



Submission to the NSW Parliamentary Inquiry

**Options to improve access to existing and alternate
accommodation to address the social housing shortage**

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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.

Recommendations

Recommendation 1

The NSW Government should commit to building 20,000 new social housing dwellings over the next 4 years (5,000 properties per year).

Recommendation 2

That DCJ commit to 50% of new LAHC builds to meet the LHD Gold Standard by 2024, incrementally increased to 75% by 2026, and 100% by 2028.

Recommendation 3:

That DCJ commit to providing transparent breakdowns on the number of LAHC properties that currently meet Gold or Silver Level Livable Design Standard, including a breakdown the Allocation Zones these properties are located in.

Recommendation 4:

That DCJ commit to an accessibility audit across the existing LAHC portfolio and then engage with key stakeholders with a view towards upgrading existing premises utilising universal design elements.

Recommendation 5:

That DCJ dedicate specific funding towards upgrading LAHC properties in line with universal design elements.

Recommendation 6:

That DCJ meet its commitments under the National Disability Strategy to address the accessibility needs of all residents with physical disability by removing capped spends across accessibility modifications for residents who are ineligible for the NDIS.

Recommendation 7:

Develop guidelines regarding resident funded disability modifications, including NDIS funded modifications, when residents are required to relocate for management purposes to ensure that residents are given comparative amenity in any alternative premises or that they are otherwise reimbursed so they can fund modifications to their subsequent dwelling.

Recommendation 8:

Where it is not possible to modify a residents' property to accommodate their accessibility requirements, LAHC set clear and enforceable benchmarks in terms of wait times for rehousing. Benchmarks should be determined in consultation with housing and disability advocacy peaks. Where rehousing across LAHC stock is not possible within a reasonable timeframe, LAHC should investigate private rental subsidy arrangements for suitable properties in the private rental market.

Recommendation 9:

The NSW Government should work with the NDIS, private investors and community housing providers to increase development of SDA

Recommendation 10:

That DCJ consult with people with disability who live in SDA, their families and disability advocacy organisations to determine an appropriate framework for safeguarding the rights of residents of Specialist Disability Accommodation within NSW.

Recommendation 11:

That NSW Government establish processes for private developers, and the community sector to submit proposals for the use of government-owned land for housing projects that address the needs of people with physical disability (and their families) with mandated quotas of at least 50% of dwellings to be Gold Level Livable Design.

Recommendation 12:

That the NSW Government partner with local governments, the community housing sector, and developers, to facilitate the development of temporary supportive accommodation built to Gold Level Livable Design.

Recommendation 13:

Mandate Silver level Livable Design Standards across all Class 1 and 2 dwellings within NSW in line with recent changes to the National Construction Code (the NCC).

Recommendation 14:

DCJ should consult with people with disability and their representatives, including Disability Advocacy Peaks, to further identify and address challenges faced by this cohort in owning or renting a home.

Recommendation 15:

Amend the Residential Premises Act 2010 (NSW) to allow tenants to make disability related modifications to private rental premises, unless the landlord can demonstrate that it is reasonable to refuse them.

Recommendation 16:

Amend s.115 of the Residential Tenancies Act 2010 (NSW) to expressly provide that a tenant cannot be evicted for seeking disability-related modifications to a rental property.

Recommendation 17:

Remove the capacity for landlords to terminate a periodic residential agreement without grounds under s. 85 of the Residential Tenancies Act 2010 (NSW).

Introduction

"I have been disabled for approximately seven years now and during this whole time it has been near impossible to find and maintain secure, safe, affordable, and accessible properties in the private rental market. I got on the NSW housing register from day one (7 years ago) and am classified as high priority and on the top of the list. Housing employees have told me that it will be highly unlikely to ever receive an offer of a property. I am still waiting seven years on."

PDCN Member, NSW Central Coast.

Access to housing that is affordable, secure, and suitable plays a critical role in the health and wellbeing of Australians, resulting in improved health outcomes, greater opportunities for employment and enhanced community connection. PDCN welcomes the opportunity to contribute to the Committee's inquiry into options to improve access to existing and alternate accommodation to address the social housing shortage.

The experiences of people with physical disability in securing housing can vary substantially depending on a range of factors, including socioeconomic status, access to Government supports such as the NDIS or My Aged Care and level of disability-related functional limitation experienced.

PDCN interprets existing accommodation as both social housing and the private housing market. We will explore why social housing may operate as a 'disability housing provider by default', why social housing is an attractive option for people with physical disability and what the NSW State Government can do to enhance the capacity of people with disability to secure suitable crisis, temporary and permanent accommodation.

