, Expected waiting times, 30 June 2019, <<https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>> accessed 22 July 2020 - there are currently 46,530 applicants on the General NSW Housing Register as of 30 June 2019.

11 Australian Government, Australian Institute of Health and Welfare, The desire to age in place amongst older Australians, Bulletin 114, April 2013 <<https://www.aihw.gov.au/getmedia/69a6b0b9-6f86-411c-b15d-943144296250/15141.pdf.aspx?inline=true>> accessed 22 July 2020 p.4 – we note that by 2056 it is anticipated that the number of Australians aged 65 years and over will reach 8.7 million – an increase of 22% from 2018 figures - <<https://www.aihw.gov.au/reports-data/population-groups/older-people/overview>>

within the NSW Housing Strategy. To that end, we welcome any incentives geared towards encouraging private sector investment and building up the community housing sector and consider that such strategies will enhance the range of properties and provide opportunities for innovation which will benefit the lives of tenants.

We would advocate that all new social and community housing builds be mandated to be built to the Liveable Housing Design Guidelines Gold Level¹² and see this as a way of meeting State obligations under the United Nations Convention on the Rights of Persons with Disability (the UNCRPD), moving forward on the National Disability Strategy 2010-2020, Outcome 1, Policy Direction 3, as well as meeting unfulfilled targets established by the National Dialogue on Universal Housing Design.¹³ We note that targets were previously set under the a strategic plan set by National Dialogue members for 100% of all new public housing to meet Gold Level by 2019.¹⁴

We see the incorporation of Gold Level design standards across social and community housing as an appropriate investment given that 41% of households in public housing and 29% of those in community Housing have at least one member with disability¹⁵ while residents aged 55 and older make up 35% and 30% respectively.¹⁶ Given the projected escalation in people aged 65 and older over the next 30 years¹⁷, and the decreasing rates in home ownership amongst this demographic¹⁸, we can only anticipate that the need for accessible social and community housing will increase exponentially over the lifetime of the NSW Housing Strategy.

¹² Liveable Housing Australia <<http://livablehousingaustralia.org.au/>> accessed 22 July 2020

¹³ Australian Network for Universal Housing Design, *Report on the Progress of the National Dialogue on Universal Housing Design 2010-2014*, Jan 2015 <<https://aduhdblog.files.wordpress.com/2020/03/anuhd-report-on-progress-of-lhd-jan15.accessible.pdf>> accessed 22 July 2020, p.7

¹⁴ Australian Government, Department of Social Services, *Disability and Carers – National Dialogue on Universal Housing Design – Strategic Plan* <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy-initiatives/livable-housing-design/national-dialogue-on-universal-housing-design-strategic-plan?HTML>> accessed 22 July 2020.

¹⁵ Australian Government, Australian Institute of Health and Welfare, *National Social Housing Survey 2018 – Key Results* <<https://www.aihw.gov.au/getmedia/46555204-b4ca-4429-9d1a-a1797e6a06cd/aihw-hou-311.pdf.aspx?inline=true>> accessed 22 July 2020

¹⁶ Australian Government, Australian Institute of Health and Welfare, *Housing Assistance in Australia 2019*, web report, 18 July 2019 <<https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2019/contents/summary>> accessed 22 July 2020.

¹⁷ Australian Government, Australian Institute of Health and Welfare, *The desire to age in place amongst older persons*, Bulletin 114, April 2013 <<https://www.aihw.gov.au/getmedia/69a6b0b9-6f86-411c-b15d-943144296250/15141.pdf.aspx?inline=true>> accessed 22 July 2020.

¹⁸ Australian Government, Australian Institute of Health and Welfare, *Older Australia at a glance*, web report, 10 Sept 2018 <<https://www.aihw.gov.au/reports/older-people/older-australia-at-a-glance/report-editions>> accessed 23 July 2020

Research also indicates that there could be many Government savings from incorporating such design standards over the lifetime of the NSW Housing Strategy across healthcare, hospital admissions, and time in residential aged care.¹⁹

Specialist Disability Accommodation (SDA)

Just as social and community housing form an important safety net for people who cannot afford the private rental market, specialist disability accommodation (SDA) is an important form of accommodation for people with disability requiring specialist housing solutions, including 'to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs'²⁰ SDA properties are currently funded under the NDIS as an investment in "bricks and mortar support for people with disabilities"²¹ Properties can vary in terms of their design features, and take a range of forms - from apartments, to houses, to shared homes. SDA is managed by independent SDA providers registered with the NDIS.²²

Currently SDA accommodation is extremely limited – SDA is only offered to people eligible for the NDIS with extreme functional impairment or very high needs. In 2018 there were 5730 residents in SDA, with an additional 3290 premises needed.²³ Most residents are under the age of 45 – for many the alternative would entirely unsuitable accommodation such as institutions (including aged care homes) or group homes.²⁴

