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# Joint Standing Committee on the National Disability Insurance Scheme

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Report into Supported Independent Living

May 2020

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# List of Recommendations

## Recommendation 1

- 4.24 The committee recommends that the National Disability Insurance Agency ensure immediate access to funding for all assessments required to support applications for reasonable and necessary supports, and in particular to support applications for Supported Independent Living.

## Recommendation 2

- 4.25 The committee recommends that the National Disability Insurance Agency clarify the assessments required to support an application for Supported Independent Living funding.

## Recommendation 3

- 4.26 The committee recommends that the National Disability Insurance Agency implement measures to ensure that all evidence provided by a participant to establish that supports are reasonable and necessary is accurately recorded in the participant's plan, and is actively considered in plan development.

## Recommendation 4

- 4.39 The committee recommends that the National Disability Insurance Agency develop and implement a mechanism to confirm a participant's eligibility for Supported Independent Living prior to the participant identifying a suitable vacancy.

## Recommendation 5

- 4.40 The committee recommends that planners be empowered to authorise a price range for Supported Independent Living (SIL) funding, with no need for further approval so long as a SIL quote falls within that price range, on the condition that the participant and/or their plan nominee is able to review the SIL quote and approve it.

## Recommendation 6

- 4.55 The committee recommends that the National Disability Insurance Agency, develop and publish clear, comprehensive guidance material on Supported Independent Living as a matter of urgency.

### **Recommendation 7**

**4.69** The committee recommends that the National Disability Insurance Agency ensure that its planners fully explore current and future accommodation and support needs with participants during pre-planning, planning and plan review.

### **Recommendation 8**

**4.91** The committee recommends that the National Disability Insurance Agency implement measures to further streamline and expedite quote approvals for Supported Independent Living as a matter of urgency.

### **Recommendation 9**

**4.92** The committee recommends that the National Disability Insurance Agency develop and implement mechanisms to prioritise and expedite approvals for Supported Independent Living and Specialist Disability Accommodation for people with disability in residential aged care, hospital settings, and the criminal justice system.

### **Recommendation 10**

**4.93** The committee recommends that the National Disability Insurance Agency clarify whether a provider may continue to claim for supports delivered under a plan while a review of that plan is underway.

### **Recommendation 11**

**4.100** The committee recommends that additional funding be made available in plans for short-term accommodation, for participants seeking to access Supported Independent Living.

### **Recommendation 12**

**4.121** The committee recommends that the National Disability Insurance Agency (NDIA) develop and implement a mechanism to ensure that participants have the opportunity to review and agree to quotes for Supported Independent Living before they are approved by the NDIA.



### **Recommendation 13**

**4.136** The committee recommends that the National Disability Insurance Agency ensure that its work to improve the Supported Independent Living quoting tool and quoting process takes into account:

- the costs associated with supporting participants with higher or more complex needs;
- the costs associated with supporting participants in thin market areas; and
- all relevant Fair Work decisions.

### **Recommendation 14**

**4.137** The committee recommends that the National Disability Insurance Agency review the 'simplified' quoting tool for Supported Independent Living, to allow providers to make minor changes to a quote based on changes to the National Disability Insurance Scheme pricing structure that have occurred since the quote was approved.

### **Recommendation 15**

**4.156** The committee recommends that the National Disability Insurance Agency establish a central point of contact for all inquiries relating to Supported Independent Living.

### **Recommendation 16**

**4.157** The committee recommends that the National Disability Insurance Agency develop and implement a mechanism to provide updates to providers on the progress of Supported Independent Living quotes.

### **Recommendation 17**

**4.158** The committee recommends that the National Disability Insurance Agency progress the recommendations made in the committee's report, *NDIS ICT Systems*, as a matter of urgency.

### **Recommendation 18**

**5.58** The committee recommends that the National Disability Insurance Agency review its existing policies and procedures, to ensure that participants needing assistance with daily living are given genuine choice as to whether they access supports in a shared or individual living arrangement.

### **Recommendation 19**

**5.59** The committee recommends that the National Disability Insurance Agency give all participants living in congregate settings, who receive Supported Independent Living funding, the opportunity to review their accommodation and support arrangements and to exit the congregate setting if they wish to do so.

### **Recommendation 20**

**5.60** The committee recommends that the National Disability Insurance Agency review and, if necessary, amend the Supported Independent Living quoting tool, to ensure that it allows participants to choose the people with whom they share a residence to the greatest extent possible

### **Recommendation 21**

**5.59** The committee recommends that additional funding be made available to support participants seeking to exit congregate living arrangements.

### **Recommendation 22**

**5.61** The committee recommends that the National Disability Insurance Scheme Quality and Safeguards Commission implement additional oversight measures for participants in group living arrangements.

### **Recommendation 23**

**5.75** The committee recommends that the National Disability Insurance Scheme Quality and Safeguards Commission develop clear policies and guidance on vacancy management, with a focus on ensuring compatibility between tenants in shared accommodation and ensuring participant involvement in the vacancy management process.

### **Recommendation 24**

**5.118** The committee recommends that the National Disability Insurance Agency implement a mechanism to separate service delivery, tenancy management and support coordination for participants in Supported Independent Living settings.

### **Recommendation 25**

**5.119** The committee recommends that the National Disability Insurance Agency, with the National Disability Insurance Scheme Quality and Safeguards Commission, implement a mechanism to ensure participants accessing Supported Independent Living are able to change providers without compromising housing security or suffering other adverse consequences.

### **Recommendation 26**

**6.28** The committee recommends that the National Disability Insurance Agency develop a central register for participants seeking to identify vacancies for Supported Independent Living and Specialist Disability Accommodation.

### **Recommendation 27**

**6.29** The committee recommends that the National Disability Insurance Agency establish a specialist team dedicated to vacancy management.

### **Recommendation 28**

**6.52** The committee recommends that the National Disability Insurance Agency develop and implement processes to streamline the approval process for participants who need funding for both Supported Independent Living and Specialist Disability Accommodation.

### **Recommendation 29**

**6.53** The committee recommends that, if a participant is approved for Specialist Disability Accommodation involving on-site overnight assistance, funding for Supported Independent Living (SIL) be automatically approved, on the condition that the participant and/or their plan nominee is able to review the SIL quote and approve it.

### **Recommendation 30**

**6.77** The committee recommends that, if a participant exits a Supported Independent Living arrangement, funding for that participant continues at a 50 per cent rate for a period of one month or until the vacancy is filled—whichever is sooner. At the end of that month, a review should be conducted to determine whether additional funding is required.

### **Recommendation 31**

**7.27** The committee recommends that the National Disability Insurance Agency conduct a review of the National Disability Insurance Scheme Price Guide and associated price settings to ensure that the additional costs associated with supporting participants with complex needs, including in Supported Independent Living settings, are adequately captured.

### **Recommendation 32**

**7.39** The committee recommends that the National Disability Insurance Agency develop and publish clear policy and guidance on when providers may claim above the benchmarks set out in the National Disability Insurance Scheme Price Guide.

### **Recommendation 33**

**7.40** The committee recommends that the National Disability Insurance Agency develop and implement mechanisms to ensure providers are immediately notified of any changes to the National Disability Insurance Scheme Price Guide or associated price settings.

### **Recommendation 34**

**7.57** The committee recommends that the National Disability Insurance Agency review the National Disability Insurance Scheme Price Guide, to ensure that the costs associated with attracting, training and retaining staff to deliver supports to people with severe or complex disability, including in Supported Independent Living settings, are adequately captured.

### **Recommendation 35**

**7.58** The committee recommends that providers within the National Disability Insurance Scheme invest in additional training for support staff involved in the delivery of Supported Independent Living services and supports for participants with higher or more complex needs.

### **Recommendation 36**

**7.75** The committee recommends that the National Disability Insurance Agency develop and implement a streamlined mechanism to expedite the processing of claims made by service providers for increased supports provided to participants.

### **Recommendation 37**

**7.101** The committee recommends that the National Disability Insurance Agency develop and implement a mechanism to streamline plan reviews for participants accessing Supported Independent Living in shared living arrangements.

### **Recommendation 38**

**8.18** The committee recommends that the National Disability Insurance Agency actively works to address thin markets, and ensures that work to address thin markets in regional, rural and remote areas captures both Supported Independent Living and Specialist Disability Accommodation.

### **Recommendation 39**

**8.30** The committee recommends that the National Disability Insurance Agency publish a clear and comprehensive policy on provider of last resort arrangements and crisis accommodation as a matter of urgency.

#### **Recommendation 40**

**8.56** The committee recommends that the Commonwealth, states and territories, through the Disability Reform Council, progress work to understand and address gaps in the availability of advocacy and decision support services as a matter of urgency.

#### **Recommendation 41**

**8.57** The committee recommends that the National Disability Insurance Agency, working with the Australian Government, publish and distribute additional information on the availability of advocacy and decision support services.

#### **Recommendation 42**

**8.58** The committee recommends that the Australian Government increase funding for advocacy and decision support initiatives, to ensure that these initiatives reach the broadest range of people who require these services.

#### **Recommendation 43**

**8.69** The committee recommends that the National Disability Insurance Agency, with the Quality and Safeguards Commission, develop and publish service standards specifically for the delivery of Supported Independent Living services.

#### **Recommendation 44**

**8.70** The committee recommends that the National Disability Insurance Agency and the Quality and Safeguards Commission take a more active role in monitoring the quality of services in residences where Supported Independent Living is delivered, to ensure that participants and advocates can readily identify and address concerns with service quality.

#### **Recommendation 45**

**8.77** The committee recommends that the National Disability Insurance Agency, with the Australian Government, develop, publish and implement a clear strategy to address coordination issues between state and territory services and the National Disability Insurance Scheme, particularly for people with disability seeking to access Supported Independent Living supports.



# Executive Summary

Supported Independent Living (SIL) is a category of funding and supports under the National Disability Insurance Scheme (NDIS). In essence, SIL is assistance with and supervision of daily tasks in the home, to help an NDIS participant develop the capacity to live as independently as possible.

While only a relatively small number of participants access SIL, funding for SIL represents a substantial portion of total committed funds. In this respect, 6.6 per cent of participants access SIL and SIL funding represents approximately 31 per cent of total funding under the NDIS.

Under the state-funded disability support framework that existed prior to the NDIS, funding was provided directly to operators of group homes and assisted living facilities. Supports were often tied to residence in a group home, and people with disability had limited choice in relation to the entity that provided their supports or those with whom they lived.

These arrangements are coming to an end, and more individualised funding models are being developed under the NDIS. SIL is one of these models, and has the potential to deliver transformational benefits for participants, by helping to develop the skills needed for independent living and by increasing community participation.

However, the committee has heard from submitters and witnesses that the current SIL regime suffers from various issues with the potential to undermine choice and control for participants and affect the financial viability of providers. These issues are of particular concern given the significant portion of NDIS funding committed to SIL supports, and the fact that a substantial portion of participants accessing SIL have higher or more complex needs.

The committee received a wealth of information and evidence, and thanks all those who participated in the inquiry. In particular, the committee wishes to acknowledge those participants, families and carers who attended public hearings and town hall sessions to share their experiences. The testimony of people with lived experience is crucial to identifying issues and making improvements to the NDIS.

The committee considers that urgent action must be taken to address the identified issues associated with access to and the delivery of SIL supports, and makes 45 recommendations to improve the SIL regime. These focus on maximising choice and control for participants and reducing unnecessary financial hardship for providers.

## **The approval process for access to SIL**

### *Evidence required to support applications for SIL*

Participants often spend significant time and resources marshalling the evidence to support an application for SIL funding. It is therefore concerning that there are substantial inequities between participants in relation to their ability to pay for functionality and other assessments needed to support SIL applications (as well as other decision-making processes under the NDIS).

The financial status of a person should not act as a barrier to accessing the NDIS or receiving supports. Funding should be provided for all assessments required for participants to access reasonable and necessary supports.

In addition, evidence submitted in support of a SIL application may be overlooked by the NDIA in some cases. Moreover, planners may be failing to reflect relevant evidence in participants' plans. The NDIA must implement measures to address these issues as a matter of urgency.

### *Eligibility for SIL funding*

Under the existing SIL regime, participants may be required to undergo multiple onerous eligibility processes to access SIL supports. Further, it appears that the eligibility process for access to SIL may commit a participant to a particular provider and residence—thereby reducing choice and control.

To address these issues, the NDIA should implement a mechanism to confirm a participant's eligibility for SIL funding prior to the participant identifying a suitable vacancy. In addition, there would be merit in allowing NDIS planners to authorise a price range for SIL funding in plans, with no further approval required if a quote from a provider falls within that price range. This is on the condition that the participant and/or their plan nominee is able to review the SIL quote and approve it.

### *Information available to participants in relation to SIL*

There is limited information available to participants, families and carers in relation to SIL funding and supports, and this lack of information is causing confusion and uncertainty. The NDIA should, as a matter of urgency, develop and publish clear, comprehensive guidance material on SIL, and ensure that participants and providers are made aware of this material as soon as it is published.

### *Discussion of SIL at pre-planning and planning stage*

Pre-planning and planning discussions are a crucial opportunity for the NDIA to engage with participants, families and carers on current and future support and accommodation needs. These discussions are also a key opportunity to explore whether a participant requires SIL funding. It is therefore concerning that some planners fail to clearly explain options for accommodation and supports at the pre-planning, planning and plan review stages, and that planners may be taking an inconsistent approach to exploring SIL with participants.



The NDIA should ensure planners explore current and future accommodation and support needs during pre-planning, planning and plan reviews. This should include discussion of whether SIL is appropriate, as well as the participant's preferences as to their living arrangements.

#### *The SIL quoting process*

Despite recent improvements made by the NDIA, the SIL quoting process remains lengthy and complex. Moreover, approval delays are causing hardship for some participants and providers. Providers may be obliged to bear funding shortfalls in order to deliver services. This is not sustainable, particularly for smaller businesses.

In addition, the SIL quoting process often fails to involve participants, families and carers in a meaningful way. This may reduce choice and control, lead to the omission of information, and ultimately lead to poorer outcomes for people with disability.

The NDIA should implement further measures to expedite the SIL quote approval process. Noting that people with disability in hospital, residential aged care and custodial settings are more heavily impacted by approval delays, the NDIA should prioritise access decisions for these cohorts. To improve participant involvement in the quoting process, the NDIA should also ensure that participants (and where appropriate, families and carers) have the opportunity to review and agree to quotes before they are approved by the agency.

In addition, the NDIA should ensure that ongoing work to improve the SIL quoting process captures the costs of supporting people with disability in SIL settings. For example, the quoting process should capture costs associated with providing services in regional and remote areas, and costs associated with supporting people with higher or more complex support needs.

#### *Short-term accommodation*

There is not currently sufficient funding for participants to access short-term accommodation while awaiting SIL approval or gathering evidence to support applications. Additional funding should be made available for this purpose.

#### *NDIA process issues*

Process failure within the NDIA may be impeding access to SIL for participants and providers. Evidence suggests that the NDIA is often unresponsive to inquiries regarding SIL quotes; does not provide timely or useful advice; has limited knowledge of SIL; and fails to communicate effectively.

The NDIA must work to implement improvements to its ICT and service delivery systems as a matter of urgency. It is noted that the committee has highlighted areas for improvement in its previous reports.

## **Living arrangements for SIL participants**

### *Congregate living arrangements*

Evidence suggests that the existing SIL regime may force participants with SIL to live in shared settings, and may be perpetuating older models of disability support rather than delivering the innovations promised by the NDIS.

The NDIA has advised that it does not require participants who access SIL to live in congregate settings, or prefer that they do so. However, the NDIA does not have a clear policy mandate on this matter. Moreover, it appears that the NDIA's approach to assessing whether a particular support is reasonable and necessary may lead the agency to prefer shared over individual arrangements in many cases.

Going forward, the NDIA should review and amend its policies to clarify that all participants must have genuine choice and control over support and accommodation arrangements, and must be able to access funding for assistance with daily activities in shared and individual settings. Further, the NDIA should give all participants accessing SIL in shared settings the opportunity to change their support and accommodation arrangements if they wish to do so. Additional funding should be made available to support participants through this process.

Finally, the NDIA must ensure that participants wishing to enter or remain in shared accommodation are able to choose who they live with. This is crucial to enabling choice and control, and is required under international human rights law.

### *Resident compatibility*

While funding shortfalls may be a key driver of failures to ensure compatibility between residents in SIL homes, other factors include shortages of SIL and SDA properties; power imbalances between participants and providers; and lack of information regarding tenancy management.

To help address these issues, the NDIS Quality and Safeguards Commission should develop clear policies and guidance on vacancy management in SIL homes, with a focus on ensuring compatibility between tenants and ensuring that participants have meaningful involvement in the tenancy management process.

### *Conflicts of interest: support, tenancy and support coordination functions*

The committee heard that allowing a single entity to exercise control over both tenancy and service delivery may have significant negative impacts for participants, including reductions in service quality; increased risks of abuse and neglect; and reduced housing security. The committee considers that the NDIA should work to separate tenancy, service delivery and support coordination as a matter of urgency. In addition, the committee considers that the NDIS Quality and Safeguards Commission must take an active role in enforcing the separation of these functions.

The committee acknowledges that it may be difficult to insist that housing and tenancy be delivered by separate entities at present, without affecting the availability

of housing and supports. However, the committee still considers that service delivery should be separated from tenancy management so far as possible. This may be, for example, by the NDIA insisting that housing and tenancy functions be delivered by separate areas within the same organisation.

The committee also considers that the NDIA, with the NDIS Quality and Safeguards Commission, should implement a mechanism to ensure participants with SIL are able to change service providers without compromising housing security. Additional independent support should also be made available to assist with this process.

## **Vacancy management**

### *Awareness of vacancies and tenancy matching*

Evidence suggests that participants often have difficulty locating suitable vacancies for SIL and Specialist Disability Accommodation (SDA). Further, providers may lack suitable mechanisms to share vacancy information with the sector. Some suggested a central register as a means of addressing these concerns. There would be merit in the NDIA establishing a central vacancy register and vacancy management team.

However, a vacancy register must be designed with a focus on participants' needs, and not only on the needs of providers. Further, there must be robust privacy safeguards in place, to ensure that personal information is not improperly collected, used or disclosed.

### *Co-dependencies between SIL and Specialist Disability Accommodation (SDA)*

Approximately 63 per cent of participants with SIL access SDA, while 99 per cent of participants with SDA also access SIL. Consequently there is an unavoidable nexus between these two supports.

For participants seeking to access both SIL and SDA, the approval process is often long and complex. In addition, it is concerning that participants may be required to apply separately for SIL and SDA, even where it is the same disability and needs that generate the entitlement to both supports. Moreover, the length of the approval process for SIL and SDA may limit access to suitable housing, and may lengthen periods of hospitalisation and stays in mental health facilities.

The NDIA should implement mechanisms to streamline approval processes for participants seeking access to SIL and SDA as a matter of urgency. Further, it would be appropriate for the NDIA to automatically approve SIL funding in certain cases; for example, where a participant is approved for SDA on the basis that they require on-site SIL supports. This is on the condition that the participant and/or their plan nominee is able to review the SIL quote and approve it.

### *Vacancies and funding gaps*

Evidence suggests that, under the current SIL regime, one participant leaving a shared living and support arrangement will lead to an overall reduction in funding. These reductions in funding may result in financial hardship for providers, and may

lead providers to fill vacancies as quickly as possible—without giving sufficient consideration to compatibility between tenants in the SIL home.

Where a participant exits a SIL setting, funding should continue for a period of one month or until the relevant vacancy is filled (whichever is shorter). A review should be conducted at the end of the one-month period (if the vacancy is not filled), to determine whether funding should be extended.

## **Funding for SIL**

### *Funding and supports for participants with complex needs*

The current SIL regime may not include sufficient funding to ensure participants with high or complex needs receive the supports that they require. This may be because current funding models do not take account of a number of costs associated with providing supports to this cohort. The NDIA should conduct a thorough review of the NDIS Price Guide and associated price settings, to ensure the additional costs of supporting people with complex needs are captured.

### *Claiming above benchmarks*

The NDIA may be unwilling to fund supports above benchmarks in the NDIS Price Guide. This is notwithstanding that providers often have specific knowledge as to the needs of the participants they support. In addition, it appears that the NDIA may not be providing sufficient notice to providers where pricing structures are changed.

To address these concerns, the NDIA should develop clear policy on when providers may claim funding above benchmarks in the Price Guide, and should publish associated guidance material. Further, the NDIA should implement mechanisms to ensure providers are immediately notified of any changes to NDIA price settings.

### *Staffing in SIL settings*

There are not sufficient trained staff in some SIL settings to ensure that high-quality services are delivered to participants. This may be due to a shortage of trained staff across the NDIS generally, as well as award rates within the disability sector—which may not be sufficient to attract and retain suitably qualified and experienced support workers.

The NDIA should review the NDIS Price Guide, to ensure that the costs of attracting and retaining sufficiently trained support staff are captured. For similar reasons, the government should review and, if appropriate, increase the Social, Community, Home Care and Disability Services (SCHADS) award. Further, providers should invest in additional training for staff involved in the delivery of SIL supports and in supporting people with severe or complex disability.

### *Flexibility in funding arrangements and funding shortfalls*

It appears that there are relatively frequent shortfalls in SIL funding, and that funding for participants' plans may not be sufficiently flexible. This may create uncertainty for providers around the supports they may deliver, and reduce choice and control for participants.

The NDIA has indicated that it already provides additional funding in SIL packages to cover irregular supports. In addition, the NDIA has advised that it proposes to increase flexibility in how funding may be used. However, it is unclear whether this will extend to SIL funding. Moreover, it may in some cases be necessary to seek additional SIL funding to cover the costs of irregular or emergency supports. The NDIA should develop and implement a streamlined mechanism to expedite the processing of claims by service providers for increased supports for participants.

### *Planning issues*

Evidence suggests that it may be appropriate to approve longer-term plans for participants with SIL, noting that—in general—the support needs of this cohort are less likely to change over time.

Longer-term plans may deliver positive outcomes for participants with SIL, and may help reduce some of the stress associated with frequent plan reviews more generally. However, long-term plans should be approved only if appropriate, and planning must continue to consider participants' individual support needs. The NDIA must not take a 'set and forget' approach to planning and service delivery. Participants should be able to review and adjust plans as necessary and appropriate.

Further, evidence indicates that participants may be required to undergo a full plan review for minor changes to supports. Submitters and witnesses suggested that it would be more appropriate to action minor changes through service agreements or by adjusting only parts of plans using a 'light touch' approach.

In November 2019, the Minister for the NDIS announced that—from that date—participants are able to request longer-term plans of up to three years. Participants retain the option to review their plan should their circumstances change. The government has also indicated that it proposes to insert a power to amend plans into the *National Disability Insurance Scheme Act 2013*. The committee will maintain a watching brief in relation to these matters.

However, it appears that more is needed to reduce the stress and burden associated with plan review in SIL settings, noting in particular that a plan review for one participant in a shared support arrangement will trigger a plan review for the others. There would be merit in the NDIA implementing a mechanism to streamline review processes for participants in shared arrangements.

## **Other issues**

### *SIL and other supports in regional, rural and remote areas*

It appears that more is needed to address the availability of SIL supports in thin market areas. In this regard, it is noted that the issue of thin markets has been discussed at length in a number of previous reports of this committee.

There is ongoing work by the NDIA and the government to address thin markets, to help ensure participants have access to the supports they need regardless of location or disability. However, the NDIA must actively work to address issues associated with thin markets and the undersupply of services, and should ensure that work to address thin markets captures issues associated with the delivery of SIL and SDA.

### *Provider of last resort arrangements*

The NDIA is responsible for provider of last resort (PLR) arrangements, including provision of services of last resort in crisis situations. This committee has expressed frustration on a number of occasions that the NDIA has not published clear policy on PLR arrangements, and about the lack of progress in relation to crisis support.

The government has indicated that it continues to develop measures to improve PLR arrangements for the NDIS. These include the provision of additional guidance to the NDIA on market performance and intervention, and the development of new access and support pathways for participants with complex needs.

### *Decision support and advocacy*

While Commonwealth, state and territory governments have allocated funding to advocacy, there is still a lack of coordinated advocacy and decision support available to some participants. Moreover, existing advocacy and decision initiatives may not be fully understood by those who need them most.

The Disability Reform Council should progress work to understand and address gaps in the availability of advocacy and decision support as a matter of urgency. In addition, the NDIA should work with government to publish additional information on the availability of advocacy services, and make these available to stakeholders.

### *Service quality*

Some SIL providers may not be delivering services of a sufficiently high quality, or a quality commensurate with amounts claimed by providers.

It is noted that there are service standards in place for participants and providers, and that compliance with these standards is monitored and enforced by the NDIS Quality and Safeguards Commission. However, issues with service quality persist. The NDIS should publish service standards specifically for SIL. Further, the NDIS Quality and Service Commission should take a more active role in monitoring and enforcing service quality in SIL settings.

*Coordination between the NDIS and state services*

Some gaps in coordination between the NDIS and state and territory services may be resulting in delays for participants seeking to access reasonable and necessary supports. This is a particular concern for people in hospital settings, child services and the criminal justice system. It is not clear that there is a strategy in place to manage this issue. The NDIA, working with the government and with state and territory agencies, should implement a clear strategy to address coordination gaps between state and territory services and the NDIS.





# Chapter 1

## Overview

- 1.1 The Joint Standing Committee on the National Disability Insurance Scheme (the committee) was established by resolution of the House of Representatives on 4 July 2019<sup>1</sup> and the Senate on 22 July 2019.<sup>2</sup> The committee is composed of 5 Members and 5 Senators, and is tasked with reviewing:
  - (a) the implementation, performance and governance of the National Disability Insurance Scheme (NDIS);
  - (b) the administration and expenditure of the NDIS; and
  - (c) such other matters in relation to the NDIS as may be referred to it by either House of the Parliament.
- 1.2 The committee is required to present an annual report to the Parliament on the activities of the committee during the year, in addition to reporting on any other matters it considers relevant.
- 1.3 The committee is also able to inquire into specific aspects of the Scheme. On 1 August 2019, the committee decided to undertake an inquiry into Supported Independent Living (SIL), with particular reference to:
  - (a) the approval process for access to SIL;
  - (b) the vacancy management process, including its management and costs;
  - (c) the funding of SIL; and
  - (d) any related issues.

### **Supported Independent Living (SIL)**

- 1.4 The National Disability Insurance Agency (NDIA) states that SIL refers to assistance with and/or supervision of daily tasks to develop the skills of an individual to live as independently as possible. SIL supports are provided to a participant in their home—regardless of property ownership—and can be provided in a shared or individual arrangement.<sup>3</sup>
- 1.5 While a relatively small number of participants access SIL supports, funding for SIL represents a significant amount of total funding under the NDIS.
- 1.6 A more comprehensive description of SIL is included in Chapter 3.

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<sup>1</sup> *House of Representatives Votes and Proceedings*, No. 3, 4 July 2019, pp. 55–56.

<sup>2</sup> *Journals of the Senate*, No. 4, 22 July 2019, pp. 134–135.

<sup>3</sup> National Disability Insurance Agency, *Submission 11*, p. 2.

### **Conduct of the inquiry**

- 1.7 In accordance with usual practice, the committee advertised the inquiry on its website, and wrote to relevant persons and organisations seeking submissions by 6 September 2019. The committee received 51 submissions, which are listed in Appendix 1 and are available on the committee's website.<sup>4</sup>
- 1.8 The committee also conducted seven public hearings:
- 8 October 2019 in Brisbane
  - 9 October 2019 in Sydney
  - 28 October 2019 in Hobart
  - 7 November 2019 in Melbourne
  - 19 November 2019 in Adelaide
  - 21 November 2019 in Canberra
  - 13 February 2020 in Canberra
- 1.9 In addition to a formal program of witnesses, the committee heard evidence in town-hall sessions. These sessions were designed to enable NDIS participants, families and others with lived experience to present evidence to the committee.
- 1.10 Witnesses who appeared at the hearings are listed in Appendix 2. Transcripts and answers to questions on notice are available on the committee's website.<sup>5</sup>

### **Structure of the report**

- 1.11 This report is comprised of seven chapters, as follows:
- This chapter introduces the inquiry and provides a brief overview of SIL.
  - Chapter 2 provides background to the NDIS, and highlights some activities undertaken by the NDIA and other entities since the committee's last report. It also introduces the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and outlines some issues related to SIL raised by this committee during the 45<sup>th</sup> Parliament.
  - Chapter 3 provides a more comprehensive overview of SIL, to foreground the issues raised in subsequent chapters.
  - Chapter 4 examines issues associated with access to SIL, and with the delivery of SIL funding and supports.
  - Chapter 5 examines issues associated with living arrangements for NDIS participants accessing SIL supports.
  - Chapter 6 examines issues associated with the management of vacancies in residences where SIL is delivered.
  - Chapter 7 examines issues associated with SIL funding.

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<sup>4</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Disability\\_Insurance\\_Scheme/Independentliving/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Independentliving/Submissions).

<sup>5</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Disability\\_Insurance\\_Scheme/Independentliving/Public\\_Hearings](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Independentliving/Public_Hearings).

- Chapter 8 examines general issues associated with SIL, and other issues associated with the implementation and performance of the NDIS that were raised in evidence before the committee.
- 1.12 Throughout this inquiry, the committee received wide and varied evidence as to the issues associated with SIL, as well as various suggestions for improving SIL to ensure it delivers on the promise of the NDIS. From the evidence, the following concerns have emerged which are a particular focus of this report:
- choice and control for participants in relation to their living arrangements, including genuine choice as to:
    - whether to live in a shared or individual setting; and
    - the people (if any) with whom a participant shares a residence;
  - the separation of tenancy management and service delivery functions; and
  - supporting participants with complex needs.
- 1.13 Witnesses and submitters also described a range of other issues associated with SIL, and gave suggestions for improvement. These matters are considered in subsequent chapters.

### **Acknowledgments**

- 1.14 The committee thanks all those who contributed to the inquiry by lodging submissions, providing additional information or expressing their views through correspondence. In particular, the committee would like to thank the participants, families and others who attended the committee's hearings.



# Chapter 2

## Background

2.1 This chapter provides background to the National Disability Insurance Scheme (NDIS), and highlights some activities undertaken by the National Disability Insurance Agency (NDIA) and other entities since the committee's last report. It also briefly introduces the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission), and outlines some issues related to Supported Independent Living (SIL) that were raised during the 45th Parliament.

### Background to the National Disability Insurance Scheme

2.2 The NDIS is a new model of funding and delivering supports for people with disability. It is insurance-based, and moves from the previous system of block funding to a fee-for-service, market-based approach. The scheme is based on the premise that people with disability each have different support needs, and should be able to exercise choice and control in relation to their supports.

2.3 The main component of the NDIS is individualised packages of supports for eligible people with disability. When fully rolled out, the NDIS is expected to serve over 500 000 people aged under 65 with a permanent and significant disability, with funding for supports and services.<sup>1</sup>

### *The National Disability Insurance Agency*

2.4 The NDIA is the independent statutory agency responsible for the governance and administration of the NDIS. Its core functions include delivering the NDIS in a way that maximises choice and control for participants and promotes access to high quality supports, and managing, advising and reporting on the financial sustainability of the scheme.<sup>2</sup>

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<sup>1</sup> The Hon. Stuart Robert (Minister for the National Disability Insurance Scheme), 'Future of the NDIS secured for all Queenslanders', Media release, 10 July 2019, <https://ministers.dss.gov.au/media-releases/5001> (accessed 15 January 2020).

<sup>2</sup> *National Disability Insurance Scheme Act 2013*, s 118.

### **Legislative framework for the National Disability Insurance Scheme**

- 2.5 The NDIS is established under the *National Disability Insurance Scheme Act 2013* (NDIS Act). The NDIS Act also establishes the NDIA and sets out the agency's functions and governance arrangements.<sup>3</sup>
- 2.6 Relevantly, the NDIS Act sets out the objectives of the NDIS, which include:<sup>4</sup>
- supporting the independence and social and economic participation of people with disability;
  - providing reasonable and necessary supports, including early intervention supports, for NDIS participants;
  - enabling people with disability to exercise choice and control in the pursuit of their goals and in the planning and delivery of their supports;
  - facilitating the development of a nationally consistent approach to accessing, planning and funding of supports for people with disability; and
  - promoting the provision of high quality and innovative supports.
- 2.7 The NDIS Act further provides for how a person may become a participant in the NDIS; how plans are prepared and reviewed; how the NDIA approves funding; how an entity can become a registered provider of supports; and the processes for reviewing decisions.<sup>5</sup>

### **National rollout of the National Disability Insurance Scheme**

- 2.8 The NDIS became operational on 1 July 2013 with the commencement of trial sites. From 1 July 2016, the NDIS began the transition to full scheme on a geographic or age basis—guided by Bilateral Agreements between Commonwealth, State and Territory governments.<sup>6</sup> Full rollout of the NDIS is expected by July 2020.
- 2.9 As of 31 December 2019, the NDIS was available in all jurisdictions except the Cocos (Keeling) Islands and Christmas Island.<sup>7</sup> The NDIS currently provides services to over 341 000 people, as outlined in the table below.

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<sup>3</sup> NDIS Act, Chapter 6, Parts 1, 2, 3, and 4. These provisions related to the Chief Executive Officer of the NDIA, the NDIA's Board, the Independent Advisory Council and Actuaries.

<sup>4</sup> NDIS Act, s 3. Other relevant objectives include protecting people with disability from harm, and giving effect to Australia's human rights obligations as they relate to people with disability.

<sup>5</sup> NDIS Act, Chapters 3 and 4.

<sup>6</sup> National Disability Insurance Scheme, *Intergovernmental Agreements*, <https://www.ndis.gov.au/about-us/governance/intergovernmental-agreements> (accessed 15 November 2019).

<sup>7</sup> National Disability Insurance Agency, *COAG Disability Reform Council Quarterly Report*, 31 December 2019, p. 17. The Cocos (Keeling) Islands and Christmas Island will be phased in from 1 July 2020.

<b>Jurisdiction</b>	<b>Number of active participants as at 31 December 2019<sup>8</sup></b>	<b>Anticipated number of active participants when NDIS is fully rolled out<sup>9</sup></b>
NSW	115 071	141 957
VIC	91 034	105 324
QLD	62 132	91 217
SA	31 230	32 284
TAS	7 784	10 587
WA	24 254	39 097
ACT	7 275	5 075
NT	2 857	6 545
<b>National</b>	<b>341 660</b>	<b>432 086</b>

2.10 In 2019–20, the Australian Government has budgeted for expenditure of \$16.3 billion on supports for NDIS participants. Following the full rollout of the scheme in 2020–21, the government estimates that \$20.9 billion will be spent on supports for NDIS participants.<sup>10</sup>

#### **National Disability Insurance Agency activities: improving participant experience**

2.11 In its most recent Quarterly Report, the NDIA observed that it has a number of initiatives in train to improve participants' experience.<sup>11</sup> Relevant to the present inquiry, these include:

- From 1 July 2020, the NDIA will provide independent functional capacity assessments for prospective participants. This follows a trial conducted in NSW from late November 2019. As part of this initiative, the agency has also undertaken to provide simple and transparent resources for prospective

<sup>8</sup> Includes participants in the Early Childhood Early Intervention (ECEI) cohort. Data sourced from the NDIS website for participant numbers as of 30 September 2019. The national total reflects the National Quarterly Report, while the total for each state and territory reflects the Performance Report for the relevant jurisdiction. See National Disability Insurance Agency, *Quarterly Reports*, <https://www.ndis.gov.au/aboutus/publications/quarterly-reports> (accessed 17 February 2020).

<sup>9</sup> Data sourced from bilateral agreements between the Commonwealth and individual jurisdictions. The ACT is currently the only jurisdiction with more active participants than anticipated.

<sup>10</sup> Australian Government, *Portfolio Budget Statements 2019-20: Budget Related Paper No. 1.15A – Social Services Portfolio*, 2019, p. 139.

<sup>11</sup> National Disability Insurance Agency, *COAG Disability Reform Council Quarterly Report*, 31 December 2019, pp. 52–55.

participants, their representatives, clinicians and others, to give certainty on the types and sources of evidence needed to support an access request.

- From mid-2020, implementing 'Collaborative Access (CA)', a process change designed to strengthen connections between prospective participants and local area coordinators (LACs). According to the NDIA, CA involves LACs providing direct support to prospective participants, and helping to identify and connect people to mainstream supports and other government services.
- The rollout of a National Community Connector Program (NCCP), which aims to support individuals with disability from hard to reach communities to access and navigate the NDIS. The minister announced the development of the NCCP on 14 November 2019.

### **Review of the NDIS Act and the Participant Service Guarantee**

2.12 In June 2019, the Australian Government commissioned a review of the NDIS Act by Mr David Tune AO PSM (Tune Review), with a focus on streamlining processes and removing red tape for participants and providers. The review honours a commitment made during the 2019 election campaign to introduce a Participant Service Guarantee (PSG).

2.13 The PSG will set new standards and timeframes for decisions affecting participants, families and carers. In addition, it will focus on specific cohorts, including children and participants requiring assistive technology and home modifications. Subject to consideration by Parliament, it is intended that the PSG will be legislated and take effect from 1 July 2020.<sup>12</sup>

2.14 Mr Tune provided a final report to government in December 2019. The report was released publicly in January 2020.

2.15 The Tune Review found that the NDIS Act and its accompanying rules are broadly fit for purpose, but that some areas of the NDIS Act are unnecessarily rigid and do not allow flexibility. It made a number of recommendations to improve NDIS processes and remove statutory barriers that may be impeding the NDIA's efforts to effectively support people with disability. In summary, the Tune Review recommended:<sup>13</sup>

- Introducing a Participant Service Guarantee that sets out standards the NDIA must meet, including:
  - clear expectations for how long processes will take to complete;
  - more transparency in how the NDIA makes its decisions; and
  - better service delivery from NDIA staff and partners in the community.

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<sup>12</sup> Mr David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 17.

<sup>13</sup> Department of Social Services, *Brief Summary of the 2019 Review of the National Disability Insurance Scheme Act 2013: Supporting the Implementation of the NDIS Participant Service Guarantee*, January 2020, p. 5.



- Improving people’s experience with the NDIS by:
  - providing more flexibility in using NDIS funding;
  - allowing plans to be amended;
  - providing participants with drafts of plans before they are approved;
  - clarifying access for people with psychosocial disability;
  - improving connections to supports if markets are undersupplied; and
  - enhancing online systems so people can track their requests.
- The NDIA and governments work together to:
  - clarify how the NDIS works with other service systems;
  - help people navigate, engage with and understand the NDIS; and
  - create resources that help participants decide which supports to use.