Australia's commitments to housing accessibility for people with disability

The NSW Government has international and domestic obligations to both providing dwellings that are suitable for people with physical disability and promote private investment in accessible housing.¹

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

¹ See here Australia's commitments under the United Nations Convention on the Rights of Persons with Disability, Arts. 4 and 9.

- (a) *Buildings, roads, transportation, and other indoor and outdoor facilities, including schools, housing, medical facilities, and workplaces.*²

Outcome 1, Policy Direction 3, of the 2010-2020 National Disability Strategy³ acknowledges finding suitable housing is important to all Australians and is a prerequisite for a happy and stable life.

People with disabilities and their families face unique challenges in the NSW housing market. A cohort that are particularly disadvantaged are people with physical disabilities which fall short of meeting the high levels of impairment necessary to qualify for supported accommodation such as Specialist Disability Accommodation (SDA) and aged care homes, who are unable to buy their own homes.

People with disability who rent are more likely (11%) to live in unaffordable housing than people without disability (7.6%). They are more likely (12%) to be unable to pay rent (compared to 6.7%), more likely (4.9%) to have moved because of a health reason (compared to 0.6%) and more likely (16%) to be dissatisfied with their homes (compared to 11%).⁴

Those who rely on the Disability Support Pension (DSP), Jobseeker or are minimum to low wage in particular, struggle to find rental properties that are both affordable and suit their accessibility requirements. This year's Anglicare Rental Affordability Snapshot indicated that out of 74,266 rental listings across Australia, just three rentals (0 percent) that were affordable for a single person on the JobSeeker payment⁵, and a person on the Disability Support Pension could afford less than one percent.⁶

PDCN Responses

Why is social housing desirable to people with physical disability?

PDCN recently surveyed our membership on their views around social housing. Results of the survey indicated that social housing offers several desirable elements for people with physical disability that are not often met within the private housing market including:

- Rents determined as a proportion of household income irrespective of market rents.
- The capacity to specify areas they want to live in with the potential to be housed close to supports – location is not dependent on capacity to afford rents in 'high demand' locations.
- Properties are generally suitable for family units.
- Tenure is stable, particularly if the tenants' circumstances do not change.
- Applicants can specify their accessibility requirements.

² United Nations, Convention on the Rights of Persons with Disability, Art. 9

³ Commonwealth Government, *National Disability Strategy – 2010-2020*, 2011

https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf accessed 10 August 2021 at p. 32. We note that the next National Disability Strategy is due to be released shortly.

⁴ This data is derived from cross-sectional analysis of the 11th wave (2011) of the Household, Income and Labour Dynamics in Australia (HILDA). Survey used data from 11,394 participants aged between 25 and 64 years (Aitken et al. 2019). Almost 1 in 4 (23% or 2,729) respondents had disability. <https://www.aihw.gov.au/getmedia/ee5ee3c2-152d-4b5f-9901-71d483b47f03/aihw-dis-72.pdf.aspx?inline=true>

⁵ <https://www.anglicare.asn.au/wp-content/uploads/2021/05/rental-affordability-snapshot-national-report.pdf>, p 9.

⁶ <https://www.anglicare.asn.au/wp-content/uploads/2021/05/rental-affordability-snapshot-national-report.pdf>, p 11.

- Applicants can retain a connection to the community and maintain independence.
- There is a transparent process for seeking accessibility modifications and express commitments by the Department of Communities and Justice to fund modifications.

As of 30 June 2021, there were 46,087 households on the General NSW Housing Register and 5308 households on the Priority waitlist.⁷ In high demand allocation zones, wait times to be allocated a property can exceed 10 years.⁸

Notwithstanding the problems associated with accessing social housing, 41% of households include at least 1 person with disability.⁹ Social housing, when it can be accessed, is an important safety net for these families, filling a vital gap in the housing market for affordable housing that is both stable (usually providing 2-, 5- or 10-year leases) and statutorily required to meet the accessibility needs of residents with physical disabilities.

PDCN recently called on the State Government to invest in social housing across the 2021-22 State budget, asking for a commitment of 20,000 dwellings over the next four years, to address the current shortfall of properties *and* keep up with projected demand.¹⁰ The government's commitment of 800 new builds over the next two years fell far short of this goal.

If the State Government cannot commit to building the necessary levels of social housing to meet demand, or to take proactive action to address the broader crisis in housing affordability, then we need to explore other ways to ensure that people with physical disability are able to access a home as a basic human right.