We see many advantages with the SDA model for our membership. SDA offers many of the benefits of social or community housing, such as a fixed rent as a proportion of income, offers a broad range of diversity in both accessibility and design, and is designed to facilitate the delivery of a range of essential day to day supports. The policies around SDA align closely with the provisions of Article 19 of the UNCRPD in providing people with disability, which states that people with disability should be provided with:

'The opportunity to choose their place of residence and where and with whom they live on an equal basis...whilst also providing a range of in-home, residential and other community support services, including personal assistance necessary

¹⁹ Bringolf, J., *Universal Design – why wouldn't you?* 18 June 2020 <<https://www.buildingconnection.com.au/2020/06/18/universal-design-why-wouldnt-you>> accessed 23 July 2020

²⁰ Australian Government, National Disability Insurance Scheme, *Specialist Disability Accommodation Overview*, 14 July 2020 <<https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/housing/specialist-disability-accommodation>> accessed 23 July 2020

²¹ The Housing Hub, *What is Specialist Disability Accommodation (SDA)?* <<https://www.thehousinghub.org.au/resources/housing-types/specialist-disability-accommodation/>> accessed 23 July 2020

²² Ibid.

²³ Summer Foundation, *Specialist Disability Accommodation – Market Insights*, 2018 <<https://www.summerfoundation.org.au/wp-content/uploads/2018/03/sda-market-insights-web-2.pdf>> accessed 23 July 2020

²⁴ Ibid.

*to support living and inclusion in the community, and to prevent isolation or segregation from the community*²⁵.

Given the demand for SDA and current shortfalls in the capacity to manage this demand, we would recommend that as part of the development of the NSW Housing Strategy, the NSW Government investigate ways to enhance private investment in the Scheme as well as increasing investment in the scheme under the NDIS. We would advocate for an increase of supply in SDA over the next twenty years in line with projected levels of need across the population. It is important that SDA is provided where need is – information already exists in terms of regional supply versus demand. We would expect to see as part of the NSW Housing Strategy a plan to address SDA shortfalls across the State to reduce the need for persons with extreme functional impairment or complex needs having to rely on alternative, less appropriate forms of accommodation, such as aged care facilities.

Private Rental

The NSW Strategy for Housing must address current issues faced by persons with disability within the private rental market. Whilst we agree that the *Residential Tenancies Act 2010* (NSW) forms a strong framework for promoting the rights of renters, further improvements are needed to ensure that the increasing number of people who rent within the private market are able to guarantee accommodation that is comfortable, affordable and secure. We note that 29% of people with disability within Australia rent.²⁶ People with disabilities are also slower to leave the rental market, with double the number of non-dependent people with disability aged between 55-64 renting compared to persons without disability.²⁷ A challenge of the Strategy is how to ensure that people with disability who cannot purchase homes, and may well rent for years, or even their whole lives, are able to achieve the 6 aspirations discussed above. There are currently many impediments to this.

Private rental is often not designed for purpose

Although the accessibility needs of people with physical disability vary, it is safe to say that significant proportions of available private rental accommodation – particularly older housing stock – are not accessible for people with physical disability, are difficult and expensive to retrofit and were not designed to be easily modified to meet individuals' changing needs. The lack of available housing stock for people with physical disabilities as a

²⁵ United Nations, *Convention on the Rights of Persons with disability*, Article 19, 6 Dec 2006 < https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf > accessed 23 July 2019

²⁶ Australian Government, Australian Institute of Health and Welfare, *People with Disability in Australia*, op cit.

²⁷ Ibid., - these rates are 27% for persons with disability, versus 12% for persons who do not identify as having a disability.

market can be seen in the development of professional brokerage services to link people with the limited stock available.²⁸

A lack of accessible housing limits the choices of individuals with physical disability with regard to where they live, what type of housing they rent and at what price. A search of accessible properties within NSW via DisabilityHousing.com.au identified only 58 listings suitable for a single person with or without an overnight assistant room across NSW.²⁹ In a market highly driven by demand, this can mean that persons with disability are forced to pay more for the housing they need. It also means that many people with physical disability are forced to make compromises – they may decide to rent a property that is less accessible to gain proximity to services, family and friends.

Private rental is not secure

A further challenge relates to security of tenure in the private rental market. Although recent changes to the *Residential Tenancies Act 2010* (NSW) encouraging longer lease terms might provide greater security for renters,³⁰ research by Choice, the National Association of Tenants' Organisations (NATO) and National Shelter in 2017 indicates that the cultural trend towards short term leases within Australia is firmly entrenched – with 51% of tenants surveyed having leases of 12 months, with only 6% of renters having leases for even just two years.³¹ The security of tenants is greatly undermined by the existence of so called *no grounds* eviction clauses under NSW tenancy legislation. "*No grounds*" evictions are mostly unknown across other OECD countries and permit landlords to evict tenants with as little as 30 days-notice without the need to specify a particular ground for why they seek to terminate or otherwise demonstrate that the tenant has breached the tenancy.³²

Whilst much has been written about the negative impacts of rental insecurity across the general renting population – for our membership, where alternative housing options are limited, finances may be tightly restrained, the physical process of moving has additional

²⁸ See for instance – disabilityhousing.com.au, *Covid19 and Housing Options* <<https://www.disabilityhousing.com.au/articles/covid-19-and-housing-options/>> accessed 23 July 2020

²⁹ From Disabilityhousing.com.au accommodation search portal <https://www.disabilityhousing.com.au/?s=&austate--1=NSW&city--2=&s=&advanced_search=yes> accessed 23 July 2020.