2.16 According to the Department of Social Services (DSS), the government response to the Tune Review will be released shortly and published on the DSS webpage. Government will work with jurisdictions and the NDIA to develop the changes needed to implement the PSG and to ensure the NDIS delivers a consistent, effective and high-quality experience<sup>14</sup>

#### *The Tune Review and SIL*

2.17 The Tune Review did not have a particular focus on SIL. Nevertheless, the review heard that the process of obtaining SIL supports is disempowering participants and working against the principles of choice and control that underpin the NDIS. In particular, submissions to the review indicated that the SIL quoting process excludes participants, families and carers in the decision-making process. This is despite the fact that providers must sign a declaration stating the participant has been involved in the process.

2.18 The review observed that while some supports can only be included in plans through a quoting process, in all cases processes should be transparent and maximise participants' ability to drive decisions that impact their daily lives. It emphasised that the SIL quoting process should not limit participants' choice and control, including the choice of alternative support arrangements.

2.19 Further, the review stated that the delivery of supports to participants should be separate from tenancy management. Anecdotal evidence also suggested an emerging trend of Specialist Disability Accommodation (SDA) providers 'pre-selecting' SIL providers to operate exclusively in a dwelling, or SIL providers developing housing options that do not conform to best-practice standards.<sup>15</sup>

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<sup>14</sup> Department of Social Services, *2019 Review of the NDIS Act and the new NDIS Participant Service Guarantee—What happens next*, <https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability-national-disability-insurance-scheme/2019-review-of-the-ndis-act-and-the-new-ndis-participant-service-guarantee> (accessed 17 February 2020).

<sup>15</sup> Mr David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, pp. 107–108.

2.20 The Tune Review made one specific recommendation in relation to SIL:

**Recommendation 14:** The NDIA undertakes a review of its operational guidelines when funding [SIL], with an emphasis on increasing the involvement of participants, families and carers in the decision-making process and the principles of choice and control.<sup>16</sup>

### **Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability**

2.21 The Royal Commission was established in April 2019, in response to community concern about widespread reports of violence against, and the neglect, abuse and exploitation of, people with disability.<sup>17</sup>

2.22 The Royal Commission was established by Letters Patent issued in April 2019. These set out Terms of Reference for the Royal Commission. According to its Letters Patent, the Royal Commission may inquire into and report on:<sup>18</sup>

- (a) what governments, institutions and the community should do to prevent, and better protect, people with disability from experiencing violence, abuse, neglect and exploitation, having regard to the extent of violence, abuse, neglect and exploitation experienced by people with disability in all settings and contexts;
- (b) what governments, institutions and the community should do to achieve best practice to encourage reporting of, and effective investigations of and responses to, violence against, and abuse, neglect and exploitation of, people with disability, including addressing failures in, and impediments to, reporting, investigating and responding to such conduct;
- (c) what should be done to promote a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation;
- (d) any matter reasonably incidental to a matter referred to in paragraphs (a) to (c) or that you believe is reasonably relevant to [the] inquiry.

#### *The Royal Commission and SIL*

2.23 The Commission will investigate and report on experiences and conditions in all settings and contexts, including schools, workplaces, jails, group homes or boarding houses, family houses, hospitals and day programs.<sup>19</sup>

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<sup>16</sup> Mr David Tune AO PSM, Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee December 2019, p. 108.

<sup>17</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, About the Royal Commission, <https://disability.royalcommission.gov.au/about-royal-commission> (accessed 20 February 2020).

<sup>18</sup> Commonwealth Letters Patent (4 April 2019), <https://rcdisability.govcms.gov.au/publications/commonwealth-letters-patent-4-april-2019> (accessed 20 February 2020). The Commission was also authorised and directed to look into, and take action in relation to, a number of more specific matters relating to the treatment of people with disability. These are set out in items (e) to (o).

2.24 Evidence given during the Commission's public hearings has touched on the experiences of people with disability in SIL settings. Some of this evidence has been used to inform the committee's views in this report.

### **Issues raised during the 45th Parliament regarding SIL**

2.25 The committee conducted eight inquiries during the 45th Parliament.<sup>20</sup> This section provides a brief overview of some of these inquiries, and highlights issues and recommendations relevant to the current inquiry into SIL.<sup>21</sup>

2.26 The Australian Government has agreed, or agreed in principle, to the majority of the recommendations made by the committee. However, only limited progress had been made on implementation as at 30 March 2019.<sup>22</sup>

#### *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*

2.27 Between November 2016 and August 2017, this committee undertook an inquiry into the service provision under the NDIS for people with psychosocial disabilities, reporting in August 2017. Key issues raised related to: access to the NDIS; eligibility criteria; staff training; the adequacy of plans; continuity of supports for people not eligible for the NDIS; Provider of Last Resort arrangements; and access to NDIS support services for people in custody.<sup>23</sup>

2.28 Relevant to the present inquiry, the committee recommended that the NDIA:<sup>24</sup>

- develop and proactively market resources and training for primary health care professionals, especially in regards to access and planning processes;
- with the Department of Social Services, develop a plan for how advocacy and outreach services will be delivered beyond transition arrangements, to

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<sup>19</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *About the Royal Commission* (accessed 20 February 2020).

<sup>20</sup> See JSC NDIS, Completed inquiries in the 45th Parliament, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Disability\\_Insurance\\_Scheme/Completed\\_inquiries](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Completed_inquiries) (accessed 13 February 2020).

<sup>21</sup> It is noted that the majority of these issues and recommendations do not relate directly to SIL. However, a number relate to matters which will impact on access to and delivery of SIL supports, including planning processes; the training and qualifications of support staff; access to services for people with disability in short-term accommodation; and access to SDA.

<sup>22</sup> JSC NDIS, *Progress Report*, March 2019, pp. 67–130. While the committee has received government responses to its reports on market readiness, NDIS ICT Systems and planning (interim report), it has not yet commented on the implementation status of the recommendations in those reports.

<sup>23</sup> JSC NDIS, *Progress Report*, March 2019, pp. 17–30.

<sup>24</sup> JSC NDIS, *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*, August 2017, pp. xiv–xv. The relevant recommendations are **Recommendation 7**, **Recommendation 8**, **Recommendation 11** and **Recommendation 18**.

ensure people with psychosocial disability and those who are hard to reach can effectively engage with the NDIS and/or other support programs;

- report on the level of engagement of carers in the planning process; and
- provide details on how it is ensuring a provider of last resort is available for all NDIS participants unable to find a suitable service provider, regardless of their location, circumstances and types of approved supports.

#### *Transitional arrangements for the NDIS*

2.29 From June 2017 to February 2018, the committee undertook an inquiry into transitional arrangements for the NDIS, reporting in February 2018. Key issues raised during the inquiry related to: the interface between the NDIS and mainstream services; delays accessing the NDIS, plan approvals; service gaps; thin markets; Provider of Last Resort arrangements; and lack of culturally appropriate services and service delivery arrangements.<sup>25</sup>

2.30 Relevant to the present inquiry, the committee recommended that:<sup>26</sup>

- the NDIA establish a unit specialising in dealing with participants who are hospitalised to ensure smooth transition from hospital and avoid delays in hospital discharge and to avoid discharge to nursing homes;
- the Disability Reform Council consider the provision of housing stock and infrastructure for people with disability;
- the NDIA ensure that across all jurisdictions people with disability can access pre-planning supports;
- the NDIA focus all necessary resources on reducing waiting times at all points of the scheme, specifically for plan approval, activation and review;
- the Disability Reform Council work with the Department of Social Services to address funding shortfalls for advocacy services beyond transition; and
- the NDIA ensure support coordination is adequately funded in plans to meet participants' needs and not limited to a fixed period.

#### *Market readiness for provision of services under the NDIS*

2.31 From December 2017 to September 2018, the committee undertook an inquiry into market readiness for the provision of services under the NDIS, reporting in September 2018. Key issues raised during the inquiry related to: market stewardship; participants' readiness to engage with the market, including their ability to exercise choice and control; workforce conditions; pricing structures; SDA; thin markets; and Provider of Last Resort arrangements.<sup>27</sup>

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<sup>25</sup> JSC NDIS, *Progress Report*, March 2019, pp. 40–51.

<sup>26</sup> JSC NDIS, *Transitional Arrangements for the NDIS*, February 2018, pp. xi–xiii. The relevant recommendations are **Recommendation 2**, **Recommendation 8**, **Recommendation 10**, **Recommendation 13**, **Recommendation 19** and **Recommendation 21**.

<sup>27</sup> JSC NDIS, *Market readiness for provision of services under the NDIS*, September 2018, pp ix–x.

2.32 Relevant to the present inquiry, the committee recommended that:<sup>28</sup>

- the NDIA monitor and report on the adequacy of its staffing levels;
- the NDIA urgently undertake work to improve its website, including its design and navigation and the quality and accessibility of its content;
- the NDIA examine the SDA pricing structure to remove restrictions for participants in their choices of living arrangements; and
- when a person is deemed eligible for SDA, this be considered ongoing and not change under annual planning processes.

#### *NDIS ICT Systems*

2.33 From August 2018 to September 2018, the committee undertook an inquiry into the information and communications technology (ICT) employed by the NDIA. Key issues raised during the inquiry related to the adequacy of the information available on the NDIS website and through the NDIS contact centre, and the functionality of the 'MyPlace' participant and provider portal.<sup>29</sup>

2.34 Relevant to the present inquiry, the committee recommended that the NDIA:<sup>30</sup>

- review all documents prior to uploading them, to ensure they are current, clearly dated, fit-for-purpose and written in clear language;
- implement a clear tracking system to enable users to track the status of their queries; create specialised contact centre teams based on common types of issues; and co-design chat bot for the website and portals; and
- urgently recommence work on the development and implementation of its knowledge management system, to ensure consistent decision-making processes and accurate provision of advice across the agency.

#### **Disability Reform Council activities**

2.35 The COAG Disability Reform Council (the Council) provides a forum for governments to discuss matters of mutual interest and to progress key national reforms in disability policy—including in relation to the NDIS. The Council oversees implementation of the NDIS, as well as a broad range of reforms to support people with disability, families and carers. These are implemented through the National Disability Agreement and National Disability Strategy.<sup>31</sup>

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<sup>28</sup> JSC NDIS, *Market readiness for provision of services under the NDIS*, September 2018, pp xi–xiv. The relevant recommendations are **Recommendation 5**, **Recommendation 7**, **Recommendation 26** and **Recommendation 28**.

<sup>29</sup> JSC NDIS, *NDIS ICT Systems*, December 2018, p. ix.

<sup>30</sup> JSC NDIS, *NDIS ICT Systems*, December 2018, p. vii. The relevant recommendations are **Recommendation 2**, **Recommendation 3** and **Recommendation 4**.

<sup>31</sup> Australian Government, Department of Social Services, *Disability Reform Council*, <https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/housing/supported-independent-living> (accessed 13 February 2020).

- 2.36 The Council is chaired by the Hon Stuart Robert MP, Minister for the NDIS. It consists of ministers in state and territory disability and treasury portfolios, and representatives from the Australian Local Government Association.<sup>32</sup>
- 2.37 In its previous report, the committee identified a number of actions relating to the NDIS which were agreed by the Council at its June 2019 and October 2019 formal meetings.<sup>33</sup> Since that time, the Council:<sup>34</sup>
- agreed that further community engagement will occur in early 2020 to help shape a new National Disability Strategy;
  - agreed to settle operating principles for the NDIS Reserve Fund;
  - committed to all jurisdictions implementing arrangements for the provision of respite for children in the care of child protection agencies;
  - agreed an interim response to provide state and territory child protection agencies with access to NDIS plans for children in out-of-home care, with an enduring response to be developed in 2020;
  - agreed that the NDIA will develop a new evidence-based strategy for the Information, Linkages and Capacity Building (ILC) program, with an initial evaluation by the end of 2020;
  - agreed to use a more flexible approach to address NDIS market challenges, recognising that a 'one-size-fits-all' approach is not suitable;
  - agreed a program of work to prioritise government efforts to attain national consistency in restrictive practices authorisation; and
  - agreed that further work will occur in on how vulnerable participants are supported through emergency response and recovery arrangements.
- 2.38 The Council also agreed to a series of measures and priorities to assist the NDIS (and the disability sector) to respond to the COVID-19 pandemic.<sup>35</sup>

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<sup>32</sup> Australian Government, Department of Social Services, *Disability Reform Council*.

<sup>33</sup> JSC NDIS, *NDIS Planning Interim Report*, December 2019, pp. 18–20.

<sup>34</sup> Disability Reform Council, *Communique*, 13 December 2019.

<sup>35</sup> Disability Reform Council, *Communique*, 18 March 2020; *Communique*, 9 April 2020.

# Chapter 3

## Supported Independent Living

- 3.1 This chapter provides an introduction to Supported Independent Living (SIL) within the National Disability Insurance Scheme (NDIS). It includes:
- background on SIL, including an overview of relevant supports;
  - an indication of the number of participants who access SIL funding, and the average amount of SIL funding per participant;
  - an explanation of how participants may access SIL, including a description of the SIL quoting process and associated documents;
  - a brief comparison of SIL, Specialist Disability Accommodation (SDA) and Assistance with Daily Living (ADL); and
  - an overview of activities the National Disability Insurance Agency (NDIA) is undertaking to improve access to and the delivery of SIL supports.

### Background to SIL

- 3.2 According to the NDIA, SIL refers to:

[A]ssistance with and/or supervision of daily tasks to develop the skills of an individual to live as independently as possible. These are the supports provided to a participant in their home, regardless of property ownership, and can be in a shared or individual arrangement.<sup>1</sup>

- 3.3 The NDIA stated that SIL covers supports delivered to individuals or groups of participants in the home. SIL covers attendant care supports (such as assisting a participant with personal activities or household tasks), and may cover skill-building activities such as dressing, cooking, shopping and developing personal budgets.<sup>2</sup> SIL also includes supports delivered outside of the home where participants are undertaking everyday activities (such as going out for a meal, attending an appointment or taking a walk), and support using transport to participate with community or informal supports.<sup>3</sup>

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<sup>1</sup> National Disability Insurance Agency, *Submission 11*, p. 2. There appears to be some inconsistency in the information published by the NDIA as to whether SIL may be provided in an individual living arrangement or is restricted to congregate settings. For example, the Price Guide states that '[SIL] is the assistance with and/or supervising tasks of daily life *in a shared living environment*'. See National Disability Insurance Agency, *NDIS Price Guide 2019–20*, p. 25 (italics added).

<sup>2</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000014, 13 February 2020 (received 2 April 2020).

<sup>3</sup> National Disability Insurance Agency, Guide to using the Provider SIL Pack—Frequently Asked Questions (FAQs), p. 17. The guide is accessible via the NDIA website: <https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/housing/supported-independent-living>.



- 3.4 According to the NDIA, SIL does not include rent, board or lodging, other day-to-day living expenses such as food or activities, or capital costs associated with a participant's accommodation.<sup>4</sup> Further, SIL does not cover supports when a participant is absent from their residence for an extended period.<sup>5</sup>
- 3.5 The NDIA stated that SIL does not cover community participation. These will be funded under other line items in a participant's plan.<sup>6</sup> However, the agency also stated that certain community participation activities may be funded as SIL. Whether an activity will be funded as SIL depends on its duration, and on whether a provider can reasonably be expected to deliver the service.<sup>7</sup>

### **Participants accessing SIL supports**

- 3.6 While a relatively small number of NDIS participants access SIL, SIL funding represents a considerable portion of NDIS funding. As at 31 December 2019, there were 22 277 participants with SIL, with approximately \$7.07 billion in committed funds. SIL supports are provided to just 6.6 per cent of participants, while SIL funding represents 31 per cent of total committed funds.<sup>8</sup>
- 3.7 According to the NDIA, there will be approximately 26 000 participants in SIL arrangements at 30 June 2020. This is projected to reach 34 000 at 30 June 2024.<sup>9</sup>
- 3.8 The number of participants with SIL in their plans, and the average funding per participant, varies across jurisdictions as outlined in the table below.<sup>10</sup>

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<sup>4</sup> National Disability Insurance Agency, *Submission 11*, p. 2.

<sup>5</sup> National Disability Insurance Agency, *Guide to Using the Provider SIL Pack—Frequently Asked Questions (FAQs)*, p. 18. The NDIA states that where a participant with SIL in a shared living arrangement is absent from the residence for extended periods of time, a provider may include a higher staff ratio for shared support components of the other residents' quotes for those periods.

<sup>6</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000014, 13 February 2020 (received 2 April 2020).

<sup>7</sup> National Disability Insurance Agency, *Guide to Using the Provider SIL Pack—Frequently Asked Questions (FAQs)*, p. 18. For example, the NDIA notes that it would not be reasonable to expect an alternative provider to deliver supports to a participant for a 30-minute walk.

<sup>8</sup> National Disability Insurance Agency, *COAG Disability Reform Council Quarterly Report*, 31 December 2019, pp. 432–434.

<sup>9</sup> National Disability Insurance Agency, answer to question on notice SQ20-000005, 13 February 2020 (received 2 April 2020).

<sup>10</sup> At this stage, it is unclear why there is such a large variance in average SIL funding between jurisdictions. One submitter speculated that it may be due to historical factors; variation across the Australian disability profile; different approaches to developing quotes; provider cost structures; or inconsistent quote approval practices. See National Disability Services, *Submission 18*, [pp. 4–5].



3.9 Table 3.2 Participants accessing SIL as at 31 December 2019<sup>11</sup>

Jurisdiction	Participants with SIL (Number and % of total)	Funds committed for SIL (% of total)	Average SIL per participant (\$)
NSW	8 058 (7.1%)	35%	\$320 202
VIC	5 020 (5.5%)	27%	\$289 661
QLD	4 173 (6.8%)	29%	\$332 091
SA	2 174 (7.0%)	36%	\$326 320
TAS	820 (10.7%)	46%	\$344 629
WA	1 278 (5.3%)	23%	\$265 756
ACT	422 (5.8%)	33%	\$327 689
NT	332 (11.8%)	48%	\$530 100
<b>National</b>	<b>22 277 (6.6%)</b>	<b>32%</b>	<b>317 190</b>

3.10 Participants with SIL in their plans report higher utilisation rates of committed funds. Participants with SIL report a utilisation rate of around 87 per cent, while those without SIL report a 60 per cent utilisation rate. Across SIL and non-SIL participants, the utilisation rate is around 69 per cent. According to the NDIA, whether a participant has SIL in their plan is one of the biggest drivers of whether the participant is using or has used committed supports.<sup>12</sup>

### Including SIL in a participant's plan

3.11 Like other funded supports, SIL will be included as part of a participant's plan. However, the manner in which SIL is included in a plan will differ from most other NDIS supports. In this regard, SIL funding is not based entirely on an individualised assessment of the supports a participant requires in the home environment. Rather, funding is determined via a quotation process, with a service provider who has a suitable vacancy providing a quote to the NDIA for assessment. This means that SIL is linked to the provider, not the participant, with re quoting required if a participant moves to another SIL arrangement.<sup>13</sup>

<sup>11</sup> Data from National Disability Insurance Agency, *COAG Disability Reform Council Quarterly Report*, 31 December 2019, pp 432–434.

<sup>12</sup> National Disability Insurance Agency, *COAG Disability Reform Council Quarterly Report*, 31 December 2019, p. 63.

<sup>13</sup> David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 108.

3.12 Once the NDIA approves the quote (often after negotiation with the provider), funding is included in the plan with other reasonable and necessary supports. SIL funding is typically included in a plan for a period of 53 weeks. Requoting and a scheduled plan review will generally occur at the end of that period.

#### *Suitability for SIL*

3.13 Before the SIL quoting process begins, the NDIA must determine whether SIL is suitable for the relevant participant. The NDIA states that the considerations for determining a participant's suitability for SIL include:

- the participant's individual circumstances, including goals and aspirations;
- independent living skills and capacity-building requirements;
- supports required to assist the participant's independent living goals;
- supporting information, reports and assessments;
- alternative housing arrangements and the associated SIL requirements; and
- that SIL represents value for money and is reasonable and necessary.

3.14 Once suitability for SIL is determined, the participant's plan will be approved with the inclusion of a SIL line item, requiring the participant to identify a suitable SIL arrangement and obtain a quote from a provider.<sup>14</sup>

#### *The SIL quoting process*

3.15 After a participant has been assessed as eligible for SIL, they will typically approach a service provider with a vacancy and seek a quote. The quote is prepared by the service provider and submitted to the NDIA for approval.

3.16 According to the NDIA, the purpose of the quote is to identify:<sup>15</sup>

- the individual supports that will be available to the participant;
- the roster of supports that is shared between participants to maximise the efficient use of resources; and
- the supports that are available to all residents to ensure the smooth operation of the household.

3.17 The SIL quote is assessed by the NDIA to determine whether the proposed model of care is appropriate to the participant and represents value for money. The assessment is undertaken using a quoting tool, which calculates a market price based on the NDIA Price Guide and proposed hours of support. The outcome of this assessment is a recommended budget based on the level of support a participant requires in their home.<sup>16</sup>

3.18 A diagram outlining the SIL quoting process is included below.

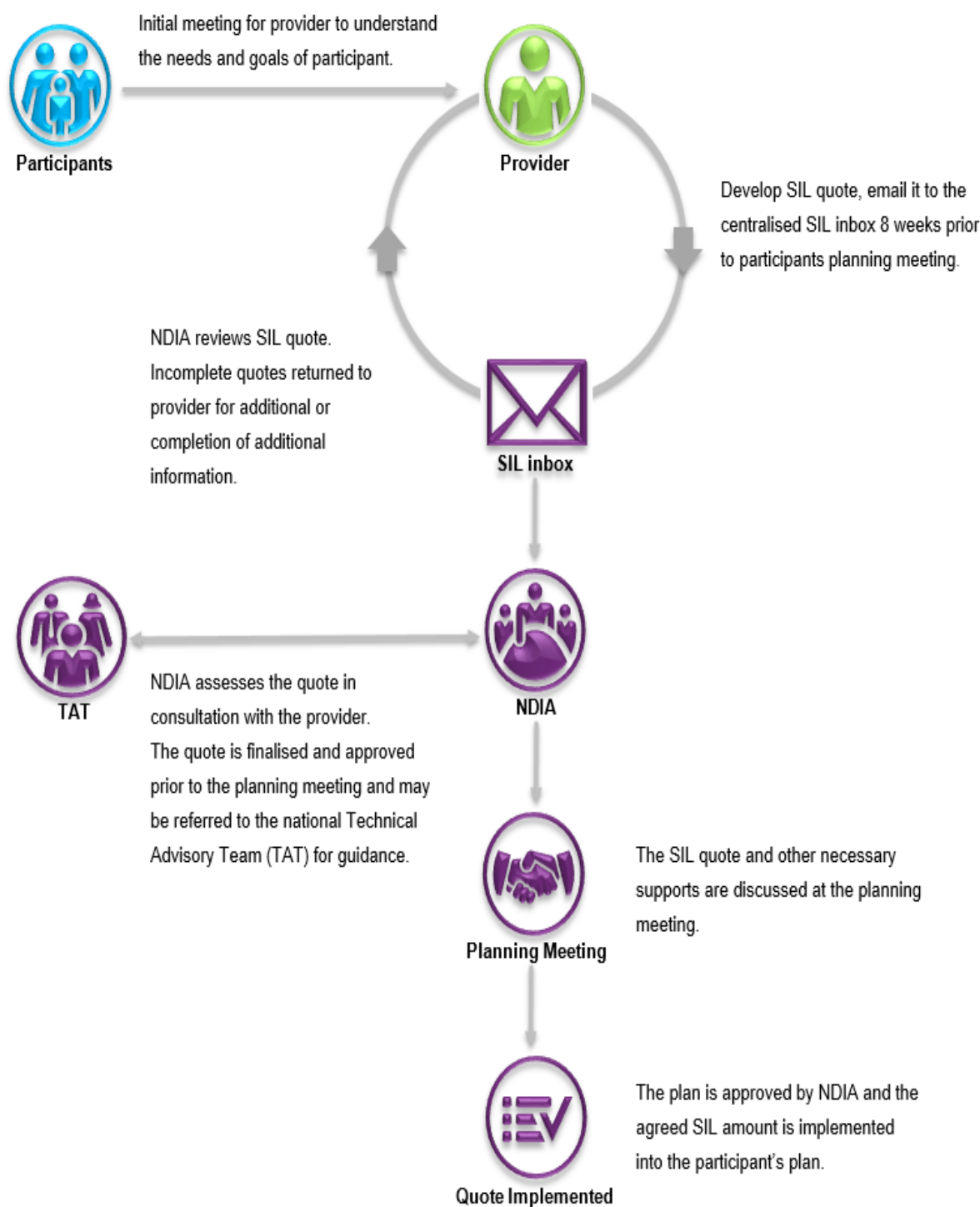
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<sup>14</sup> National Disability Insurance Agency, *Submission 11*, pp. 5–6.

<sup>15</sup> National Disability Insurance Agency, *NDIS Price Guide 2019–20*, p. 25.

<sup>16</sup> National Disability Insurance Agency, *Submission 11*, pp. 6–7

## The Supported Independent Living (SIL) quoting process<sup>17</sup>



<sup>17</sup> Source: National Disability Insurance Agency, *Guide to Using the Provider Supported Independent Living (SIL) Pack*, September 2018, p. 3.

- 3.19 According to the NDIA, prior to submitting a SIL quote for assessment a provider should ensure that:<sup>18</sup>
- the participant, their family and/or guardian has been consulted regarding the proposed service offering;
  - all templates and tools have been completed;
  - only NDIA templates and tools have been used (to avoid delays);
  - the quote does not include items that are not funded under SIL (such as employment supports or therapy); and
  - any additional information that would assist the NDIA to understand the participant's needs or required supports has been included.
- 3.20 Once a quote is approved, it and any supporting information are discussed in planning conversations between the NDIA and the relevant participant. At this point, the NDIA will make a 'reasonable and necessary' assessment across all supports in the participant's plan—which is then approved. After this, service bookings are created on the approved plan, allowing the provider to draw down on approved funds.<sup>19</sup>

### **The Provider SIL Quoting Pack**

- 3.21 The NDIA has indicated that, to submit a quote, a provider must complete the Provider SIL Quoting Tool (SIL Tool) and the Provider SIL Quoting Template (SIL Template). These documents, along with any supporting evidence relating to the participant's support needs, should be sent to the centralised SIL inbox for allocation of assessment and review.<sup>20</sup>
- 3.22 An overview of the SIL Tool and the SIL Template is provided below. Further information about those documents is available on the NDIA's website.<sup>21</sup>

#### *Provider SIL quoting tool*

- 3.23 The SIL Tool is an Excel spreadsheet. Providers are required to enter details of the staffing mix in the relevant property, the level of shared supports, and the needs of individual participants. The purpose of the tool is to allow the NDIA to get an insight into a typical week for each SIL participant in a property.<sup>22</sup>

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<sup>18</sup> National Disability Insurance Agency, *Guide to using the Provider Supported Independent Living (SIL) Pack*, September 2018, p. 15.

<sup>19</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000016, 13 February 2020 (received 13 February 2020).

<sup>20</sup> National Disability Insurance Agency, *Guide to using the Provider Supported Independent Living (SIL) Pack*, September 2018, p. 8.

<sup>21</sup> <https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/housing/supported-independent-living>

<sup>22</sup> The NDIA indicated that the SIL Tool is to be completed by the provider for each property where SIL is delivered. Providers do not need to complete the SIL Tool separately for each participant.

3.24 In summary, the SIL Tool will include:<sup>23</sup>

- 'Overall information', including:
  - the address of the SIL home;
  - the maximum number of support staff at the residence at any given time;
  - an indexation percentage for the quote, to account for inflation;
  - the name of each participant receiving SIL supports at the property;
  - the name of each person in the residence who is not a participant;
  - an effective date for the quote; and
  - the provider's hourly rates, including for weekdays and weekends, days and nights, public holidays, irregular supports and overnight shifts.
- A roster of care, reflecting staffing arrangements and levels of support to be for a typical week. Providers must specify:
  - ratios of support for each participant (for example, one staff member to two participants, or 1:2), for every half hour during a 24-hour day;
  - overnight shifts, and whether these are 'active overnight' (staff must stay awake) or 'sleepover' (staff may sleep when support is not required); and
  - afternoon and evening shifts, whether two or more shifts overlap.

3.25 Providers are also encouraged to include any notes that will assist the NDIA's understanding of the roster, such as scheduled time with family or friends; regular appointments; transport needs; employment; and staff handover.

#### *Provider SIL Quoting Template*

3.26 The SIL Template intends to give the NDIA a 'snapshot' of each participant in a SIL arrangement, including their needs, goals and capacities. The template is developed by the provider and submitted with the SIL Tool, and will include:<sup>24</sup>

- a participant profile, including the person's name; NDIS number; date of birth; disabilities, goals; current behaviours of concern; and details of the person (if any) making decisions on the participant's behalf;
- a property profile, including an address; number of properties; number of bedrooms in each property; any home modifications or assistive technology; and the name of each person sharing the property;
- current capacity building goals for each participant (for example, learning to cook), and how achievement will be measured;
- prior capacity building goals that have been achieved;
- the SIL quote amount for the participant; and
- Items excluded from the quote.

<sup>23</sup> National Disability Insurance Agency, *Guide to Using the Provider Supported Independent Living (SIL) Pack*, September 2018, p. 21.

<sup>24</sup> National Disability Insurance Agency, *Guide to Using the Provider Supported Independent Living (SIL) Pack*, September 2018, p. 21.

- 3.27 The NDIA has also developed a simplified template for use where there is no significant change in support needs from one year to the next. The simplified template requires the provider to specify the capacity-building outcomes that have been achieved in the previous year; the proposed outcomes for next year; the weekly quote amount; and the date on which the quote will take effect.
- 3.28 If there has been a change to a participant's level of support compared to the previous year, or if there has been a change of circumstances, providers must submit a quote using the standard SIL Template.

#### *Participants' support needs*

3.29 The SIL Tool and the SIL Template require the provider to specify, for each participant in the SIL arrangement, whether the participant has 'lower needs', 'standard needs' or 'higher needs'. These are defined as follows:<sup>25</sup>

#### 3.30 **Lower needs**

- supervision of living arrangements as a whole, including occasional or intermittent prompting to undertake household tasks or self-care activities.
- supervision not usually provided 24/7, and may be provided via off-site monitoring if appropriate.
- if the participant has had incidents of challenging behaviour, a behaviour support plan is in place and it is demonstrated that the participant can be supported effectively within the available support.
- where a participant has additional support needs, they may be supported through a mix of additional paid and informal supports.

#### 3.31 **Standard needs**

- 24/7 support, which includes:
  - active assistance or supervision of most daily tasks.
  - regular inactive overnight (sleepover) supports.
  - where appropriate, spending some time with family or friends;
  - a behaviour support plan for episodic or challenging behaviours.

#### 3.32 **Higher needs**

- highly frequent assistance, with features such as :
  - managing challenging behaviours requiring intensive behaviour support;
  - continual, active assistance with all daily tasks.
  - active management of complex medical needs such as ventilation.
  - 24/7 active support, with active overnight shifts.
  - higher staffing ratios at peak periods, for episodic or incidental behaviour supports or emergency medical needs.

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<sup>25</sup> National Disability Insurance Agency, *Guide to Using the Provider Supported Independent Living (SIL) Pack*, September 2018, p. 19.

## SIL and other supports funded under the NDIS

### *Specialist Disability Accommodation*

- 3.33 SIL refers to assistance with and/or supervision of daily tasks for an individual to live as independently as possible. Funding for SIL is used to cover the costs of the support staff necessary to provide any assistance or supervision, and to cover any associated administrative costs. SIL funding does not cover the cost of a participant's accommodation.
- 3.34 By contrast, SDA *does* fund accommodation costs for eligible participants. The rules governing SDA describe the support as follows:
- SDA refers to accommodation for people who require specialist housing solutions, including to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs. SDA does not refer to the support services, but the homes in which they are delivered. SDA may, for example, have specialist designs for people with very high needs or a location or features that make it feasible to provide complex or costly supports for independent living.<sup>26</sup>
- 3.35 SDA does not fund rent, board or lodging, and does not include day-to-day living expenses such as food and activities. Rather, SDA funds the capital costs associated with housing a participant in specialist accommodation.<sup>27</sup>
- 3.36 To access SDA, a participant must be assessed as having an extreme functional impairment requiring an SDA response, or very high support needs that are appropriately met by an SDA response.<sup>28</sup> In April 2018, the NDIA estimated that around 6 per cent of participants will be found eligible for SDA funding under the NDIS.<sup>29</sup>
- 3.37 Ultimately, SDA funding is designed to increase the availability of accessible housing for people with disability. It allows providers to recover the costs of building a new property for, or making an existing property available to, the disability sector.<sup>30</sup>

<sup>26</sup> National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016, rule 1.2.

<sup>27</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000015, 13 February 2020 (received 2 April 2020).

<sup>28</sup> National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016, rule 3.4. Matters to be considered in making these assessments are set out in rules 3.5 to 3.8.

<sup>29</sup> National Disability Insurance Agency, *Specialist Disability Accommodation: Provider and Investor Brief*, April 2018, p. 5. The NDIA observed that this may change over time as participants enter the NDIS and have plans made.

<sup>30</sup> The NDIA has set a number of benchmark prices for SDA homes that it may be prepared to fund through participants' plans. These prices are based on matters such as the size and type of the dwelling; the nature of any modifications; and whether the dwelling has additional 'breakout' rooms or additional space for support staff staying overnight. See National Disability Insurance Agency, *Price Guide (2019–20) – Specialist Disability Accommodation (SDA)*, October 2019.

- 3.38 The NDIS will make payments available to the provider of an SDA property through an eligible participant's plan for so long as the participant resides in the property.<sup>31</sup> A participant may be required to pay some of the costs of their accommodation. However, a participant's contribution will be relatively low.<sup>32</sup>
- 3.39 There is considerable overlap between participants with SIL and those with SDA. The NDIA has noted that 63 per cent of participants with SIL also access SDA, while 99 per cent of those with SDA also access SIL.<sup>33</sup> The NDIA stated that the relationship between SDA and SIL is an area of focus for the agency.<sup>34</sup> It provided further detail during the committee's public hearing in Canberra:

[W]e are very clear in making sure that SIL is funded only for the supports: that is, the carers and the overhead required to operate those activities for participants, noting that rent and other funding is intended to be covered through specialist disability accommodation or others.<sup>35</sup>

#### *Assistance with daily living*

- 3.40 Some submitters to the inquiry observed that services designed to assist NDIS participants with independent living are not unique to SIL, and may be funded under other support categories. For example, the Victorian Office of the Public Advocate noted that:

Services that may be encompassed by SIL...include daily personal activities, provisions for 'shadow shifts', establishment of personal care, assistance with household tasks, and the preparation and delivery of meals. These same services can alternatively be funded and provided outside of the SIL framework. This occurs where a large amount of 'core support' funding is specified in the person's plan, without the quoting requirements and booking system that are attached to SIL provision.<sup>36</sup>

- 3.41 The NDIA stated that ADL is assistance with and/or supervision of personal care activities such as showering and dressing, and the activities of daily life

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<sup>31</sup> In limited circumstances, SDA payments may also continue for a period of time after a participant has left the SDA property. Payments may continue where a participant vacates a property that is enrolled to house between two and five residents, and the provider has notified the NDIA that a vacancy is available. In those circumstances, the participant will be taken to reside in the property for up to 90 days or until a vacancy is filled, whichever is earlier. See National Disability Insurance Agency, *Price Guide (2019-20) – Specialist Disability Accommodation (SDA)*, October 2019, p. 6.

<sup>32</sup> The participant will contribute 25 per cent of the base rate of their Disability Support Pension, plus any Commonwealth Rent Assistance they receive. This amount may be adjusted to take account of indexation and average vacancy rates. See National Disability Insurance Agency, *Price Guide (2019-20) – Specialist Disability Accommodation (SDA)*, October 2019, p. 15.

<sup>33</sup> National Disability Insurance Agency, *Submission 11*, p. 3.

<sup>34</sup> National Disability Insurance Agency, *Submission 11*, p. 3.

<sup>35</sup> Mr Oliver Bladeck, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 2.

<sup>36</sup> Victorian Office of the Public Advocate, *Submission 31*, p. 7.



such as cooking and cleaning, to enable participants to live as autonomously as possible. ADL may be delivered in shared and individual living arrangements, including a participant's home. ADL is 'essentially attendant care'.<sup>37</sup>

3.42 The NDIA further stated that, in practice, SIL is the provision of ADL supports with a different billing method. SIL service bookings are defined in weeks, while ADL bookings are defined in hours. However, the services provided are the same. Indeed, the NDIA has stated that it uses the ADL rate per hour as the benchmark to evaluate the cost of a proposed roster of care in a SIL quote.<sup>38</sup>

3.43 The NDIA provided further detail on the difference between SIL and SDA at the committee's public hearing in Canberra, stating that:

[T]he difference between SIL and [ADL] is merely a service-booking issue. SIL is provided as an annual amount, whereas ADL is a quotable amount that is more tailored and customised to an individual...the perspective of the agency is ensuring that those who have those challenges actually receive the right product that's suitable for them. SIL, through its quoting tool, is intended to be for shared accommodation. I would suggest that the agency's perspective is ensuring they have the right support, which may come from a different product.<sup>39</sup>

3.44 The NDIA also noted that it has used 'SIL' to refer to supports delivered in both individual and congregate arrangements. It acknowledged that this may cause confusion for some stakeholders:

...[O]ver recent times—probably the last few years—we've used SIL in both scenarios. That's why there's a little bit of confusion. That's why we tried to describe earlier that we should be focusing less on the name—though I realise that we have to call it something at the moment—and more on the supports that people need irrespective of where they live.<sup>40</sup>

3.45 However, some evidence received during the inquiry suggested that providers, participants, families and carers consider SIL to be as much about the nature of supports how they are funded. For example, submitters asserted that SIL should be available to participants in *both* shared and individual settings. This appears to reflect some disagreement among stakeholders as to the most appropriate means of delivering supports for independent living.

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<sup>37</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000015, 13 February 2020 (received 2 April 2020).

<sup>38</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000015, 13 February 2020 (received 2 April 2020).

<sup>39</sup> Mr Oliver Bladec, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 6.

<sup>40</sup> Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020,

3.46 The committee will continue to monitor the funding and delivery of SIL and ADL supports, including whether participants receive the funding package that best meets their wishes and support needs. The committee may report on this matter as part of a subsequent inquiry.