Alternatives may include enhancing the capacity for existing social housing to service the needs of people with disability, incentivising NGO and broader private investment in accessible housing (including short-term and crisis accommodation), removing barriers to Specialist Disability Accommodation, implementing mandatory accessibility requirements across Class 1 and 2 dwellings at State level in line with recent changes to the National Construction Code (the NCC), and removing barriers to modifying dwellings across the private rental market.

Recommendation 1:

The NSW Government should commit to building 20,000 new social housing dwellings over the next 4 years (5,000 properties per year).

Better use of existing State-owned social housing

⁷ NSW Government, *Expected Waiting Times* <[Expected waiting times | Family & Community Services \(nsw.gov.au\)](https://www.nsw.gov.au/family-community-services/expected-waiting-times)>

⁸ [Expected waiting times | Family & Community Services \(nsw.gov.au\)](https://www.nsw.gov.au/family-community-services/expected-waiting-times)> accessed 9 August 2021.

⁹ Australian Institute of Health and Welfare (AIHW) *People with Disability in Australia, 2020* <<https://www.aihw.gov.au/getmedia/ee5ee3c2-152d-4b5f-9901-71d483b47f03/aihw-dis-72.pdf.aspx?inline=true>> accessed 9 August 2021.

¹⁰ See here PDCN's 2021-22 pre-budget submission <<https://www.pdcnsw.org.au/wp-content/uploads/2021/02/2021-22-NSW-Pre-Budget-Submission.pdf>> accessed 5 August 2021.

The Department of Communities and Justice (DCJ) Housing (as property manager) and Land and Housing Corporation (LAHC) (as property owner), provide rental housing for over 96,695 households in public housing across NSW.¹¹

We are keen to see DCJ social housing managed more effectively to ensure that appropriate stock is available for those who need it the most, especially those properties that are built to Gold Standard Accessibility.

Increase the proportion of Gold Level Livable design dwellings across new LAHC builds

Part of the vision for social housing is dwellings with universal access, providing a safe and comfortable environment, functioning efficiently, ameliorating climatic extremes, operating on a sustainable basis and attractive as a home.¹²

The NSW Government has recognised the important role that social housing plays both in providing housing for those who are unable to sustain a home in the private rental market, but also as a mechanism for stimulating the economy and supporting communities:

Social housing is increasingly recognised as a form of infrastructure that performs more than a welfare function. Delivering safe, secure, and well-designed social housing for social housing tenants not only supports positive wellbeing outcomes for social housing tenants, but also provides tangible economic benefits to tenants, communities, and the state and national economies, particularly in areas of employment, construction, productivity, fiscal policy, and social services.¹³

It is critical that all social housing properties can be used as viable accommodation - that they are maintained in a reasonable state of repair, and have the widest scope of accessibility possible, with consideration of extenuating factors such as age, slope of block, heritage status and existing structural features.

This is particularly important in the case of properties owned by the Department of Communities and Justice (Land and Housing Corporation - LAHC), since DCJ is obligated to comply with the National Disability Strategy (the NDS).

¹¹ Australian Institute of Health and Welfare (AIHW) *Housing assistance in Australia 2020* <<https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2020>> quoted in Tenants Union of NSW and Public Interest Advocacy Centre, *Follow up Review of the Management of NSW Public Housing Maintenance Contracts*, Dec 2020 < [2012_TUNSWPIAC_Sub_Management_NSW_PH_Maintenance.pdf \(tenants.org.au\)](https://www.tunswpiac.org.au/sub-management-nsw-ph-maintenance.pdf) > accessed 9 August 2021.

¹² Housing NSW, *Asset Performance Standards for Existing Dwellings*, Version 6:2i, July 2009 <https://www.facs.nsw.gov.au/download?file=330221> accessed 9 August 2021.

¹³ y NSW Department of Planning, Industry and Environment, *Housing 2041 – NSW Housing Strategy*, 2021 < [Housing 2041 - NSW Housing Strategy](https://www.housing2041.nsw.gov.au/) > accessed 9 August 2021 at p. 36.

In 2018, NSW was the worst performing Australian jurisdiction for amenity across social housing, including ease of access and entry and modifications for functional needs, with 13% of residents stating that their access and entry needs were not currently being met.¹⁴

Existing policies to increase the accessibility of social housing owned by LAHC focus on building new dwellings to Liveable Housing Design (LHD) Silver level where level access is available. Silver level is the minimum level of housing accessibility prescribed by Liveable Housing Australia¹⁵, a not-for-profit partnership between community and consumer groups, government, and industry.

