



State Election Platform 2023

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Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing the estimated 1,079,200 people with physical disabilities across New South Wales.¹ 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 in line with Australia's international and domestic commitments, they have equality of opportunity and full participation in NSW society.



Key Commitments

We call on all political parties to commit to 6 key asks for greater disability inclusion:



Introduce a Human Rights Act for NSW



Transfer the Disability Portfolio into the jurisdiction of Premier and Cabinet



Commit to National Construction Code minimum accessibility standards by October 2023



Unlock the capacity of tenants with disabilities to access NDIS and CHSP funded home modifications via reform of the Residential Tenancies Act 2010



Increase funding for the Ageing and Disability Commission in line with current and projected demand for the ADC's services.



Provide additional incentives for private investment in wheelchair accessible taxi services (WATs)

Rights and Justice

Problem 1: people with disability are unable to access adequate protections of their basic human rights across NSW

Human rights are the tools we use to fight for the basic rights and freedoms that should be protected in relation to every person in the world, from birth until death, no matter our race, gender, religion, abilities, political belief, sexuality, age, or any other characteristic. Protecting our human rights ensures that we are treated fairly and equally.ⁱ

Despite being a signatory to the UN Convention of Human Rights, Australia is the only western democracy that does not have a Bill of Rights to ensure that the basic rights of all its citizens are enforceable in our domestic legal system.ⁱⁱ

Establishing a Human Rights Act at state level, as an alternative to a federal Bill of Rights, would allow every NSW citizen – including people with disabilities – to be confident that their fundamental rights are enforceable at law, and that politicians, parliament and policy makers are obligated to acknowledge and incorporate these rights across policy.ⁱⁱⁱ

Committing to introducing a Human Rights Act would also send a powerful message to the private sector and the NSW community more broadly of the importance the NSW Government places on ensuring that we are all treated fairly, and with dignity, equality and respect.^{iv}

In the context of disability, a Human Rights Act would facilitate the realisation of the NSW Disability Inclusion Plan, building on its vision of creating a state that is fully inclusive for everyone in our community.^v

Victoria, the ACT and Queensland have all passed human rights acts in their jurisdictions. ACT has had a human rights act for 19 years. Across those states, we have seen the enforcement of basic human rights across healthcare, education and housing.

Passing a similar Act in NSW is a decisive and powerful next step in responsible governance, which would legislate the expectations we already have as NSW citizens – *that we are all treated with dignity and equality.*



Solution – adopt a Human Rights Act in NSW

Problem 2: Currently disability inclusion is not implemented consistently across government departments and across federal, state, and local jurisdictions.

The NSW Government has clear leadership responsibility for addressing the broad range of social and structural factors that currently prevent people with disabilities from realising their rights both as citizens and as members of the NSW community.^{vi}

These responsibilities arise from Australia's commitments as a signatory to the United Nations Convention on the Rights of Persons with Disability (the UNCRPD), Australia's Disability Strategy 2021-2031, the Disability Discrimination Act 1992 (Cth), as well as the Disability Inclusion Act 2014 at state level.

Disability inclusion is relevant across all state government portfolios, including transport, health, and education, and often requires alignment and synergy both with the federal government and other states and territories. This is particularly relevant now, with the NDIS and Information Linkages and Capacity Building Scheme (ILC) now providing many supports and services to NSW citizens which were historically co-ordinated at state level.

The Department of Premier and Cabinet is ideally positioned to navigate the complexities that can arise when working with the federal government and other state and territory governments to service the needs of the disability community.^{vii}

At the same time, there is still significant variation across NSW Government departments in terms of ambition and progress towards championing disability inclusion, as seen across the various departments' Disability Inclusion Action Plans.

Moving the disability portfolio to the 'heart' of the NSW Government is key to achieving a whole of government approach to disability inclusion, giving much needed consistency to people with disability as the recipients of State supports and services.

Currently the portfolios for Aboriginal Affairs and Women – two groups recognised as marginalised within society – already fall under the jurisdiction of Premier and Cabinet. We question why disability inclusion – as a whole of nation commitment – has not been similarly elevated.

Transferring the portfolio would elevate the interests of the disability community, in line with our domestic and international commitments; better facilitate the integration of disability inclusion across all areas of government and ensure greater consistency in the interpretation and application of prescribed disability rights.



Solution: transfer responsibility for disability inclusion into the Premier and Cabinet cluster

Problem 3: The Ageing and Disability Commission is grossly underfunded to meet current and projected demand for services

The establishment of the Ageing and Disability Commission, (the ADC) in 2019 was a significant milestone towards achieving equitable rights for both older persons and those living with disability across NSW.

The Commission has a critical role as the primary body in NSW to promote and safeguard the rights of vulnerable older people and people with disability across NSW, filling a critical gap not previously addressed by other complaint and investigative bodies.