### **NDIA initiatives related to SIL**

#### *Enhancing the timeliness and consistency of access to SIL*

3.47 The NDIA stated that it has implemented a series of measures to improve the timeliness and consistency of SIL for participants and providers, including:<sup>41</sup>

- establishing a centralised process for submitting and assessing SIL quotes.
- implementing additional checks to ensure that the SIL budget is included in the plan, and to ensure that service bookings are created for providers following plan approval. This ensures providers are able to claim from the time supports commence.
- delivery of intensive engagement and education to providers in completing and submitting SIL quotes.
- supporting the transfer of state government disability accommodation services to non-government NDIS providers.

#### *Legacy issues and congregate living arrangements*

3.48 The NDIA has acknowledged that the SIL environment has significant legacy arrangements in place. The agency noted that, historically, states and territories funded supported accommodation through block-funded group living arrangements, or operated congregate living facilities. Support was not tailored to participants' needs, and participants had limited choice in where they lived or who they lived with.<sup>42</sup>

3.49 The NDIA stated that it is working to manage legacy arrangements during the transition from state-based support models to the NDIS. However, its efforts have been hampered by the need to address in-kind arrangements, transfers from state facilities, different working arrangements across jurisdictions, and increases in participant numbers. As a result, the current SIL environment 'is complex, and continues to evolve'.<sup>43</sup>

3.50 The NDIA describes itself as being committed to service innovation and improvement as the NDIS matures, and notes that improvements to the SIL framework will be driven by the principle of maximising choice and control for participants. The agency has further stated that:

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<sup>41</sup> National Disability Insurance Agency, *Submission 11*, pp. 3–4.

<sup>42</sup> National Disability Insurance Agency, *Submission 11*, pp. 2–3.

<sup>43</sup> National Disability Insurance Agency, *Submission 11*, p. 2.

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In the future, SIL-like funding in a participant's plan will be informed by the participant's goals and support needs, contemporary models of support, evidence and actuarial data, and move away from legacy models of support, which may not necessarily deliver the optimal support solution for participants and give them choice and control. This will need to be underpinned by improved market data to assist with the development of future support models.<sup>44</sup>

- 3.51 In its most recent Quarterly Report, the NDIA also stated that it is working on consistent and equitable decisions for those seeking access to SIL. Further, the agency is working to enhance participants' support packages through guided planning processes, with a view to ensuring the right assessment questions and tools are used to inform decisions.<sup>45</sup>
- 3.52 The NDIA is also considering more contemporary options for people with disability who require a high level of support—noting that congregate settings are traditionally viewed as the most appropriate form of accommodation for this cohort.<sup>46</sup>

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<sup>44</sup> National Disability Insurance Agency, *Submission 11*, p. 4.

<sup>45</sup> National Disability Insurance Agency, *COAG Disability Reform Council Quarterly Report*, 31 December 2019, p. 81.

<sup>46</sup> National Disability Insurance Agency, *COAG Disability Reform Council Quarterly Report*, 31 December 2019, p. 81. The NDIA noted that a number of options, termed 'Contemporary Individual Living Options' (ILOs) have emerged as alternatives to shared living arrangements. These ILOs have potential as more tailored solutions for participants with higher or more complex support needs, and may increase choice and control and improve participant outcomes.



# Chapter 4

## The approval process for access to SIL

- 4.1 This chapter examines issues associated with access to Supported Independent Living (SIL), and with the delivery of SIL funding and supports. It also makes recommendations which aim to improve access to SIL for participants and providers.
- 4.2 Key issues considered in this chapter include:
- the approval process for access to SIL for 'new' participants;
  - the evidence required to support an application for SIL funding;
  - the eligibility process for SIL;
  - information and guidance on SIL for participants, providers and other stakeholders;
  - the SIL quoting process; and
  - internal processes and practices of the National Disability Insurance Agency (NDIA) relating to SIL.

### Access to SIL for 'new' participants

- 4.3 Submitters observed that the approval process for access to SIL is lengthy and complex for the majority of National Disability Insurance Scheme (NDIS) participants. Submitters also observed that the approval process is particularly onerous for participants who are not in—or have not previously accessed—supported living arrangements.<sup>1</sup>
- 4.4 The Victorian Office of the Public Advocate (Vic OPA) observed that the SIL quoting and approval process set out in the in the NDIA guidance material best reflects the experience of existing residential services clients.<sup>2</sup> However, the approval process may be considerably longer and more challenging for other people with disability—particularly due to the volume of evidence needed to establish eligibility for SIL supports.<sup>3</sup>

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<sup>1</sup> For example, people with disability living at home supported by family members, who wish to move out to live on their own, share with friends, or live with others in the community.

<sup>2</sup> Victorian Office of the Public Advocate, *Submission 31*, p. 10.

<sup>3</sup> Victorian Office of the Public Advocate, *Submission 31*, p. 10. The Vic OPA noted that, in practice, guardians involved in the first planning meeting often seek money in the plan to fund assessments necessary to obtain approval for SIL. If the client has money to pay for these assessments, this may speed up approval by allowing the client to bring relevant evidence to the first planning meeting.

4.5 The Vic OPA outlined the SIL approval process for 'new' clients as follows:<sup>4</sup>

- (a) The client seeks specific evidence to prove they are eligible for SIL.
- (b) Occupational Therapy (OT) assessments are carried out. There may be wait lists for assessments, particularly as not all OTs offer specialised assessments.
- (c) The planner confirms that the participant is eligible for SIL, based the evidence provided in the assessment. This is likely to occur during a review of an initial plan.
- (d) Once eligibility for SIL has been confirmed by the NDIA, the participant may approach a provider of their choice who is interested in providing a service and willing to submit a quote. This step is often difficult due to the availability of SIL providers, particularly in regional and rural areas.
- (e) The SIL provider develops a quote and submits it to the NDIA. The NDIA assesses the quote and either accepts it or enters into negotiations with the provider.
- (f) Once the quote is accepted, it is included in the participant's approved plan, and SIL funding is implemented.

4.6 DARE Disability Support (DARE) similarly noted that participants who have not previously accessed supported living must undergo a 'long, ill-conceived and drawn out [approval] process', which may take more than 12 months. DARE recommended that the process be simplified to the following steps:<sup>5</sup>

- establishing eligibility;
- pre-approval for SIL;
- identifying a vacancy; and
- approving funding based on the SIL tool.

### **Evidence to support an application for SIL funding**

4.7 Access to SIL will require a participant to obtain evidence to support their application. This may include clinical and behavioural assessments; incident or police reports; risk assessments; statements from former providers; and other assessments such as the Functional Independence Measure.<sup>6</sup> Submitters expressed concern at the high volume of evidence required to support a SIL application, as well as in relation to disparities in participants' ability to pay for assessments—for example due to high costs and thin markets.

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<sup>4</sup> Victorian Office of the Public Advocate, *Submission 31*, p. 11. This process is also broadly consistent with the observations of DARE Disability Support in relation to participants accessing supported living supports for the first time. See DARE Disability Support, *Submission 9*, p. 5.

<sup>5</sup> DARE Disability Support, *Submission 9*, p. 6.

<sup>6</sup> National Disability Services 'Supported Independent Living (SIL)', <https://www.nds.org.au/images/sdp/SIL-Presentation.pdf> (accessed 24 February 2020). Other standardised assessments may include Lawton's Instrumental Activities of Daily Living; Allen's model of cognitive disability; and assessments of motor and processing skills.

4.8 The Office of the Public Guardian (Queensland) (Qld OPG) noted that the process to access SIL is 'onerous and prohibitive', with participants required to spend significant time and resources obtaining evidence.<sup>7</sup>

4.9 Submitters also noted that there is substantial inequity in terms of access to SIL and other supports between those participants who can independently fund OT assessments, and those who must rely on NDIS funding.<sup>8</sup> In this respect, the Vic OPA observed that:

The OT assessment is costly, but people who have a [Transport Accident Commission] package (or other independent means) can pay the costs themselves and receive services they are eligible for months earlier than those who need an additional plan review to get to that point.<sup>9</sup>

4.10 The Vic OPA recommended the NDIA ensure immediate access to funding for assessments required for plan reviews, and that the NDIA, as market steward, act to address the insufficient supply in occupational therapy services.<sup>10</sup>

4.11 In the context of funding for Specialist Disability Accommodation (SDA), representatives of Uniting Vic. Tas (UVT) echoed these concerns during the committee's public hearing in Melbourne:

If the money for those assessments hasn't been placed into the plan, that means a plan review—or families or individuals are going to have to pay for those assessments to be able to fast-track it. If they don't have the capacity to do that, it initiates a plan review to get money for the allied health assessments or behavioural support plans to be put into the plan to then go on a waitlist to get those assessments.<sup>11</sup>

4.12 The CEO of the Queenslanders with Disability Network (QDN) estimated the costs of certain assessments at the committee's public hearing in Brisbane:

Depending on the nature of the assessment, a basic OT assessment would be somewhere around \$500. A more complicated neuropsych assessment, with a report, can be up to [\$2, 500] to \$3 000. There are organisations that have established themselves and are prepared to provide discounted assessments, and are doing them currently, if there are a number of people who need to get assessments done.<sup>12</sup>

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<sup>7</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 5.

<sup>8</sup> The committee has heard that many participants seeking to access SIL funding may seek to have a plan approved without such funding in the first instance. The plan may include funding for the participant to undergo OT and other assessments necessary to support their application for SIL. Once SIL is approved, the plan may be reviewed and a new plan (with SIL funding) approved.

<sup>9</sup> Victorian Office of the Public Advocate, *Submission 31* p. 12.

<sup>10</sup> Victorian Office of the Public Advocate, *Submission 31*, p. 12.

<sup>11</sup> Mrs Suzanne Gannon, Senior Manager, Residential and Community Options, Uniting Vic. Tas, *Proof Committee Hansard*, 7 November 2019, p. 9.

<sup>12</sup> Ms Paige Armstrong, Chief Executive Officer, Queenslanders with Disability Network, *Proof Committee Hansard*, 8 October 2019, p. 52.

*Evidence may be overlooked by NDIA officers*

4.13 Some submitters raised concerns that the NDIA may, in some cases, overlook evidence provided by participants to support a SIL application. For example, the CEO of DARE stated during the committee's public hearing in Sydney that:

[I]t certainly doesn't seem that in many cases there is consideration with regard to, say, an OT report or a psychologist's report. Maybe that consideration is occurring, but it doesn't appear to be obvious to us. Again, we're sort of hamstrung...because we've never seen the algorithm and I don't know how information and evidence is collated into a plan.

...I don't know how a planner considers it. But certainly our impression has been, on a number of occasions, that recommendations from allied health professionals and similar just haven't been incorporated or seem to have been overlooked.<sup>13</sup>

4.14 Identitywa raised similar concerns, and provided the following example:

[A] Planner stated that an individual could 'cook his own meals' and was therefore independent in this regard. This was interpreted from a 1-hour OT assessment where the individual was observed (with prompting) to get a frozen meal out of the freezer, prompted to open the packet, assisted to set the time for cooking on the microwave, assisted to check it for heat, assisted to get it out of the microwave with prompting to use oven [mitts], and assisted to put the food on his plate.

What wasn't overtly stated in the OT report was that, without verbal prompting and support, this person would not be able to undertake this task independently. If Identitywa staff had not queried this, the individual would not have the level of support that he requires to live in a SIL supported accommodation.<sup>14</sup>

*NDIA position*

4.15 At the committee's public hearing in Canberra, the NDIA acknowledged that some inequities exist between participants who are able to fund OT and other assessments and those who are not. In relation to measures taken to address this issue, the agency observed that:

In New South Wales we have been trialling what we call an independent functional assessment, that we pay for, for people to go to get all the right assessment information that we can then use to help (a) with access and (b) with plans...We've had some really positive feedback, because, for one thing, people don't have to pay for those assessments themselves, but it also creates a much better, fair, consistent process. We are looking at expanding that nationally over the next little while.<sup>15</sup>

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<sup>13</sup> Mr Andrew Daly, Chief Executive Officer, DARE Disability Support, *Proof Committee Hansard*, 9 October 2019, p. 30.

<sup>14</sup> Identitywa, *Submission 22*, p. 4.

<sup>15</sup> Mr Scott McNaughton, General Manager, Service Delivery and Performance, Participant and Planning Experience, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 6.



- 4.16 The NDIA further noted that this assessment is not a diagnosis, but rather a report that gives the agency information on the impact that a participant's disability may have on their daily life.<sup>16</sup> The NDIA indicated that once this and other measures are rolled out, the NDIA would be able to 'lend a lot more flexibility' to participant plans.<sup>17</sup>
- 4.17 However, the NDIA has also stated that it does not require participants to undergo functionality assessments to access SIL funding.<sup>18</sup>

#### *Committee view*

- 4.18 The committee heard that a substantial amount of evidence is required to establish eligibility for SIL, and that participants may spend significant time and resources marshalling evidence to support an application.
- 4.19 The committee is concerned that there may be substantial inequities between participants in relation to their ability to pay for assessments that are needed to establish eligibility. The committee emphasises that the financial status of a person with disability should not act as a barrier to accessing the NDIS or to obtaining reasonable and necessary supports.
- 4.20 The committee welcomes the NDIA's advice that the agency is trialling an independent functional assessment—paid for by the NDIA—which will help participants receive the information needed to support access to the NDIS and to support the development and approval of plans.
- 4.21 However, the committee considers that more support is needed to ensure equal access to assessments. The committee also considers that additional funding should be provided for assessments needed to assist participants to access reasonable and necessary supports, and in particular for assessments required to support an application for SIL funding.
- 4.22 Submitters and witnesses also indicated that functionality assessments must be submitted as evidence to support SIL applications. This is notwithstanding statements by the NDIA that participants are not required to undergo such assessments to access SIL. The committee considers that there would be merit in the NDIA clarifying exactly what evidence is needed to support an application for SIL funding. The committee has recommended elsewhere in

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<sup>16</sup> Mr Scott McNaughton, General Manager, Service Delivery and Performance, Participant and Planning Experience, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 6.

<sup>17</sup> Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 16.

<sup>18</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000021, 13 February 2020 (received 2 April 2020).

this report that the NDIA develop and publish comprehensive guidance on SIL for participants, families and carers.

- 4.23 The committee is also concerned that evidence submitted in support of a SIL application may be overlooked by the NDIA, and that planners may fail to reflect this evidence in a participant's plan. The committee considers that the NDIA should, as a matter of urgency, develop and implement measures to ensure that all evidence submitted by participants is accurately recorded in the participant's plan, and actively considered in plan development.

### **Recommendation 1**

- 4.24 The committee recommends that the National Disability Insurance Agency ensure immediate access to funding for all assessments required to support applications for reasonable and necessary supports, and in particular to support applications for Supported Independent Living.**

### **Recommendation 2**

- 4.25 The committee recommends that the National Disability Insurance Agency clarify the assessments required to support an application for Supported Independent Living funding.**

### **Recommendation 3**

- 4.26 The committee recommends that the National Disability Insurance Agency implement measures to ensure that all evidence provided by a participant to establish that supports are reasonable and necessary is accurately recorded in the participant's plan, and is actively considered in plan development.**

### **Eligibility for SIL funding**

- 4.27 A number of submitters observed that the process to determine eligibility for SIL is lengthy and onerous—particularly regarding the volume of supporting evidence required. Submitters also noted that eligibility for SIL is tied to the quote developed by a provider, and raised concerns that this may commit the participant to a particular SIL provider and residence—rather than enabling the participant to exercise choice and control over their living arrangements.
- 4.28 For example, the Vic OPA observed that if a participant wishes to live independently, or wishes to move into SDA but does not have a current offer of accommodation, the planner does not include eligibility for SIL in their plan. This means that plans may be inflexible, and will require review once accommodation is identified. The Vic OPA recommended that the NDIA clearly state in plans where a participant is eligible for SIL, without requiring the participant to identify their future accommodation.<sup>19</sup>

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<sup>19</sup> Victorian Office of the Public Advocate, *Submission 31*, p. 11.

4.29 DARE noted that SIL approval is predicated on a vacancy being identified, and suggested a preferable approach would be to confirm eligibility for SIL before the search for a vacancy commences. DARE observed that this is already happening with SDA.<sup>20</sup> The CEO of DARE elaborated on this issue during the committee's public hearing in Sydney:

[W]e had to find a house first. Then we had to find participants. The participants had to get their plans amended to include an assessment to show that they were eligible for SIL. Then we had to go through the SIL process. It takes about 12 months, and it basically makes finding vacancies and matching vacancies a near impossibility.

My view is that, rather than having this long, drawn-out process, I see no reason why someone can't be approved for SIL—in other words, their eligibility has been determined and NDIS is willing to fund them to go into a SIL arrangement—and then they find the physical vacancy.<sup>21</sup>

4.30 The NSW Trustee & Guardian stated that quotes will not be processed unless the participant has secured 'bricks and mortar'. It also stated that government housing providers cannot support a housing application if there is no guarantee of supports or funding. The NSW Trustee & Guardian further noted that at least one of its clients had been detained unnecessarily due to the interaction between SIL and government housing processes.<sup>22</sup>

4.31 Scope (Aust) Ltd (Scope) observed that for SIL to be included in a participant's plan, the NDIA requires a quote from the provider to be submitted for assessment prior to the participant's budget being approved. Scope noted that this has the effect of deciding in advance how the budget will be spent, and effectively commits the participant to a particular SIL provider.<sup>23</sup>

#### *NDIA position*

4.32 The NDIA stated that, to ensure a participant's plan includes the supports they require (including the level and intensity of supports), the NDIA confirms the participant's needs at each plan review. In cases where a participant's function has changed, evidence of the participant's current impairment and support needs may be required to assist the decision-making process. According to the NDIA, this means it is not possible to assess SIL requirements only once.<sup>24</sup>

<sup>20</sup> DARE Disability Support, *Submission 9*, p. 3.

<sup>21</sup> Mr Andrew Daly, Chief Executive Officer, DARE Disability Support, *Proof Committee Hansard*, 9 October 2019, p. 27.

<sup>22</sup> NSW Trustee & Guardian, *Submission 15*, p. 9.

<sup>23</sup> Scope (Aust) Ltd, *Submission 17*, p. 3. Scope stated that it would be preferable to authorise planners to set a price range for the participant, with no need for further approval so long as a quote from a provider meets the participant's needs and is within that range.

<sup>24</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000022, 13 February 2020 (received 2 April 2020).

4.33 The NDIA also stated that it is not expected that a participant would have to undergo a lengthy assessment process for each plan that includes SIL. However, the assessment process will be more detailed if there is a change to a participant's situation which would lead to a different support level.<sup>25</sup>

*Committee view*

4.34 The eligibility process for access to SIL requires a participant to identify a vacancy in a SIL residence, and to approach a service provider to obtain a quote. The committee heard that eligibility for SIL is not recorded in a plan unless a suitable vacancy is identified—notwithstanding that it is clear the participant requires support to live independently.

4.35 The committee is concerned that participants may be obliged to undergo multiple eligibility processes to access SIL—particularly where a participant has not previously accessed SIL supports. The committee is also concerned that the current eligibility process for SIL may effectively commit a participant to a particular provider and residence, thereby reducing choice and control as to the participant's living arrangements.

4.36 In light of these matters, the committee considers the NDIA should implement a mechanism to confirm a participant's eligibility for SIL funding prior to the participant identifying a suitable vacancy. The committee appreciates that it may not be possible to assess a participant's SIL requirements only once, as support needs may change over time. Nevertheless, the committee wishes to minimise the number of eligibility processes required for access to SIL, particularly where those processes do not relate to a change in circumstances.

4.37 In addition, the committee considers there would be merit in allowing planners to authorise a price range for SIL funding in participants' plans, with no further approval required if a quote from a provider falls within that price range. The committee considers that this would increase choice and control with respect to participants' living arrangements, and help streamline and expedite approval processes for access to funding. However, the committee emphasises that the participant and/or their plan nominee should be able to review and approve the SIL quote before it is approved by the NDIA.

4.38 The committee notes that these recommendations would be broadly consistent with recommendations made in the Tune Review. In particular, the committee notes that the Tune Review recommended amending the *National Disability Insurance Act 2013* (NDIS Act) to allow evidence provided to the NDIA about a

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<sup>25</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000022, 13 February 2020 (received 2 April 2020).

prospective participant or participant to be used for multiple purposes, including access, planning and plan review processes.<sup>26</sup>

#### **Recommendation 4**

**4.39 The committee recommends that the National Disability Insurance Agency develop and implement a mechanism to confirm a participant's eligibility for Supported Independent Living prior to the participant identifying a suitable vacancy.**

#### **Recommendation 5**

**4.40 The committee recommends that planners be empowered to authorise a price range for Supported Independent Living (SIL) funding, with no need for further approval so long as a SIL quote falls within that price range, on the condition that the participant and/or their plan nominee is able to review the SIL quote and approve it.**

#### **Information available to stakeholders**

4.41 A number of submitters observed that there is limited information available in relation to SIL, and virtually no guidance published by the NDIA. Submitters called for increased clarity in relation to the supports that are covered by SIL funding; the approval process for access to SIL; how SIL funding is calculated; and participants' rights and options when dealing with SIL providers.

4.42 The Disability Council NSW noted that a lack of information relating to SIL has resulted in confusion as to what is covered by SIL, as well as in relation to the requirements to be met in order to qualify for SIL funding. The Council recommended that additional guidance be provided by the NDIA in relation to both of these matters.<sup>27</sup> The Chair of the Disability Council NSW expressed similar concerns during the committee's public hearing in Sydney:

People find out information by luck or just from talking to their mates. It's not from the NDIS. The NDIS doesn't tell you what SIL does or what SIL is capable of. You ring up somebody who's been through the system. They get phone calls asking, 'What was your experience of SIL, what can we do in SIL, what can we find out about SIL,' and they just regurgitate the information, which is shared amongst our network. People with disability don't network with people and get to know friends within the system; they get isolated and lost.<sup>28</sup>

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<sup>26</sup> Mr David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 14 (**Recommendation 7**).

<sup>27</sup> Disability Council NSW, *Submission 3*, [p. 2].

<sup>28</sup> Mr Mark Tonga, Chair, NSW Disability Council, *Proof Committee Hansard*, 9 October 2019, p. 15.

- 4.43 The Disability Council NSW also stated that participants have reported that 'obscure wording formulas or statements' must be included in plans before a participant is able to access SIL. It emphasised that there should not be such obstacles to participants accessing the supports they need, and recommended the NDIA publish guidelines on access to SIL for participants and carers.<sup>29</sup>
- 4.44 Another submitter stated that there should be comprehensive information available to participants, families and advocates on participants' rights when dealing with SIL providers, as well on where to seek assistance. The submitter observed that they had been unable to locate useful information online or by contacting advocacy groups—noting that, by contrast, there is a wealth of information available to providers on 'how to make the NDIS work for them'.<sup>30</sup>
- 4.45 Speaking Up For You (SUFY) observed that there is little information available to people with disability to help them gain an understanding of SIL. In particular, there is limited information available on how vacancies are filled in shared living arrangements. SUFY indicated that this issue is compounded by the lack of a clear NDIA policy to encourage service providers to assist people to make informed choices by providing honest information, advice or support about SIL.<sup>31</sup> SUFY suggested that these information gaps may be because SIL facilitates a mechanism for block funding that forces people into shared care settings organised and controlled by the NDIA and the service provider.<sup>32</sup>
- 4.46 QDN observed that there needs to be more transparency in costings, so that participants can clearly understand what is quoted; what this means for 'reasonable and necessary' funding that relates to their accommodation; and how funding for SIL is different to previous block funded arrangements. QDN also asserted that there needs to be investment in building the capacity and understanding of participants about options and rights under SIL. QDN stated that this would best sit outside NDIS and the service system to avoid conflicts of interest; should be independent; and should be co-designed and co-led by people with disability.<sup>33</sup>
- 4.47 Queensland Advocacy Incorporated (QAI) raised similar concerns, noting that a dearth of truthful information about SIL has reinforced the conception that participants with high or complex support needs must enter SIL arrangements, notwithstanding that they previously received 24/7, 1:1 supports. QAI asserted

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<sup>29</sup> Disability Council NSW, *Submission 3*, [p. 2].

<sup>30</sup> Name Withheld, *Submission 40*, [p. 1].

<sup>31</sup> Speaking Up For You, *Submission 12*, [p. 1].

<sup>32</sup> Speaking Up For You, *Submission 12*, [p. 1].

<sup>33</sup> Queenslanders with Disability Network, *Submission 26*, p. 7.

that the lack of information about alternative accommodation and about SIL costings is increasingly forcing participants into congregate settings.<sup>34</sup>

- 4.48 The Qld OPG noted a number of inconsistencies in information provided to stakeholders regarding SIL, as well as a general lack of community education. It raised concerns that this may lead to misconceptions about participants:

[T]here is a perception that the OPG's clients should all have 24/7 support for supervision. This perception is potentially harmful as it presumes that people under guardianship require fulltime support, and does not allow for capacity building which is a key tenet of the NDIS.<sup>35</sup>

#### *NDIA position*

- 4.49 The NDIA stated that there is currently no guidance or regulation of SIL in the NDIS Act, associated delegated legislation, or NDIS Operational Guidance. However, external information is available on the NDIS website.<sup>36</sup>
- 4.50 According to the NDIA, the SIL team have standard protocols for internal and external communication. These are used in the process of recommending SIL quotes for approval, and in working with providers on pricing or errors. The NDIA also has internal guidance on SIL, including a Practice Guide, Standard Operating Procedures, and a SIL Team Guidance Document.<sup>37</sup>

#### *Committee view*

- 4.51 The committee is concerned that there is only limited information available to participants, families and carers in relation to SIL funding and supports. The committee itself has struggled to find reliable and consistent information published by the NDIA or by government regarding how SIL is funded and how SIL supports operate in practice. Further, the information on the NDIA's website (which appears to be the only public-facing information available to participants and providers) is limited.
- 4.52 The committee heard that this dearth of information has resulted in confusion as to the supports that are covered by SIL funding; how eligibility for SIL is established; how SIL vacancies are managed; how funding is calculated; and participants' rights and obligations with respect to SIL providers. The available

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<sup>34</sup> Queensland Advocacy Incorporated, *Submission 8*, [p. 5]. QAI recommended clear, transparent and honest information be provided in relation to SIL, including clarifying the restrictions that SIL may impose on choice and control; explaining that SIL pressures participants to share accommodation and support; and explaining that SIL hinders planning and review.

<sup>35</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 5.

<sup>36</sup> National Disability Insurance Agency, answer to question on notice SQ20-000006, 13 February 2020 (received 2 April 2020). This information includes a general overview of SIL, as well as the resources in the Provider SIL Quoting Pack.

<sup>37</sup> National Disability Insurance Agency, answer to question on notice SQ20-000006, 13 February 2020 (received 2 April 2020).

evidence also suggests a lack of reliable information may cause confusion as to whether SIL is appropriate for a participant, or whether the participant should explore alternative support arrangements.

- 4.53 The committee considers that the NDIA should, as a matter of urgency, develop and publish clear, comprehensive guidance material on these matters, and ensure that participants and providers are made aware of this material as soon as it is published.
- 4.54 The committee notes that publishing such guidance would accord with the recommendations of the Tune Review. In particular, the committee notes that the Tune Review recommended that the government and the NDIA provide more clarity around the definition of 'reasonable and necessary', including that the NDIA publish more information about how it makes decisions.<sup>38</sup>

### **Recommendation 6**

- 4.55 The committee recommends that the National Disability Insurance Agency, develop and publish clear, comprehensive guidance material on Supported Independent Living as a matter of urgency.**

### **Explanation of living arrangements at the pre-planning and planning stages**

- 4.56 Some submitters expressed concern that NDIA planners are failing to clearly explain options for accommodation and support at pre-planning and planning stages, and called for additional engagement with participants, families and carers in relation to these matters.
- 4.57 The Samaritans Foundation stated that pre-planning and planning meetings should include an exploration of current and future housing needs; the likely timeframe for changes in needs and circumstances; and education on the SIL approval and placement processes and the availability of properties.<sup>39</sup>
- 4.58 QDN stated that it is important for planners to work with participants to help them understand and fully explore their support needs, with options other than SIL considered.<sup>40</sup>
- 4.59 The committee also heard some evidence to suggest that approaches taken by planners in relation to SIL may be inconsistent. For example, the Qld OPG observed that planners sometimes have a negative view about including SIL in a plan. According to the Qld OPG, planners have advised that SIL is restrictive

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<sup>38</sup> Mr David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 13 (**Recommendation 4**).

<sup>39</sup> Samaritans Foundation, *Submission 4*, p. 3.

<sup>40</sup> Queenslanders with Disability Network, *Submission 26*, p. 7.



and too expensive, and that the client does not meet requirements—even if there is clearly a need for SIL supports.<sup>41</sup>

4.60 By contrast, a member of QDN stated that their planner had suggested a group living arrangement almost immediately. The member suggested that this approach had been taken in order to save money.<sup>42</sup>

4.61 In addition, the committee heard that planners may have a tendency not to recommend innovative housing options, due to lack of knowledge about such options and a desire to protect participants by recommending more familiar forms of accommodation.<sup>43</sup> Representatives of Summer Housing stated during the committee's public hearing in Melbourne that:

[T]here's a great sense of protecting people. It means, 'This is how we've always done it, so I'm more comfortable in that space.' How could this be done differently? Worries go...to, 'I'm not 100 per cent sure how it's done. I haven't seen it being done successfully. I'm more comfortable doing it the way we've already done it.' I think there is a big element of that thinking.<sup>44</sup>

#### *NDIA position*

4.62 The NDIA stated that it provides information on potential living arrangements and supports to participants who have a housing goal, or goal to change their living arrangements, either at the first planning meeting or a plan review meeting. The NDIA stated that participants with a housing goal are supported to identify suitable housing options and support needs through Local Area Coordinators (LACs), Support Coordinators and Allied Health Practitioners.<sup>45</sup>

4.63 According to the NDIA, internal guidance is available to NDIA staff and LACs to support participants with the steps required to identify a suitable housing option and the types of supports they may require.<sup>46</sup>

#### *Committee view*

4.64 The committee considers that pre-planning and planning discussions are a crucial opportunity for the NDIA to engage with participants, families and carers as to participants' current and future support and accommodation needs and, if appropriate, to discuss whether participants may require SIL funding.

<sup>41</sup> Office of the Public Guardian (Queensland), *Submission 37*, pp. 5–6.

<sup>42</sup> Queenslanders with Disability Network, *Submission 26*, p. 6.

<sup>43</sup> For example, planners may be inclined to recommend congregate living arrangements, as these were in place for some time under the state-funded disability support framework.

<sup>44</sup> Mr Daniel McLennan, Chief Executive Officer, Summer Housing Ltd, *Proof Committee Hansard*, 7 November 2019, p. 23.

<sup>45</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000017, 13 February 2020 (received 2 April 2020).

<sup>46</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000017, 13 February 2020 (received 2 April 2020).

- 4.65 The committee is therefore concerned that planners may be failing to clearly explain options for accommodation and support at the pre-planning, planning and plan review stages. The committee is also concerned that there may be inconsistencies between planners as to whether SIL is recommended to participants, and that planners may be recommending SIL as a cost reduction measure without sufficient consideration to participants' wishes and needs. The committee acknowledges the NDIA's advice that housing options and support needs are explained to participants during planning and plan review meetings. However, in light of the evidence before the committee, it appears more is needed to ensure participants are aware of available housing and support options, and are making genuine, informed choices as to their living arrangements and supports.
- 4.66 The committee emphasises that it does not seek to place blame on individual planners, who generally do good work under very trying circumstances. Rather, the committee seeks to ensure that the value of the planning process as an opportunity to explore accommodation and support needs is optimised.
- 4.67 Going forward, the committee considers that the NDIA should ensure that all planners (including LACs, if LACs are working closely with participants)<sup>47</sup> explore all current and future accommodation and support needs during pre-planning, planning and plan review meetings. This should include discussion of whether SIL is appropriate for the participant in light of their needs, and whether the participant wishes to live alone or in a shared setting.
- 4.68 The committee considers that these discussions should include an explanation of SIL funding and supports (informed by guidance, where appropriate). Further, planners should explore whether SIL continues to be appropriate for a participant, or whether the participant should explore more individualised funding and support arrangements.

### **Recommendation 7**

- 4.69 The committee recommends that the National Disability Insurance Agency ensure that its planners fully explore current and future accommodation and support needs with participants during pre-planning, planning and plan review.**

### **The SIL quoting process**

- 4.70 Many submitters observed that the SIL quoting process is lengthy and complex, and may limit providers' ability to obtain funding and to deliver

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<sup>47</sup> The NDIA stated that LACs generally do not support participants with SIL. Rather, planning involving SIL supports will be undertaken with an NDIA planner. See National Disability Insurance Agency, answer to question on notice SQ20-000006, 13 February 2020 (received 2 April 2020).

supports. Submitters indicated that process failure within the NDIA may exacerbate these concerns.<sup>48</sup> For example, Sylvanvale observed that:

A SIL application can be fast tracked if a participant has SIL as a goal in their NDIS plan and has dollars approved. A provider can submit a quote to provide the support with these two planks in place, yet it can still take six to nine months to be approved. Once the quote is submitted you do not even receive an acknowledgement of receipt, and may hear nothing from the Agency for many months. The Agency provides no central contact points so providers forever chase multiple people, and the advent of the SIL taskforce (designed to streamline SIL approvals/declines) adds another layer of bureaucracy to be navigated.<sup>49</sup>

- 4.71 Similar issues were raised during the committee's hearing in Melbourne. Representatives of UVT stated that the quoting process may take more than 12 months, notwithstanding that a participant has already been deemed eligible to receive SIL funding:

We've got some quotes from 2018 that we are still negotiating. They are going back and forth. They haven't been approved. We don't have a service booking. We can't claim. As a larger organisation we are able to absorb that period of non-payment...which is sometimes up to 12 months. That's not something a smaller organisation would be able to sustain.<sup>50</sup>

- 4.72 Submitters also observed that delays in quote approval and in access to SIL funding may have particular impacts on people seeking to transition out of hospital, the criminal justice system or residential aged care. For example, the NSW Trustee & Guardian stated that:

The lengthy delays in the approval process have caused distress and financial loss to some clients. In particular, clients who cannot be discharged from hospital without SDA and SIL funding may experience financial hardship during the approval process where they are incurring hospital fees. Young people in residential aged care are also not able to exit their aged care facility without SDA and SIL funding and may be financially disadvantaged by the SIL approval process.<sup>51</sup>

- 4.73 Submitters held multiple views as to the reasons behind the complexity of the SIL quoting process. For example, VALID observed that SIL quotes are made unnecessarily complex because service providers must account for competing needs of multiple residents—particularly where participants are accessing SIL supports in a congregate living arrangement. VALID asserted that this can result in long delays for participants who need urgent access to SIL supports,

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<sup>48</sup> This issue is explored in further detail below.

<sup>49</sup> Sylvanvale, *Submission 6*, [p. 3].

<sup>50</sup> Mrs Suzanne Gannon, Senior Manager, Residential and Community Options, Uniting Vic. Tas, *Proof Committee Hansard*, 7 November 2019, p. 10.

<sup>51</sup> NSW Trustee & Guardian, *Submission 15*, p. 8.

which in turn may extend periods of hospitalisation and—for some people—the use of chemical and physical restraints.<sup>52</sup>

*Impacts on plan reviews and plan approvals*

4.74 Some submitters observed that funding for SIL will cease at the point a plan review is initiated, and will not be available for claiming until a new plan is in place. As a plan with SIL cannot commence until a SIL quote is approved, delays in quote approval may leave providers unable to claim for services for a significant period of time. This is notwithstanding that a provider may have submitted a SIL quote well in advance of the relevant plan review meeting.

4.75 The Cram Foundation (Cram) provided the following example to illustrate these concerns:

In the past 3 months, Cram has had over half of its participants undergo plan reviews. All plan reviews commenced before the end date of the current plan. SIL quotes were completed ahead of the plan review meeting for consideration and then formally submitted to the NDIS as required after the meeting. Client's plans were then stopped at the time of the plan review meeting, leaving Cram as the SIL provider with no funding stream while awaiting the approval and service bookings of the SIL quotes for the new plan which at times takes months to approve. At times Cram has been owed...half a million dollars in unpaid SIL funding due to this issue.<sup>53</sup>

4.76 Submitters stated that it is not only SIL providers that are impacted by delays. Other providers will be unable to claim for supports that would be covered by the relevant plan. In such circumstances, providers are faced with the difficult choice between ceasing supports for the participant and wearing a potentially significant funding shortfall.<sup>54</sup> For example, UVT stated that:

We have instances where someone is living in [a]...residential [house] and their plan hasn't been approved; because of the SIL quoting process, we are still waiting for approval. That means none of their other providers can claim, because they don't have an active plan—because it is still considered to be under review. We've had service providers pull out and cease services because they can't afford to provide services and not be paid.<sup>55</sup>

4.77 UVT representatives elaborated on this issue at the committee's public hearing in Melbourne, observing that while it is *possible* to claim for supports during

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<sup>52</sup> VALID, *Submission 21*, p. 3.

<sup>53</sup> The Cram Foundation, *Submission 2*, [p. 2]. See also MS Australia, *Submission 1*, p. 4. MS Australia similarly noted that, for one of its sites, it had experienced a funding shortfall of \$1.5 million due to these delays.

<sup>54</sup> Evidence suggests that providers will generally wear funding shortfalls rather than cease providing supports. However, this may not always be an option for smaller providers.

<sup>55</sup> Mrs Suzanne Gannon, Senior Manager, Residential and Community Options, Uniting Vic. Tas, *Proof Committee Hansard*, 7 November 2019, p. 10.

the plan review process, much will depend on the capacity of the participant and the provider to negotiate with the NDIA:

The minute you initiate a plan review, then nobody can claim services during that time. There is negotiation to do with NDIA but it's all about the strength of the advocacy and the knowledge of the people who are contacting the NDIA to say, 'We know you can extend the plan; can you extend the plan?' or 'We know that the service booking can be changed'. But most people don't know that.<sup>56</sup>

4.78 VALID similarly observed there are often delays in plan approvals and other plan gaps due to delays in submitting and processing SIL quotes, stating that:

VALID advocacy clients who are waiting on SIL quotes often have a 'plan gap' because other supports in their plan cannot be approved until the service provider submits the quote. VALID has advocated for participants where they have had limited, or even no access to the community for weeks or months while waiting on SIL approval.<sup>57</sup>

#### *Quoting delays and changing residences*

4.79 Submitters observed that re-quoting is required each time a participant wishes to change residences, and raised concerns that delays in the quoting process result in challenges for these participants. Northcott, for example, stated that:

Another issue for existing SIL customers is the impact of the process when they want to explore moving to a different location, either for lifestyle or because of different circumstances. Whilst their eligibility for SIL funding should not be an issue, because the SIL funding is tied to a particular location and house set-up, it can take considerable time for a new SIL quote to be approved.<sup>58</sup>

4.80 Multiple Sclerosis (MS) Australia similarly observed that where supports are shared, re-quoting is required each time needs and/or tenancy arrangements change. MS Australia stated that this places substantial administrative burden on providers and participants.<sup>59</sup>

4.81 Paragon Support Limited (Paragon) made similar observations, and stated that the NDIA takes a substantial amount of time to review and approve SIL quotes. During this time, the provider may be forced to bear any funding shortfalls.<sup>60</sup> Paragon observed that when a new resident enters a SIL home, a new quote is required to reflect the increase in participants receiving supports.