Silver level housing design provides for step-free access, open internal spaces across some living spaces, an accessible toilet, and a level of structural integrity to allow for future modifications, such as grab bars. Such dwellings are “visitable”, but often lack the level of accessibility required across our membership for these dwellings to function as comfortable homes, for example, they do not provide ground floor bedrooms as standard.¹⁶ PDCN does not support Silver Level as the baseline for social housing builds and notes that information regarding how many dwellings meet silver level, and where such dwellings are located is not publicly available.

We are aware that some LAHC developments may include a proportion of dwellings built to Livable Housing Design Gold level – which is PDCN’s recommendation - but again, there is no evidence of how many dwellings this is in a practical context or where they might be found.

The Silver Level benchmark represents a failure of the NSW Government to meet original 2010 targets set by the National Dialogue on Universal Housing Design, in which State and Territory social housing authorities committed to 100% Gold Level Accessibility by 2019.¹⁷

A recent review of the management of NSW public housing maintenance contracts, prepared by Tenants Union of NSW and the Public Interest Advocacy Centre¹⁸ recommended targets of 50% of new builds to meet the LHD Gold Standard by 2024, incrementally increased to 75% by 2026, and 100% by 2028 as a demonstration of the NSW Government’s commitment to its obligations under the UNCRPD and the National Disability Strategy.

PDCN supports this proposal to ensure that properties are best designed to meet the accessibility needs of all current and future households. It is important that the NSW Government provides social housing that promotes best practice and reflects the needs of social housing residents. Gold Level Livable Design Standard dwellings achieve this -

¹⁴ Australian Institute of Health and Welfare. (2019). *National Social Housing Survey 2018* <<https://www.aihw.gov.au/reports/housing-assistance/national-social-housing-survey-2018-key-results>> accessed 9 August 2021, quoted in Tenants Union of NSW and Public Interest Advocacy Centre, *Follow up Review of the Management of NSW Public Housing Maintenance Contracts*, Dec 2020 < [2012 TUNSWPIAC Sub Management NSW PH Maintenance.pdf](https://www.tenants.org.au/2012_TUNSWPIAC_Sub_Management_NSW_PH_Maintenance.pdf) (tenants.org.au)> accessed 9 August 2021, p. 13.

¹⁵ Liveable Housing Australia Website, 2020 <<https://livablehousingaustralia.org.au>> accessed 9 August 2021.

¹⁶ Liveable Housing Australia, *LHA Silver*, 2020 < [LHA Silver \(livablehousingaustralia.org.au\)](https://www.livablehousingaustralia.org.au/lha-silver)> accessed 9 August 2021.

¹⁷ Australian Government, Department of Social Services, *National Dialogue on Universal Housing Design - Strategic Plan*, 2011 <<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 10 August 2021.

¹⁸ Tenants Union of NSW and Public Interest Advocacy Centre, op cit., p.5.

representing a satisfactory compromise between building costs and accessibility and incorporating features universally beneficial across any household.

Recommendation 2

That DCJ commit to 50% of new LAHC builds to meet the LHD Gold Standard by 2024, incrementally increased to 75% by 2026, and 100% by 2028.

Recommendation 3:

That DCJ commit to providing transparent breakdowns on the number of LAHC properties that currently meet Gold or Silver Level Livable Design Standard, including a breakdown the Allocation Zones these properties are located in.

Retrofit all existing LAHC properties

Helping people to live safely and independently in their home, with or without support, improves quality of life. DCJ assists eligible tenants and approved applicants with home modifications to support their independent living.¹⁹

Residents with specific accessibilities in social housing which are not met in their current dwelling currently have two options – to seek modifications to their existing property or to request to transfer to an alternative property which is more appropriate to their needs. Both options are unsatisfactory for a variety of reasons.

The current approach to modifications reinforces the variability that already occurs across LAHC dwellings, dilutes the responsibility of DCJ to actively address housing accessibility and forces residents with disabilities to ‘police their own rights’.

Whilst we acknowledge that there may be circumstances where residents will need specialised modifications to their dwellings, we consider that best practice would be to upgrade the standard of the entire housing portfolio, making resident-initiated modifications the exception, not the rule.

PDCN has previously recommended that the NSW Government dedicate a pool of funds specific to upgrading the existing State social housing portfolio with a view to incorporating universal design elements from Livable Housing Design as an aspect of portfolio renewal.