The Commission is still in its early days of operation, and the unexpected context in which the ADC has had to function has resulted in higher than anticipated demand across the Commission's services and made the provision of these services more difficult.

The original funding for the ADC was exclusive of population increases or crisis driven demand, and budget requests submitted in 2021-22, based on service demand over the prior two years of operations were declined.^{viii}

Our members have expressed strong support of the Commission and its critical role both in responding to instances where abuse may be occurring, and in safeguarding the rights of people with disability and older people, to live safely within their communities.

It is clear from the ADC's most recent annual report that the Commission is not on a sustainable financial trajectory, and we need the State Government to ensure that the Commission is appropriately resourced as a matter of priority.^{ix}

This is particularly important when considering the projected increases in the proportion of the NSW population aged 65 years and over, across the next few decades.^x

\$ *Solution: increase funding for the Ageing and Disability Commission in line with current and projected demand for the ADC's services*

Inclusive homes in community

Problem 4: People with disability are unable to find suitable homes in the mainstream housing market

Housing plays a major role in the health and wellbeing of people with disability, by providing shelter, safety, and security.^{xi} The availability of affordable, sustainable, and appropriate housing helps people with disability to participate in the social, economic and community aspects of everyday life.^{xii}

It is estimated that there are over 1 million people across NSW who live with physical disability, including older persons^{xiii}. 95.7% these people are living in the private housing market, either as property owners or renters,^{xiv} and are not eligible for specialised disability accommodation.

Research by PDCN indicates that most people with physical disability looking to rent or buy in the private market struggle to find homes that are physically suitable for them to live in.^{xv} Many are forced to live in homes that are not fit for purpose with compromises across comfort, safety, and utility across many years:

I lived in aged care for 10 years (all my 40s) before I found a wheelchair accessible SDA property 6 years ago.

Survey response from PDCN member, 2021

"In several weeks of searching [for a rental property] not one of the properties we saw was suitable for someone with a power chair and no walking ability at all, in that we didn't see any [properties] that were ground floor with flat access. In the price range we looked at, first floor with a lift and good stairs was the best we found. Only one listing mentioned disability access - to say there was none.

-Survey response from PDCN member, 2020

In 2020, changes were introduced into the National Construction Code, Australia's primary set of technical design and construction provisions for buildings, requiring all new home builds to be built to Silver Level Livable Design Standard.^{xvi}

Silver Level Livable Design is a form of universal housing design with significant accessibility benefits for people with physical disability.

Adopting Silver Level Livable Design as standard across all new builds would result in an increase of 47,000 accessible homes across NSW per year^{xvii}, greatly enhancing the capacity for people with physical disability, including those with age related disability, to find homes that are either suitable to live in, or easy and cheap to modify to their specific accessibility requirements.

The NSW Government has expressly opted out of compliance with the new accessibility provisions in the NCC. Victoria, South Australia, Tasmania, Queensland, and the ACT have already signed onto these changes and are working towards compliance by October 2023.

Current NSW strategies to address the housing needs of the disability community^{xviii} are not fit for purpose in meeting current or projected demand for accessible homes across our state. With 18% of the NSW population currently living with disability, correlations between disability and ageing, and the proportion of the population aged 65 years and older (17%) set to increase to 25% by 2061,^{xix} mandating Silver Level Livable design across NSW now will provide current and ongoing benefits to NSW communities.





Solution: commit to implementing the NCC minimum accessibility provisions by October 2023.

Problem 5: People with disabilities cannot consistently realise home modifications in private rentals.

Close to one-third (29% or 1.2 million) of people with disability across Australia rent their homes and most of those rent from a private landlord (42%).^{xx} Our research shows that most NSW rental properties either don't meet the accessibility requirements of people with physical disability or only partially meet their needs.^{xxi}

In 2016 I was moved to a property with 26 stairs and stayed for three years. I just had to stay up there (in the home) or go down the stairs on my backside.

- Quote from PDCN survey participant, 2021

When I first came home from hospital my son had to carry me upstairs at the front of the house. I wish I could have a ramp for my mobility scooter. Steps mean I can't get it inside.

- Quote from PDCN survey participant, 2021

Making modifications, such as the installation of a ramp or a ceiling hoist, can greatly increase the amenity of a property, but many landlords do not permit these types of modifications to their properties, irrespective of whether the tenant offers to restore the property to its original state at the end of their lease.

Landlords of private rentals do not want their home modified to accommodate disability. This means the only options for people needing modified housing is to either buy or try to get social housing. Not good enough.