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<sup>56</sup> Mrs Suzanne Gannon, Senior Manager, Residential and Community Options, Uniting Vic. Tas, Proof Committee Hansard, 7 November 2019, p. 11.

<sup>57</sup> VALID, *Submission 21*, p. 3.

<sup>58</sup> Northcott, *Submission 7*, p. 10.

<sup>59</sup> MS Australia, *Submission 1*, p. 4.

<sup>60</sup> Paragon Support Limited, *Submission 13*, p. 4. Paragon observed that this is a particular concern for smaller businesses, which may not be able to absorb the loss in funding.

Inaction by the NDIA in those circumstances may result in funding shortfalls, and may reduce participants' ability to access necessary supports.<sup>61</sup>

*NDIA position*

4.82 The NDIA stated that it has implemented a number of measures to improve the timeliness and consistency of the quoting process for participants and providers.<sup>62</sup> It elaborated on the success of these measures at the committee's public hearing in Canberra:

[W]e've gone from 200 to 400 quotes processes per week, so we've effectively doubled our effectiveness with, I believe, a same-size workforce. The provider feedback that the agency's heard has largely been that the process is improving. Again, I think there is joint recognition that there is a way to go in further simplifying and making our processes more transparent and consistent.<sup>63</sup>

4.83 In relation to the possibility of plans expiring and/or funding streams ceasing before the NDIA has approved a quote, NDIA representatives observed that:

[T]he system change we put in late last year means the plans continue anyway if we're still finalising the quote with the provider. So they continue the cash flow based on the current plan. It doesn't stop. The service bookings continue...We've also set-up a national payment team that providers, if they are having any issues, can escalate to and will resolve them. We...have tried to tackle...SIL payments specifically through starting earlier and continuing to extend the plan so they don't expire.<sup>64</sup>

4.84 According to the NDIA, improvements to SIL may be expected as the agency evaluates and refines processes and practices and continues to engage with all stakeholders participating in the SIL process.<sup>65</sup>

4.85 The NDIA further stated that it is implementing the following improvements to the SIL quoting process:<sup>66</sup>

- working towards maintaining key performance indicators that all SIL quotes proceed to an outcome within 10 days of receipt;
- providing detailed feedback to providers when a quote is not acceptable;
- providing 90 days notification before a quote is required;

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<sup>61</sup> Paragon Support Limited, *Submission 13*, p. 4.

<sup>62</sup> National Disability Insurance Agency, *Submission 11*, p. 4.

<sup>63</sup> Mr Oliver Bladeck, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 4.

<sup>64</sup> Mr Scott McNaughton, General Manager, Service Delivery and Performance, Participant and Planning Experience, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 6.

<sup>65</sup> National Disability Insurance Agency, *Submission 11*, p. 4.

<sup>66</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000026, 13 February 2020 (received 2 April 2020).

- providing fortnightly reconciliation of outstanding quotes;
- providing a counter offer when there is an unacceptable quote and no evidence of a change in circumstances;
- capacity building and training for providers to reduce errors; and
- developing a new and improved SIL tool.

### *Committee view*

- 4.86 The committee is concerned that the SIL quoting process appears to be unduly lengthy and complex, and that approval delays may be causing substantial hardship for participants and providers. Evidence before the committee suggests participants and providers may wait more than 12 months for a quote to be approved, and that during this time providers may be unable to claim for services delivered. Submitters also indicated that delays in approving SIL quotes leave participants without reasonable and necessary supports, and in some cases result in extended periods of hospitalisation, homelessness, and extended use of restrictive practices.
- 4.87 The committee welcomes the initiatives being progressed by the NDIA to streamline and expedite the process for approving SIL quotes. The committee also notes the NDIA's advice that funding under an existing plan, and service bookings for SIL supports, will continue while a new SIL quote is awaiting approval. As the NDIA itself has acknowledged, there is substantial work still to be done to ensure all SIL quotes are approved in a timely manner.
- 4.88 The committee therefore considers the NDIA should develop and implement additional measures to expedite the SIL quote approval process as a matter of urgency, to ensure that participants are able to receive the supports they need as quickly as possible; to ensure that participants are not exposed to harm; and to guard against risks of financial hardship for providers.
- 4.89 Further, while the NDIA has advised that funding under existing plans will continue while a quote awaits approval, it is unclear whether this extends to plans remaining open for claiming while a review is underway. As outlined above, evidence before the committee suggests that this may not be the case. The NDIA should provide additional clarity on this matter.
- 4.90 Finally, noting that people in hospital, residential aged care and the criminal justice system are particularly vulnerable to approval delays, the committee considers that the NDIA should prioritise approvals for these cohorts.

### **Recommendation 8**

- 4.91 The committee recommends that the National Disability Insurance Agency implement measures to further streamline and expedite quote approvals for Supported Independent Living as a matter of urgency.**

## Recommendation 9

- 4.92 The committee recommends that the National Disability Insurance Agency develop and implement mechanisms to prioritise and expedite approvals for Supported Independent Living and Specialist Disability Accommodation for people with disability in residential aged care, hospital settings, and the criminal justice system.**

## Recommendation 10

- 4.93 The committee recommends that the National Disability Insurance Agency clarify whether a provider may continue to claim for supports delivered under a plan while a review of that plan is underway.**

### *Short-term accommodation*

- 4.94 Some submitters observed that there is insufficient funding in plans for short-term accommodation that may be required while a participant undergoes the approval process to access SIL—including marshalling all relevant evidence and locating a suitable service provider and SIL residence.

- 4.95 For example, the Northern Territory Office of the Public Guardian (NT OPG) asserted that plans provide an 'unrealistic and limited' amount of funding for short-term accommodation, stating that:

The allocation of Short Term Accommodation funding is not equivalent to the time required to obtain information and assessments, resulting in additional work being undertaken to either adjust the amount of Short Term Accommodation in the plan or core money being used for this purpose. This is an inappropriate use of resources as time is then spent on Short Term Accommodation as opposed to SIL and is not reflective of the participants' needs.<sup>67</sup>

- 4.96 The Qld OPG similarly noted that while a participant gathers evidence to support a SIL application, they may be left 'in limbo' without suitable support arrangements.<sup>68</sup> It stated that while service providers may sometimes assist participants to obtain private rental accommodation until an application for SIL is approved, this may involve considerable expenditure of a participant's resources—including their approved NDIS funding.

- 4.97 To address these issues, the Qld OPG recommended that interim funding be provided while a person gathers information to support an application for SIL,

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<sup>67</sup> Northern Territory Office of the Public Guardian, *Submission 38*, [p. 3]. The NT OPG recommended that a review of funding options be undertaken, to ensure the needs of participants with complex and changing circumstances are adequately met.

<sup>68</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 5. For example, a participant may be left 'in limbo' in circumstances where they are seeking to move out of their family home, where they are seeking to transition between SIL homes, or where they are seeking to leave short-term or emergency accommodation such as a hospital.



which would allow the person to transition to their SIL accommodation while undergoing assessments for formal approval.<sup>69</sup>

### *Committee view*

- 4.98 The committee is concerned that there is not sufficient funding for participants to access short-term accommodation while awaiting approval for SIL funding or gathering evidence to support a SIL application. The committee heard that in some cases this may leave participants without suitable accommodation, or oblige participants to remain in inappropriate or unsafe living arrangements (for example, by lengthening stays in hospital or custodial settings, or living arrangements where there has been conflict, abuse or neglect).
- 4.99 The committee considers that additional funding should be made available in plans for short-term accommodation, to ensure that participants are able to access suitable accommodation while awaiting SIL approval or obtaining evidence to support an application.

### **Recommendation 11**

- 4.100 The committee recommends that additional funding be made available in plans for short-term accommodation, for participants seeking to access Supported Independent Living.**

### *Participant involvement in the quoting process*

- 4.101 A number of submitters observed that the SIL quoting process fails to involve participants, families and carers in a meaningful way. Submitters expressed concern that this reduces choice and control; leads to the omission of critical information; and may lead to a significant reduction in participant outcomes (for example, if a participant is not funded for supports they need or is forced into an unsuitable living arrangement).
- 4.102 Every Australian Counts (EAC) stated that the design of the SIL approval process 'locks out' participants and family members from participation and oversight. EAC asserted that:
- SIL quotes are being submitted by providers not only with no input from participants and their families, but even without their knowledge. This has left participants and families feeling that they have been 'stitched up' with little opportunity to challenge or change...[G]iven the significant shortage of suitable alternative housing or providers, the opportunity to change providers could be described as limited at best, impossible at worst.<sup>70</sup>
- 4.103 Ms Kirsten Deane, Campaign Director for EAC, elaborated on this issue during the committee's public hearing in Sydney, noting that:

<sup>69</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 5.

<sup>70</sup> Every Australian Counts, *Submission 27*, p. 5. EAC's submission was informed by the views of its members.

[I]n some...processes we're reinforcing...disempowerment, because the process for SIL is a negotiation between the agency and the provider: people are giving us evidence that they've been locked out of the process.

Participants and their families have been locked out of participating and, in fact, things have been submitted that they've had no input into. So there's frustration with the fact that the processes are acting to disempower people with disability and their families. But there is a second thing, which is that the NDIS was the promise of change, and in this particular area we are absolutely not seeing that change; in fact, we're going backwards.<sup>71</sup>

4.104 A member of QDN observed that the SIL quote is 'owned' by the relevant property and managed between the provider and the NDIA.<sup>72</sup> Ms Paige Armstrong, CEO of QDN, reiterated these concerns during the committee's public hearing in Brisbane, stating that:

Going forward, we would like to see an immediate change to the SIL process, where it is not just the provider that gets to sign off on a quote but that there is some documented evidence that the person with disability and/or their family, if the person has impaired capacity, has been involved in the development of a quote and agrees to that quote in some way.<sup>73</sup>

4.105 Ms Armstrong recommended the production of user-friendly information on the SIL quoting process. Ms Armstrong also observed that while there is a wealth of information for providers on the NDIS website, further information should be made available to participants.<sup>74</sup>

4.106 VALID observed that while providers are obliged to develop SIL quotes in consultation with participants, VALID has supported hundreds of participants who have had no involvement in the development of their quote, and are unaware that the provider has catalogued their needs without their input.<sup>75</sup>

4.107 These concerns were echoed by the families of participants with whom Family Advocacy consulted in preparing its submission:

The agency will not show a breakdown or quote that is used to obtain SIL funding...The agency is not interested at all in us plan managing our son's

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<sup>71</sup> Ms Kirsten Deane, Campaign Director, Every Australian Counts, *Proof Committee Hansard*, 8 October 2019, p.5.

<sup>72</sup> Queenslanders with Disability Network, *Submission 26*, p. 6.

<sup>73</sup> Ms Paige Armstrong, Chief Executive Officer, Queenslanders with Disability Network, *Proof Committee Hansard*, 8 October 2019, p. 48.

<sup>74</sup> Ms Paige Armstrong, Chief Executive Officer, Queenslanders with Disability Network, *Proof Committee Hansard*, 8 October 2019, p. 48.

<sup>75</sup> VALID, *Submission 21*, p. 3. As an example of the consequences of not involving participants and their supporters in the quoting process, VALID noted that providers have submitted quotes that have effectively *prevented* participants from using other services to go out on weekdays.

funding in the share house, and has stated that SIL is not for us to worry about therefore leaving us with little trust as we are not shown figures.<sup>76</sup>

4.108 Another submitter asserted that there should be transparency around the calculation of the SIL quote, and all relevant information should be made available to participants, families and advocates. The submitter provided an example to illustrate some concerns with the current quoting process:

The Service Agreement that the SIL Provider gave us to sign...did not have a Schedule of Services attached. Without that, we did not know that [the participant] was supposed to be receiving 19 hours of 1:1 support. The SIL Provider was providing 2 hours, yet claiming for the 19. I reported the SIL Provider to the Fraud Unit of the NDIA and [the participant] started to receive his full hours.<sup>77</sup>

4.109 The NT OPG stated that many providers see the SIL quote as a 'transaction or negotiation' between the provider and the NDIA, with participants and their representatives having very little involvement in the quoting process. It recommended that processing of SIL quotes give priority to maximising the involvement of participants and representatives.<sup>78</sup> In addition, the NT OPG also noted an increase in the occasions where it had not been given the opportunity to review a quote before it was assessed by the NDIA, asserting that the exclusion of the participant and/or their representative can result in the omission of critical information.<sup>79</sup>

4.110 In relation to transparency, JFA Purple Orange (JFA) observed that:

The SIL quoting process is primarily a discussion and agreement between a service provider and the NDIA, with limited input and oversight from the NDIS participant and their family: the...participant is not necessarily given the opportunity to view the quote or the roster or to confirm if it meets their needs.<sup>80</sup>

4.111 JFA noted that this stands in contrast to other supports, where participants are funded through individual plans and pay for services directly.<sup>81</sup>

4.112 Prader-Willi Syndrome Australia raised similar concerns, asserting that the lack of inclusion and transparency in the SIL quoting process means that

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<sup>76</sup> Family Advocacy, *Submission 35*, p. 2. Family Advocacy stated that it conducted a survey of 56 people with disability in preparing its submission.

<sup>77</sup> Name withheld, *Submission 40*, [p. 2].

<sup>78</sup> Northern Territory Office of the Public Guardian, *Submission 38*, [p. 3].

<sup>79</sup> Northern Territory Office of the Public Guardian, *Submission 38*, [p. 4].

<sup>80</sup> JFA Purple Orange, *Submission 34*, p. 14.

<sup>81</sup> JFA Purple Orange, *Submission 34*, p. 14.

participants and supporters have no opportunity to build their understanding and capability around SIL budgets, thereby limiting choice and control.<sup>82</sup>

*NDIA position*

4.113 In its submission to the inquiry, the NDIA stated that it is critical to the SIL quote preparation process that participants be included in developing the level of supports and model of care to be included in their quote. However, it stated that participant involvement in the quoting process is a work in progress.<sup>83</sup>

4.114 During the committee's public hearing in Canberra, the NDIA noted that its operating guidelines insist that a provider must indicate that the participant has been involved in the quoting process,<sup>84</sup> elaborating on this as follows:

Our intent is to ensure that participants not only are more involved in the process of creating the roster of care but that [the NDIA] also gives them the tools and...opportunities to influence that, to build the roster of care.<sup>85</sup>

4.115 The NDIA also noted that, in late 2019, the NDIA introduced a mandatory declaration that requires participants and their representatives to be actively involved with the development of their plans with SIL providers. The NDIA indicated that it would be auditing this initiative to ensure that participant involvement in the planning and quoting process is occurring in practice.<sup>86</sup>

4.116 The NDIA also acknowledged that existing controls and processes may not be strong enough, and has started to implement a SIL assurance process as part of the wider provider payment process. According to the NDIA, this will check that the participant is actually receiving the supports for which they are funded. In addition, the NDIA stated that it is working to improve its operational guidelines, which includes confirming that a participant is aware of and has provided input to their roster of care.<sup>87</sup>

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<sup>82</sup> Prader-Willi Syndrome (PWS) Australia, *Submission 10*, p. 4. PWS Australia recommended that providers include participants and supporters in quote development; share draft quotes in full with participants; and explain how quoted amounts are calculated and how services are delivered.

<sup>83</sup> National Disability Insurance Agency, *Submission 11*, p. 6.

<sup>84</sup> Mr Oliver Bladek, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 2.

<sup>85</sup> Mr Oliver Bladek, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 2.

<sup>86</sup> Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 3. The agency also stated a provider must declare the participant's support needs and outcomes, which should have come from discussions with the participant. See National Disability Insurance Agency, answer to question on notice SQ20-000004, 13 February 2020 (received 2 April 2020).

<sup>87</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000025, 13 February 2020 (received 2 April 2020). See also National Disability Insurance Agency, answer to question on notice SQ20-000004, 13 February 2020 (received 2 April 2020).

### *Committee view*

- 4.117 The committee is concerned that the SIL quoting process fails to involve participants, families and carers in a meaningful way, notwithstanding that providers are obliged to develop quotes in consultation with participants. The committee is concerned that a failure to involve participants in the quoting process can reduce choice and control, lead to the omission of key information, and ultimately lead to poorer outcomes for people with disability.
- 4.118 The committee welcomes the initiatives being progressed by the NDIA to help ensure that participants have greater involvement in the SIL quoting process and in the development of the roster of care. However, in light of the available evidence, the committee considers that current arrangements for consultation with participants in relation to SIL quotes may not be sufficient, and should be re-evaluated to ensure meaningful participant involvement.
- 4.119 The committee therefore considers the NDIA should develop and implement mechanisms to ensure participants have the opportunity to review and agree to SIL quotes before they are approved by the agency. For example, it may be appropriate for the NDIA to require documented evidence that the participant, and/or their family, guardian or carer, were involved in the development of and agree to the quote before the NDIA starts the quote assessment process.
- 4.120 The committee notes that this would be consistent with a recommendation of the Tune Review that the NDIA focus on increasing the involvement of participants, families and carers in the decision-making process for SIL.<sup>88</sup>

### **Recommendation 12**

- 4.121 The committee recommends that the National Disability Insurance Agency (NDIA) develop and implement a mechanism to ensure that participants have the opportunity to review and agree to quotes for Supported Independent Living before they are approved by the NDIA.**

### **The SIL quoting tool**

- 4.122 Submitters indicated that while there have been improvements to the SIL quoting tool, it remains a complex instrument. Submitters also observed that completing the quoting tool creates challenges for participants, families and carers, and may exacerbate delays in accessing necessary funding.
- 4.123 For example, the parent of an NDIS participant observed that ‘the SIL quoting tool is a complicated instrument that befuddles many disability professionals as well as a fair number of NDIA employees’, further stating that:

It is not realistic to expect that the people with disability to whom SIL applies will be able to meaningfully exercise choice and control in the

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<sup>88</sup> Mr David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee* December 2019, p. 108.

planning and delivery of this element of their supports, especially when the other parties involved are service providers and NDIA bureaucrats. The complexity of the [SIL quoting tool], the high communication support needs of many SIL participants, and the inherent power imbalance favouring service providers and the NDIA have the combined effect of excluding or minimising their already marginalised voices.<sup>89</sup>

4.124 The NSW Trustee & Guardian also indicated that the quoting tool is complex, noting that in cases where the NSW Trustee & Guardian performs the role of financial manager, concerns arise where clients attempt to complete the quoting tool but lack the support to complete it accurately.<sup>90</sup>

4.125 Submitters also observed that the quoting tool can be inflexible, and may not take account of certain costs outside normal hours of support. For example, DARE stated that the tool fails to consider the costs of transport in rural and remote areas compared with metropolitan areas, and the costs of supporting participants with episodic or degenerative conditions.<sup>91</sup>

4.126 DARE also stated that, following a number of recent Fair Work decision concerning sick leave and casual loading, calculations in the SIL quoting tool are inaccurate. DARE asserted that decisions of this nature require a quick and reasonable response, which is not reflected in current NDIA processes (such as the NDIA's annual pricing review).<sup>92</sup>

*Completing the quoting tool for quotes that are 'rolled over'*

4.127 The committee heard that the introduction of a simplified quoting tool for quotes that are 'rolled over' was welcomed by providers. However, evidence before the committee indicated that more work is needed to address ongoing issues with the re-quoting process. Representatives of Northcott stated at the committee's public hearing in Sydney that:

[T]he NDIA did introduce a subsequent SIL quote process, with the new SIL quote—so effectively that method of being able to just submit a document that says, 'Yes, the quote can basically roll over'—but it really only allows for a CPI increase; it doesn't allow for the changes that might have occurred with the change in the pricing that we are currently in, because we're still in a fairly volatile space there.<sup>93</sup>

*NDIA position*

4.128 At the committee's hearing in Canberra, NDIA representatives acknowledged that the SIL quoting tool is complex, and noted that some providers may have

<sup>89</sup> SOTICA, *Submission 28*, p. 2.

<sup>90</sup> NSW Trustee & Guardian, *Submission 15*, p. 9.

<sup>91</sup> DARE Disability Support, *Submission 9*, p. 8.

<sup>92</sup> DARE Disability Support, *Submission 9*, p. 9.

<sup>93</sup> Ms Aleta Carpenter, General Manager, Supported Independent Living, Northcott, *Proof Committee Hansard*, 9 October 2019, p. 9.

difficulty completing the tool to the standard required for the NDIA to assess the relevant quote. The NDIA stated that it is making changes to improve the quoting process for participants and providers.

4.129 As to the nature of the proposed changes, the NDIA stated that:

One [element of these process improvements] is technical changes so the formulas in Excel work better. The second is...to work closely with participants and with providers to ensure they are aware and engaged in any changes that we would make.<sup>94</sup>

4.130 The NDIA also stated that it would be 'bringing [the quoting process] together under a specialist team', which would be able to conduct outreach activities with providers:

If we see that a provider is struggling with the quoting tool, they'll go and do some outreach, sit with them, help them understand how to do it and try and minimise the error rates.<sup>95</sup>

4.131 The NDIA further noted that a substantial portion of SIL quotes submitted by providers contain errors, or are not provided to the NDIA in a timely fashion. The NDIA acknowledged that this may be due to the NDIA not providing sufficient clarity around the requirements of the SIL quoting process or the items which may and may not be included in a SIL quote. The NDIA stated that it is taking steps to address this situation.<sup>96</sup>

### *Committee view*

4.132 The committee acknowledges that the NDIA has recently made improvements to clarify and streamline the quoting tool, and that additional work to improve the quoting process for participants and providers is underway. However, the committee remains concerned that the quoting tool remains complex, and still presents challenges for participants and providers.

4.133 The committee therefore considers that the NDIA should progress its work to improve the quoting tool and quoting process as a matter of urgency. The committee considers that this project should include full consultation with participants and providers, to ensure their views are taken into account and all relevant issues are accurately captured.

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<sup>94</sup> Mr Oliver Bladec, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 15.

<sup>95</sup> Mr Scott McNaughton, General Manager, Service Delivery and Performance, Participant and Planning Experience, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 15. The NDIA observed that approximately 40 per cent of quotes are returned to providers due to errors. However, it did not provide further information on whether these are logic errors, or inconsistencies between the roster of carer and the support level of the relevant participant(s).

<sup>96</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000011, 13 February 2020 (received 2 April 2020).

4.134 Further, it is unclear to the committee whether current work to improve the SIL quoting tool will ensure the tool captures the additional costs associated with supporting participants with higher or more complex needs and participants in thin market areas. The committee has recommended elsewhere in this report that the NDIA work to ensure that these matters are taken into account when approving funding for support, and considers that these matters should be included in the NDIA's work to improve the SIL quoting process. Further, the committee considers that work to improve the SIL quoting tool should take account of all relevant Fair Work decisions, to ensure that the calculations in the quoting tool are as accurate as possible.

4.135 Finally, the committee considers that, as part of its work to improve the SIL quoting tool, the NDIA should review the new 'simplified' quoting tool used for rolling over SIL quotes. The committee considers that providers should be permitted to make minor changes to a quote based on changes to pricing structures that have occurred since the relevant quote was approved—using the simplified quoting tool. The committee acknowledges that more significant changes may require a full re quoting process.

### **Recommendation 13**

**4.136 The committee recommends that the National Disability Insurance Agency ensure that its work to improve the Supported Independent Living quoting tool and quoting process takes into account:**

- **the costs associated with supporting participants with higher or more complex needs;**
- **the costs associated with supporting participants in thin market areas; and**
- **all relevant Fair Work decisions.**

### **Recommendation 14**

**4.137 The committee recommends that the National Disability Insurance Agency review the 'simplified' quoting tool for Supported Independent Living, to allow providers to make minor changes to a quote based on changes to the National Disability Insurance Scheme pricing structure that have occurred since the quote was approved.**

### **Issues with NDIA processes**

4.138 A common theme in the evidence before the committee was process failure within the NDIA. Submitters variously noted that the NDIA is unresponsive to inquiries regarding SIL quotes; that the agency fails to provide useful advice; knowledge within the NDIA in relation to SIL is limited; that separate yet related areas within the NDIS (for example, quote assessment and planning) do not communicate effectively; and that there is a high level of staff turnover.



Multiple Sclerosis (MS) Australia provided an example of a complaint it had received in compiling its submission, which summarises these concerns:

The NDIA is essentially unresponsive on any issues and when a contact is made and nurtured, one can guarantee that the official will be removed from their role within a month and we have to seek another contact.<sup>97</sup>

4.139 These concerns were echoed in witness testimony. For example, Ms Jane Wardlaw, a disability rights advocate, stated at the committee's public hearing in Hobart that the NDIA's ICT system is an 'abject failure', noting that:

[The system] won't allow the NDIA planner to make minor adjustments in individual plans across budget streams to respond to crises. Sometimes, with SIL, this could add another level of bureaucracy in trying to navigate the system—if there happens to be a crisis or a change of circumstances—for example, an increased need.<sup>98</sup>

4.140 Other submitters noted similar issues. For example, Cram stated that quotes must occasionally be resubmitted as they have been 'lost in the system'. This issue may only come to light when a provider enquires about progress.<sup>99</sup>

4.141 Paragon stated that access to the National SIL Team can be 'extremely difficult', and it is difficult—if not impossible—to contact anyone associated with SIL through the general NDIA line. Paragon asserted that, after writing an email 'one just waits and hopes that [the NDIA responds], which could take many weeks'.<sup>100</sup>

4.142 UVT made similar observations, and provided examples of its own experience with the Agency:<sup>101</sup>

- when UVT submits a quote, it receives an automated response. However, UVT is not provided with a specific point of contact with whom to raise concerns or seek advice. UVT often needs to actively follow up with the NDIA, and to explore many avenues to obtain useful information;
- where a quote is approved, this is not effectively communicated. New service bookings simply 'appear' in the system with no notice to UVT staff;
- there is no communication by the NDIA when service bookings are made at a lesser amount than quoted, or where bookings are amended.<sup>102</sup>

<sup>97</sup> MS Australia, *Submission 1*, p. 4.

<sup>98</sup> Ms Jane Wardlaw, Disability Advocate, *Proof Committee Hansard*, 28 October 2019, p. 2.

<sup>99</sup> The Cram Foundation, *Submission 2*, [p. 4]. To address this issue, Cram recommended that the SIL quote team improve planners collaborate to avoid gaps in SIL and core funding, and to avoid providers having to submit multiple quotes and reviews.

<sup>100</sup> Paragon Support Limited, *Submission 13*, p. 5.

<sup>101</sup> Uniting Vic. Tas, *Submission 16*, p. 2.

<sup>102</sup> Uniting Vic. Tas, *Submission 16*, p. 2.

- UVT also highlighted a lack of communication between NDIA planners and staff responsible for the SIL quote submission. It further noted that it may take considerable time between submitting a quote for review and receiving communication about negotiating prices, and that there have been times when planners have created bookings before negotiations on rates were finalised.

4.143 Brightwater Care Group stated that the NDIA relies on email as the only form of correspondence to address SIL-related inquiries. Further, the NDIA call centre is unable to discuss quotes or provide updates on progress.<sup>103</sup>

4.144 Ms Parkinson-Cumine, Operations Manager for Li-Ve Tasmania, made similar comments during the committee's public hearing in Hobart:

I think one of the big challenges is the lack of ability to actually speak to someone about the issues. The provider payments team are a mysterious team who sit at the end of an email address that sometimes gets answered. There's no real availability...So there's no real ability for you to chase up... payments or have a discussion with a real person around how [a payment] occurred and what occurred or even to know where in the system it is and how it's being followed through.<sup>104</sup>

4.145 ConnectAbility Australia (ConnectAbility) noted that the NDIA lacks 'progress tracker' software related to SIL, with the result that quotes and applications may sit with the agency for months without being reviewed. ConnectAbility stated that this may place considerable strain on providers and participants, and expanded on this issue as follows:

The [NDIA] has no solid business rules to guide them, what they do have are often broken. For example we had a quote sit for months, we made continual enquires to [the NDIA] to find out the Planner went on leave for 5 weeks and it sat on their desk. This delay totalled over 3 months. This demonstrates no commercial business practice to acknowledge application and to track application and timely communication to clarify issues.

We have had numerous occasions where we were told [the NDIA] have not received the quote. Once it goes to them it can be bounced around from planner to planner, then we get multiple requests from different planners in the process even though the issue was addressed with initial planner. Some planners give contact numbers, some don't. There is no consistency.<sup>105</sup>

4.146 Some submitters went further, asserting that these administrative processes are symptomatic of the broader NDIA culture. For example, Sylvanvale stated:

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<sup>103</sup> Brightwater Care Group, *Submission 25*, p. 2. Brightwater recommended that the SIL quoting process include access to knowledgeable staff for SIL-related inquiries to talk through rosters of care and quote development to reduce delays and increase clarity of communication.

<sup>104</sup> Mrs Nicole Parkinson-Cumine, Operations Manager, Li-Ve Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 17.

<sup>105</sup> ConnectAbility, *Submission 29*, p. 1.

It seems that a basic tenant of any insurance scheme *Uberrimae Fidei* (to act in good faith) is missing. The Government and its agent the National Disability Insurance Agency must, as a matter of urgency, seek to restore faith in the National Disability Insurance Scheme, as we the not for profit sector must continue to respond to them as we have done since the scheme's inception in good faith.<sup>106</sup>

4.147 Sylvanvale asserted that the NDIA pursues a deliberate 'agenda of delay' to limit the percentage of participants who access SIL, and particularly SIL with SDA attached. It observed that:

Once the [SIL] quote is submitted you do not even receive an acknowledgment of receipt, and may hear nothing from the Agency for many months. The Agency provides no central contact points so providers forever chase multiple people, and the advent of the SIL taskforce adds another layer of bureaucracy to be navigated.<sup>107</sup>

#### *NDIA position*

4.148 As noted above, the NDIA has stated that it is implementing improvements to the SIL quoting process, which aim to improve its timeliness and efficiency.

4.149 In relation to its current administrative processes, the NDIA stated that its planners are in regular communication with the national SIL teams responsible for assessing quotes. It also stated that NDIA representatives communicate regularly with providers on the status of quote assessments.<sup>108</sup>

#### *Committee view*

4.150 The committee appreciates that the NDIA is making improvements to the SIL quoting process, and notes the agency's advice that there are protocols in place to ensure internal teams (such as planning and SIL) communicate effectively. The committee also notes the NDIA's advice that the agency communicates regularly with providers on the status of SIL quote assessments.

4.151 However, the committee remains concerned that process failure within the NDIA continues to impede access to SIL, and creates challenges for participants and providers. The committee has heard that the NDIA is unresponsive to inquiries regarding quotes; the agency fails to provide useful advice; knowledge within the NDIA about SIL is limited; and teams within the NDIA (in particular, SIL and planning) do not communicate effectively.

4.152 The committee notes that it previously made a number of recommendations aimed at improving the NDIA's ICT systems.<sup>109</sup> In response, the Australian

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<sup>106</sup> Sylvanvale, *Submission 6*, [p. 4].

<sup>107</sup> Sylvanvale, *Submission 6*, [p. 2].

<sup>108</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000026, 13 February 2020 (received 2 April 2020).

<sup>109</sup> JSC NDIS, *NDIS ICT Systems*, December 2018.

Government stated that the NDIA had investigated options for a tracking system to enable end-users to track the status of their queries, with a solution to be delivered by the first quarter of 2019. The government also stated that has revised its business processes to improve call resolution rates, and has established centralised teams to provide responses to common issues raised by end users.<sup>110</sup> Finally, the government stated that the NDIA is committed to establishing an agency-wide knowledge management solution in 2019, to ensure consistent decision-making and accurate advice.<sup>111</sup>

- 4.153 While noting the government's responses to the committee's inquiry into NDIS ICT Systems, the committee is concerned that evidence before the committee in the present inquiry indicates that the NDIA has not made sufficient progress in implementing the committee's recommendations. Accordingly, the committee considers that the NDIA should work to implement these recommendations as a matter of urgency.
- 4.154 The committee also considers that the NDIA should establish a central point of contact within the agency to provide advice and updates in relation to SIL. This point of contact should be made widely available to participants, providers and other stakeholders.
- 4.155 Finally, the committee considers the NDIA should implement a central mechanism to notify providers when SIL quotes are received by the agency; when any further information is required in relation to the SIL quote; when any changes to the SIL quote are made; and when the SIL quote is approved. The committee notes that some submitters have observed that existing ICT infrastructure could be used for this purpose.<sup>112</sup>

### **Recommendation 15**

- 4.156 The committee recommends that the National Disability Insurance Agency establish a central point of contact for all inquiries relating to Supported Independent Living.**

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<sup>110</sup> Australian Government, *Australian Government Response to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Report: NDIS ICT Systems*, March 2019, p. 5.

<sup>111</sup> Australian Government, *Australian Government Response to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Report: NDIS ICT Systems*, March 2019, p. 6.

<sup>112</sup> For example, the committee heard during its public hearing in Sydney that the MyPlace portal could be used for submitting SIL quotes, and for notifying providers and other stakeholders when quotes are approved. See Ms Rachel Parker, Claiming and Compliance Manager, Northcott, *Proof Committee Hansard*, 9 October 2019, p. 13

**Recommendation 16**

**4.157 The committee recommends that the National Disability Insurance Agency develop and implement a mechanism to provide updates to providers on the progress of Supported Independent Living quotes.**

**Recommendation 17**

**4.158 The committee recommends that the National Disability Insurance Agency progress the recommendations made in the committee's report, *NDIS ICT Systems*, as a matter of urgency.**



# Chapter 5

## Living arrangements for SIL participants

- 5.1 This chapter examines issues associated with living arrangements for National Disability Insurance Scheme (NDIS) participants with Supported Independent Living (SIL) supports, and makes recommendations which aim to improve choice and control for people with disability.
- 5.2 Key issues considered in this chapter include:
- congregate living arrangements, and whether participants have choice and control as to where they live and who they live with;
  - compatibility between residents in shared living arrangements; and
  - conflicts of interest associated with tenancy and support functions.

### Congregate living arrangements

- 5.3 Historically, many people with disability in Australia were forced to live in institutions. While the majority of these institutions are no longer operational, many disability service users continue to live in congregate arrangements such as group homes, cluster housing, residential facilities and aged care facilities. The Australian Government reported that in 2015-16, 5.2 per cent of disability service users lived in domestic-scale supported living facilities such as group homes, with a further 2.7 per cent in supported accommodation.<sup>1</sup>
- 5.4 Submitters asserted that congregate arrangements limit choice and control for people with disability, and increase risks of isolation and abuse.<sup>2</sup> For example, Queensland Advocacy Incorporated (QAI) argued that:

Whether the facility is a large institution...or any of the hundreds of the small group homes around Australia, the only reason for its existence is an institutional one: congregate arrangements save money for service providers, funding bodies, and...the state and voting public, but those savings come at a cost to people with disability, who have less choice, less control, less freedom, more restraint, and a lower quality of life.<sup>3</sup>

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<sup>1</sup> JFA Purple Orange, *Submission 34*, pp. 10–11, citing Australia's Combined Second and Third Periodic Report under the Convention on the Rights of Person with Disabilities, 2018, p. 38.

<sup>2</sup> See, for example, Summer Foundation, *Submission 30*, p. 5; JFA Purple Orange, *Submission 34*, p. 11. Such claims appear to be supported in academic and policy literature. See, Ilan Wiesel and Daphne Habibis, 'NDIS, Housing Assistance and Choice and Control for People with Disability', Australian Housing and Urban Research Institute, December 2015, p. 25 <https://www.ahuri.edu.au/research/final-reports/258> (accessed 20 January 2020). Wiesel and Habibis state that 'research evidence suggests...smaller-scale, non-congregated housing dispersed in the community is a fundamental condition for the social inclusion, self-determination, and wellbeing of people with disability'.

<sup>3</sup> Queensland Advocacy Incorporated, *Submission 8*, [p. 7].

- 5.5 Significant concerns regarding group homes and congregate settings were also raised at the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission):

The witnesses who will give evidence about their life in a group home will shine a light on some disturbing incidents of violence, abuse, neglect and exploitation...The Royal Commission will hear that people with disability may have no choice about where they live and who they live with...[and] that for some people with disability their home is actually someone else's workplace...Their homes may be organised around the convenience for those who come into the home....to provide services and supports.<sup>4</sup>

- 5.6 One witness before the Royal Commission described the experiences of a person with disability living in a group home as follows:

When she lived in the group home she had bones broken, skin torn, money stolen, multiple physical abuses...And when she complained, she was told she was difficult and that she was demanding by managers of the group home. The needs [and] preferences of workers were prioritised over [hers]. She was expected to be patient, to wait, to work with a steady stream of new staff and agency staff who didn't understand her communication, to wait for more resources to trickle down.<sup>5</sup>

- 5.7 Submitters to this inquiry also noted that congregate arrangements may in fact be costlier than individualised support models, and those in group homes report lower quality of life than those with more individualised supports.<sup>6</sup>
- 5.8 Submitters were concerned that the NDIA appears to encourage, if not require, participants with SIL to live in congregate settings. Submitters asserted that this preference for congregate living may be a cost saving measure by the NDIA, or based on misconceptions that people with disability are better served by purpose-built care arrangements than by genuine community participation.
- 5.9 The Office of the Public Guardian (Queensland) (Qld OPG) observed that it is very difficult to obtain SIL funding for a single person in their own home—even where this reflects that person's rights and wishes.<sup>7</sup> It elaborated on this matter as follows:

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<sup>4</sup> Ms Kate Eastman QC, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Transcript of Proceedings*, 2 December 2019, p. 7. Witnesses before the Commission also described specific instances of abuse and neglect, and asserted that risks of abuse and neglect are often exacerbated by group living environments.

<sup>5</sup> Professor Sally Robinson, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Transcript of Proceedings*, 3 December 2019, pp. 100–101.