To that end, PDCN also seeks that the NSW Government conduct an accessibility audit across all existing portfolio stock and then invest in retrofitting existing dwellings as part of the ongoing management of its properties as an alternative to modifying on an as needs basis.

As part of this process, DCJ should engage with key stakeholders including the Tenants Union of NSW, Shelter NSW, Disability Peaks, the Australian Network for Universal Housing Design (AHUDH) and the Centre for Universal Design Australia (CUDA) and City Futures Research Centre (UNSW) to determine how to achieve meaningful outcomes via renewal processes and to ensure that existing residents are supported during redevelopment.

¹⁹ Housing NSW, *Asset Performance Standards for Existing Dwellings*, op cit.

Recommendation 4:

That DCJ commit to an accessibility audit across the existing LAHC portfolio and then engage with key stakeholders with a view towards upgrading existing premises utilising universal design elements.

Recommendation 5:

That DCJ dedicate specific funding towards upgrading LAHC properties in line with universal design elements.

Current modification policies are potentially inequitable and need to be reviewed

Acknowledging that residents may need accessibility modifications not met via retrofitting, the questions of who should be responsible for funding modifications and whether residents should be reimbursed if they contribute to the cost of modifications must both be resolved.

The introduction of the National Disability Insurance Scheme (the NDIS) has complicated the situation in terms of disability modifications. LAHC policies cap DCJ funding for home modifications²⁰ (although we note some discretion on this) but allow residents to source alternative funding sources to supplement funding limits – and it is not clear if the capping of modification spends is in direct response to the introduction of the NDIS.

If this is indeed the case, the policy may be at odds with the Council of Australian Governments Communique on Principles to Determine the Responsibilities of the NDIS and other Service systems:

Social housing providers will be responsible for providing accessible accommodation for people in need of housing assistance in line with existing allocation and prioritisation processes, and consistent with universal design principles and livable housing design standards as outlined in the National Disability Strategy 2010-2020, including appropriate and accessible housing for people with disability, routine tenancy support, and ensuring that new publicly funded housing stock, where the site allows, incorporates Liveable Design features.²¹

The NDIS will be responsible for home modifications required due to the impact of a participant's impairment/s on their functional capacity in private dwellings, in social housing dwellings on a case-by-case basis and not to the extent that it would compromise the responsibility of housing authorities to make reasonable adjustments.²²

²⁰ Housing NSW, *Asset Performance Standards for Existing Dwellings*, op cit,

²¹ Council of Australian Governments, *Communique: Principles to Determine the Responsibilities of the NDIS and Other Service Systems*, 27 November 2015 <<https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>> accessed 9 August 2021 at p.18.

²² Ibid.

We are concerned at the narrow interpretation LAHC has taken to its obligations under both the National Disability Strategy and the Disability Discrimination Act 1993 (Cth) when a significant proportion of people with disability will never access the NDIS.

Having NDIS participants 'top up' capital for modification works to LAHC dwellings, may result in inequities in access to substantial modifications, as residents who are not NDIS recipients (including residents under My Aged Care) have significantly reduced capacity to contribute to the costs.

All residents with physical disabilities should have equal access to dwellings that meet their accessibility needs. Caps should be removed for modifications when a resident is not an NDIS participant.

Recommendation 6:

That DCJ meet its commitments under the National Disability Strategy to address the accessibility needs of all residents with physical disability by removing capped spends across accessibility modifications for residents who are ineligible for the NDIS.

In addition, there needs to be clear prescription around LAHC's liability to compensate a resident for their financial contribution to disability modifications to a dwelling if the resident is transferred for operational issues or a guarantee that the resident will be transferred to a property with a comparable level of amenity.

On this point, PDCN endorses the recommendations of the Tenants' Union of NSW and PIAC:

There should be mechanisms in place to ensure that tenants who relocate do not lose the investments they have made to meet their special needs. With LAHC being a large institutional landlord, this is done at close to no net cost because the improved asset is retained. Currently, only alterations (non-disability modifications) are eligible for reimbursement under the Alterations to A Home Policy from our understanding.²³

Recommendation 7:

Develop guidelines regarding resident funded disability modifications, including NDIS funded modifications, when residents are required to relocate for management purposes to ensure that residents are given comparative amenity in any alternative premises or that they are otherwise reimbursed so they can fund modifications to their subsequent dwelling.