- Quote from PDCN survey participant, 2021

Under the National Disability Insurance Scheme (the NDIS) and the Commonwealth Home Support Program (CHSP), people with disability, including older persons, can access funding for modifications that improve the accessibility of their homes. In both instances, the need for home modifications must be assessed by occupational therapists who are qualified to recommend more detailed home modifications supports, and any approved works must be constructed by certified builders, in line with legal and administrative requirements, like the National Construction Code and Australian Standards.^{xxii}

NSW Tenancy law has not adjusted to these changes.



While it is possible for a tenant to apply to the Civil and Administrative Tribunal to seek an order that the tenant may install a fixture or make a renovation, alteration, or addition to the residential premises^{xxiii}, the onus is on the tenant to demonstrate why they should be permitted to modify the property, not on the landlord to show why a modification should not be permitted, and tenants often lack the relevant information about the property, necessary to substantiate such an order.

NSW rental law should be reformed to give tenants with disability a prima facie right to make approved NDIS or CHSP modifications to their rental properties, such as the installation of ramps and chair lifts, the replacement of floor surfaces, or the installation of ceiling hoists, unless the landlord can demonstrate that there is a legitimate and compelling reason not to permit such works.

We envision that achieving this change could be achieved in two ways. Firstly, through modifying s.66 (2) to include NDIS and CHSP modifications, to read:

A landlord must not unreasonably withhold consent to a fixture, or to an alteration, addition or renovation that is of a minor nature or is a NDIS or CHCC approved modification.^{xxiv}

Or as an alternative, adding a new clause to s. 66 permitting tenants with NDIS or CHCP approved modifications to permit, install or cause to be installed a fixture or make or cause to be made any renovation, alteration, or addition to the residential premises with written notice to the landlord.

Either change would result in a need for a new subclause in s. 69 to give the landlord capacity to seek an order that the tenant does not make alterations to the property.

We note that s. 67 of the Act already provides that a tenant may remove any fixture that they have installed at the premises in compliance with the act at their own cost before vacating the premises.

Making these changes would make it easier for tenants with disabilities to access approved modifications in their rental properties, unless there was a legitimate reason why such modifications should not be permitted.

At the same time, landlords could be confident that works would be constructed by certified builders, in line with legal and administrative requirements, like the National Construction Code and Australian Standards, as a prerequisite for funding under the NDIS and CHCP.

Landlords could either benefit from the works to their properties by retaining the modifications at the end of the tenancy, expanding the range of future tenants who could occupy their property, or request that the tenant remove the modifications and restore the premises to its original state at their own cost.

If accessibility modifications were retained, we could expect to see federally funded increases in the overall accessibility of rental stock across the NSW market over time.



Solution: unlock the capacity of tenants with disabilities to access NDIS and CHSP funded home modifications via tenancy law reforms

Personal and Community Support

Problem 6: Wheelchair Accessible Taxi services are notoriously unreliable for our members and the disability community, preventing people with disability from participating across society and missing vital appointments.

Wheelchair Accessible Taxis (WATs) act as an essential mode of transport for a large proportion of the disability community, with many people relying on this service to get to essential medical appointments, employment, and broader social occasions.

[WATs] enable me to be able to go out without worrying about parking, having too many drinks when socialising and when ordering a wheelchair taxi it allows me not to have to do extra transfers [from my wheelchair], saving my shoulders.

- PDCN member survey response, Dec 2022

While many people with physical disability prefer the convenience of door-to-door transport provided by a WAT, for some, there is no viable transport alternative.

I don't drive, so have used Wheelchair Accessible Taxis for the majority of my adult life, as well as in my teens. As a part time worker on the DSP, I also don't earn much money, so being able to pay half the fare is helpful.

- PDCN member survey response, Dec 2022

[WATs] enable me to access the community and nearby events that meets my needs e.g. less people contact compared to buses/I'm severely immuno-suppressed, less impact on pain levels etc.

- PDCN member survey response, Dec 2022

The need for reliable WAT services is particularly important in regional areas where there are limited alternative modes of point-to-point transport. Since 2021, and the lifting of pandemic restrictions, we have received consistent complaints about a lack of WAT services across the NSW, including complaints that booked taxis haven't arrived, that drivers are declining jobs, and ongoing extended waits for pickups.

There are long waits now [for WATs], over an hour even though you pre-booked and then they just don't bother showing up.

- PDCN member survey response, Dec 2022

For last 7 bookings, no taxi arrived. I missed 3 paid-for events & wasted my NDIS funding on support worker fees. Even booking 12hrs ahead doesn't get you a taxi. Seriously considering only bookings events I can wheel to in future, rather than being left stranded again.

- PDCN member survey response, Dec 2022

We were so fed up being left stranded for 4-5 hours when we had booked a trip, missing doctor appointments as a taxi never arrived, being thrown around the back of the taxi as I had not securely fastened.

- PDCN member survey response, Dec 2022

A recent study PDCN conducted on the user experience of people with disability using taxi services found that almost half (48%) of respondents across NSW had to wait up to 30 minutes to an hour for a WAT to arrive in the last 12 months.