<sup>6</sup> See, for example, Summer Foundation, *Submission 30*, p. 5; JFA Purple Orange, *Submission 34*, p. 11. These submitters cited Australian and international authorities in support of their claims.

<sup>7</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 6. The Qld OPG asserted that this approach may have a significant impact on the cultural and religious needs of the person, could amount to a 'grievous infringement' of the person's rights under international human rights law,



The OPG has received information from the NDIA that to make the case that a client should live alone with one-on-one SIL support, they need to be able to show why the client cannot live with other people. It seems that the default position is that people with disability must live together unless they can prove otherwise. Obtaining this kind of evidence is very challenging, and almost always requires the client to show that they have tried shared accommodation and the arrangement has failed.<sup>8</sup>

- 5.10 The Housing Connection (THC) stated that the NDIA has sometimes insisted that a participant access supports in a congregate setting, and provided the following example:

[The participant] has lived with one other person for the last twenty years. The NDIA insisted at the beginning of the second plan that because [the participant] lives in a house with five bedrooms, that there needs to be four other people living with him. This is despite the model of support being historically based on meeting the needs of two people with complex needs.

...THC has been open to and looking for a possible third person to share this home. There was someone in need of this model of support, who has moved in, and has been living there for the last 14 months. The three participants are not compatible and there is an escalation of challenging behaviours amongst all three people. We are now looking to move at least one person out into suitable other accommodation. If an alternative option can be found! There is a dearth of appropriate housing solutions.<sup>9</sup>

- 5.11 Family Advocacy asserted that the NDIA tends to prefer 'group segregated settings' over individual living arrangements, stating that:

A common experience of families was that when...support arrangements that were individualised and connected to community were sought, it was common for planners to...strongly push the segregated options. Even when families felt that a strong case for funding for their family member had been expressed and documents were presented at the meeting, the plan would still come back representing segregated arrangements.<sup>10</sup>

- 5.12 The Office of the Public Guardian Tasmania (Tas OPG) noted that the NDIA is 'extremely reluctant' to fund SIL for individuals wishing or needing to live alone, with the assumption that participants with SIL will be required to live in shared accommodation. The Tas OPG asserted that this approach is contrary to

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and is contrary to the principles of choice and control that underpin the NDIS. The OPG emphasised that this approach is discriminatory, and should cease immediately.

<sup>8</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 6.

<sup>9</sup> The Housing Connection, *Submission 33*, [p. 2].

<sup>10</sup> Family Advocacy, *Submission 35*, p. 7. Family Advocacy strongly recommended the NDIA ensure staff take a genuinely person-centred approach to planning and the funding of supports, to ensure participants can access individualised living arrangements.

the NDIS' underlying principles of choice and control, as well as the rights of persons with disabilities under international human rights law.<sup>11</sup>

- 5.13 The Tas OPG strongly recommended that the NDIA allow participants to trial living in shared accommodation, with an option to quickly transition between shared and individual living arrangements if it is the participant's wish to do so. The OPG emphasised that—in order to maximise choice and control—a participant should be able to transition to new living arrangements without compromising housing security.<sup>12</sup>
- 5.14 VALID asserted that planners consistently confirm that SIL must be used for shared supports, and only through a service provider. VALID emphasised that this disproportionately affects people with intellectual disability.<sup>13</sup> VALID also observed that—for participants with intellectual disability or other complex support needs—providers defer to plan nominees or substitute decision makers, and do not work with participants to understand their needs.<sup>14</sup>
- 5.15 VALID also noted that the NDIA has been reluctant to fund 24/7, 1:1 supports for people with intellectual disabilities to live independently, and only after expensive, time-consuming reports from allied health professionals which are often rejected without justification.<sup>15</sup> It observed that:
- VALID has received reports from the families of participants with intellectual disabilities, who already live in their own homes...that they will need to share with other SIL-funded participants to access SIL supports. Some NDIS planners have demanded to see the floorplan of the person's private home to determine how many people should move in.<sup>16</sup>
- 5.16 Scope (Aust) Ltd (Scope) similarly noted that, when it comes to participants with complex needs, a quote is likely to be for a group home.<sup>17</sup> However, Scope also observed that congregate living arrangements do not necessarily result in worse outcomes for people with disability:

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<sup>11</sup> Office of the Public Guardian Tasmania, *Submission 46*, p. 3. In this respect, the Tas OPG noted that the Convention on the Rights of Persons with Disabilities provides that persons with disability have the right to choose where and with whom they live.

<sup>12</sup> Office of the Public Guardian Tasmania, *Submission 46*, p. 3. The Tas OPG acknowledged that this may require funding two organisations to fund SIL at the same time, in order to ensure a gradual, responsive transition.

<sup>13</sup> VALID, *Submission 20*, p. 4. VALID stated that, by contrast, the NDIA provides 24/7, 1:1 supports to participants without an intellectual disability. VALID asserted that this is discriminatory, and disadvantages certain cohorts of participants.

<sup>14</sup> VALID, *Submission 20*, p. 4.

<sup>15</sup> VALID, *Submission 21*, p. 4.

<sup>16</sup> VALID, *Submission 21*, p. 4.

<sup>17</sup> Scope (Aust) Ltd, *Submission 17*, p. 3.

[A] study completed by McConkey et al (2016) contrasted the experience of individuals in Ireland living in personalised rental arrangements, group homes and congregate care respectively. While those people with personalised arrangements achieved the most positive outcomes, the outcomes for people living in group homes were also often positive, and the study concluded that further longitudinal research was required.<sup>18</sup>

- 5.17 Scope further asserted that there may be opportunities to modify existing service models, such that group homes strengthen choice and control and become an organic part of the communities where they are located.<sup>19</sup>

*Transition of participants in congregate settings to the NDIS*

- 5.18 A number of submitters and witnesses observed that SIL funding has been used to 'transition' people with disability living in group homes on to the NDIS without giving sufficient consideration to whether such arrangements are appropriate or taking account of participants' wishes and needs.

- 5.19 For example, Mr Mark Tonga, Chair of the NSW Disability Council, observed during the committee's public hearing in Sydney that:

I ended up in a group home because the old system forced me into that group home. I was hoping and expecting that SIL would be able to give me some flexibility to move into the community and live on my own.<sup>20</sup>

...SIL was discussed between the owner who was running the group home and the NDIA. I was just handed to them. They just carbon copied the model from the old system over to SIL. They had no discussion about what needs to be done. It's a lazy effort. To get a system, they just walked into a group home and said, 'What was done in the old days? We can match that and give a little bit more.' That was it.<sup>21</sup>

- 5.20 The Queenslanders with Disability Network (QDN) noted that a number of its members who were living in shared arrangements prior to the NDIS had been transitioned to SIL homes once NDIS rollout commenced. One QDN member observed that:

[P]re-NDIS I was already in a supported accommodation so when I transferred over to the NDIS it wasn't much of an issue for me; it was more

<sup>18</sup> Scope (Aust) Ltd, *Submission 17*, p. 4. Scope asserted that the preferred basis for such arrangements is for participants to choose to live in a house with a shared support model—including choice regarding the location of the property and the participant's co-tenants. Scope also asserted that any obstacle to effective choice should be minimised by the provider and the NDIA.

<sup>19</sup> Scope (Aust) Ltd, *Submission 17*, p. 4. However, Scope also observed that there appears to be a 'philosophical shift' away from group living arrangements in the development of the SDA framework, and expressed concern that there may not be sufficient transitional arrangements in place to improve or reduce reliance on the group home service model

<sup>20</sup> Mr Mark Tonga, Chair, Disability Council NSW, *Proof Committee Hansard*, 9 October 2019, p. 14.

<sup>21</sup> Mr Mark Tonga, Chair, Disability Council NSW, *Proof Committee Hansard*, 9 October 2019, p. 17.

our provider who did the running around working out the hours we needed as a house".<sup>22</sup>

- 5.21 People with Disabilities WA (PwDWA) asserted that participants who were in congregate arrangements prior to NDIS rollout had little if any opportunity to explore alternative accommodation.<sup>23</sup> PwDWA also observed that:

[The NDIA is] requesting the information for the [SIL] quote be based upon the service provider's detailed knowledge and understanding of the participant and their needs. The...provider provides the documentation to verify the level of support. At no time is an independent representation required to support the participant to explore and engage in the planning process. This leads to a breach of human rights.<sup>24</sup>

- 5.22 QAI asserted that SIL proliferates the 'archaic block funded group home', and observed that SIL arrangements do not reflect participant choice. Rather, they are 'organised, negotiated and created' by the NDIS system and service providers'.<sup>25</sup>

- 5.23 During the committee's public hearing in Brisbane, Ms Michelle O'Flynn, Director, QAI, raised concerns that the boarding houses and hostels which operated under the state-funded disability support framework had simply transitioned to become SIL providers. Ms O'Flynn stated that these providers:

...have captured [the participants] yet again, effectively barring other services from seeing people—even holding meetings with LACs and planner, the managers speaking for all of the residents. The SIL arrangement has made that worse.<sup>26</sup>

- 5.24 These concerns were echoed by families of participants in congregate living arrangements. Mr Peter Rankin—the father of a participant—observed that:

Our foster son...is a resident at a specialist disability accommodation house (SDA). [He] has been a resident since the house opened in 2011. The Supported Independent Living (SIL) provider...was appointed by the Victorian DHHS prior to the introduction of the NDIS. Participants at the house had no say and were not consulted in regard to this contract.

After the introduction of the NDIS, [the organisation] continued to provide SIL services at the house. Participants at the house were not consulted as to whether [the organisation] should continue to provide services or whether there was an alternative.<sup>27</sup>

<sup>22</sup> Queenslanders with Disability Network, *Submission 26*, p. 6.

<sup>23</sup> People with Disabilities WA, *Submission 32*, pp. 19–20.

<sup>24</sup> People with Disabilities WA, *Submission 32*, p. 20. The issue of limited participant involvement in the SIL quoting process is also explored elsewhere in this report.

<sup>25</sup> Queensland Advocacy Incorporated, *Submission*

<sup>26</sup> Ms Michelle O'Flynn, Director, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 8 October 2019, p. 41.

<sup>27</sup> Mr Peter Rankin, *Submission 45*, [p. 1].

5.25 JFA Purple Orange (JFA) was similarly concerned that SIL funding appears to have been developed to manage the transition of residents in congregate living arrangements to the NDIS with minimal disruption to housing and supports. JFA's submission stated that there a number of issues driving the continued preference for service provision in congregate arrangements, including:<sup>28</sup>

- service providers which were delivering supports under the state-funded disability support framework are familiar with group living models;
- there is a shortage of housing for people with disability, particularly for those who require housing with physical accessibility features;<sup>29</sup>
- the SIL quoting guidelines state that a quote is to identify 'supports that are shared between participants to maximise the efficient use of resources'.<sup>30</sup> This suggests the SIL Quoting Tool assumes staffing ratios are not based on one-to-one supports; and
- it may be financially attractive to deliver supports in shared living arrangements, as a provider may supervise multiple participants at once.

5.26 JFA also asserted that there is no clarity in relation to how a participant may exit a SIL arrangement, and that the current SIL model makes it difficult for a participant to explore alternative living arrangements. JFA observed that:

Where a participant wishes to leave a group home for an alternative living arrangement, the NDIS is likely to calculate the cost of this alternative arrangement based on the existing shared supports the participant is utilising. It is then probable that they will deem the proposed arrangement as not reasonable and necessary and therefore refuse to fund it.

...[P]articipants are not necessarily asking for, and do not necessarily require, any additional funding. Rather, they need the flexibility to use their existing funding more innovatively, for example by complementing it with informal supports and capital and capacity building supports.<sup>31</sup>

#### *Flexibility in shared living arrangements*

5.27 Some submitters observed that the SIL framework does not give participants the flexibility to live with people without disability if they choose to do so. Submitters noted that this is of particular concern for people with disability who wish to live with friends and/or family members.

5.28 For example, the Disability Council NSW expressed concern that the current SIL regime does not allow participants to live with family and carers in SIL settings. It recommended the NDIA structure the SIL system to provide greater

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<sup>28</sup> JFA Purple Orange, *Submission 35*, pp. 15–16.

<sup>29</sup> JFA Purple Orange observed that shared living arrangements may be appealing where they reduce perceived demands for housing, even where they incur greater long-term costs.

<sup>30</sup> See National Disability Insurance Agency, *NDIS Price Guide 2019-20*, December 2019, p. 25.

<sup>31</sup> JFA Purple Orange, *Submission 34*, pp. 17–18.

flexibility for participants to live with carers and family if they wish to do so.<sup>32</sup> The Chair of the Disability Council NSW elaborated on this issue during the committee's public hearing in Sydney, stating that:

[P]eople with a disability, want to have a relationship—for company, love and whatnot. With...SIL, you cannot move into a place and be with your partner...SIL has restricted that. We are humans, too. I would like to see you open it up for people with disability who have wives, husbands and whatnot.<sup>33</sup>

5.29 Representatives of Northcott raised similar concerns, noting that the NDIA is reluctant to allow vacancies to be filled by people without disability, including family members of participants:

[The NDIA] see [a vacant room in a SIL home] as a vacancy that should be filled by a person with a disability, to the extent that we are required when we submit our SILs to put in a vacant line, with the assumption that someone will come in and fill that line. Unless we move someone into that room who will meet that, then we actually are underfunded for the other customers...The tool itself could easily be adapted to have maybe three people who share, and people who don't in two rooms.<sup>34</sup>

5.30 Northcott observed in its submission that SIL has become more flexible, with a move to allow funding for participants sharing a house with family members without disability. However, Northcott raised concerns that SIL does not allow participants to share with other people without disability (for example, friends and co-workers). Northcott asserted that SIL should be expanded to allow for a greater range of living arrangements, noting that this would support more meaningful community participation and greater choice and control.<sup>35</sup>

#### *Alternative living arrangements*

5.31 Some submitters provided examples of alternatives to typical SIL living arrangements. For example, Summer Housing noted that:

[O]ur approach to date has been to acquire 11 apartments peppered throughout developments with typically 75 or more dwellings, tailoring the design of 10 apartments to meet the requirements for Specialist Disability Accommodation. The remaining 11<sup>th</sup> apartment is used to enable the provision of on-call support to tenants by third party SIL providers.

...The onsite support provider operates under a concierge model with a SIL provider funded by the NDIS in each of our tenants' NDIS plans. One

<sup>32</sup> Disability Council NSW, *Submission 3*, [p. 2].

<sup>33</sup> Mr Mark Tonga, Chair, Disability Council NSW, *Proof Committee Hansard*, 9 October 2019, p. 14. The Disability Council emphasised that participants should have the same level of choice and control over their living arrangements as any other member of the community.

<sup>34</sup> Ms Aleta Carpenter, General Manager, Supported Independent Living, Northcott, *Proof Committee Hansard*, 9 October 2019, p. 10.

<sup>35</sup> Northcott, *Submission 7*, p. 11.

staff member is onsite at all times to be shared amongst the 10 SDA tenants. This staff member is located in the additional 11<sup>th</sup> dwelling...

The SIL provider is selected by our tenants through an Expression of Interest and due diligence process. Similarly, tenants have the ability to change the onsite concierge SIL provider.

...[U]nlike many other SDA providers, Summer Housing does not:

- choose a SIL provider itself which tenants are required to then engage for their supports; or
- provide SIL providers with exclusive rights to select tenants for projects enabling them to restrict housing opportunities to participants which engage them to provide other services.<sup>36</sup>

5.32 Summer Housing emphasised that this approach promotes participant choice and service quality, noting in particular that the appointment of the provider is made by the tenants. Summer Housing stated that its arrangements are cost effective, as costs are amortised across the 10 tenants and the arrangement does not promote over-servicing by one provider.<sup>37</sup> However, it also observed that there is not widespread awareness of this or similar models, nor willingness from planners to engage with alternative SIL models.<sup>38</sup>

5.33 HOPES Inc. outlined a similar model at the committee's hearing in Hobart:

At present, HOPES manages one cooperative-living community called Laetare Court. It's an evidence-based model that consists of 13 public-housing units surrounding a community house, encouraging residents to interact, support each other and function as a community while still having their own independent lives and space.

...Laetare Court operates as a democracy...[R]esidents make the decisions about anything that happens in their community. They participate in the selection of...new residents and staff, and they have the power of veto over any new residents and staff. Residents are also encouraged to cooperate in the community and contribute to it...

...[W]e provide for a resident group with very diverse abilities, and we work hard to make our residents as independent as possible and to reduce their formal support. Some residents have 24-hour personal support and some have none at all. We also have several residents who transferred to our facility from group homes where they did receive 24/7 personal support and now receive little or none.

...[W]e were...advised to downplay peer and family support, and to support sharing between residents that we previously negotiated to reduce

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<sup>36</sup> Summer Housing, *Submission 23*, [pp. 3–4].

<sup>37</sup> Summer Housing, *Submission 23*, [p. 4].

<sup>38</sup> Summer Housing, *Submission 23*, [p. 6].

costs. Personal supports are now assessed for each individual independently.<sup>39</sup>

- 5.34 The WA Department of Communities observed that, in that state, Individual Living Options (ILOs) have been shown to be a cost-effective and flexible alternative for people with disability with low to medium support needs. The department noted that ILOs provides opportunities for independence in the home and in community settings, and that—in most cases—additional supports can be provided to individuals in ILO through shared staff costs.<sup>40</sup>
- 5.35 JFA broadly supported the use of ILO arrangements as an alternative to SIL. However, it noted that to date the focus has been on transitioning people in ILOs to the NDIS, rather than facilitating a transition between SIL and ILOs.<sup>41</sup>
- 5.36 Some submitters also pointed to successful international models as alternatives to congregate living arrangements. For example, the Summer Foundation noted that, in the United Kingdom, many people with disability use home sharing models for both permanent and temporary accommodation. The Foundation explained that these models:

...bring together a person with disability who is the householder and requires some companionship and assistance; and the home sharer, a person or persons who needs somewhere affordable to live. Generally, the householder provides free or reduced rent in exchange for companionship and negotiated assistance by the home sharer.<sup>42</sup>

- 5.37 The Summer Foundation noted that the home share model is delivered through 'Shared Lives', and observed that cost-benefit analyses of 'Shared Lives' and similar initiatives have shown these alternatives can reduce support costs by 43 per cent for people with intellectual disability and 28 per cent for those with mental illness.<sup>43</sup>

#### *NDIA position*

- 5.38 SIL has significant legacy arrangements in place following the transition from the state-based disability support regime to the NDIS. The NDIA has noted

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<sup>39</sup> Ms Alison Jacob, President, HOPES Inc., *Proof Committee Hansard*, 28 October 2019, pp. 7–8. It is noted that the HOPES model is not SIL-funded, and HOPES does not provide personal support to residents; that is provided separately. However, the HOPES model is useful to illustrate lead tenancy arrangements; the potential to transition people with disability from group homes to more independent living arrangements; and the separation of housing and support functions.

<sup>40</sup> Western Australian Department of Communities, *Submission 36*, p. 5.

<sup>41</sup> JFA Purple Orange, *Submission 34*, p.

<sup>42</sup> Summer Foundation, *Submission 30*, Attachment B, p. 6. It is noted that this model may not be an option for many people with disability, insofar as it may require the person with disability to own their own home.

<sup>43</sup> The Summer Foundation, *Submission 30*, Attachment B, p. 6, citing 'The state of shared lives in England', Liverpool, Shared Lives Plus (2017).



that states and territories historically funded supported accommodation in block funding arrangements, or directly operated relevant facilities. Under this framework, people with disability had limited say in where they lived or who they lived with.<sup>44</sup> The NDIA stated that it is working to manage these legacy arrangements during transition to full scheme. However, the transition process is proving to be challenging.<sup>45</sup>

- 5.39 The NDIA has asserted that while the approach to SIL has to date been shaped by service models established under the former state-based funding framework, the agency is committed to service innovation and improvement as the NDIS matures' The NDIA has also stated that, in the future, approaches to SIL funding will move away from legacy models of support and will be driven by the participant's goals and support needs, contemporary support models, evidence and actuarial data.<sup>46</sup>
- 5.40 During the committee's public hearing in Canberra, the NDIA stated that SIL can be used for both individual and shared living arrangements.<sup>47</sup> However, it also noted that it is intended for SIL to be used for shared supports.<sup>48</sup> The agency indicated that where a participant wishes to access SIL-type supports while living alone, it may be more appropriate for the participant to be funded for assistance with daily living (ADL). The NDIA stated that there should be no difference in the nature of supports between SIL and ADL. The only difference is the manner in which the supports are funded.<sup>49</sup>
- 5.41 Additionally, the NDIA asserted that the agency's intention is for participants to have choice and control as to where they live, and that a participant may choose to live on their own, with family or with other participants in a variety of settings.<sup>50</sup> The NDIA elaborated on this matter as follows:

There should be no predisposition on our part towards shared supported accommodation. That is to say: our predisposition should be on what a participant wants...[I]f they are in shared supported accommodation now, they wish to stay there and those arrangements are currently

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<sup>44</sup> National Disability Insurance Agency, *Submission 11*, pp. 2–3.

<sup>45</sup> National Disability Insurance Agency, *Submission 11*, p. 3.

<sup>46</sup> National Disability Insurance Agency, *Submission 11*, p. 3.

<sup>47</sup> Mr Oliver Bladdek, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 4.

<sup>48</sup> Mr Oliver Bladdek, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 2.

<sup>49</sup> Mr Oliver Bladdek, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 14.

<sup>50</sup> Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 5.

accommodated through a SIL arrangement then, for the time being, that is the way that we would refer to it in their plan.<sup>51</sup>

- 5.42 The NDIA also stated that it does not have a preference for shared living arrangements, and there is no guidance for staff to encourage participants to take up a vacancy in a SIL setting.<sup>52</sup> However, it acknowledged that it does not have a mandate to ensure participants are not forced into congregate care arrangements as a result of its policy decisions.<sup>53</sup>
- 5.43 The NDIA further stated that its assessment of whether a support is reasonable and necessary takes account of a participant's individual circumstances, goals, preferences and support needs. This includes available informal supports to enable the participant to pursue their preferred living arrangement.<sup>54</sup>
- 5.44 However, the NDIA observed that, when considering supports that enable a participant to live alone rather than in a shared arrangement, it will have regard to whether the support represents value for money (among other matters). The agency will assess whether there are comparable supports which would achieve the same outcome at substantially lower cost; the improved life stage outcomes and benefits for the participant; whether the support is likely to reduce costs in the long term; and whether the support will increase independence and reduce the need for other supports.<sup>55</sup>
- 5.45 In relation to participants' ability to exit congregate living arrangements if they choose to do so, the NDIA stated that a participant may request an unscheduled plan review at any time. This may be with the aim of moving the participant out of shared accommodation to live alone or with family or friends. According to the NDIA, representatives of the agency, as well as

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<sup>51</sup> Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 14.

<sup>52</sup> National Disability Insurance Agency, answer to question on notice SQ20-000019, 13 February 2020 (received 2 April 2020). The NDIA also stated that it has no policy or procedure that would require a participant to trial a shared living arrangement before they can access supports for independent living in an individual arrangement. See National Disability Insurance Agency, answer to question on notice SQ20-000010, 13 February 2020 (received 2 April 2020).

<sup>53</sup> Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 16.

<sup>54</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000018, 13 February 2020 (received 2 April 2020).

<sup>55</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000018, 13 February 2020 (received 2 April 2020).

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LACs, Support Coordinators and Allied Health Practitioners, will support participants to identify suitable housing options.<sup>56</sup>

*Committee view*

- 5.46 The committee heard from a number of submitters that congregate living arrangements may limit choice and control for people with disability, and may increase risks of social isolation and abuse. The committee notes that this view is widely held within the academic and disability support communities.
- 5.47 The committee is concerned that the current SIL regime may be encouraging—if not forcing—participants with SIL to live in shared accommodation. The committee heard that SIL is perpetuating congregate living models that existed under the state-funded framework, rather than delivering the innovations in disability support that were promised by the NDIS. Evidence suggests that this may reflect familiarity with legacy arrangements, and is perceived as a cost-saving measure for providers, the NDIA and government.
- 5.48 The committee is also concerned that the existing SIL framework may not provide participants with the flexibility to share housing with people without disability—including family members, friends and carers. The committee emphasises that people with disability should have choice and control over their living arrangements, including those with whom they share a home. This principle is also enshrined in international human rights law.<sup>57</sup>
- 5.49 The committee notes the NDIA's advice that it is working to address legacy arrangements associated with supported living, and the advice that in the future SIL funding will be more focused on the participant and their individual support needs. The committee also notes the NDIA's advice that while SIL is intended to be used in shared arrangements, the agency does not have a predisposition to encourage or require participants needing assistance with daily living to access shared supports. However, the committee has heard that the NDIA does not have a clear policy mandate in relation to this matter.
- 5.50 Further, the committee is concerned that participants are not given sufficient information about accommodation and support options,<sup>58</sup> and that the NDIA may promote SIL as the only support option for some cohorts (for example, participants with complex disability or higher support needs). Evidence before the committee also indicates that participants may have difficulty exiting congregate arrangements due to current processes for assessing whether

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<sup>56</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000020, 13 February 2020 (received 2 April 2020).

<sup>57</sup> See Convention on the Rights of Persons with Disabilities, Article 19(a).

<sup>58</sup> This is also discussed above, in relation to the information that is available to participants and other stakeholders regarding SIL.

supports are reasonable and necessary, and that participants are not supported to leave congregate settings where they wish do to so.

- 5.51 The committee notes the NDIA's advice that, when assessing supports that will allow a participant to live alone rather than in a shared setting, the NDIA considers whether a support represents value for money—including whether there are comparable supports which would achieve the same outcome at substantially lower cost. Providing supports to a participant living alone or with friends or family members who do not have disability is likely, in most cases, to be more costly than delivering those same supports under a shared funding model (where costs are shared through a roster of care). Consequently, it seems unlikely that the NDIA would approve supports for independent living in an individual setting (for example, ADL), unless a participant requires one-to-one support the majority of the time.
- 5.52 The committee is therefore concerned that the existing process for assessing whether a support is reasonable and necessary would lead the NDIA to prefer shared supports, rather than allowing a participant to access supports in an individual living arrangement. The committee notes that this approach would be contrary to the principles of choice and control which underpin the NDIS.
- 5.53 Going forward, the committee considers that the NDIA should review and amend existing policies to clarify that all participants must have genuine choice and control over their support and accommodation arrangements, and should be able to access funding for assistance with daily activities in both shared and individual living arrangements.<sup>59</sup> The committee also considers that the NDIA must ensure that options for supports and accommodation are clearly explained to participants. As outlined above, submitters have provided examples of living arrangements which aim to ensure choice and control and to maximise community participation.
- 5.54 The committee also considers that the NDIA should give participants currently accessing SIL in group living arrangements the opportunity to review and, if appropriate, change their accommodation and support arrangements at the next available opportunity. This may be at the next scheduled plan review (or sooner, for participants in unsuitable or unsafe living arrangements). The committee considers that additional funding should be made available to support participants seeking to exit congregate living arrangements.
- 5.55 The committee acknowledges that, in some cases, shared accommodation may result in positive outcomes, and does not propose that shared living and support arrangements should be eliminated. However, whether a shared arrangement delivers positive outcomes will depend on whether participants have a genuine choice as to where they live and who they live with. The

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<sup>59</sup> This may be funding for SIL or for Assistance with Daily Living (ADL), depending on what is most appropriate for the participant and the participant's choice of support arrangements.

committee emphasises that all people with disability should be able to make informed and genuine choices about their living arrangements.

- 5.56 In addition, the NDIA must ensure that the SIL quoting and approval process allows participants to choose those with whom they live while still receiving SIL funding, including giving participants the option to live with people without disability should they choose to do so. The committee notes that the current SIL quoting tool appears to allow providers to select whether people living in a residence are NDIS participants. However, it is unclear whether people without disability may be included in a SIL quote.
- 5.57 Finally, the committee heard that congregate settings—and particularly larger institutional-type arrangements—can exacerbate risks of abuse and neglect for people with disability. Consequently, the committee considers that the NDIS Quality and Safeguards Commission should implement additional oversight measures for participants in shared living arrangements, to ensure that risks of abuse and neglect are identified and addressed as effectively as possible.

#### **Recommendation 18**

- 5.58 The committee recommends that the National Disability Insurance Agency review its existing policies and procedures, to ensure that participants needing assistance with daily living are given genuine choice as to whether they access supports in a shared or individual living arrangement.**

#### **Recommendation 19**

- 5.59 The committee recommends that the National Disability Insurance Agency give all participants living in congregate settings, who receive Supported Independent Living funding, the opportunity to review their accommodation and support arrangements and to exit the congregate setting if they wish to do so.**

#### **Recommendation 20**

- 5.60 The committee recommends that the National Disability Insurance Agency review and, if necessary, amend the Supported Independent Living quoting tool, to ensure that it allows participants to choose the people with whom they share a residence to the greatest extent possible**

#### **Recommendation 21**

- 5.61 The committee recommends that additional funding be made available to support participants seeking to exit congregate living arrangements.**

## Recommendation 22

### 5.62 The committee recommends that the National Disability Insurance Scheme Quality and Safeguards Commission implement additional oversight measures for participants in group living arrangements.

#### Resident compatibility

5.63 A key concern among submitters was the need to ensure participants in shared living arrangements are compatible. Submitters emphasised that failures to ensure compatibility between residents may lead to adverse outcomes for people with disability—including increased risk of abuse and social isolation, and may undermine the principles of choice and control that underpin the NDIS. VALID observed that:

There is considerable published research demonstrating that abuse is more prevalent where people do not have a choice about who they live with. Preventing abuse should be the key consideration for NDIS planners making decisions about SIL funding; no-one should be compelled to live with their abuser.<sup>60</sup>

5.64 VALID asserted that the vacancy management process should ensure tenants are matched according to lifestyle preferences and compatibility. VALID stated that this will typically require extensive meetings with applicants, and may require independent support for decision-making.<sup>61</sup>

5.65 The Disability Council NSW observed that participants in SIL arrangements often lack choice as to who they live with, with most of the power resting with the provider. It asserted that this could lead to adverse outcomes for people with disability, particularly where the provider allows incompatible people to share a home. The Disability Council NSW recommended the NDIA ensure thorough compatibility and safety assessments are undertaken before a new participant is introduced to an occupied SIL home.<sup>62</sup>

5.66 The Qld OPG provided an example of how a failure to ensure compatibility between residents could impact negatively on participants' experience:

In a household where four adults with impaired capacity were residing, the behaviour of one 45 year old male adult...[had] a profound impact on the remaining adults. The behaviours described to the Community Visitor included the man insisting on eating meals alone, insisting others stay in their rooms until he was finished so they are not visible while he was eating, and yelling loudly at the residents.

The service provider reported the man to be controlling and that he often used his voice to force other residents to their rooms when he didn't want

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<sup>60</sup> VALID, *Submission 21*, p. 4.

<sup>61</sup> VALID, *Submission 20*, p. 3.

<sup>62</sup> Disability Council NSW, *Submission 3*, [p. 2].

them in his area. One of the other adults directly confided to the Community Visitor that he felt unsafe due to the man's behaviour.<sup>63</sup>

- 5.67 The Qld OPG also observed that there may not be sufficient vacancies in SIL homes to ensure compatibility between residents is given due consideration, particularly in regional and remote areas. The Qld OPG was also concerned in relation to the level of information available to prospective residents to assist in determining if a tenancy arrangement is suitable. It recommended that the NDIA facilitate improved information-sharing between prospective tenants to ensure compatibility prior to entering a SIL arrangement.<sup>64</sup>
- 5.68 Submitters acknowledged that failures to ensure compatibility between residents may result from the financial pressure imposed on providers to fill vacancies as quickly as possible.<sup>65</sup> The ACT Disability Aged and Carer Advocacy Service (ADACAS) noted that these financial pressures often result in a 'near enough is good enough' approach to vacancy management, where potential tenants are accepted without sufficient emphasis on the choice and control of current and prospective residents, or on the issue of compatibility between residents in the SIL home.<sup>66</sup> ADACAS observed that:

All too often, we have heard from participants stories of situations where matches ended up being driven by exactly this situation – i.e. by the availability of who can move in (as opposed to looking at the individual person's wishes, or the adequacy of the matches).<sup>67</sup>

- 5.69 Submitters also noted that the need to ensure compatibility between residents in a SIL home may result in vacancies going unfilled for a substantial period, which can place a substantial financial burden on providers. For example, the Samaritans Foundation observed that a home may have existing residents who have lived together for some time in a stable and comfortable environment. The Foundation observed that in such circumstances it may be inappropriate to introduce a new resident to fill a vacancy. A provider may be required to carry a vacancy indefinitely—particularly given the challenges associated with having plans varied for existing residents.<sup>68</sup>

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<sup>63</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 9.

<sup>64</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 8.

<sup>65</sup> As noted elsewhere in this report, where a vacancy goes unfilled, service providers may be obliged to fund supports at their own expense to ensure continuity of supports for participants. Providers often seek to fill vacancies as quickly as possible to avoid funding shortfalls.

<sup>66</sup> ADACAS, *Submission 20*, p. 8. ADACAS also noted that there is a dearth of SIL accommodation within the ACT. ADACAS expressed concern that this could lead participants and providers to take the first available vacancy, without giving sufficient consideration to compatibility issues.

<sup>67</sup> ADACAS, *Submission 20*, p. 8.

<sup>68</sup> Samaritans Foundation, *Submission 4*, p. 4.

- 5.70 Northcott noted that the process of matching people to suitable vacancies—and especially to existing tenants—is often drawn out, with costs borne by the provider.<sup>69</sup> Moreover, SIL quotes do not include compensation for providers for unfilled vacancies. By contrast, SDA providers may claim funding for unfilled vacancies for a limited amount of time.<sup>70</sup> Northcott noted that loading for potential vacancies could be built in to SIL quotes based on staffing ratios.<sup>71</sup>
- 5.71 The committee also heard that it is often difficult to relocate unsuitable tenants once they have taken up a vacancy in a SIL home. This may be due to a lack of available vacancies, or to unwillingness on the part of providers to risk losing funding—particularly if a participant is funded for one-to-one support. The Tas OPG provided an example at the committee's public hearing in Hobart:

We had three elderly gentlemen who had lived together for many years. In fact, they came originally from Willow Court...When that facility closed down, they were moved into a group home. So they had lived together for a long time. This group home was a four-bedroom place but one bedroom was tiny. There might have been four of them originally and one died.

...[A] young bloke moved in with them. He had never lived anywhere other than the family home. He had some very challenging behaviours and there were all sorts of problems. We can call it an incompatibility issue, but there was physical assault happening. The original elderly gentlemen—we were the guardian for all three of them—were quite fearful of him.

...[N]egotiations...to find a solution—either to move the three elderly men somewhere else or this young bloke going somewhere else—took months and months and there was so much resistance. I'm quite sure that part of the resistance was that there weren't any obvious vacancies for either. But also I suspect there were funding implications for the provider who didn't want to lose particularly the money for the young bloke who was eligible for one-on-one support. They didn't want to lose him to another provider. It was very difficult. It took months.<sup>72</sup>

- 5.72 Finally, submitters indicated that the vacancy management process, and the need to ensure compatibility among tenants, is a significant challenge for participants and families. For example, Sylvanvale stated that:

For families vacancy management means finding 'just the right place' for their person, and is yet another hurdle in the maze that is navigating the NDIS. Often parents or carers are overwhelmed with the planning process within the NDIS. Then to find they have to sub navigate other channels

<sup>69</sup> Northcott, *Submission 7*, p. 11

<sup>70</sup> See National Disability Insurance Agency, *National Disability Insurance Scheme Price Guide (2019–20): Specialist Disability Accommodation (SDA)*, October 2019, p. 6.

<sup>71</sup> Northcott, *Submission 7*, p. 11.

<sup>72</sup> Ms Kim Barker, Public Guardian, Office of the Public Guardian, Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 31.



such as SIL, SDA and associated assessment processes renders them incapacitated and unable to search or make a decision.<sup>73</sup>

### *Committee view*

- 5.73 Evidence suggests that funding shortfalls are a key driver of failures to ensure compatibility between residents in SIL homes. However, the committee has heard that there are other contributing factors—including a shortage of SIL and SDA properties; power imbalances between participants and providers; and a lack of information regarding tenancy management.
- 5.74 To help address some of these issues, the committee considers that the Quality and Safeguards Commission should develop clear policies and guidance on vacancy management in SIL homes, with a focus on ensuring compatibility between current and prospective tenants, and on ensuring that participants have meaningful involvement in the tenancy management process.

### **Recommendation 23**

- 5.75 The committee recommends that the National Disability Insurance Scheme Quality and Safeguards Commission develop clear policies and guidance on vacancy management, with a focus on ensuring compatibility between tenants in shared accommodation and ensuring participant involvement in the vacancy management process.**

### **Conflicts of interest: support, tenancy and support coordination functions**

- 5.76 A significant concern for submitters was the conflict of interest that may arise when a SIL provider also owns or manages the property in which services are delivered. This was particularly in relation to participants who have both SIL and SDA in their plans.
- 5.77 Submitters asserted that allowing a single entity to exercise control over both tenancy and supports may have significant negative impacts for participants—such as reductions in service quality; greater potential for abuse and neglect; and reduced housing security. Submitters emphasised that separating tenancy and service delivery is crucial to enabling choice and control.
- 5.78 ADACAS noted that, in the ACT, participants with SIL often live in properties owned by the SIL provider.<sup>74</sup> It asserted that such arrangements have negative impacts on choice and control—particularly where the provider requires a

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<sup>73</sup> Sylvanvale, *Submission 6*, [p. 3].

<sup>74</sup> ADACAS, *Submission 20*, p. 5. ADACAS observed that this scenario is likely unless a participant owns their own property (which may not be possible due to financial constraints); has an SDA provider that is not also providing SIL; or lives in a household that has a Housing ACT property (either via a head lease or leased directly from Housing ACT).

participant to accept their services as a condition of taking up a vacancy.<sup>75</sup> ADACAS strongly recommended that the NDIA work to separate landlord and SIL functions.<sup>76</sup>

- 5.79 The Tasmanian Government observed that, in Tasmania, approximately 80 per cent of SDA is owned by the government's Director of Housing (DoH). This is leased to providers through a community tenancy lease, comprising a head lease between DoH and a provider which enters into separate agreements with participants. This means that the provider is often responsible for both tenancy management and service delivery. In such circumstances, a participant may need to negotiate with the provider to split tenancy and support functions or leave the home.<sup>77</sup> However, financial pressures may also make it less viable for providers to deliver only tenancy or SIL supports.<sup>78</sup>
- 5.80 QDN asserted that tenancy management and service delivery should be separated. According to QDN, these functions would be performed by separate entities to avoid conflicts of interest. If this is not possible, clear processes should be in place to separate tenancy and support functions.<sup>79</sup>
- 5.81 Summer Housing raised concerns that the following anti-competitive practices are commonplace—particularly in connection with the provision of SIL in SDA dwellings:<sup>80</sup>
- **one-stop shops**, where SIL providers also act as support coordinators and SDA providers. According to Summer Housing, providers may leverage this position to operate a 'closed shop', denying people with disability the opportunity to become aware of or explore, alternative arrangements;
  - **third line forcing**, where SDA providers pre-select SIL providers for their projects, and only allow participants to move in if they accept services from the SIL provider;
  - **vacancy guarantees**, under which an SDA provider charges a SIL provider with the responsibility of selecting tenants. This model may incentivise the SIL providers to only offer housing to people who engage them to provide supports. A SIL provider may also be required to guarantee income for the SDA provider. This may compromise the SIL provider's economic viability.