Transferring tenants as a mechanism to resolve accessibility issues

Transferring residents with disability should be the last resort to solving their accessibility needs. Housing transfers are hugely disruptive to residents. They may have to leave their communities, move away from localised care support services and their treating health professionals, and rebuild support networks. There are also often significant wait times before a suitable property can be located. It is not unheard of for residents to wait months to be

²³ Tenants Union of NSW and Public Interest Advocacy Centre, op cit., p. 32.

relocated, having to sleep in a lounge chair, due to the lack of a ground floor bedroom, or not having the capacity to wash in a full bathroom.

If the only option that is available to address a residents' specific accessibility requirements is to transfer the resident, clear and enforceable benchmarks need to be set in terms of wait times and if a suitable dwelling cannot be realised within that time frame, other alternatives should be found, such as the use of private rental subsidies or head leasing.

Recommendation 8:

Where it is not possible to modify a residents' property to accommodate their accessibility requirements, LAHC set clear and enforceable benchmarks in terms of wait times for rehousing. Benchmarks should be determined in consultation with housing and disability advocacy peaks. Where rehousing across LAHC stock is not possible within a reasonable timeframe, LAHC should investigate private rental subsidy arrangements for suitable properties in the private rental market.

In addition to addressing issues associated with the social housing market, it is vital to explore mechanisms to reduce demand on the social housing system for people with physical disability who might otherwise be able to seek options across other forms of housing.

The NSW Government can take several proactive steps to enhance options for affordable and accessible housing for people with physical disability both across established 'niche' markets and the broader housing sector. The following proposals are in no specific order.

Enhance the capacity for people who are eligible for Specialist Disability Accommodation (SDA) to access it

Specialist disability accommodation (SDA) is designed to provide accommodation for people with disability with high and complex disability support needs and is only intended for 6% of NDIS participants.²⁴

As of March 2020, there were 607 SDA places estimated to be in development in NSW, with close to 60% of developments being delivered by the community housing sector. At the same time, there was an undersupply, based on estimated existing supply and SDA supply in development of close to 2000 properties.²⁵

The NSW Government should work with the NDIS, private investors and community housing providers to increase development of SDA to meet this shortfall. PDCN also strongly supports objective 2.3.6 in the Department of Planning, Industry and Environment's *Housing 2041: 2021-22 Action Plan*²⁶ for DCJ to develop a rights framework to ensure residents in Specialist Disability Accommodation have the statutory protections they need.

²⁴ Summer Foundation, Housing Policy, 2020 < <https://www.summerfoundation.org.au/policy-information-and-resources/housing-policy/#solution3> > accessed 9 August 2021.

²⁵ Estimates by the Summer Foundation were 1971 properties.

²⁶ NSW Department of Planning, Industry and Environment, *Housing 2041: 2021 – 22 Action Plan*, March 2021 <Housing 2041: 2021-22 Action Plan (nsw.gov.au)> accessed 9 August 2021, p. 12.

Recommendation 9:

The NSW Government should work with the NDIS, private investors and community housing providers to increase development of SDA.

Recommendation 10:

That DCJ consult with people with disability who live in SDA, their families and disability advocacy organisations to determine an appropriate framework for safeguarding the rights of residents of Specialist Disability Accommodation within NSW.

Encourage innovative solutions to housing affordability and accessibility through public private partnerships (PPPs)

We note that the Housing 2041, 2021-22 Action Plan²⁷ notes the importance of public private partnerships in meeting current and future community needs across the NSW housing market.

The NSW Government should establish processes for private developers, and the community sector to submit proposals for the use of government-owned land for housing projects aimed at providing affordability, accessibility, diversity of housing types, tenures and delivery models, suitable for people with physical disability (and their families). Projects should meet at least 50% Gold Level dwellings.

Recommendation 11:

That NSW Government establish processes for private developers, and the community sector to submit proposals for the use of government-owned land for housing projects that address the needs of people with physical disability (and their families) with mandated quotas of at least 50% of dwellings to be Gold Level Livable Design.

Partner with LGAs to use under-utilised operational land for crisis and short-term accommodation

The NSW Government should likewise partner with local governments, the community housing sector and developers, to facilitate the development of temporary supportive accommodation built to Gold Level Livable Design. We note that temporary supportive accommodation could be located on under-utilised operational land.

Recommendation 12:

That the NSW Government partner with local governments, the community housing sector, and developers, to facilitate the development of temporary supportive accommodation built to Gold Level Livable Design.

Enhance options for people with physical disability to access accommodation within the private housing sector

²⁷ Ibid.