35% of respondents who have booked a WAT in the last 12 months simply had it not turn up at all.

We are concerned that many drivers ceased operating their own WATs during the pandemic, and have either switched to standard taxis, as a more lucrative business opportunity, or left the industry all together.

With reports that some regional areas only have one or two WATs in operation, or have lost all WATs in their region; and of growing competition from NDIS funded transport services across some regional areas, we need Government to review of the adequacy of current incentives with a view to rebuilding the NSW WAT fleet.

It may also be appropriate across large scale taxi companies for the Government to mandate that a set proportion of the company's fleet must consist of WATs.



Solution: Provide additional incentives for taxi drivers (and companies) to invest in wheelchair accessible taxis (WATs)

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- ⁱ Australian Lawyers for Human Rights, *Human Rights Act for NSW* < <https://humanrightsforNSW.org/benefits-of-a-human-rights-act> > accessed 25 Jan 2023.
- ⁱⁱ Ibid
- ⁱⁱⁱ Ibid
- ^{iv} Ibid
- ^v Department of Communities and Justice, *NSW Disability Inclusion Plan* < <https://www.dcj.nsw.gov.au/community-inclusion/disability-and-inclusion/nsw-disability-inclusion-plan.html> > accessed 25 Jan 2023.
- ^{vi} Centre for Intellectual Disability, *Every Day for Everyone: Putting Disability Inclusion at the heart of Government* < [Information Sheet: Putting disability inclusion at the heart of government \(cid.org.au\)](https://www.cid.org.au/information-sheet-putting-disability-inclusion-at-the-heart-of-government) > accessed 25 Jan 2023
- ^{vii} Premier & Cabinet, *About the Department of Premier and Cabinet* < [About the Department of Premier and Cabinet - Premier & Cabinet \(nsw.gov.au\)](https://www.nsw.gov.au/about-the-department-of-premier-and-cabinet) > accessed 25 Jan 2023
- ^{viii} Ageing and Disability Commission, *Ageing and Disability Commission Annual Report, 2021 – 2022* < [2021-22 Annual Report \(nsw.gov.au\)](https://www.adc.nsw.gov.au/2021-22-annual-report) > accessed 14 December 2022
- ^{ix} Ibid.
- ^x NSW Treasury, *2021-22 NSW Intergenerational Report - Towards 2061 – Planning for the Future* < [2021-22 NSW Intergenerational Report](https://www.nsw.gov.au/2021-22-nsw-intergenerational-report) > accessed 25 January 2023
- ^{xi} Australian Institute of Health and Welfare, *People with Disability in Australia*, Web Report, last updated 5 July 2022 < [People with disability in Australia, Housing - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/people-with-disability-in-australia) > accessed 25 Jan 2023
- ^{xii} Ibid
- ^{xiii} ABS
- ^{xiv} AIHW, op cit.
- ^{xv} Stone, H., Bachelor, A., and Mead, M, *Access Denied -The Experiences of People With Physical Disability Across the NSW Housing Sector*, May 2022 < [Research and Reports | Physical Disability Council of NSW \(pdcnsw.org.au\)](https://www.pdcnsw.org.au/research-and-reports/physical-disability) > accessed 25 Jan 2023
- ^{xvi} Livable Housing Australia, *Livable Housing Design Guidelines: Silver, Gold, and Platinum* < [Design guidelines \(livablehousingaustralia.org.au\)](https://www.livablehousingaustralia.org.au/design-guidelines) > accessed 25 Jan 2023
- ^{xvii} Department of Planning and Environment, *Housing Supply Insights Quarterly Insights Monitor Q1 (July to September 2022)* < [Housing Supply Insights \(nsw.gov.au\)](https://www.dpe.nsw.gov.au/housing-supply-insights) > accessed 25 Jan 2023.
- ^{xviii} These include requirements that 20% of all high to medium density Landcom builds are accessible, that new social and affordable government housing is built to Silver Level Accessibility and Government encouragement that 20% of all builds to be built accessibly as provided in the NSW Apartment Design Guide.
- ^{xix} NSW Treasury, op. cit.
- ^{xx} AIHW, *People with disability in Australia 2022: in brief*, web report, last updated 5 July 2022 < [People with disability in Australia 2022: in brief, Housing - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/people-with-disability-in-australia-2022) > accessed 25 Jan 2023
- ^{xxi} Stone., H et al, op. cit.
- ^{xxii} Australian Government, *National Disability Insurance Scheme, Home modifications explained* < [Home modifications explained | NDIS](https://www.ndis.gov.au/home-modifications-explained) > accessed 25 Jan 2023
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- ^{xxiv} Residential Tenancies Act 2010 (NSW) s. 66(2)