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<sup>75</sup> ADACAS, *Submission 20*, p. 5. ADACAS also noted that, where the SIL provider is the landlord, the provider may encourage participants to agree that they will also deliver non-SIL supports (for example, community participation) as a condition of the participant moving into the SIL home.

<sup>76</sup> ADACAS, *Submission 20*, p. 9.

<sup>77</sup> Tasmanian Government, *Submission 41*, p. 6.

<sup>78</sup> Tasmanian Government, *Submission 41*, p. 6.

<sup>79</sup> Queenslanders with Disability Network, *Submission 26*, p. 12.

<sup>80</sup> Summer Housing, *Submission 23*, [pp. 7–8].

- 5.82 Summer Housing noted that, in some cases, SIL providers are providing non-SDA accommodation to participants, cross-subsidised by SIL payments. In these arrangements (effectively group homes), tenants have minimal choice in their support providers and co-residents.<sup>81</sup>
- 5.83 Summer Housing recommended separating SDA providers, SIL providers and support coordinators, and stated that anti-competitive practices and conflicts should be prohibited in new SDA developments. It also recommended that a timetable and transition plan be developed to unwind existing arrangements, noting that such arrangements apply to a large number of SDA dwellings.<sup>82</sup>
- 5.84 In the SDA context, Scope observed that there is an 'inherent tension' for SIL providers involved in vacancy management:
- The on-the-ground knowledge of SIL providers in SDA is critical to ensuring there is an appropriate mix of residents. At the same time, it is in the interests of SIL providers to support all the residents in the house. If a vacancy were offered to a participant who wished to use a different SIL provider, there may be conflict and this has the potential to undermine the principles of choice and control.<sup>83</sup>
- 5.85 Another submitter observed that SIL providers are often the owners of the property where supports are provided. The submitter was concerned that such arrangements could reduce choice and control and increase vulnerability, as in such arrangements a participant may be unable to change providers without risking homelessness. The submitter noted that, where a provider is also the landlord, clients with behavioural issues may be evicted from both the SIL service and the property – placing the participant at risk of homelessness.<sup>84</sup>
- 5.86 The submitter recommended that SIL providers should not own the property where supports are delivered. Rather, participants should own or rent the property, or live in a property owned by the government.<sup>85</sup> The submitter asserted that this would ensure providers have a greater incentive to provide quality services, and permit better market development of the SIL sector.<sup>86</sup>
- 5.87 Summer Housing observed at the committee's public hearing in Melbourne that there are only weak controls on an entity having support coordination, tenancy management and service delivery functions. It stated that:

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<sup>81</sup> Summer Housing, *Submission 23*, [p. 7]. Summer Housing also noted that, as the properties are not registered as SDA, they are not subject to the regulatory safeguards that apply to SDA homes.

<sup>82</sup> Summer Housing, *Submission 23*, [p. 7].

<sup>83</sup> Scope (Aust) Ltd, *Submission 17*, p. 6.

<sup>84</sup> Name withheld, *Submission 51*, p. 7.

<sup>85</sup> Name withheld, *Submission 51*, p. 7. The submission refers expressly to properties owned by ACT Housing and to head tenant arrangements such as those in place for Havelock Housing.

<sup>86</sup> Name Withheld, *Submission 51*, p. 7

You do have a separate agreement. It's pretty easy—it's two pieces of paper. 'Please sign here'...I can see how that that can get implemented, and [it] doesn't provide a lot—we really need a conflict of interest policy.<sup>87</sup>

- 5.88 QAI observed that there is often one entity responsible for tenancy management and the delivery of supports, notwithstanding repeated statements from the NDIA about the importance of separating these functions. QAI stated that while the NDIS has some policies in place in relation to the management of conflicts of interest, many providers not only fail to manage conflicts of interest but actively resist separating housing and support functions. In this respect, QAI further stated that some accommodation agreements explicitly state that a resident may only seek to replace a provider if the provider is de-registered or becomes insolvent.<sup>88</sup>
- 5.89 In addition, QAI observed that legislation governing disability services in a number of jurisdictions enshrines the principle that a single provider should not exercise control over all aspects of the life of a person with disability.<sup>89</sup> However, this principle is not expressed in the statutes governing the NDIS.<sup>90</sup>
- 5.90 Similar concerns were raised during hearings of the Royal Commission. For example, Dr Ilan Wiesel stated that if a support provider is also the landlord of the property where supports are delivered:

[There is] a power dynamic that is – is very much against the residents. So imagine if you live in your own home and you bring in someone to...to provide you with support services, it gives you some control over the situation. But if you live in a house that's owned or managed by the support provider, and they're also your support providers, they have quite significant control over your life.

So that was a major issue. If you wanted to leave, you lose both your home and your support. So, again, it disempowers people with disability living in group homes.<sup>91</sup>

### *Support coordination functions*

- 5.91 Some submitters asserted that the SIL provider should not also be responsible for support coordination or the delivery of non-SIL supports.

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<sup>87</sup> Mr Daniel McLennan, Chief Executive Officer, Summer Housing, *Proof Committee Hansard*, 7 November 2019, p. 24.

<sup>88</sup> Queensland Advocacy Incorporated, *Submission 8*, [p. 11].

<sup>89</sup> Queensland Advocacy Incorporated, *Submission 8*, [p. 9]. QAI observed that this principle is enshrined in the *Disability Services Acts* of NSW, ACT, Queensland, WA and Victoria.

<sup>90</sup> Queensland Advocacy Incorporated, *Submission 8*, [p. 10]. It is noted that a very similar principle is enshrined in s 7(8) of the Disability Services (Principles and Objectives) Instrument 2018.

<sup>91</sup> Dr Ilan Wiesel, Senior Lecturer, University of Melbourne, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Official Transcript*, 3 December 2019, p. 80.

5.92 For example, one submitter emphasised that the failure to separate functions is of particular concern for participants who do not have a family member or advocate acting as their nominee. The submitter observed that:

When [the participant] first became a client of his SIL Provider, the Provider WAS THE PROVIDER OF SIL ACCOMMODATION, DAY PROGRAM AND SUPPORT COORDINATION [*sic*]. The first Support Coordinator whispered to us at our first meeting, whilst glancing to the outer office, 'I'm actually supported to make you aware of other options'. This alerted us that a conflict of interest may have existed.

Without our consent or knowledge, the Support Coordinator was replaced by another, who happened to be a Disability Manager for [the participant]. So then [the participant] had a Support Coordinator, who was employed by the SIL Provider, who performed 2 roles for [the participant]: Support Coordinator and Disability Manager. This was a conflict of interest.<sup>92</sup>

5.93 The submitter asserted that, if the NDIA required all to roles be provided independently of each other—or at least be provided with transparency and strict oversight—this scenario could have been avoided.<sup>93</sup>

5.94 ADACAS stated that, in some cases, services delivered by SIL providers are not at the needed or expected level of quality, and do not reflect the fees that are claimed through the NDIS. This was a particular concern where the SIL provider is also the landlord.<sup>94</sup> While noting that assistance may be available through advocacy services and official visitors, ADACAS recommended that people in receipt of SIL have a support coordinator who is separate from their SIL provider. It also recommended additional training and skills development for providers and support workers.<sup>95</sup>

5.95 Some of these concerns were echoed during the committee's public hearing in Adelaide. For example Mr Jeremy Brown, Chief Operating Officer for Novita Children's Services, noted that some SIL providers have an undue influence over the planning process:

We have some providers who are the SIL provider...support coordinator and the plan manager. When an NDIA plan comes, they will typically say to us that we need to give them a quote for what we would like to do, and they will then consider whether that's correct or not for the participant, versus keeping them in home and wrapping that into the SIL.

The big part that's missing in that is the participant and their choice to be able to get out and do something in the community. So I think that, if there is a SIL provider there, their role is to provide those in-home supports but

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<sup>92</sup> Name Withheld, *Submission 40*, [p. 1]. The participant is a family member of the submitter.

<sup>93</sup> Name Withheld, *Submission 40*, [p. 1].

<sup>94</sup> ADACAS, *Submission 20*, p. 9.

<sup>95</sup> ADACAS, *Submission 20*, p. 9. As noted elsewhere in this report, there is also a perceived need to increase funding for advocacy services and decision support.

not to influence the individual or their plan in order to wrap all of that into just accommodation to the point where they're not out achieving their goals. So I think some separation of powers is a healthy thing when it comes to SIL.<sup>96</sup>

- 5.96 Evidence before the Royal Commission also highlighted the importance of independent support coordination—particularly for people with disability in group living arrangements. Mr Kevin Stone, CEO of VALID, stated that:

What we're seeing right now is that [the] right to choose services is being taken away from people because support coordinators are often captured by service providers. The support coordination is coming from the very organisation that is providing services to them...[L]ittle wonder that people aren't told about what their options might be and the choices that are available to them.<sup>97</sup>

*Continuity of services and market development*

- 5.97 The committee heard some evidence that the immediate separation of service delivery and tenancy management may impact the financial sustainability of providers, as well as on the continuity of supports for participants. However, this may become less of a concern as the NDIS continues to evolve away from previous state-funded models of disability support.

- 5.98 For example, representatives of Uniting Vic. Tas observed at the committee's public hearing in Melbourne that:

As we get further into the [NDIS] and people are more confident in making...choice[s] and having control the group homes are going to become smaller. We don't want homes with five or six people in them; that's not the norm. That will make that process easier as well. If there are only two or three people living in a home, there is consensus on who they want for a SIL provider. One of them may have one-to-one support; they can have a completely separate SIL from the other two people. The smaller group home settings will make those choices easier as well.<sup>98</sup>

- 5.99 The committee also heard that if support delivery and tenancy functions are separated too quickly, this may have an adverse impact on the development of the SDA market. For example, representatives of National Disability Services (NDS) stated at the committee's public hearing in Melbourne that:

In circumstances where a provider of [SDA] who is currently relying upon people with SIL living in that property—in circumstances where all of a sudden they find that that's not the case, because of changes in rules, that could produce unfortunate outcomes in terms of capacity to maintain and

<sup>96</sup> Mr Jeremy Brown, Chief Operating Officer, Novita Children's Services, *Proof Committee Hansard*, 19 November 2019, pp. 12–13.

<sup>97</sup> Mr Kevin Stone, Chief Executive Officer, VALID, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Official Transcript*, 4 December 2019, p. 169.

<sup>98</sup> Mrs Suzanne Gannon, Senior Manager, Residential and Community Options, Uniting Vic. Tas, *Proof Committee Hansard*, 7 November 2019, p. 9.

build the stock of [SDA] around Australia, bearing in mind that that stock needs to accommodate 28 000 Australians.<sup>99</sup>

5.100 Other stakeholders challenged this view. For example, representatives of Summer Housing stated during the same hearing that:

In terms of...whether there is a situation whereby a one-stop-shop solution makes sense, for the overwhelming majority I can't see a case for it. I can probably only see a case [in]...a provider of last resort scenario. I can accept that argument.<sup>100</sup>

*NDIA position*

5.101 In its submission, the NDIA noted that it is aware of risks associated with the provision of SIL and SDA by the same provider—including that participants could feel pressured to accept poorer quality services due to concerns that a complaint about their supports might affect their accommodation.<sup>101</sup> The NDIA stated that the SDA Rules require separate service agreements with regard to SIL and SDA.<sup>102</sup>

5.102 In addition, the NDIA stated that there must be demonstrable conflict of interest policies in place to allow for participants to exercise choice and control with respect to each aspect of their accommodation supports. Provider policies must also allow for participants to raise concerns or complain about their SIL or SDA supports with confidence that doing so will not jeopardise or otherwise impact on the delivery of their other supports.<sup>103</sup>

5.103 The NDIA acknowledged that separation between service delivery and tenancy management does not always occur. However, it asserted that, going forward, this is expected to be a key design parameter.<sup>104</sup>

5.104 At the committee's public hearing in Canberra, the NDIA observed that participants often have the same support coordinator and SIL provider:

Our research would suggest that 40 per cent of participants have the same support coordinator and SIL provider...[W]e are aware and are nervous

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<sup>99</sup> Mr David Moody, Acting Chief Executive Officer, National Disability Services, *Proof Committee Hansard*, 7 November 2019, p. 15.

<sup>100</sup> Mr Daniel McLennan, Chief Executive Officer, Summer Housing, *Proof Committee Hansard*, 7 November 2019, p. 24.

<sup>101</sup> National Disability Insurance Agency, *Submission 11*, p. 7.

<sup>102</sup> National Disability Insurance Agency, *Submission 11*, p. 7. See also National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018, sections 9 and 10.

<sup>103</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000031, 13 February 2020 (received 2 April 2020).

<sup>104</sup> National Disability Insurance Agency, *Submission 11*, p. 7.

about that inherent conflict of interest and working toward making sure we are clear on our policy, approach and expectations.<sup>105</sup>

5.105 The NDIA went on to state that it is the agency's intent that participants have choice and control over their bricks and mortar provider and their support coordinator as well as their SIL or attendant care provider:

[T]he agency is working to ensure that participants can have that choice through improving their opportunity to intervene and have the operational management of their providers and through our processes and engagement that we have with participants being supportive and them being aware of the choices that they do have.<sup>106</sup>

5.106 The NDIA has also stated that, over time, it will require that SIL and SDA be provided by separate entities, as this greatly reduces the likelihood of conflicts of interest arising.<sup>107</sup> However, it asserted that at the current stage of SDA market development, there are not enough SIL and SDA providers to introduce such a requirement without affecting the availability of supply.<sup>108</sup>

5.107 In addition, the NDIA stated that Government is considering how to specify the circumstances in which it is not appropriate for the providers of support coordination to be a provider of any other support in a participant's plan, in accordance with recommendations of the Tune Review.<sup>109</sup>

### *Committee view*

5.108 The committee heard that a significant concern—particularly for participants and advocacy organisations—is the conflict that arises where a provider of supports also owns the property in which supports are delivered. This concern is heightened where that entity is also responsible for support coordination.

5.109 The committee has heard that allowing a single entity to exercise control over both tenancy and service delivery may have significant negative impacts for participants, including reductions in service quality; increased risks of abuse and neglect; and reduced housing security. In particular, the committee was

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<sup>105</sup> Mr Oliver Bladdek, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 3.

<sup>106</sup> Mr Oliver Bladdek, Deputy Chief Executive Officer, Strategy Development and Chief Risk Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 8.

<sup>107</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000031, 13 February 2020 (received 2 April 2020). The NDIA stated that it is monitoring the market as it grows, and will engage with participants and providers about introducing the separation requirement. It is expected that this will involve consultation with the SDA Reference Group, which includes a range of small and large providers, as well as participants and advocacy groups.

<sup>108</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000031, 13 February 2020 (received 2 April 2020).

<sup>109</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000031, 13 February 2020 (received 2 April 2020).



concerned to hear that participants in these circumstances may not be able to change service providers without risking homelessness.

- 5.110 In addition, the committee is concerned that some organisations—particularly those which owned or operated facilities and group homes under the previous state-funded disability support framework—actively resist the separation of service delivery and tenancy functions.
- 5.111 The majority of submitters and witnesses who gave evidence in relation to this matter emphasised that separating tenancy, service delivery and support coordination is crucial to enabling choice and control for NDIS participants.
- 5.112 The NDIA has acknowledged the risks associated with a single entity having responsibility for tenancy, service delivery and support coordination, and has stated that, going forward, the separation of these functions will be a key design parameter for SIL and SDA. It has also stated that there are robust policies in place to manage potential conflicts of interest, and to ensure that participants may raise concerns about the provision of SIL or SDA without compromising the delivery of other supports.
- 5.113 In light of the evidence received during the inquiry, the committee considers that the NDIA should progress work to separate tenancy, service delivery and support coordination as a matter of urgency. Noting that not all participants with SIL require SDA funding, the committee also considers that the NDIA should expand this work to include the separation of tenancy, service delivery and support coordination functions for *all* participants with SIL, irrespective of whether they access SDA. This would be broadly consistent with the Tune Review, which stated that the delivery of supports to participants should be separate from tenancy management.<sup>110</sup>
- 5.114 The committee acknowledges that it may be difficult to insist that SIL and SDA be delivered by separate *entities* at the present time without affecting the availability of supply. Nevertheless, the committee considers that service delivery should be separated from tenancy management so far as possible. Until it is possible to require separate entities to deliver supports and accommodation, a requirement might be introduced for providers to have separate areas responsible for accommodation and service delivery.
- 5.115 The committee notes that some providers have developed resources to assist providers to separate housing and support functions and to understand the positive impacts of separating these functions—in terms of choice and control

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<sup>110</sup> Mr David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, pp. 107–108.

for people with disability.<sup>111</sup> The committee considers that these resources are useful guidance for providers, and may serve as a foundation for NDIA policy.

5.116 Noting concerns that some providers are actively resisting the separation of service delivery and tenancy management, the committee is strongly of the view that the NDIS Quality and Safeguards Commission must take an active role in enforcing separation of these functions. The committee notes the NDIA's advice that it is working with the Quality and Safeguards Commission on initiatives to separate support and tenancy functions.<sup>112</sup>

5.117 Finally, committee considers that the NDIA, working with the NDIS Quality and Safeguards Commission, should develop and implement a mechanism to ensure that participants with SIL are able to change service providers without compromising housing security. The committee considers that there should be additional independent support made available to assist with this process.

#### **Recommendation 24**

**5.118 The committee recommends that the National Disability Insurance Agency implement a mechanism to separate service delivery, tenancy management and support coordination for participants in Supported Independent Living settings.**

#### **Recommendation 25**

**5.119 The committee recommends that the National Disability Insurance Agency, with the National Disability Insurance Scheme Quality and Safeguards Commission, implement a mechanism to ensure participants accessing Supported Independent Living are able to change providers without compromising housing security or suffering other adverse consequences.**

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<sup>111</sup> See, for example, Summer Foundation, *Separating Housing and Support Services Toolkit*, <https://www.summerfoundation.org.au/resources/separating-housing-and-support-services-toolkit/> (accessed 2 March 2020).

<sup>112</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000031, 13 February 2020 (received 2 April 2020).

# Chapter 6

## Vacancy management

- 6.1 This chapter examines issues associated with the management of vacancies in residences where supported independent living (SIL) is delivered, and makes recommendations to improve the vacancy management process.
- 6.2 Key issues considered in this chapter include:
- awareness of vacancies in SIL residences
  - matching prospective tenants to vacancies in SIL homes;
  - funding for vacancies in SIL homes; and
  - co-dependency between SIL and Specialist Disability Accommodation (SDA).

### **Awareness of vacancies and tenancy matching**

- 6.3 A number of submitters to the inquiry indicated that participants often have difficulty locating SIL and SDA vacancies, and providers lack a comprehensive mechanism to share vacancy information with the disability sector. Submitters also noted difficulties in matching prospective tenants to vacancies. These are exacerbated where a participant has not previously lived in a SIL setting.
- 6.4 Submitters further noted that although there are mechanisms in place to assist in vacancy management, these are generally developed by providers and may not be known to participants. Submitters suggested a central vacancy register as a means of addressing some of these concerns.
- 6.5 DARE Disability Support (DARE) summarised some key issues as follows:
- [There is] no process of matching participants to vacancies, nor [a] method of projecting demand or encouraging new investment, particularly to non SDA eligible participants. Delays and cost are further exacerbated through the current approval process.<sup>1</sup>
- 6.6 In relation to the absence of a centralised register, Northcott observed that lack of market knowledge often means that people are making inquiries in relation to vacancies advertised on providers' websites. Often these vacancies are not suitable for the person and their specific circumstances.<sup>2</sup>
- 6.7 Sylvanvale observed that the lack of a central vacancy register may lengthen the search for accommodation and increase costs for providers (as each provider must promote its own vacancies and undertake an individualised matching process). It further asserted that vacancy management lends itself to

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<sup>1</sup> DARE Disability Support, *Submission 9*, p. 4.

<sup>2</sup> Northcott, *Submission 7*, p. 10.

the concept of a centralised register, and recommended that the NDIA look to develop a register as part of its market development activities.<sup>3</sup>

6.8 Sylvanvale also noted that where a participant has not previously lived in supported accommodation, there may be few documents available to assist with risk and needs assessments for on-boarding. Sylvanvale noted that its current practice is to offer participants a three-month trial residency. However, if the trial is unsuccessful, the process to fill the vacancy begins again for the provider, and a search for a suitable vacancy begins again for the participant.<sup>4</sup>

6.9 The NSW Trustee & Guardian observed that the NDIA is often reluctant to recommend any providers, and suggested that a more central vacancy list may help ensure efficient transition and placement for participants.<sup>5</sup>

6.10 The Housing Connection (THC) similarly supported a central vacancy register, noting that:

...[there are] some people who would benefit from a reconfiguration of their living situation but to date we have not been able to gain access to comprehensive information about vacancies and options. This is such a difficult area given compatibility needs to be a high priority, and has been poorly managed by [Ageing, Disability and Home Care] previously.<sup>6</sup>

6.11 Yooralla raised concerns that there is no visibility of demand for SIL services, noting that the ability to gauge demand would assist in filling vacancies. It noted that, prior to the NDIS, state departments held a waiting list which facilitated placement of participants in residential settings.<sup>7</sup>

6.12 The Queenslanders with Disability Network (QDN) noted that many people are unaware of how SIL vacancies are managed, and there is a general lack of awareness about market demand. QDN observed that:

[T]here are challenges for both participants and providers, including that providers are limited in their ability to understand market demand. This can result in costs to providers who hold vacancies for long periods of time, impacting upon the market in the long term. Market intervention is needed to...connect providers and participants.<sup>8</sup>

6.13 ConnectAbility Australia expressed frustration that there is no centralised process for matching participants to vacancies. ConnectAbility stated that it had been forced to rely on the NDIS' Continuity of Supports (CoS) system to

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<sup>3</sup> Sylvanvale, *Submission 6*, [p. 3].

<sup>4</sup> Sylvanvale, *Submission 6*, [p. 2].

<sup>5</sup> NSW Trustee & Guardian, *Submission 15*, p. 8.

<sup>6</sup> The Housing Connection, *Submission 33*, [p. 3].

<sup>7</sup> Yooralla, *Submission 42*, p. 6.

<sup>8</sup> Queenslanders with Disability Network, *Submission 26*, p. 11.

fill vacancies, asserting that the CoS system suffers from a number of issues. ConnectAbility observed that:

We have gone to the extreme of advertising 3 month[']s free rent and after 2 months have not had one enquiry. There is a high possibility that we will end up overstocking this sector of the market with high levels of vacancies and therefore placing a higher strain on provider's financial viability.<sup>9</sup>

*Existing vacancy management and tenancy matching services*

- 6.14 Submitters provided some examples of the services that are available to assist participants to locate vacancies, and to allow providers to fill vacancies and ensure compatibility between participants living at the relevant property.
- 6.15 Northcott noted that its online matching service 'Nest'<sup>10</sup> provides a service whereby a customer can identify suitable vacancies in a range of housing types and apply to be considered for a vacancy. According to Northcott, the service will be expanded Australia-wide, and will include different housing options.<sup>11</sup>
- 6.16 The Summer Foundation noted that 'The Housing Hub'<sup>12</sup> is used by providers in Victoria, NSW, Queensland and South Australia to list SDA and non-SDA properties available to be tenanted—with plans to expand the initiative to other jurisdictions.<sup>13</sup> It also stated that it has established a Tenancy Matching Service (TMS) to locate tenants for SDA properties across Australia. According to the Foundation, the TMS uses a tailored community engagement approach to locate tenants for SDA vacancies, and identifies their potential for SDA funding. Younger people at risk of admission to or already in residential aged care were identified as a significant user group.<sup>14</sup>
- 6.17 However, submitters noted that these services may not be widely used or understood. For example, the Samaritans Foundation observed that while the Housing Hub is a useful platform for advertising vacancies, it is not well known among participants, their families or guardians.<sup>15</sup>

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<sup>9</sup> Connectability Australia, *Submission 29*, p. 2.

<sup>10</sup> See [www.gonest.com.au](http://www.gonest.com.au). Northcott noted that the service has been entirely developed through Northcott Innovation, a subsidiary of Northcott.

<sup>11</sup> Northcott, *Submission 7*, p. 9.

<sup>12</sup> See <https://www.thehousinghub.org.au/>.

<sup>13</sup> The Summer Foundation, *Submission 30*, p. 4.

<sup>14</sup> The Summer Foundation, *Submission 30*, p. 5. The Foundation noted that the TMS has worked with seven different SDA providers across Australia and has supported 103 people to receive an offer for tenancy.

<sup>15</sup> Samaritans Foundation, *Submission 4*, p. 4.

*Vacancy management may not be sufficiently person-centred*

- 6.18 Some submitters expressed concern that vacancy management processes may not give sufficient concern to the wishes and needs of people with disability, but are instead designed to ensure providers can fill vacancies as quickly as possible and avoid funding shortfalls.
- 6.19 For example, Queensland Advocacy Incorporated (QAI) observed that SIL has become part of a de facto 'permit system' for group homes, in which dwellings and their operators become the focus instead of people with disability. In this regard, QAI argued that:
- In a person-centred approach, services would not 'vacancy manage' group homes to maximise returns by advertising upcoming spaces and potential occupants, but the Summer Foundation's 'Housing Hub', for example, offers a tenancy matching service for specialist disability accommodation providers, so that they can match 'the most appropriate tenants for your development'. They offer to shortlist [...] relevant candidates for your vacancy and provide you with a report with detailed assessment of all identified candidates.<sup>16</sup>
- 6.20 QAI also indicated that, under some existing vacancy management processes, documents describing participants by age, gender, support needs, interests and location may be shared between providers as a form of vacancy register. QAI expressed concern that this may allow participants to be identified.<sup>17</sup>
- 6.21 Representatives from the Queensland Department of Communities raised similar concerns during the committee's public hearing in Brisbane. The department stated that current SIL vacancy management processes are focused on the need to fill vacancies rather than individual preferences, which is inconsistent with the principles of choice and control.<sup>18</sup>

*NDIA position*

- 6.22 The NDIA stated that there are a number of websites that allow providers to advertise vacancies in SDA properties, and permit those seeking SDA to upload information. The NDIA suggested that a similar approach could be explored for SIL.<sup>19</sup> It also stated that Support Coordinators will assist participants to identify vacancies in SIL settings.<sup>20</sup>

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<sup>16</sup> Queensland Advocacy Incorporated, *Submission 8*, [p. 9].

<sup>17</sup> Queensland Advocacy Incorporated, *Submission 8*, [p. 15].

<sup>18</sup> Mr Max Wise, Assistant Director-General, Department of Communities, Disability Services and Seniors, Queensland, *Proof Committee Hansard*, 8 October 2019, p. 54.

<sup>19</sup> National Disability Insurance Agency, *Submission 11*, p. 6.

<sup>20</sup> National Disability Insurance Agency, response to written question on notice SQ20-000023, 13 February 2020 (received 2 April 2020).

6.23 The NDIA further noted that participants who have been identified as young people in residential aged care are assisted by the NDIA to identify vacancies which match their support needs.<sup>21</sup>

#### *Committee view*

6.24 The committee heard that NDIS participants often have difficulty locating suitable vacancies in SIL and SDA settings, and support providers may lack a suitable mechanism to share vacancy information with the disability sector. The committee also heard that while there are some mechanisms in place to assist with vacancy management, these are typically developed by providers and may not provide sufficient information to ensure that participants can identify suitable vacancies within their area.

6.25 Submitters suggested a central vacancy register as a means of addressing these concerns. The committee supports this proposal, and recommends that the NDIA take steps to develop and implement a register as soon as possible. It would be beneficial for the NDIA to consult with providers who have developed their own register and can share ideas and lessons learned.

6.26 The committee also emphasises that the vacancy register should be designed with a focus on the needs of participants. Care should be taken to ensure that the register is not designed only to allow providers to fill vacancies as quickly as possible to avoid funding shortfalls. The committee is mindful of ensuring that participants are matched only to suitable vacancies, and of the need to maximise choice and control for participants.<sup>22</sup> Noting that the register could contain personal information about people with disability, the committee emphasises the need for robust privacy safeguards—to ensure that personal information is not improperly used or disclosed.

6.27 The committee also sees merit in the NDIA establishing a centralised vacancy management team. Such a team may assist in administering a register, provide advice on the best fit for a vacancy, and advocate for people with disability who have the most pressing need for accommodation.

#### **Recommendation 26**

**6.28 The committee recommends that the National Disability Insurance Agency develop a central register for participants seeking to identify vacancies for Supported Independent Living and Specialist Disability Accommodation.**

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<sup>21</sup> National Disability Insurance Agency, response to written question on notice SQ20-000023, 13 February 2020 (received 2 April 2020).

<sup>22</sup> Ideally, a register should reduce the timeframe for filling vacancies in SIL residences. However, the committee emphasises that the register should be *designed* around ensuring that participants are matched only to suitable vacancies.

## Recommendation 27

**6.29 The committee recommends that the National Disability Insurance Agency establish a specialist team dedicated to vacancy management.**

### Co-dependencies between SIL and SDA

6.30 As outlined in Chapter 3, around 63 per cent of participants with SIL also access SDA, while 99 per cent of those who access SDA also access SIL. Particularly for participants with higher or more complex support needs, there is an unavoidable nexus between SIL and SDA.<sup>23</sup>

6.31 A number of submitters raised issues concerning co-dependencies between SIL and SDA. These are outlined below.

### *Funding delays*

6.32 A key issue for a number of submitters was the delay in accessing funding and supports where a participant requires both SIL and SDA. Submitters observed that obtaining SDA adds time and complexity to an already onerous approval process for access to SIL. National Disability Services (NDS), for example, noted that if SIL is to be provided in an SDA property:

The prospective new resident will need to be approved for SDA; if not yet approved, they will need to request a plan review to seek approval. Once [the] participant is SDA-approved, they will need to be assessed to determine the level of SDA they are eligible for. The delays in this assessment are lengthy. If the participant is assessed at a suitable level of SDA, the SIL provider will then need to develop a quote for their SIL supports, gathering evidence for the quote. The approval of the quote can then take months.<sup>24</sup>

6.33 NDS observed that it may take many months—or over a year—to fill a SIL vacancy in an SDA property, particularly if the participant is new to SIL and/or SDA. NDS emphasised that streamlining the SIL and SDA approval process is urgently needed in order to reduce vacancy periods.<sup>25</sup>

6.34 The Cram Foundation (Cram) similarly observed that delays in SDA approvals are a major concern for providers seeking to fill a vacancy in a SIL house. It provided an example to illustrate this issue, which also touches on the issue of transitioning people with disability from aged care to independent living:

Cram proactively manages a wait list of participants living in aged care services seeking to transition to a SIL vacancy. When a recent vacancy came available following the death of a participant, the transition for the [new] participant was significantly held up by delays in SIL quoting and approval and importantly in the dependency of approval of SDA.

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<sup>23</sup> As outlined elsewhere in this report, the SIL quoting process also requires a participant to identify a residence where SIL supports are provided. In some cases, this will be an SDA home.

<sup>24</sup> National Disability Services, *Submission 18*, [p. 3].

<sup>25</sup> National Disability Services, *Submission 18*, [p. 3].



Whilst Cram expedited arrangements to fill the vacancy immediately, and the participant had been deemed eligible for SIL, Cram experienced months of delay for the SIL quote to be approved and SDA approval which is a mandatory requirement for the participant to take the vacancy.

In all aspects, the participant in aged care was prevented from taking up the vacant room, [with] the SIL provider financially penalised by the SDA provider for not filling the vacancy within required timeframes.

- 6.35 Cram also noted that contractual arrangements between SIL providers, SDA providers and government housing services may result in SIL providers bearing a financial penalty where a vacancy in an SDA home is not filled. It recommended that all such contracts be reviewed to ensure that providers are not penalised for delays which may be beyond their control.<sup>26</sup>
- 6.36 Summer Housing stated that the SIL approval process is often undertaken *after* a participant is funded for SDA, noting that it has had dwellings standing vacant for two to three months, with participants who had been approved for SDA unable to move in while awaiting determination of a SIL application.<sup>27</sup>
- 6.37 Summer Housing stated that while processes to assess a participant's eligibility for SDA are often based on the provision of on-site SIL supports, a participant may theoretically be denied SIL funding after they have been approved for SDA.<sup>28</sup> Representatives of Summer Housing elaborated on this matter at the committee's public hearing in Melbourne:

At the conclusion of the [SDA] process, even though you've been assessed ...as having very high support needs and funded for accommodation that assumes SIL—because it will assume that you have onsite overnight assistance—you're required to re-prosecute your case to...get SIL funding. There's no implicit guarantee; there's no fast track. You go through exactly the same process again, arguing for a different support. But at the end of the day, it's fundamentally the same elements of your disability that are generating the entitlement.<sup>29</sup>

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<sup>26</sup> The Cram Foundation, *Submission 2*, [p. 3].

<sup>27</sup> Summer Housing, *Submission 23*, [p. 5]. Summer Housing indicated that this is a 'fundamentally unsupportable outcome', as it leaves high quality, purpose-built housing unable to be occupied by younger people in, or at risk of entering, residential aged care (RAC) despite having been assessed as eligible for SDA. See also Summer Foundation, *Submission 30*, p. 2. The Summer Foundation similarly noted that delays in SIL and SDA are leading young people to enter or remain in RAC or other inappropriate housing.

<sup>28</sup> Summer Housing, *Submission 23*, [p. 5]. Summer Housing has noted that, in practice, it has not heard of any participants with SDA being denied SIL funding. However, it emphasised that this lends support to the conclusion that a person with SDA should automatically receive SIL funding. See Mr Daniel McLennan, Chief Executive Officer, Summer Housing, *Proof Committee Hansard*, 7 November 2019, p. 22.

<sup>29</sup> Mr Daniel McLennan, Chief Executive Officer, Summer Housing, *Proof Committee Hansard*, 7 November 2019, p. 21.

6.38 Summer Housing recommended that, where a participant is funded for SDA with on-site overnight assistance, a presumption of SIL funding should apply. It also recommended streamlining quote preparation and assessment processes for this cohort of participants.<sup>30</sup>

6.39 Sylvanvale noted that the SIL approval process can be 'stalled or de-railed' by delays in SDA funding:

An application for SDA can take up to 18 months with many assessors not understanding the rules around SDA, with providers keeping the terms of the Bilateral to hand. SDA is portable so participants can take it with them if they move property, but Agency planners can also remove it which puts the tenancy at risk with a knock on risk of homelessness.<sup>31</sup>

6.40 Submitters noted that co-dependencies between SIL and SDA, and delays in SDA approval, are of particular concern to participants with complex needs.<sup>32</sup> For example, Prader-Willi Syndrome (PWS) Australia stated that:

[PWS Australia]...would like the committee to note that it has members whose participants are in dire need of SDA and SIL. They have been waiting for years whilst family circumstances deteriorate. This is an unacceptable situation.<sup>33</sup>

6.41 The Housing Connection stated that the convoluted process for access to SDA may exclude certain cohorts (for example, participants with intellectual disability). It asserted that SDA needs urgent clarification around eligibility to ensure people with disability have access to sufficient housing solutions.<sup>34</sup>

6.42 These concerns were echoed by representatives of the Tasmanian Office of the Public Guardian (Tas OPG) during the committee's public hearing in Hobart:

With regard to access to [SDA], the NDIS's processes for assessment of eligibility and funding seem excessively longwinded and complex, and the availability of SDA stock is very low. Prospects of new builds seem simply too hard. A lack of access to suitable housing can place a person with a disability, particularly those with complex and challenging needs, at all sorts of risks of homelessness, unwarranted detention in mental health facilities, prolonged hospitalisation, as I mentioned before, without any medical justification, involvement in the criminal justice system—really, myriad associated risks and adverse outcomes.<sup>35</sup>

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<sup>30</sup> Summer Housing, *Submission 23*, [p. 5].

<sup>31</sup> Sylvanvale, *Submission 6*, [p. 2].

<sup>32</sup> It is emphasised that this cohort of participants is statistically more likely to require SIL and SDA in their plans.

<sup>33</sup> Prader-Willi Syndrome Australia, *Submission 10*, p. 3.

<sup>34</sup> The Housing Connection, *Submission 33*, [p. 3].

<sup>35</sup> Ms Kim Barker, Public Guardian, Office of the Public Guardian, Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 27.

### *SDA eligibility and housing availability*

6.43 Some submitters to the inquiry noted that accessing SDA is difficult due to the high eligibility threshold. Submitters also asserted that the framework for SDA may limit housing availability for those who do not meet the eligibility criteria.

6.44 For example, DARE observed that while SDA was intended to *expand* the availability of disability accommodation, it is currently restricted to six per cent of NDIS participants. DARE raised concerns that SDA funding is 'skewing new accommodation away' from the remaining 94 per cent of participants in the Scheme, stating that:

DARE has been approached by...developers and housing providers who require as a condition of occupation that DARE subsidize them for...SDA irrespective of the participant's eligibility. Clearly creating a super profit for them, a loss for DARE and restricting access to participants.<sup>36</sup>

6.45 DARE asserted that limits on SDA funding, combined with rental cap charges, will result in NDIS participants who are ineligible for SDA being concentrated in cheaper areas that are not in proximity to family or transport.<sup>37</sup>

6.46 Northcott similarly noted that while the housing market is expanding, there is a concentration of current developments in SDA, driven by incentives for developers in SDA funding. Northcott asserted that SDA is not the solution for most people entering the market, given that the NDIA has stated that SDA will be restricted to 6 per cent of NDIS participants.<sup>38</sup>

### *Alternative accommodation for participants with complex needs*

6.47 The NSW Trustee & Guardian observed that, during consultations between the (former) NSW Department of Justice<sup>39</sup> and the NDIA, it was noted that SDA is not the preferred option for housing, and the NDIA want planners to explore alternative housing in the first instance.