Lastly there are several actions the NSW Government could take to increase the range of housing options across the private market for people with physical disability, including:

- Regulation of Silver Level Accessibility Standards across new Class 1 and 2 builds.
- Providing enhanced supports to facilitate people with physical disability sustaining tenancies within the private rental market
- Enhancing the capacity for people with physical disability to make disability modifications to rental properties and regulating to remove no-grounds evictions.
- Providing specialised loan agreements for people with disability to purchase homes

Mandate Silver Level Accessibility for Class 1 and 2 dwellings across NSW

Adequate accessible housing, (owned or rented), is a foundational building block for achieving the aims of the NSW Disability Inclusion Act 2014 and is a key aspect of both the NSW Housing Strategy 2041 and the Ageing Well in NSW: Seniors Strategy 2021–2031.

Existing strategies employed by the NSW Government to increase supplies of accessible housing are not sufficient to address current or future need - A report by, Raynor and Smith, states that a new home built today has a 60% probability of housing a person with permanent disability and 91% if you count visitors. ²⁸

On 30 April 2021, a majority decision taken by the Building Ministers Meeting (BMM) to mandate minimum accessibility requirements in the National Construction Code (The NCC) in line with Silver Level Livable Housing Design Standards, with optional specifications for Gold Level Livable Design. This decision was in line with the October 2019 directive of the United National Committee on the Convention on the Rights of Persons with Disabilities (CRPD) that Australia, as a state party that ratified the CRPD, mandates accessibility into the national framework that governs the building of housing.

NSW was an outlier in not supporting minimum standards within the NCC. Victoria, Queensland, the Australian Capital Territory, Northern Territory and now Tasmania have all committed to implementing the guidelines when they come into effect on 1 September 2022.

Applying the provisions of the NCC at a State level would greatly enhance the capacity of the private housing market to meet the needs of people with low to moderate level accessibility requirements and facilitate cheaper and easier retro-fits as accessibility needs evolve over time, allowing people to age in place, a significant requirement going forward as we become an increasingly ageing population

Recommendation 13:

Mandate Silver level Livable Design Standards across all Class 1 and 2 dwellings within NSW in line with recent changes to the National Construction Code (the NCC).

²⁸ These strategies include a requirement that 20 per cent of all medium to high density dwellings developed by Landcom to meet or exceed the silver accessibility standard and the NSW Apartment Design Guide, which encourages 20 per cent of apartments within new residential apartment buildings to achieve a minimum silver level.

Provide enhanced supports to facilitate people with low incomes (including people with physical disability) to access and sustain housing within the private market

The NSW Government has a range of supports to assist low-income families to rent in the private market, including Advance Rent, Rent Start Bond Loans, Tenancy Assistance, Tenancy Guarantees and more recently, a trial rental assistance program, Rent Choice Assist, which assists low-income households that have experienced a financial shock, such as loss of employment or illness to pay rent for up to three years.²⁹ We understand that under the new NSW housing strategy the Government will also be exploring ways to enhance the capacity for people to buy properties via a range of strategies including right of first purchase or low deposits on government-led residential developments or fast-tracking developments that support first homebuyers.³⁰

The Department of Communities and Justice should consult with people with physical disability and disability peaks to understand the challenges experienced by people with disability in accessing housing in the private market with a view to developing specialised support services to give people with physical disability the assistance they need.

We note that the Western Australian Government, for instance, has an Access Home Loan Scheme specifically designed to help people with disabilities buy their own home or modify an existing private home to cater for their needs.³¹ The Loan allows for Western Australia's Housing Authority to fund up to a maximum of 30% of the purchase price of the property, retaining a share of the property until such time as it is paid out.³²

The Australian Housing and Urban Research Institute (AHURI) also released a report in 2017, suggesting that shared ownership—including shared equity and mixed equity models—could offer potential housing policy options to help address *'unmet need in affordable housing and barriers in entry to home ownership for people with disability'*³³ if combined with a range of other policy interventions including:

- The establishment of government-backed agencies, such as Keystart, (referenced above) to offer affordable and inclusive finance
- Clarification around shared owners' eligibility for Commonwealth Rent Assistance (CRA), the First Home-Owner Grant and NDIS SDA funds
- A review of stamp duty, Special Disability Trust and pension eligibility rules to allow for the gifting of funds by families and the potential unlocking of housing wealth; and
- The funding of independent financial advice and advocacy for people with disability who may seek to co-own a property.³⁴

²⁹ NSW Government, Communities and Justice, *Rent Choice Assist*, 16 Sept 2019 < [Rent Choice Assist | Family & Community Services \(nsw.gov.au\)](#) > accessed 9 August 2021.