³⁰ NSW Government, Fair Trading <https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0007/608380/Standard-Residential-Tenancy-Agreement.pdf> We note that as of 23 March 2020 the Standard Form Residential Tenancy Agreement now allows for the selection of a lease term up to 5 years and a further fillable option for a longer term lease as agreed.

³¹ Choice, National Shelter and National Association of Tenant Organisations (NATO) Feb 2017 <<https://apo.org.au/sites/default/files/resource-files/2017-02/apo-nid73768.pdf>> accessed 23 July 2020, p 8.

³² Kollmorgen, A., *Rental Rights*, Choice, 27 August 2014 <<https://www.choice.com.au/money/property/renting/articles/rental-rights>> accessed 23 July 2020

complications and proximity to support services is vital, the impacts of rental instability are arguably much greater and the fear more palpable.

It is important that the NSW Housing Strategy work towards ensuring a greater level of security for tenants who want this – particularly through the removal of no grounds evictions.

Potential challenges in realising NDIS modifications

Whilst we are yet to see the practical implications of short term leases on NDIS modifications of rental premises, we would expect that this is an issue that will become increasingly prominent – as tenants are able to access capital for home modifications as part of their Capital Supports Budget³³ we would expect to see tenants with disabilities seeking both landlord approvals for modifications and longer lease terms to meet the NDIS criteria around reasonable length of tenure as necessary criteria for investment in home modifications.³⁴ We do not consider that the Residential Tenancies Act 2010 (NSW) has adequate provisions to address modifications on the basis of disability, especially modifications of a major nature which are, in essence, funded via the public purse.

Whilst we do not intend to enter into in-depth analysis on the range of potential issues we forecast could arise in relation to home modifications under residential tenancy agreements (both via NDIS and funded otherwise) we would propose that a much better alternative would be a solid investment in either Specialist Disability Accommodation or in the production of additional private rental stock built to Liveable Housing Design Guidelines.

A focus on universal design suitable for all people in all stages of life

We consider that the promotion of universal design is key to the creation of accessible communities. Incorporating universal design principles across private and public builds would address many of the issues faced by persons with physical disability – increasing the amount of accessible housing with the associated flow on effect of greater choice in terms of where and how to live.

We note that although universal design has previously been accepted in principle – as demonstrated by the benchmarks set by government, key stakeholders groups from the ageing, disability and community support sectors and the residential building and property industry under the National Dialogue on Universal Housing Design, the aspirational target

³³ Australian Government, National Disability Insurance Scheme, *Support budgets in your plan*, 7 February 2020 <<https://www.ndis.gov.au/participants/using-your-plan/managing-your-plan/support-budgets-your-plan>> accessed 23 July 2020

³⁴ Australian Government, National Disability Insurance Scheme, *Including Specific Types of Support in Plans Operational Guideline - Home modifications*, 18 July 2019 <<https://www.ndis.gov.au/about-us/operational-guidelines/including-specific-types-supports-plans-operational-guideline/including-specific-types-support-plans-operational-guideline-home-modifications>> accessed 23 July 2020

that all new homes will be of an agreed Universal Housing Design standard by 2020 has not been met.³⁵

We consider that universal design has a key place in any responsible plan for governing the state's housing future. We consider that the NSW Government has the responsibility to lead this process by incorporating universal design principles across all government residential builds, as well as stipulating universal design in any public private partnership (PPP) relating to housing development. We would suggest that, although universal design across society is generally seen as a worthwhile goal, the lack of voluntary uptake over the last decade would suggest that regulation would be the best way of moving forward – to that end, we note that there has been calls to introduce minimum accessibility standards in the National Construction Code (the NCC) – PDCN would support this and would advocate that the minimum be set at Gold Level.

Concluding comments

Housing is both a fundamental right and a basic need. Affordable, appropriate, and secure housing allows people to work, create families and to participate in their communities – goals for all individuals including persons with physical disability.

In considering a strategy for housing across NSW over the next two decades, there is much opportunity to focus on addressing both present day issues and to invest in new and innovative housing solutions to meet the state's future housing needs.

The lifetime of the NSW Housing Strategy will see a major shift in the priorities and housing needs of the NSW population. We will see a greater need, not just for accessibility across all modes of housing, but across society as a whole.

³⁵ Australian Network for Universal Housing Design, *Report on the Progress of the National Dialogue on Universal Housing Design 2010-2014*, Jan 2015, op cit., p. 13.