6.48 The NSW Trustee & Guardian expressed concern that many of its clients may not be able to explore alternative housing options due to time constraints (for example, if they are exiting the justice system or being discharged from hospital) or due to the complexity of their support needs.<sup>40</sup>

### *Committee view*

6.49 The committee has heard that approval processes for participants needing both SIL and SDA is long and complex. In particular, the committee is concerned

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<sup>36</sup> DARE Disability Support, *Submission 9*, p. 10.

<sup>37</sup> DARE Disability Support, *Submission 9*, p. 10.

<sup>38</sup> Northcott, *Submission 7*, p. 9. Northcott noted that it is developing new housing options including SIL-only houses created using houses in the private rental market.

<sup>39</sup> Now the Department of Communities and Justice (DCJ).

<sup>40</sup> NSW Trustee & Guardian, *Submission 15*, p. 9.

that—after an onerous approval process to access SDA—a participant may be obliged to 're-prosecute' their case to access SIL, notwithstanding that SDA has been approved on the basis that the participant requires on-site SIL supports. The committee notes in this regard that it is often the same disability and associated support needs that generate the entitlement to both SIL and SDA.

- 6.50 The committee is also concerned that unnecessarily lengthy approval processes may limit participants' access to housing, and may place people with disability at risk of homelessness. The current access framework for SDA and SIL may also lead to prolonged periods of hospitalisation or unwarranted detention in mental health facilities—all due to the length of time taken to have SDA and SIL supports approved and to move into suitable accommodation. There may be similar risks for younger participants in residential aged care.
- 6.51 In light of these matters, the NDIA should implement mechanisms to streamline approval processes for participants seeking to access both SIL and SDA as a matter of urgency.<sup>41</sup> In addition, the committee considers that it would be appropriate to automatically approve SIL funding in cases where a participant is approved for SDA on the basis that they require SIL supports. This should be on the condition that the participant and/or their plan nominee is able to review the SIL quote and approve it.

### **Recommendation 28**

- 6.52 The committee recommends that the National Disability Insurance Agency develop and implement processes to streamline the approval process for participants who need funding for both Supported Independent Living and Specialist Disability Accommodation.**

### **Recommendation 29**

- 6.53 The committee recommends that, if a participant is approved for Specialist Disability Accommodation involving on-site overnight assistance, funding for Supported Independent Living (SIL) be automatically approved, on the condition that the participant and/or their plan nominee is able to review the SIL quote and approve it.**

### **Vacancies and funding gaps**

- 6.54 A number of submitters noted that where funding for SIL is shared between multiple participants in a group living arrangement, a participant leaving a SIL home will result in the available funding for SIL supports being reduced by a fraction corresponding to the total number of residents.<sup>42</sup> Since funding is not

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<sup>41</sup> The committee also considers that there is a need to streamline approval processes for both SIL and SDA for participants with complex support needs.

<sup>42</sup> For example, if a SIL home has four residents with SIL funding in their plans, a resident leaving the home will result in the available funding for SIL supports being reduced by 25 per cent.

available to cover vacancies, a participant leaving a SIL home may result in a substantial reduction in funding for SIL supports for the remaining residents. This is notwithstanding that the circumstances in which a participant leaves a SIL home may be beyond the control of the SIL provider.

- 6.55 Providers may come under very substantial financial pressure to fill vacancies as quickly as possible, to avoid the difficult choice between ending SIL for the remaining participants and continuing to provide supports at a loss. For example, DARE observed that:

At one...residence following the passing of a resident and given the complex nature and behaviours of the remaining two residents, DARE has maintained a vacancy at its expense for over 14 months; this has resulted in a loss of in excess of \$100k...the alternative being to close the house and make the remaining residents homeless. Effectively DARE is providing almost the same level of support for two thirds of the previous income.<sup>43</sup>

- 6.56 At the committee's public hearing in Sydney, the CEO of DARE noted that:

The cost of vacancies to a SIL provider are a major issue given the shared nature of the funding model. Unfortunately, a vacancy is not filled just by adding water and requires identifying, matching and navigation of the NDIS system. It is DARE's belief that SIL funding should reflect the actual support required and be modified accordingly in the event of a vacancy.<sup>44</sup>

- 6.57 Cram noted that staff in SIL homes are also impacted by reduced hours and roster changes while waiting for a vacancy to be filled. In turn, this impacts on the provider's brand as an employer and its workforce sustainability in an already competitive employment environment.<sup>45</sup>

- 6.58 NDS noted that vacancies in congregate living arrangements often result in less funding being available for shared supports. NDS observed that this will mean less support for the remaining participants in the home, unless the provider is prepared to bear the costs of delivering shared supports at the pre-existing level.<sup>46</sup> This issue is compounded by the fact that many costs associated with providing SIL are fixed; providers cannot simply adjust their service model to accommodate funding shortfalls.<sup>47</sup>

- 6.59 Sylvanvale similarly noted that there is no funding for vacancies in SIL plans. In Sylvanvale's view, the NDIA considers that where a participant leaves a SIL arrangement involving shared supports, the provider needs to alter their

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<sup>43</sup> DARE Disability Support, *Submission 9*, p. 7.

<sup>44</sup> Mr Andrew Daly, Chief Executive Officer, DARE Disability Support, *Proof Committee Hansard*, 9 October 2019, p. 28.

<sup>45</sup> The Cram Foundation, *Submission 2*, [p. 3].

<sup>46</sup> National Disability Services, *Submission 18*, [p. 3].

<sup>47</sup> National Disability Services, *Submission 18*, [p. 3]. This is reflected in the NDIA's submission. See National Disability Insurance Agency, *Submission 11*, p. 6.

business model to accommodate the funding shortfall. Sylvanvale asserted that this is absurd in a situation where there are fixed costs and ratios of support.<sup>48</sup>

- 6.60 People with Disability WA (PwDWA) observed that the NDIS has a policy that vacancy management is the provider's responsibility, and is not be funded by the NDIS.<sup>49</sup> PwDWA expressed concern that this creates a perverse incentive for providers to keep people in shared accommodation wherever possible to avoid funding shortfalls.<sup>50</sup>
- 6.61 Uniting Vic. Tas (UVT) observed that it is not funded for vacancies despite the circumstances of a vacancy being outside its control. UVT noted that vacancies may occur or persist due to delays in SDA approval, the need to ensure a suitable mix of participants, or the death of a participant.<sup>51</sup> UVT recommended that interim funding be made available for vacancy management, to ensure providers are not required to absorb the costs of vacancies.<sup>52</sup>

#### *Sudden and unplanned vacancies*

- 6.62 Funding shortfalls were a particular concern with respect to unplanned or sudden vacancies (for example, where a participant passes away or needs to be moved to short-stay emergency accommodation such as hospital care).
- 6.63 For example, Cram raised concerns that if a participant in a SIL setting unexpectedly passes away, funding for that participant ceases with immediate effect. In this respect, Cram observed that:
- The provider is still responsible for ethically managing the requirements of the...family, paperwork and...belongings, reallocating rostering as per the [Social, Community, Home Care and Disability Services] award which requires at a minimum of 1 week consultation and then time to roll out.<sup>53</sup>
- 6.64 Cram recommended that interim funding be made available in SIL plans, which can be accessed in the event that the participant passes away. This is to ensure that providers can manage requirements associated with sudden vacancies without incurring financial hardship.<sup>54</sup>
- 6.65 Identitywa similarly noted that where a participant in a congregate living arrangement passes away, it would be beneficial and respectful to all involved if funding were extended to allow participants to grieve. It also recommended

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<sup>48</sup> Sylvanvale, *Submission 6*, [p. 3].

<sup>49</sup> People with Disabilities WA, *Submission 32*, p. 19.

<sup>50</sup> People with Disabilities WA, *Submission 32*, pp. 19–20.

<sup>51</sup> Uniting Vic. Tas, *Submission 16*, p. 3.

<sup>52</sup> Uniting Vic. Tas, *Submission 16*, p. 3.

<sup>53</sup> The Cram Foundation, *Submission 2*, [p. 2].

<sup>54</sup> The Cram Foundation, *Submission 2*, [p. 2].

that there be a mechanism to allow rosters of care to be adjusted without disadvantaging the remaining residents in the SIL home.<sup>55</sup>

6.66 Cara Inc (Cara) raised similar concerns regarding participants' passing away in congregate settings. Cara observed that, in these circumstances, there is often no acknowledgement of the work with the family to deal with personal assets and no time for the provider to fill the vacancy.<sup>56</sup> Cara recommended all SIL funding be increased by a percentage reflecting vacancy rates in the sector.<sup>57</sup>

6.67 Paragon Support Limited (Paragon) similarly asserted that in circumstances of a participant's sudden death or hospitalisation, funding should continue for at least one month.<sup>58</sup> Paragon also emphasised that:

[R]esidences need to be treated as a home and not just a business. The question needs to be asked, "How would we cope if a family member dies but immediately we need to look for a...person to fill the vacant room?"<sup>59</sup>

6.68 Submitters also emphasised that funding shortfalls resulting from a participant leaving a SIL setting may have a substantial impact on remaining participants in shared accommodation. NDS argued that:

Participants should not be disadvantaged by a vacancy; it is not their responsibility to fill it. The NDIA should 'top up' the SIL funding for remaining participants...to prevent this from happening. A participant may also need temporary accommodation for months while a...permanent arrangement is put in place. Options for this need to be available.<sup>60</sup>

#### *NDIA position*

6.69 The NDIA's has stated that vacancy management is the responsibility of the providers, emphasising that the agency is not responsible for filling vacancies on providers' behalf.<sup>61</sup> It recommended that service agreements between participants and providers include notice periods for ending SIL supports and placements, and that these agreements should include processes to fill planned vacancies if and when they arise.

6.70 The NDIA acknowledged that this may not be possible in the event of a participant's death, and stated that—as part of a program of work on SIL

<sup>55</sup> Identitywa, *Submission 22*, p. 4.

<sup>56</sup> Cara Inc, *Submission 14*, [p. 5]. Cara emphasised that this differs from the situation where a participant *chooses* to terminate a service agreement and provides the required notice (enabling the provider to begin the vacancy management process).

<sup>57</sup> Cara Inc, *Submission 14*, [p. 5].

<sup>58</sup> Paragon Support Limited, *Submission 13*, p. 3. Paragon emphasised that funding should be *reviewed* at the end of one month, but should not be automatically cut off.

<sup>59</sup> Paragon Support Limited, *Submission 13*, p. 3.

<sup>60</sup> National Disability Services, *Submission 18*, [p. 4].

<sup>61</sup> National Disability Insurance Agency, *Submission 11*, p. 6.

policy—it is developing a position to ensure that providers are not negatively impacted in the event of a participant's death.<sup>62</sup>

- 6.71 The NDIA also acknowledged that vacancies are a challenge for providers, and that getting the right match in shared accommodation takes time. However, it also stated that it does not fund SIL vacancies.<sup>63</sup>

*Committee view*

- 6.72 The committee has heard from several submitters that, where SIL supports are shared between participants in a group living arrangement, one participant leaving the home results in a reduction in funding for the remaining residents. This is a particular issue where a participant passes away in a SIL setting or is hospitalised. The committee is concerned that—since funding is not available to cover SIL vacancies—a provider may be obliged to bear the reduction in funding, or reduce the level of support provided, until the vacancy is filled.
- 6.73 The committee has also heard that reductions in funding may force providers to fill vacancies as quickly as possible—without giving sufficient consideration to the wants and needs of residents in the SIL home. The committee heard that a failure to ensure compatibility between residents may increase the risks of abuse and social isolation, and undermines the principles of choice and control that underpin the NDIS.
- 6.74 A number of submitters and witnesses suggested that interim funding be made available to cover vacancies in SIL homes, to ensure that providers can continue to deliver supports without financial hardship and are not pressured to fill vacancies without first ensuring compatibility between residents. The committee broadly agrees with this proposal, and notes that funding for SDA may be extended for up to 90 days in some circumstances to cover vacancies.<sup>64</sup>
- 6.75 However, the committee is mindful of ensuring that any additional funding does not create perverse incentives for providers to maintain vacancies in SIL homes, or to claim payment for supports that are not delivered at a level which is not commensurate with levels of SIL funding. The committee also considers that the Commonwealth should not be exposed to undue financial risk.
- 6.76 The committee therefore considers that, where a participant exits a SIL setting, funding for the participant should continue at a 50 per cent rate for a period of one month or until the vacancy is filled (whichever is shorter). A review should be conducted at the end of the month to determine whether it is appropriate to further extend the funding. The review may consider matters

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<sup>62</sup> National Disability Insurance Agency, *Submission 11*, p. 6.

<sup>63</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000032, 13 February 2020 (received 2 April 2020).

<sup>64</sup> See National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016, rules 6.3 and 6.4.



such as whether the provider has made reasonable efforts to fill the vacancy, and whether more time is needed to ensure compatibility between residents.

**Recommendation 30**

**6.77 The committee recommends that, if a participant exits a Supported Independent Living arrangement, funding for that participant continues at a 50 per cent rate for a period of one month or until the vacancy is filled—whichever is sooner. At the end of that month, a review should be conducted to determine whether additional funding is required.**



# Chapter 7

## Funding for SIL

- 7.1 This chapter examines issues associated with funding for Supported Independent Living (SIL), and makes recommendations to improve SIL funding for participants and providers.
- 7.2 Key issues considered in this chapter include:
- funding shortfalls in SIL settings;
  - funding and supports for participants with complex needs;
  - claiming above benchmarks set in the National Disability Insurance Scheme (NDIS) Price Guide;
  - staffing in SIL settings;
  - flexibility in SIL funding; and
  - issues associated with NDIS planning.

### **Funding shortfalls in SIL settings**

- 7.3 Some submitters asserted that funding for SIL may be insufficient to cover the costs of service delivery. Submitters noted that this may negatively impact innovation in the sector, as well the achievement of participant outcomes.
- 7.4 Community Mental Health Australia (CHMA) noted that SIL costs are often greater than what is funded in plans. CMHA asserted that what is needed is a better understanding of participants' irregular support needs; additional funding to induct and train skilled staff; better rostering to support individual requirements; more resources such as vehicles; and improvements in the planning process and the timing of payments.<sup>1</sup>
- 7.5 The Cram Foundation (Cram) observed that while providers aim for efficiency and cost effectiveness in the delivery of supports, the costs of service delivery often exceed available funding. This was of particular concern with respect to the additional costs associated with claiming, plan reviews and re quoting.<sup>2</sup>
- 7.6 The Tasmanian Government stated that, while recent amendments to the NDIS Price Guide are welcome, providers have advised that funding increases are still not covering the costs of delivering services. The Tasmanian Government stated that:

Larger providers have indicated they are absorbing some of the cost of service delivery, particularly in rural and remote areas. Providers are

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<sup>1</sup> Community Mental Health Australia, *Submission 19*, [pp. 3-4].

<sup>2</sup> The Cram Foundation, *Submission 2*, [p. 3].

considering how this unsustainable situation will affect their capacity to deliver future services.<sup>3</sup>

- 7.7 The Tasmanian Government also noted that providers have expressed concern about providing supports to participants with complex needs. It observed that, depending on the participant's circumstances, delivering complex supports can be difficult and costly.<sup>4</sup>

### **Funding and supports for participants with complex needs**

- 7.8 A number of submitters observed that SIL funding often fails to take account of the additional costs associated with supporting participants with higher or more complex needs.

- 7.9 For example, Scope (Aust) Ltd (Scope) noted that there are a variety of issues that may add to the complexity and intensity of a participant's support needs, which are not considered 'cost drivers' by the NDIA.<sup>5</sup> Scope recommended the NDIA give further consideration to costs associated with complex support needs, noting that these costs may include:<sup>6</sup>

- additional hours of support and higher support ratios;
- employing staff with the skills needed to support people with challenging behaviours;
- facilities and transport required to support people with complex needs in group activities; and
- providing crisis support, consistent with an organisation's duty of care.

- 7.10 Mr Ross Fear raised similar concerns, noting that under the existing SIL model, costs associated with the following matters may not be taken into account:<sup>7</sup>

- dedicated specialised transport with trained staff;
- 'overlap' transport and transport in peak hour traffic;
- staff pre-shift formal training;
- staff induction buddy shifts;
- team leader allowance;
- on-call allowance;

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<sup>3</sup> Tasmanian Government, *Submission 41*, p. 5.

<sup>4</sup> Tasmanian Government, *Submission 41*, p. 5. As an example of the additional costs associated with delivering supports to participants with complex support needs, the Tasmanian Government noted additional reporting requirements under the NDIS Quality and Safeguards Framework.

<sup>5</sup> Scope (Aust) Ltd, *Submission 17*, p. 8. Scope noted that these include age; co-existing mental illness; clients at home during the day, clients who require two people for morning/evening preparations; clients requiring a two-person lift; clients who require meal time assistance other than Home Enteral Nutrition (HEN); alternative communication systems; and legal orders.

<sup>6</sup> Scope (Aust) Ltd, *Submission 17*, p. 8.

<sup>7</sup> Ross Fear, *Submission 24*, [pp. 3–5]. Mr Fear indicated that these matters were captured by the state-funded disability support model that existed prior to NDIS rollout.

- responsive on-call staff for emergency and incident management;
  - team meetings;
  - 'no gaps' funding;
  - regular (daily or weekly) specialist staff support;
  - data collection and collation;
  - high needs and medication management staff training;
  - complex behaviour support staff training;
  - complex multiple disability high dependency staff training; and
  - property reports after damage by participants with behavioural disorders.
- 7.11 The Housing Connection (THC) similarly observed that SIL funding does not capture the additional costs of supporting a participant with complex needs. It provided the following example to illustrate this concern:
- For [the participant] and his home, there is a minimum of eight double-up buddy shifts (or 60 hours) for a new staff member to ensure a minimum level of understanding of the participant's needs, how the household runs, ...routines and...behaviour support training. The cost of this is not covered in the SIL quote. Nor is the level of oversight and service coordination to ensure safety, supervision, staff support and service coordination.<sup>8</sup>
- 7.12 The NSW Trustee & Guardian considered that behaviour support may not be adequately captured by SIL funding. The NSW Trustee & Guardian stated that the 'full process' for behaviour support includes developing and implementing behaviour support plans; training staff, and the resources to carry out monitoring, review and 1:1 counselling for the participant.<sup>9</sup>
- 7.13 The Samaritans Foundation (the Foundation) noted that while SIL funding is generally sufficient for participants with lower to moderate support needs, the current funding model fails to consider the cost implications of complex support needs for service providers. The Foundation noted that while work health and safety legislation may require two staff to lift a participant from bed, SIL funding may only cover one support worker.<sup>10</sup>
- 7.14 Some submitters also observed that the supports needs of participants with complex disability may change over time, and indicated that the NDIA should ensure that funding profiles are regularly reviewed to allow for changing needs to be captured. For example, Prader-Willi Syndrome (PWS) Australia noted that while funding for adults with PWS has been adequate, funding for high school students with PWS has been insufficient due to the increasing complexity of their support needs at this life stage.<sup>11</sup>

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<sup>8</sup> The Housing Connection, *Submission 33*, [p. 2].

<sup>9</sup> NSW Trustee & Guardian, *Submission 15*, p. 9

<sup>10</sup> Samaritans Foundation, *Submission 4*, p. 5.

<sup>11</sup> Prader-Willi Syndrome Australia, *Submission 10*, p. 3.

*Availability of services and supports*

7.15 A number of submitters to the inquiry noted that finding and accessing SIL supports and accommodation is also particularly challenging for participants with high or complex support needs.

7.16 For example, the ACT Disability Aged and Carer Advocacy Service (ADACAS) observed that it can be extremely difficult for people with complex disability to find SIL providers, even if SIL funding has been deemed appropriate.<sup>12</sup> ADACAS stated that this issue is of particular concern for people seeking to leave hospital or other short-term accommodation, and provided the following example:

[The participant] is a teenager living with disability who also has very complex medical needs, where ongoing monitoring is required...She is living in the hospital, and has been doing so for three years. Hospital is a very dangerous place for her to be living in an ongoing way, due to the risk of infection...

[The participant's] advocate approached almost thirty SIL providers who had vacancies (sometimes in houses that had the features she needed). The greater majority declined, explaining that they were not able to assist someone with such a high level of needs. Whilst it is responsible for providers to indicate when something is beyond their skill level, it has highlighted for us the dearth of providers who are willing to work with clients where nursing-level clinical care is provided.<sup>13</sup>

7.17 ACADAS noted that although the participant in the example ultimately found a suitable residence and SIL provider, others in similar situations have passed away before an appropriate housing solution could be found.<sup>14</sup>

7.18 Similar concerns were raised by Mr Brian Stanton, the father of a participant, who expressed frustration at being unable to find a SIL provider that could cater to his son's complex support needs, with copies of emails from SIL providers used to illustrate his concerns.<sup>15</sup>

7.19 Every Australian Counts (EAC) noted that many of the complaints it receives about SIL relate to the inability of providers and the NDIA to respond effectively to participants with complex needs, noting that:

Many suggested that the 'let the market rip' approach of both government and the NDIA failed to ensure there were enough providers with sufficient skilled and experienced staff to meet the needs of people with more complex disabilities or circumstances. Many families noted... how difficult

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<sup>12</sup> ADACAS, *Submission 20*, p. 7.

<sup>13</sup> ADACAS, *Submission 20*, p. 7.

<sup>14</sup> ADACAS, *Submission 20*, p. 8.

<sup>15</sup> Mr Brian Stanton, *Submission 39*, [pp. 2–4].

it was to find providers and workers with the essential experience and skills to support people in the way they needed and preferred.<sup>16</sup>

- 7.20 Queenslanders with Disability Network (QDN) also noted that while SIL may provide a greater opportunity for people with disability to move out of family homes and achieve independence, there are a number of persistent challenges for people with complex needs. One of QDN's members observed that:

[T]here seems to be a reluctance on behalf of services to take on 'complex' clients in favour of the people with lower needs. How do we make it work so that people with high and complex needs are always taken care of?<sup>17</sup>

- 7.21 Representatives of Queensland Advocacy Incorporated (QAI) echoed these concerns during the committee's public hearing in Brisbane, stating that:

Those who are often the most vulnerable and have the most complex needs are actually those who are faring worse off in many cases, because the issues we're talking about with thin markets aren't only for placements in rural, regional or remote locations but also for participants with more complex needs who can have much greater struggles to engage with appropriate service providers and support coordinators.<sup>18</sup>

#### *NDIA position*

- 7.22 The NDIA stated that, as part of the planning process, the NDIA will consider a participant's support needs and housing goals, and will take into account available community, mainstream and informal supports. This information informs the supports the participant needs to achieve their goals related to independent living. Where a participant has complex support needs, this may require additional funding to enable them to live independently in the housing option of their choice.<sup>19</sup>

#### *Committee view*

- 7.23 The committee is concerned that, under the current SIL funding model, there may not be sufficient funding to ensure that participants with high or complex needs receive the supports that they require. The committee heard that the SIL funding model does not take account of the additional costs associated with providing supports to this cohort, such as additional hours of support; specialised training; increased supervision; and 'irregular' supports.
- 7.24 The committee is also concerned that participants with high or complex needs often have difficulty accessing SIL supports and suitable accommodation.

<sup>16</sup> Every Australian Counts, *Submission 27*, p. 5.

<sup>17</sup> Queenslanders with Disability Network, *Submission 26*, pp. 6–7.

<sup>18</sup> Dr Emma Phillips, Senior Lawyer, Law Reform and Systems Advocacy, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 8 October 2019, pp. 42 – 43.

<sup>19</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000028, 13 February 2020 (received 2 April 2020).

Further, providers may be reluctant to take on participants in this cohort, due to a lack of sufficiently trained support staff and the additional costs associated with supporting participants with more complex needs (which may not be covered under the current funding model).

- 7.25 The committee therefore considers that the NDIA should conduct a thorough review of the NDIS Price Guide (and the pricing model for SIL more generally) to ensure the additional costs associated with supporting people with complex needs are captured. The committee notes that this may require increasing SIL and other funding in certain circumstances.
- 7.26 The committee considers that such a review should include a comprehensive consultation process to ensure the views of providers, participants, families and carers are taken into account.

### **Recommendation 31**

- 7.27 The committee recommends that the National Disability Insurance Agency conduct a review of the National Disability Insurance Scheme Price Guide and associated price settings to ensure that the additional costs associated with supporting participants with complex needs, including in Supported Independent Living settings, are adequately captured.**

### **Claiming above benchmarks in the NDIS Price Guide**

- 7.28 Some submitters to the inquiry expressed concern that the NDIA is reluctant to fund supports above the benchmarks set in the NDIS Price Guide.
- 7.29 ADACAS noted that where a person needs a SIL package that is above the benchmarked price, it can be 'exceptionally difficult' to achieve the required level of funding. While acknowledging that this may reflect concern within the NDIA about conflicts of interest in the quoting process,<sup>20</sup> ADACAS asserted that participants have been disadvantaged by the NDIA's reluctance to fund SIL above established benchmarks.<sup>21</sup>
- 7.30 Uniting Vic. Tas (UVT) similarly noted that there is currently no clear process for claiming above benchmarks set by the NDIA, and stated that this impacts UVT's financial stability and the viability of its SIL program.<sup>22</sup>
- 7.31 UVT also expressed concern that the NDIA may change its price structure without giving adequate warning to service providers. UVT stated that its program staff have reported that:

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<sup>20</sup> That is, because the service provider who receives funding is also responsible for submitting the SIL quote.

<sup>21</sup> ADACAS, *Submission 20*, p. 8.

<sup>22</sup> Uniting Vic. Tas, *Submission 16*, p. 3.



[M]any quotes [are] approved using Uniting's rates and then suddenly NDIA changed the rate and will not approve ...outstanding SIL quotes at the level [UVT] were quoting at. Consequently, [UVT] have had to...renegotiate rates and re-work...quotes to get them approved.<sup>23</sup>

- 7.32 EAC noted a 'considerable reluctance' on the part of the NDIA to fund additional expenses associated with living in and managing a home, and expressed concern that this leaves people without support or out of pocket. EAC was also concerned that a lack of flexibility in SIL funding limits the ability of those living in group homes to 'get out and about', directly contradicting what was intended when the NDIS was introduced.<sup>24</sup>
- 7.33 Submitters also indicated that the NDIA may be unwilling to accept a quote which does reflect the NDIS Price Guide in certain circumstances. For example, Identitywa stated that while it uses NDIA prices to determine quote amounts, it is regularly asked to adjust its quotes to consider a lesser amount that is recommended by the NDIA's SIL team.<sup>25</sup>

#### *NDIA position*

- 7.34 The NDIA stated that providers of SIL supports can use the Provider SIL Pack to help develop the SIL quote and supporting documentation. It also stated that the SIL quoting tool does not have fixed price limits, and providers can quote for the specific SIL service that they offer to each participant.
- 7.35 However, the NDIA stated that difficulty may arise when a plan is approved before the provider and the NDIA have reached agreement on the SIL quote. Most often this occurs when the quote is significantly above the NDIA's internal benchmarks set by reference to the NDIS Price Guide.<sup>26</sup>

#### *Committee view*

- 7.36 The committee is concerned that the NDIA may be unwilling to fund supports above benchmarks set out in the NDIS Price Guide. This is notwithstanding that providers often have specific knowledge as to the needs of participants to whom they provide supports. The committee also notes that the costs associated with providing SIL supports may vary between participants, and may not be adequately captured by the current NDIS pricing structure. In addition, the committee is concerned that the NDIA may be unwilling to accept quotes that do reflect the Price Guide in certain circumstances.

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<sup>23</sup> Uniting Vic. Tas, *Submission 16*, p. 3.

<sup>24</sup> Every Australian Counts, *Submission 27*, p. 5. Flexibility in SIL funding is discussed further below.

<sup>25</sup> Identitywa, *Submission 22*, p. 4.

<sup>26</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000033, 13 February 2020 (received 2 April 2020).

- 7.37 Further, the committee heard that the NDIA may change the pricing structure for the NDIS without sufficient notice to providers. This may lead to the NDIA rejecting outstanding quotes, requiring providers to re-work their quotes to meet new benchmarks.
- 7.38 In light of these matters, the committee considers that the NDIA should develop clear policy on when providers may claim funding above benchmarks set out in the NDIS Price Guide, and should develop and publish associated guidance material. The committee also considers that the NDIA should develop and implement mechanisms to ensure that providers are immediately notified of any changes to the NDIS Price Guide or associated price settings.

### **Recommendation 32**

- 7.39 The committee recommends that the National Disability Insurance Agency develop and publish clear policy and guidance on when providers may claim above the benchmarks set out in the National Disability Insurance Scheme Price Guide.**

### **Recommendation 33**

- 7.40 The committee recommends that the National Disability Insurance Agency develop and implement mechanisms to ensure providers are immediately notified of any changes to the National Disability Insurance Scheme Price Guide or associated price settings.**

### **Staffing in SIL settings**

- 7.41 Some submitters raised concerns that staffing levels in SIL settings may be inadequate to ensure that participants with SIL—who often have higher or more complex support needs—receive the support and assistance they require.
- 7.42 The Office of the Public Guardian (Queensland) (Qld OPG) stated that the key issues associated with staffing in SIL settings include compatibility between participants and staff and the need for increased staff ratios due to behavioural needs. The Qld OPG recommended that the NDIA allow for increased funding to ensure appropriate staffing numbers for participants accessing SIL—taking into account the levels of care required and the number of participants in the relevant SIL setting.<sup>27</sup>
- 7.43 Another submitter emphasised the need to ensure participants with SIL can engage the same support worker(s) over a sustained period of time, noting the

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<sup>27</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 9. In relation to inadequate staffing leading to less choice and control, the Qld OPG provided an example of a female participant who had objected to a male support worker providing her personal care, but had been unable to change support workers due to a lack of funding. It also noted that, after Community Visitor advocacy, shifts were adjusted so that personal care was provided by a female support worker.

relationships of trust that develop between participants and support workers and the importance of such relationships to a participant's wellbeing.<sup>28</sup> The submitter observed that this is a particular concern in relation to participants with complex support needs, providing the following example:

[The participant's] complex mix of disability means he must be able to trust his support workers to be able to effectively communicate with consistency and be able to keep him physically safe when he accesses the Community. If he has a negative experience with an activity, it can take years for him to attempt it again.

[The participant], with his family, should be able to supply the information and the SIL Provider act on his wishes. We should not have to lobby, advocate and escalate to achieve his right to choose who works with him.<sup>29</sup>

#### *Insufficient trained staff*

7.44 Submitters observed that there is a shortage of trained staff within the NDIS, which may result in the needs of some participants—particularly those with complex disability—going unmet.

7.45 For example, Community Mental Health Australia (CMHA) asserted that high staff turnover and inadequate trained support workers may lead to poor capacity-building outcomes, particularly in group settings. CMHA provided the following observation from a mental health service provider:

[P]eople are being placed into settings where [there is] a casualised workforce that has high turnover and is inadequately trained and is unable to implement recovery-focussed approaches so people are becoming more institutionalised (e.g. staff packing a person's lunch rather than helping them make their own lunch).<sup>30</sup>

7.46 Mr Brian Stanton similarly observed a shortage of skilled and qualified staff among NDIS providers. According to Mr Stanton, anecdotal evidence suggests support workers will be imported from overseas to make up staffing shortfalls. Mr Stanton recommended the NDIS consider engaging the family members and former carers of participants as a means of addressing staff shortages.<sup>31</sup>

7.47 During the committee's public hearing in Hobart, representatives of Li-Ve Tasmania further elaborated on the issue of finding appropriately trained staff for participants with complex needs, noting that this is a particular challenge in thin market areas. Li-Ve Tasmania also stated that:

[P]roviders need to bring on lower-level employees and invest heavily in training and supervision, all at the lower price points but with far higher costs. There is an assumed level of core training by providers...[H]owever,

<sup>28</sup> Name Withheld, *Submission 40*, [p. 2].

<sup>29</sup> Name Withheld, *Submission 40*, [p. 2].

<sup>30</sup> Community Mental Health Australia, *Submission 19*, [p. 2].

<sup>31</sup> Mr Brian Stanton, *Submission 39*, [p. 1].

individuals with complex needs have specific support requirements that are not covered in generalised training...

[The] NDIA provides training for individuals, although this is inconsistent from person to person, and particularly more difficult when it relates to complex behaviour...

Monitoring of behavioural support plans, reviewing behavioural support incidents, identifying antecedents and triggers of complex behaviour, developing strategies to reduce incidents, education, feedback to staff—all of this means extra additional administrative resources that are required to deliver supports for people with complex behaviour.<sup>32</sup>

7.48 Li-Ve Tasmania also observed a high turnover of staff in contexts where supports are provided to participants with complex behaviour, noting that:

The reality is that there is more support needed out there than there are staff to provide it, so staff can take the option of the shifts that they choose. We see, more often than not, staff moving away from those more difficult and risky shifts to work with people who are perceived as easier.<sup>33</sup>

#### *Staff salaries*

7.49 Some submitters to the inquiry also observed that salaries for support workers and other staff providing services to participants are low, and indicated that this may help explain shortages in trained staff and high staff turnover.

7.50 For example, Paragon Support Limited (Paragon) stated that salaries for staff in SIL settings are 'terrible', with salaries governed by the Social, Community, Home Care and Disability Services (SCHADS) award.<sup>34</sup> Paragon asserted that the SCHADS award should be increased to force the NDIA to increase funding to support companies.<sup>35</sup> Paragon also noted that when annual pricing reviews occur, higher paid occupational therapists see large salary increases while 'staff at the bottom are forgotten...scraping by with minimal increases'.<sup>36</sup>

7.51 Sylvanvale indicated that the NDIA's knowledge of the operating environment around awards in the disability sector has improved. However, concerns relating to remuneration persist. Sylvanvale observed that, in some cases, funding levels may not be aligned to awards or to the skill and training of the

<sup>32</sup> Ms Nicole Parkinson-Cumine, Operations Manager, Li-Ve Tasmania, *Proof Committee Hansard*, 28 October 2019, pp. 13–14.

<sup>33</sup> Ms Nicole Parkinson-Cumine, Operations Manager, Li-Ve Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 14.

<sup>34</sup> Paragon Support Limited, *Submission 13*, p. 5. The SCHADS award covers employees throughout Australia in the supported housing, social and community services, and home and family care sectors. For further information, see Fair Work Ombudsman, Social, Community, Home Care and Disability Services Award 2010 (version PR715164, 19 December 2019), <http://awardviewer.fwo.gov.au/award/version/MA000100?vn=90&rvn=56> (accessed 13 March 2020).

<sup>35</sup> Paragon Support Limited, *Submission 13*, p. 5.

<sup>36</sup> Paragon Support Limited, *Submission 13*, p. 5.

relevant support workers. Sylvanvale stated that this may lead to inconsistent decision-making with health and safety implications.<sup>37</sup>

- 7.52 Another submitter stated that staff in SIL homes must be comprehensively trained, and that lack of training may put the lives of participants at risk. The submitter asserted that staff providing SIL services should be paid at a higher rate to reflect the higher level of training required.<sup>38</sup>

### *Committee view*

- 7.53 The committee is concerned that there may not be sufficient trained staff in SIL settings to ensure that participants with SIL funding receive the supports that they require. Evidence before the committee suggests that this may be due to a shortage of trained staff across NDIS providers generally. The committee has also heard that remuneration within the NDIS and the disability sector more generally—which is based on the SCHADS award—is not sufficient to attract and retain support workers with the skills and expertise necessary to deliver SIL supports. In this respect, the committee notes that participants with SIL often have higher or more complex support needs, and that support workers may not receive higher pay for delivering supports to this cohort.
- 7.54 In light of these matters, the committee considers that the NDIA should review the NDIS Price Guide, to ensure that the costs of attracting and retaining appropriately trained support staff are captured, and to ensure that providers are able to make these support staff available to participants in SIL settings.
- 7.55 The committee also notes concerns raised by submitters regarding the adequacy of training for SIL staff, and considers that providers should invest in additional training for staff involved in the delivery of SIL supports, and in supporting people with severe or complex disability.
- 7.56 The committee will consider issues associated with the workforce providing NDIS services in further detail as part of a separate inquiry.<sup>39</sup> This will include examination of whether industry award rates are appropriate.

### **Recommendation 34**

- 7.57 The committee recommends that the National Disability Insurance Agency review the National Disability Insurance Scheme Price Guide, to ensure that the costs associated with attracting, training and retaining staff to deliver supports to people with severe or complex disability, including in Supported Independent Living settings, are adequately captured.**

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<sup>37</sup> Sylvanvale, *Submission 6*, [p. 3].

<sup>38</sup> Name withheld, *Submission 40*, [p. 2].

<sup>39</sup> JSC NDIS, *NDIS Workforce*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Disability\\_Insurance\\_Scheme/workforce](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/workforce).

### Recommendation 35

**7.58 The committee recommends that providers within the National Disability Insurance Scheme invest in additional training for support staff involved in the delivery of Supported Independent Living services and supports for participants with higher or more complex needs.**

#### Flexibility in funding arrangements and shortfalls in SIL funding

7.59 Evidence before the committee indicated that there are relatively frequent shortfalls in SIL funding. Submitters also indicated that there is insufficient flexibility for participants to use SIL funding for 'non-SIL' activities (for example, community participation or transport), or to use other funding streams to offset shortfalls in SIL funding.

7.60 For example, the Qld OPG stated that there is insufficient flexibility in participants' plans regarding the use of SIL funding. It provided the following example of when additional flexibility would be necessary:

[T]he OPG was appointed guardian for an 18 year old young person who had come out of child protection, having lived in a very protective environment. The OPG advocated for a carer to be on call for the young person if they were unwell or upset about something at their day program and wanted to come home to their SIL arrangement. This arrangement required the use of additional SIL funding rather than core supports.<sup>40</sup>

7.61 The Qld OPG also noted that there may be gaps in funding between SIL and core supports, stating that:

[T]here is a half hour overlap for carers transporting clients between their day program and SIL which is not funded by either area, resulting in an eventual shortfall in funding.<sup>41</sup>

7.62 The Qld OPG further observed that it had received inconsistent information about whether SIL providers are entitled to be paid when participants are out of the house engaging in community participation activities. The Qld OPG noted that it has received information that a SIL provider is entitled to be paid in these circumstances (on the basis that the provider is delivering 24/7 care). However, the Qld OPG understands that SIL is not funded while a participant is away from a SIL home receiving services funded out of core supports.<sup>42</sup>

7.63 Sylvanvale noted that there is uncertainty around what may be funded from core supports and what may be funded from SIL, stating that:

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<sup>40</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 6. The Qld OPG recommended that greater flexibility be introduced between the use of funding provided for SIL and core supports, to allow either funding source to be used for the other purpose if required.