³⁰ NSW Department of Planning, Industry and Environment, op cit., p.

³¹ Keystart, *Access Home Loan*, 2021 < <https://www.keystart.com.au/loans/access-home-loan> > accessed 9 August 2021.

³² Ibid.

³³ Wiesel, I., Bullen, J., Fisher, K. R., Winkler, D. and Reynolds, A. (2017) Shared home ownership by people with disability, AHURI Final Report No. 278, Australian Housing and Urban Research Institute, Melbourne, <<http://www.ahuri.edu.au/research/finalreports/277>, doi:10.18408/ahuri-7104001.> accessed 9 August 2021, pp. 2 & 3.

³⁴ Ibid., p. 3.

Recommendation 14:

DCJ should consult with people with disability and their representatives, including Disability Advocacy Peaks, to further identify and address challenges faced by this cohort in owning or renting a home.

Enhance the capacity for people with physical disability to make disability modifications to private rental properties

Currently under the Residential Tenancies Act 2010 (NSW), a landlord can refuse to allow a tenant with physical disability to make major modifications to the property regardless of whether it is reasonable to do so.³⁵ This is an impediment to people with disability being able to access disability-related housing modifications. Whilst tenants can potentially challenge a landlord's refusal to allow modifications, at the NSW Civil and Administrative Tribunal, they often don't, for fear of reprisal or retaliation.

"In terms of [modifications], I personally would not [ask for them] because you usually don't know your landlord and have no idea how they might respond but it depends. I bought a shower chair a while ago, so that I can sit down in the bathroom and lean on it if needed to step over the shower frame. It also fits in the shower space if needed. So, the chair has given me the extra help I've needed for the past few months, without asking for mods."

- PDCN member

Tenants should have the prima-facie right to make disability related modifications to rental properties, unless the landlord can demonstrate that it is reasonable to refuse them, for instance, if a proposed modification would be in violation of the heritage provisions relating to the property or would otherwise affect the property's structural integrity.

Recommendation 15:

Amend the Residential Premises Act 2010 (NSW) to allow tenants to make disability related modifications to private rental premises, unless the landlord can demonstrate that it is reasonable to refuse them.

Ensure that private tenants can exercise any right to disability-related modifications without reprisal

Tenants should also be able to seek disability related modifications to their rental premises without fear of being evicted.

The experience of Jan*, highlights the conundrum faced by persons with physical disability in the rental market when considering whether to request modifications:

Jan rents a townhouse and uses a wheelchair full time. She had to search extensively to find the townhouse – it was the most accessible property she could

³⁵ Residential Tenancies Act 2010 (NSW) s.66(3).

find in her regional town, even so, half of the property is inaccessible to her. Jan now needs a ceiling hoist since she can no longer transfer herself (ie: from bed to wheelchair). She has been approved for NDIS funding for the hoist but needs approval from the landlord and body corporate as well. Jan is reluctant to raise the issue because she knows that the landlord will most likely refuse to grant permission for the hoist. Jan is also aware that the landlord can refuse to renew her lease.

Expand rules relating to retaliatory evictions

The capacity for tenants to seek disability-related modifications could be enhanced through the strengthening of rules around retaliatory evictions under s. 115 of the *Residential Tenancies Act* to expressly provide that a landlord cannot evict a tenant for seeking to modify a property for disability related purposes and more broadly through the removal of no-grounds evictions.

Recommendation 16:

Amend s.115 of the Residential Tenancies Act 2010 (NSW) to expressly provide that a tenant cannot be evicted for seeking disability-related modifications to a rental property.

Remove no grounds evictions

“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 agreement.

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

No grounds evictions could be used to circumvent any changes to enhance the capacity for tenants to seek disability related modifications and should be removed as an option for landlords under the *Residential Tenancies Act 2010* (NSW).

Recommendation 17:

Remove the capacity for landlords to terminate a periodic residential agreement without grounds under s. 85 of the Residential Tenancies Act 2010 (NSW).

Concluding comments

It is impossible to look at issues relating to the supply and adequacy of the social housing sector without considering the broader housing market and the reasons why social housing is so highly sought after.

High property prices and rents, limited housing accessibility, insecurity of tenure and a lack of enforceable rights as a tenant are all hallmarks of the private housing sector. These issues combined with an abject lack of alternatives for people with low to medium accessibility needs increases demand for social housing as an 'oasis in the desert'.

The NSW Government needs to address both the external factors driving demand for social housing and enhance the capacity for social housing to meet the needs of those who require it, both now and into the future.