<sup>41</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 7.

<sup>42</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 7.

This creates a dilemma for providers and families in terms of whether it is safe to support a person at the level offered, offer the required amount of support across a shortened time span or seek a plan review.<sup>43</sup>

7.64 Sylvanvale also expressed concern that the NDIA takes a 'black box' approach to SIL funding, with the NDIS Price Guide 'serving to underline consistent SIL funding decisions'.<sup>44</sup>

7.65 Cram observed that the 'promised integration of core supports with SIL' has not occurred, stating that:

At the time of plan reviews, SIL quotes are accepted in relation to a given number of days per week that the resident is away from the home, but it is often found the core supports that have been added are insufficient, and...the SIL provider is forced to seek a review or make up a shortfall.<sup>45</sup>

#### *Funding for irregular support needs*

7.66 Some submitters indicated that funding shortfalls, and the lack of flexibility in participants' plans, is of particular concern for people with more 'irregular' support needs, including participants whose needs may be subject to change due to illness or incapacity. Submitters and witnesses observed that it is often participants with severe or complex disability who require 'irregular' supports.

7.67 During the committee's public hearing in Sydney, representatives of Northcott raised similar issues, noting that the rigidity of SIL funding creates challenges for participants with complex needs who may require unscheduled absences from certain activities. Northcott illustrated this issue using the example of a participant who attends a day program several days per week, stating that:

Because of their complex disability, [the participant] may need to have regular absences from that day program. It doesn't mean that they don't want to continue to participate in the community, but they have periods where they are unable to do that. [In]...the way the plans are often put together and the gap between SIL and accommodation, we find there's quite often some rigidity around the view that the hours can't be put in SIL and must be put in the day program.<sup>46</sup>

7.68 The Northern Territory Office of the Public Guardian (NT OPG) observed that only support hours are recognised as a 'fundable item' under SIL, and while a participant is on community access a provider cannot claim.<sup>47</sup> The NT OPG stated that SIL funding would benefit from a review to clarify what is or is not included. It also recommended increasing SIL funding to enable irregular

<sup>43</sup> Sylvanvale, *Submission 6*, [p. 3].

<sup>44</sup> Sylvanvale, *Submission 6*, [p. 3].

<sup>45</sup> The Cram Foundation, *Submission 2*, [p. 4].

<sup>46</sup> Ms Aleta Carpenter, General Manager Supported Living, Northcott, *Proof Committee Hansard*, 9 October 2019, p. 8.

<sup>47</sup> Northern Territory Office of the Public Guardian, *Submission 38*, [p. 4].

support options, noting that this would help to address concerns associated with unforeseen absences by community access providers, and situations where higher ratios of support are needed for shorter periods of time (such as assisting a participant with personal care activities).<sup>48</sup>

#### *NDIA position*

7.69 The NDIA stated that it intends to provide greater flexibility to participants in utilising plan budgets. According to the NDIA, the intention is to remove distinctions between core and capacity-building, so participants and families can use funding more flexibly on supports that best meet their needs.<sup>49</sup>

7.70 The NDIA also noted that anticipated changes to a participant's regular support needs may be considered in preparing the statement of participant supports.<sup>50</sup> The NDIA stated that, as part of the SIL quoting process, providers take into account days where the participant is likely not to undertake their usual employment, social and community activities. According to the NDIA, funding is therefore available:<sup>51</sup>

- where the participant wishes to have a day at home rather than attend a day program or supported employment;
- where the participant is not well enough to undertake their usual activities;
- the participant unexpectedly leaves a community participation activity and returns to a SIL home earlier than expected;
- for supported employment or day program holiday breaks; and
- where there is an escalation in behaviours of concern and the participant cannot attend their usual activities.

#### *Committee view*

7.71 The committee is concerned that there may be funding shortfalls for SIL in participants' plans, and that funding in plans may not be sufficiently flexible. The committee has heard that this may create uncertainty for providers around the supports they may deliver and reduce choice and control for participants. The committee heard from submitters and witnesses that a lack of flexibility in how funding may be used can limit providers' ability to deliver supports to a participant who wishes to leave a community participation activity, or to remain at home at a time when a community activity is scheduled.

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<sup>48</sup> Northern Territory Office of the Public Guardian, *Submission 38*, [p. 4].

<sup>49</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000029, 13 February 2020 (received 2 April 2020).

<sup>50</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000030, 13 February 2020 (received 2 April 2020).

<sup>51</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000030, 13 February 2020 (received 2 April 2020).



- 7.72 In addition, the committee heard that funding shortfalls for SIL, and a lack of flexibility in participants' plans, may leave providers unable to claim funding for the cost of transporting participants to and from community participation activities, and for circumstances where a higher ratio of support is needed for a short period of time (for example, assisting with personal care activities).
- 7.73 The committee notes that the NDIA has indicated that it already provides additional funding in SIL packages to cover irregular support services. The committee also notes recent announcements regarding the use of core funding for transport. However, it appears that there are still circumstances in which additional SIL funding is needed, as well as circumstances in which it may be appropriate to have more flexibility in how funding may be used. While the committee welcomes the NDIA's advice regarding initiatives to increase flexibility in how funding may be used, it is unclear whether this initiative will extend to SIL funding. The committee also understands that it may in some cases be necessary to seek additional SIL funding to cover the costs of irregular or emergency support needs. This is of particular concern to providers, who may be obliged to provide supports without a guarantee that they will be able to recoup any additional costs from the NDIA in a timely manner. The committee therefore considers that the NDIA should develop and implement a streamlined mechanism to expedite the processing of claims made by service providers for increased supports provided to participants. This is to ensure that participants are able to access additional supports as needed, and to ensure that providers are not obliged to bear funding shortfalls.
- 7.74 Further, the committee notes that it has recommended a review of the NDIS Price Guide be undertaken to ensure pricing structures capture the additional costs associated with supporting participants with high and/or complex needs. The committee anticipates that such a review would consider the 'irregular' support needs of this cohort. The committee has also recommended that the NDIA develop and publish comprehensive guidance on SIL, and emphasises that this guidance should clearly articulate which supports and activities are and are not covered by SIL funding.

### **Recommendation 36**

- 7.75 The committee recommends that the National Disability Insurance Agency develop and implement a streamlined mechanism to expedite the processing of claims made by service providers for increased supports provided to participants.**

## Planning issues

### *Longer plans for participants with SIL supports*

- 7.76 Some submitters to the inquiry asserted that, since a number of the support needs for participants accessing SIL are not subject to frequent change, longer plans may be more suitable for this cohort. Submitters also asserted that more frequent plan reviews may create undue burden and stress for participants, families and carers, and indicated that this could be addressed by approving longer plans in appropriate circumstances.
- 7.77 For example, Northcott observed that as housing tends to be a longer-term requirement—with fewer changes than other services in a participant's plan—there is scope for plans which include SIL and/or SDA to be approved for periods of up to three years, rather than insisting on annual plan reviews.<sup>52</sup>
- 7.78 During the committee's public hearing in Sydney, representatives of Alliance20 made similar observations, stating that:
- Typically, people who are in supported independent living...have relatively stable patterns of accommodation and activities they undertake during the day, whether it is employment, training or other types of services. Typically, their needs remain reasonably stable over that period. In saying there is a need for longer term planning, we are also cognisant that there will be changes to some aspects of the plans, but these aren't the large majority of the things that are included in that person's life. And they could be dealt with a lighter touch type of review on certain line items.<sup>53</sup>
- 7.79 Alliance20 also noted that yearly plans are 'extremely stressful' on participants and their families, and observed that it often hears from families that a significant amount of information needs to be provided and that plans often come back needing to be reviewed.<sup>54</sup>
- 7.80 Cram asserted that a 12–24 month planning cycle places undue strain on participants, families and carers—particularly in light of the often lengthy and onerous process to access SIL funding. Cram also stated that shorter-term plans and plan gaps can result in significant delays in the acceptance of SIL quotes by NDIA planners.<sup>55</sup>
- 7.81 ConnectAbility Australia (ConnectAbility) noted that most participants with SIL require 24/7 care, and have higher or more complex needs that are unlikely

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<sup>52</sup> Northcott, *Submission 7*, p. 10. Northcott stated that if longer-term plans are approved, there should be scope for annual increases in funding to be included, to take account of matters such as consumer price indexing and changes to the NDIS Price Guide.

<sup>53</sup> Mr Drew Beswick, Representative, Alliance20, *Proof Committee Hansard*, 9 October 2019, p. 3

<sup>54</sup> Mr Stephen Doley, Representative, Alliance20, *Proof Committee Hansard*, 9 October 2019, p. 2.

<sup>55</sup> The Cram Foundation, *Submission 2*, [p. 3].

to change during their lifetime. ConnectAbility argued for longer plans for this cohort, stating that:

The 12-month plan is a draconian system that is built for bureaucracy and serves no meaningful purpose other than to generate jobs for public servants and add overhead cost to providers to pay for someone to pump out quotes. If we went to a 2-5 year funded plan it would save the scheme 100s [of] millions that [would] go back into service delivery.<sup>56</sup>

7.82 During the committee's public hearing in Canberra, the NDIA noted that it is seeing a higher uptake of longer plans, and that it is considering using longer plans as a matter of course—as well as to address some of the issues associated with annual plan reviews. The NDIA stated that:

[W]e're...looking at having much longer plans, defaulting to two- and three-year plans and maybe—who knows—plans that are event based rather than date based. So we're seeing a big take-up of much longer plans now, which takes out the issue of having to come back for an annual plan review.<sup>57</sup>

7.83 In addition, the Minister for the NDIS announced in November 2019 that participants may request longer-term plans of up to three years. Participants retain the option to review their plans should their circumstances change.<sup>58</sup>

#### *Change of circumstances*

7.84 Some submitters observed that adjustments to support or care arrangements often require a change of circumstances process, including a full plan review. Submitters asserted that that this process is lengthy and onerous, and may be unnecessary where only a minor change is needed.

7.85 For example, Cara Inc (Cara) noted that following capacity-building processes, participants in a SIL setting may change active overnight supports to passive supports.<sup>59</sup> Cara expressed concern that while this would reduce the fees charged, at present the NDIA requires a full change of circumstances process (including a plan review) to be followed. According to Cara, this may require

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<sup>56</sup> Connectability Australia, *Submission 29*, p. 2.

<sup>57</sup> Mr Scott McNaughton, General Manager, Service Delivery and Performance, Participant and Planning Experience, National Disability Insurance Agency, *Proof Committee Hansard*, 13 February 2020, p. 7.

<sup>58</sup> The Hon Stuart Robert MP, Minister for the NDIS, 'Delivering the NDIS Plan: Longer plan duration and greater accessibility available now', *Media Release*, 18 November 2019, <https://ministers.dss.gov.au/media-releases/5281>

<sup>59</sup> That is, from an arrangement where workers are required to remain awake overnight to ensure the participant has the supports they need, to an arrangement where support workers may sleep during the night and respond to the participant's needs as required.

the provider to continue delivering active overnight supports until the change of circumstance process is complete.<sup>60</sup>

- 7.86 Cara asserted that a reduction in the intensity of supports could be actioned by varying the relevant service agreement, without the need to undergo a change of circumstances process. The plan could then be updated at the next available opportunity to reflect the change in participants' needs.<sup>61</sup>
- 7.87 DARE Disability Support (DARE) recommended that plans be considered as 'living', with planners given the ability to adjust plans as necessary using a 'light touch' approach. DARE noted that current processes involve submitting a change of circumstances and undergoing a 'long, expensive and arduous' process for what may be a simple change.<sup>62</sup>
- 7.88 Evidence before the committee also indicated that it is important for changes of circumstances to be reflected in plans as quickly and efficiently as possible. For example, during the committee's public hearing in Sydney, representatives of Northcott indicated that while it may be appropriate to approve longer plans for participants with SIL, there must be robust processes in place to ensure changes in circumstances can be actioned—particularly where this is necessary to respond to an incident.<sup>63</sup>

#### *Committee view*

- 7.89 A number of submitters to the inquiry indicated that it may be appropriate for the NDIA to approve longer plans (for example, three to five years) for participants with SIL supports. The committee heard that longer plans may be more appropriate for this cohort—noting that their needs are less likely to change over time, and that approving longer-term plans may reduce the burden and stress associated with more frequent plan reviews.
- 7.90 The committee supports the introduction of longer plans for participants with SIL. However, the committee emphasises that the NDIA should ensure that longer-term plans are approved only where appropriate, and that the planning process considers the participant's individual support needs. Additionally, the committee is mindful of ensuring that the NDIA does not take a 'set and forget' approach to planning and service delivery, and emphasises that participants should have the opportunity review and adjust their plans as necessary. This may include a major change to support arrangements following an incident.

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<sup>60</sup> Cara Inc., *Submission 14*, [p. 6].

<sup>61</sup> Cara Inc., *Submission 14*, [p. 6].

<sup>62</sup> DARE Disability Support, *Submission 9*, p. 8. See also Mr Andrew Daly, Chief Executive Officer, DARE Disability Support, *Proof Committee Hansard*, 9 October 2019, p. 27.

<sup>63</sup> Ms Aleta Carpenter, General Manager, Supported Living, Northcott, *Proof Committee Hansard*, 9 October 2019, p. 11.

- 7.91 Submitters also asserted that participants should not be required to undergo a full change of circumstances and plan review process each time there is a minor change to support arrangements, and that minor changes to supports might be more appropriately actioned through changes to service agreements, or by planners adjusting parts of plans using a more 'light touch' approach.
- 7.92 The committee previously recommended that the *National Disability Insurance Scheme Act 2013* (NDIS Act) be amended to enable participants to review only part of a plan, or to vary a plan, in appropriate circumstances.<sup>64</sup> The Government supported this recommendation, and stated that it intends to introduce a plan amendment power into the NDIS Act as part of its response to the Tune Review.<sup>65</sup>
- 7.93 The committee considers that this may be sufficient to ensure that participants may make changes to their support arrangements in SIL settings without needing to undergo a lengthy plan review process. The committee proposes to maintain a watching brief in relation to this issue.

*Plan reviews for all participants in a SIL home*

- 7.94 Some submitters to the inquiry observed that a plan review for one participant in a SIL home will trigger a review for the others.
- 7.95 For example, the Cram Foundation (Cram) raised concerns that a plan review for one participant in a SIL home creates an unnecessary administrative burden, and may diminish providers' capacity to focus on service delivery.<sup>66</sup> Cram recommended ceasing the need for all participants in a SIL home to undertake full plan reviews in the event a change to one participant's supports is required. It also recommended that plans be left open for claiming during reviews, to ensure providers can access funding while a review is underway.<sup>67</sup>
- 7.96 The Samaritans Foundation expressed similar concerns that the requirement to have SIL approved and reviewed individually for each participant in a SIL setting creates unnecessary duplication and administrative burden, and delays plan approval. It recommended the NDIA implement mechanisms to allow for streamlined approval and review processes.<sup>68</sup>

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<sup>64</sup> JSC NDIS, *Planning Interim Report*, December 2019, p. vii (**Recommendation 3**).

<sup>65</sup> Australian Government, *Australian Government Response to the NDIS Report, NDIS Planning Interim Report*, February 2020, p. 4.

<sup>66</sup> The Cram Foundation, *Submission 2*, [p. 2].

<sup>67</sup> The Cram Foundation, *Submission 2*, [p. 4]. As noted elsewhere in this report, SIL funding often ceases at the time a plan review commences. In these circumstances, providers may be obliged to wear funding shortfalls in order to ensure continuity of supports for participants.

<sup>68</sup> The Samaritans Foundation, *Submission 4*, p. 5.

*Committee view*

- 7.97 The committee heard that the framework for SIL is structured in such a way that a plan review for one participant in a shared support arrangement will trigger a plan review for the others. The committee is concerned that this may significantly increase the number of unscheduled reviews that are required, and increase stress and administrative burden for participants and providers.
- 7.98 As noted above, the committee previously recommended that the NDIS Act be amended to allow participants to review part of a plan. This recommendation was supported by the Australian Government. The committee considers that this initiative may go at least some way to minimising unscheduled plan reviews triggered by changes to supports in shared settings. The committee also notes that the NDIA proposes to introduce longer plans in certain circumstances. This may reduce unscheduled plan reviews, by reducing the number of annual reviews required for each participant in a shared setting.
- 7.99 However, these measures may not be sufficient to fully address the administrative burden associated with plan reviews in shared settings. Consequently, the committee considers that the NDIA should develop and implement a mechanism to streamline review processes for participants in shared living arrangements.
- 7.100 As noted elsewhere in this report, the NDIA has advised that funding under existing plans will continue while a SIL quote is awaiting approval. However, it is not clear to the committee that this indicates that providers may still claim funding for supports while a plan review is underway. Evidence before the committee suggests that this is not the case. Consequently, the committee has recommended that the NDIA clarify whether a plan remains open for claiming while a plan review is underway. The committee notes that this is a particular issue for shared living arrangements, given that concurrent plan reviews may be triggered for all participants in a SIL home.

**Recommendation 37**

- 7.101 The committee recommends that the National Disability Insurance Agency develop and implement a mechanism to streamline plan reviews for participants accessing Supported Independent Living in shared living arrangements.**

# Chapter 8

## Other issues

8.1 This chapter examines general issues associated with Supported Independent Living (SIL), as well as other issues associated with the implementation and performance of the National Disability Insurance Scheme (NDIS) that were raised in evidence before the committee.

8.2 Key issues covered in this chapter include:

- the availability of SIL and other supports in regional, rural and remote areas, and other issues associated with 'thin markets';
- provider of last resort (PLR) arrangements and crisis support;
- the availability of decision supports and advocacy services;
- the quality of SIL services being provided to participants; and
- coordination between the NDIS and state services.

### **SIL and other supports in thin market areas**

8.3 A key concern for some submitters was the availability of SIL services in 'thin markets', and particularly in regional, rural and remote areas.<sup>1</sup> As Ms Michelle O'Flynn, Director of Queensland Advocacy Incorporated (QAI), stated during the committee's public hearing in Brisbane:

If you're somebody with a disability living in a regional or rural town and there's one big provider and it happens to be a SIL provider and it's offering services from cradle to grave and you've had a terrible experience living in that group home under a block funded arrangement and you desperately want to get out, you've got no hope. So that's a very thin market. If you've got nowhere else to get community access or to have your personal care needs met and you've been abused in a group home, you've got no choice, no control and no options.<sup>2</sup>

8.4 The Disability Council NSW raised similar concerns, noting that the NDIS may not be doing enough to service the market for SIL in regional, rural and remote areas, where lower population densities may make it more difficult to viably provide SIL under standard market conditions.<sup>3</sup> The Disability Council NSW elaborated on this issue at the committee's public hearing in Sydney, expressing concern that thin markets are particularly disruptive for people in remote communities, and Aboriginal and Torres Strait Islander people:

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<sup>1</sup> This issue is not confined to regional, rural and remote areas. The committee has heard that thin markets are also a challenge in some outer metropolitan areas.

<sup>2</sup> Ms Michelle O'Flynn, Director, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 8 October 2019, p. 40.

<sup>3</sup> Disability Council NSW, *Submission 3*, [pp. 1–2].

[P]eople in Uralla are being told, 'You might need to look at shifting to Armidale,' which is only a 20-kilometre difference, but it's a whole different community. And it's a different Aboriginal tribe: you're moving from being in Gamilaraay to Anaiwan. So that's different. You're moving communities. And you'd be moving into a different grouping, because there are places already built there. 'Move there, because there are places already built there.' That's what the service providers are saying to people.<sup>4</sup>

- 8.5 The Disability Council NSW indicated that there needs to be a 'bigger picture' review of SIL, to ensure connectivity and integration throughout the system.<sup>5</sup>
- 8.6 Another submitter asserted that the NDIA has a duty of care to ensure there are sufficient SIL and SDA providers in regional, rural and remote areas. The submitter further stated that, if it is not possible to expand the number of providers in such areas, providers must be subject to high levels of oversight.<sup>6</sup>
- 8.7 Community Mental Health Australia (CMHA) observed that, in the Northern Territory (NT), there are often extremely thin markets for SIL, and there are many issues that are not adequately captured by NDIS funding arrangements. According to the CMHA, these issues include:<sup>7</sup>
- providers make a loss if premises are not fully occupied by SIL participants;
  - providers are liable for damage to a property which is not recoverable from SIL participants or their plans;
  - there is a significant administrative burden if a participant changes housing;
  - finding SIL housing in the private rental market is challenging, particularly as neighbours may object because of anticipated disturbance;
  - insurance costs become high if claims are made as premiums then increase;
  - there may be poor configuration of SIL premises; and
  - matching processes may not be adequate to ensure participants in SIL homes are compatible.
- 8.8 The Northern Territory Office of the Public Guardian (NT OPG) similarly noted that a significant number of people in the NT live in remote and very remote areas. The NT OPG stated that the NT does not have any SIL services outside of major regional centres and the market stewardship needed to address this issue not happening. It further observed that:

Whilst it is encouraging to see many examples of very good packages of support funded by NDIA, it disappointingly continues to be difficult to realise this funding as SIL services. In the [NT], there is significant difficulty in obtaining appropriate SIL services due to the thin market and

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<sup>4</sup> Ms Rachael Sowden, Member, Disability Council NSW, *Proof Committee Hansard*, 9 October 2019, p. 15.

<sup>5</sup> Mr Mark Tonga, Chair, Disability Council NSW, *Proof Committee Hansard*, 9 October 2019, p. 16.

<sup>6</sup> Name withheld, *Submission 40*, [p. 2].

<sup>7</sup> Community Mental Health Australia, *Submission 19*, [p. 3].



provider expertise. This difficulty is particularly the case for people with complex behaviours of concern or significant multiple issues.<sup>8</sup>

### *Committee view*

8.9 As the committee has previously noted, it is the role of the NDIA, as market steward, to put in place policies and interventions to minimise the occurrence of thin markets and to maximise the availability of supports for participants.<sup>9</sup>

8.10 The issue of thin markets has been discussed at length in a number of previous reports of this committee, and the committee has continued to express its frustration at the NDIA's reluctance to trial and/or implement alternatives to the standard NDIS fee-for-service model to address this issue.<sup>10</sup> In its most recent progress report, the committee recommended that the NDIA start trials of alternatives to a fee-for-service model to address thin markets in regional, rural and remote areas by the end of 2019.<sup>11</sup>

8.11 The Australian Government supported this recommendation, stating that in December 2019 the Disability Reform Council (the Council) agreed to use a more flexible approach to address market challenges in the NDIS. It recognised that a 'one-size-fits-all' approach to delivering the NDIS is not suitable to address market gaps faced by certain geographic locations, particular cohorts or disability support types:

[The Council] agreed to initial projects that will address thin markets in all jurisdictions including in APY Lands, North Queensland, the Top End, Wentworth and Walgett in New South Wales, Fitzroy Crossing in Western Australia, and Tasmania, and to address specific needs, such as disability support types which includes deepening the behavioural support market in Victoria and the Australian Capital Territory, and professional groups such as allied health.<sup>12</sup>

8.12 The Council has stated that work on initial projects would commence from late 2019, with a comprehensive rollout plan to be developed and brought to the Council for agreement in June 2020.<sup>13</sup>

8.13 In addition, the government has advised that it is bringing forward legislative changes to give the NDIA more flexibility to undertake market intervention on behalf of participants who are unable to exercise choice and control over their

<sup>8</sup> Northern Territory Office of the Public Guardian, *Submission 38*, [p. 5]. The NT OPG emphasised that getting SIL providers and services in remote communities still needs to be realised.

<sup>9</sup> See JSC NDIS, *Market Readiness for Provision of Services under the NDIS*, September 2018, p. 70.

<sup>10</sup> JSC NDIS, *Progress Report*, March 2019, pp. 49–50.

<sup>11</sup> JSC NDIS, *Progress Report*, March 2019, pp. 49–50 (**Recommendation 11**).

<sup>12</sup> Australian Government, *Australian Government Response to the Joint Standing Committee on the National Disability Insurance Scheme Report: Progress Report, 2019*, February 2020, p. 10.

<sup>13</sup> See Disability Reform Council, *Communique*, 13 December 2019, p. 2.

support arrangements. According to the government, these amendments will be informed by the recent review of the National Disability Insurance Scheme Act 2013 (Tune Review) and by the thin markets project (outlined above), and will ensure all participants, irrespective of market challenges or supply gaps, will be able to access supports.<sup>14</sup>

- 8.14 The committee welcomes the work being progressed by the NDIA and by the government to address market challenges within the NDIS, and to help ensure participants have access to the supports they need regardless of geographic location or type of disability. The committee proposes to maintain a watching brief to determine whether these initiatives will effectively address the issues raised during this and other inquiries.
- 8.15 In light of the issues raised during this inquiry, the committee is concerned to ensure that initiatives to address thin markets consider challenges associated with SIL supports. While the thin markets project will consider thin markets in a variety of support types, it is not clear to the committee that it will consider SIL supports.<sup>15</sup>
- 8.16 The committee considers that the NDIS should actively work to address issues associated with thin markets and the undersupply of services, and should ensure that work to address thin markets captures issues associated with access to and the delivery of SIL and SDA supports. For example, the NDIA should undertake an analysis of the likely demand for independent living in particular locations, measured against the stock of suitable accommodation. The NDIA should also explore funding and/or incentive mechanisms to increase the availability of housing and supports in thin market areas.
- 8.17 The committee proposes to examine issues associated with thin markets and with SDA in further detail as part of its inquiry into general issues with the implementation and performance of the NDIS.

### **Recommendation 38**

- 8.18 The committee recommends that the National Disability Insurance Agency actively works to address thin markets, and ensures that work to address thin markets in regional, rural and remote areas captures both Supported Independent Living and Specialist Disability Accommodation.**

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<sup>14</sup> Australian Government, *Australian Government Response to the Joint Standing Committee on the National Disability Insurance Scheme Report: Progress Report, 2019*, February 2020, p. 10.

<sup>15</sup> See Australian Government, Department of Social Services, *NDIS Thin Markets Project: About the project*, <https://engage.dss.gov.au/ndis-thin-markets-project/> (accessed 12 March 2020).

### Provider of last resort (PLR) arrangements and crisis support

- 8.19 Some submitters to the inquiry expressed concern that there are not currently sufficient PLR arrangements to ensure people with disability are not left without housing and supports if they cannot find a suitable vacancy in a SIL home, or if they require emergency accommodation as a result of a crisis. This was a particular concern with respect to regional, rural and remote areas.<sup>16</sup>
- 8.20 For example, DARE Disability Support (DARE) stated that where a tenancy match fails (for example, due to behavioural concerns or changed needs), a participant risks homelessness (unless a vacancy can be identified elsewhere).<sup>17</sup> DARE stated that while traditionally PLR arrangements were delivered by state and territory governments, state governments—at least in NSW—have exited disability services entirely.<sup>18</sup> According to DARE, the NDIA has advised that it has been preparing a PLR strategy for a number of years. DARE asserted that this strategy needs to be finalised as a matter of urgency.<sup>19</sup>
- 8.21 The Office of the Public Guardian (Queensland) (Qld OPG) observed similar issues in cases where a participant is relinquished by a SIL provider. The Qld OPG stated that—in shared living arrangements—this may result in housing instability. The Qld OPG recommended that the NDIA consider establishing emergency SIL providers of last resort, to ensure participants are supported through unexpected SIL placement breakdowns and relinquishments.<sup>20</sup>
- 8.22 At the committee's public hearing in Hobart, representatives of the Office of the Public Guardian Tasmania (Tas OPG) observed that there is an ongoing failure to provide for crisis services and services of last resort:

The failure to provide for crisis services...has been raised in forums in the past, but this is certainly a concern from our point of view and we consider that the NDIS really does need to provide contingency funding to be available for crises when they occur and for clear procedures and processes to access funding and services.

...Our concern about the provisions for services of last resort is a little similar, in a way. In our view, provisions need to be established in response to crisis situations but also for market failure situations, particularly for participants who have exceptional needs and challenging needs that might result in service breakdown, or where providers who

<sup>16</sup> As with thin markets, this issue is confined to regional, rural and remote areas. The committee heard that access to PLR arrangement may also be challenging in some outer metropolitan areas.

<sup>17</sup> DARE Disability Support, *Submission 9*, p. 10. DARE noted that these concerns are exacerbated by the long approval process and by failures in vacancy management.

<sup>18</sup> DARE Disability Support, *Submission 9*, p. 10.

<sup>19</sup> DARE Disability Support, *Submission 9*, p. 10.

<sup>20</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 11.

operate in a commercial environment may simply refuse or reject referrals, particularly in those difficult or challenging groups.<sup>21</sup>

8.23 The Tas OPG stated the NDIA should be responsible for commissioning and funding crisis and emergency respite services and PLR arrangements outside of individual participants' plans.<sup>22</sup>

### *Committee view*

8.24 As the committee has noted on a number of previous occasions, the NDIA is responsible for PLR arrangements, including the provision of services of last resort in the event of crisis situations. The committee has expressed frustration on a number of occasions that the NDIA has not published a clear policy on PLR arrangements, and has expressed deep concern about the lack of progress in relation to PLR arrangements for crisis support.<sup>23</sup>

8.25 In its most recent progress report, the committee recommended that the NDIA make public how it will ensure provision of services in cases of market failure in rural and remote areas,<sup>24</sup> and that the NDIA establish within the Complex Needs Pathway a unit in each jurisdiction responsible for crisis service provision.<sup>25</sup> In its market readiness report, the committee also recommended the NDIA publicly release its policy on PLR arrangements, and the outcomes of its Maintaining Critical Supports (MCS) project, as a matter of urgency.<sup>26</sup>

8.26 The Australian Government has supported these recommendations, and has stated that the MCS project continues a commitment to refine and build the capability of the disability sector. The government also stated that there are a number of elements that underpin a strengthened MSC approach, including;<sup>27</sup>

- The Market Enablement Framework (MEF), which provides guidance to the NDIA in relation to market performance and intervention.<sup>28</sup>

<sup>21</sup> Ms Kim Barker, Public Guardian, Office of the Public Guardian, Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 27.

<sup>22</sup> Ms Kim Barker, Public Guardian, Office of the Public Guardian, Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 27.

<sup>23</sup> JSC NDIS, *Progress Report*, March 2019, pp. 50–51.

<sup>24</sup> JSC NDIS, *Progress Report*, March 2019, p. 50 (**Recommendation 12**).

<sup>25</sup> JSC NDIS, *Progress Report*, March 2019, p. 51 (**Recommendation 13**).

<sup>26</sup> JSC NDIS, *Market Readiness for Provision of Services under the NDIS*, September 2018, p. 78 (**Recommendation 24**). The committee noted that there was a change in terminology from 'Provider of Last Resort' to 'Maintaining Critical Supports'.

<sup>27</sup> Australian Government, *Australian Government response to the NDIS report, Market Readiness for provision of service under the NDIS*, 4 March 2020, pp. 16–17.

<sup>28</sup> The MEF was published in November 2018. See National Disability Insurance Agency, *Market Information*, <https://www.ndis.gov.au/providers/working-provider/market-information#market-enablement-role-of-ndia-as-market-steward> (accessed 12 March 2020).

- The Complex Support Needs (CSN) Pathway, which provides support for people with disability who experience personal and situational factors that are beyond the scope of general NDIS disability support models. Key features of CSN Pathway include end-to-end support by dedicated planners skilled in supporting people with complex needs; effective implementation of plans; regular monitoring to assess plan utilisation; and regular contact with support coordinators to ensure supports meet participants' needs.<sup>29</sup>
- The Exceptionally Complex Support Needs Program (ECSNP), which will deliver the following functions:
  - sector and community development activities to support the growth and capability of the disability sector in working with complex participants;
  - subject-matter expertise to build systemic capabilities, knowledge and skills of providers who work directly with complex participants; and
  - after-hours crisis referral, to ensure the availability of integrated support coordination to participants who are experiencing a crisis due to an unforeseen, unavoidable or unexpected loss of supports.

8.27 The government has also stated that the NDIA is working with all jurisdictions to formalise escalation mechanisms to resolve individual and systemic roles and responsibilities, where a lack of action or agreement has the potential to make the situation critical for the participant or the Scheme's reputation and where multiple service systems are often involved.<sup>30</sup>

8.28 The committee welcomes the work being progressed by the NDIA and by the government more broadly to address issues associated with PLR arrangements and crisis accommodation. The committee proposes to maintain a watching brief to determine whether these initiatives will effectively address the issues raised during this and other inquiries.

8.29 However, it is unclear to the committee whether the NDIA has released clear, comprehensive policy on PLR arrangements or crisis accommodation. In line with the recommendations of its previous reports, the committee considers that the NDIA should release such policy to the public as a matter of urgency.

### **Recommendation 39**

**8.30 The committee recommends that the National Disability Insurance Agency publish a clear and comprehensive policy on provider of last resort arrangements and crisis accommodation as a matter of urgency.**

<sup>29</sup> The government has observed that support coordinators are expected to assist a participant to prepare for and navigate unexpected events, including providing assistance.

<sup>30</sup> Australian Government, *Australian Government Response to the Joint Standing Committee on the National Disability Insurance Scheme Report: Progress Report, 2019*, February 2020, pp. 12–13.

### Decision support and advocacy

8.31 A number of submitters raised issues regarding the need for and availability of decision support and advocacy for people with disability—particularly for people with disability seeking to access SIL. Submitters indicated that those seeking access to SIL often have more complex needs, and require additional assistance in navigating the NDIS and in securing the supports they need.

8.32 For example, Every Australian Counts (EAC) noted that one of the people who raised concerns with them in preparing their submission 'summed up the situation succinctly' as follows:

I think that the very great risk with the SIL funding arrangement is that those who don't have very strong advocacy can just slip into a life that is not much different from under the old culture of block funding or institutionalisation. It seems to me that strong personal advocacy is the key – and sadly many people living in a SIL arrangement do not have that ... it's a systemic problem not isolated to any particular service provider.<sup>31</sup>

8.33 Ms Kirsten Deane, Campaign Director for EAC, elaborated on this issue during the committee's public hearing in Brisbane:

[T]his scheme is turning into a dual-track system, where people who have advocates or families in their corner, or who are more well-resourced and more well educated, can get one set of outcomes—it's still tough but they're more likely to get a good set of outcomes—while those people who don't have those things, who perhaps come from a culturally or linguistically diverse background, who have more complex needs, who maybe come from an Aboriginal or Torres Strait Islander background, who don't have families in their corner to go in to bat for them, are getting a different set of outcomes and a poorer set of outcomes.<sup>32</sup>

8.34 In relation to decision support, Ms Deane also observed that:

[W]e hear very little from the NDIA about supported decision-making. I would actually say the opposite: we hear examples of people with an intellectual disability not having their views respected in planning meetings. We hear it from people who do have families in their corner and, in particular, we hear it from people who don't have families or advocates in their corner. We have heard of examples where people living in joint homes have joint planning meetings between everybody in the home and then the plans, surprisingly, come back fairly similar.<sup>33</sup>

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<sup>31</sup> Every Australian Counts, *Submission 27*, p. 6.

<sup>32</sup> Ms Kirsten Deane, Campaign Director, Every Australian Counts, *Proof Committee Hansard*, 8 October 2019, p. 3.

<sup>33</sup> Ms Kirsten Deane, Campaign Director, Every Australian Counts, *Proof Committee Hansard*, 8 October 2019, p. 4.

- 8.35 The Brightwater Care Group expressed concern that there is heavy reliance on service providers to facilitate the NDIS process, particularly for participants who lack decision-making capacity and/or family support.<sup>34</sup>
- 8.36 These concerns were broadly echoed by another submitter, who noted that people accessing SIL supports often do not have family or other informal supports to advocate for them or to monitor the quality of their care, which may leave those participants open to greater risks of abuse or neglect. The submitter asserted that the NDIA should provide dedicated advocates for each SIL client who does not have sufficient supports.<sup>35</sup>
- 8.37 VALID stated that participants with intellectual disabilities who move into a SIL property often lack the decision support needed to ensure they understand their rights, the risks and benefits of accepting the relevant placement, and the alternatives. VALID noted that SIL providers routinely defer to plan nominees and other substitute decision-makers, without working with the participant to understand their wishes and needs.<sup>36</sup>
- 8.38 The Qld OPG noted that service agreements for SIL are quite complex. It expressed concern that this restricts a participant's ability to fully comprehend these agreements, and increases the risk that unfair clauses will be included—to the benefit of the provider and the detriment of the participant.<sup>37</sup>
- 8.39 The Qld OPG further noted an increase in the number of indefinite or ongoing guardianship appointments. It indicated that this may be due to an increasing number of required plan reviews. The Qld OPG recommended that the NDIA increase funding for decision support and advocacy, to enable participants to understand and make informed decisions about SIL service agreements and to reduce if not eliminate the need for guardianship appointments.<sup>38</sup>
- 8.40 The Qld OPG highlighted a direct link between the complexity of service agreements and the increase in formal guardianship appointments. It called for the NDIA to allow funding for SIL support and advocacy, to ensure people with disability are able to understand and make informed decisions about service agreements and reduce or eliminate the need for guardianship appointments.<sup>39</sup>

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<sup>34</sup> Brightwater Care Group, *Submission 25*, [p. 4].

<sup>35</sup> Name withheld, *Submission 40*, [p. 2].

<sup>36</sup> VALID, *Submission 21*, p. 4.

<sup>37</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 7. The Qld OPG noted that such clauses may require participants to pay cancellation fees where they fail to attend a particular component of their support arrangements.

<sup>38</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 7.

<sup>39</sup> Office of the Public Guardian (Queensland), *Submission 37*, pp. 7–8.

- 8.41 Family Advocacy similarly stressed the 'absolute necessity' for advocacy in the NDIS planning process, noting that the need for advocacy has been driven by the changes to the disability sector brought about by the introduction of the NDIS, as well as by barriers within the current system. It also observed that while the states and territories historically funded advocacy, with the introduction of the NDIS state funding was redirected to the Commonwealth.<sup>40</sup> Moreover, the NDIS does not generally fund advocacy services.<sup>41</sup>
- 8.42 Family Advocacy called on the committee to recommend that all state and territory governments provide funding in perpetuity for disability advocacy, representation and information services for people with disability.<sup>42</sup>

#### *Availability of services*

- 8.43 In relation to the services that are available, submitters noted that while the National Disability Advocacy Program (NDAP)<sup>43</sup> has been useful in providing support to some participants, there is considerable room for improvement. For example, the Tas OPG observed at the committee's hearing in Hobart that:

The OPG is really pleased that funding to Speak Out in Tasmania has been extended to a second year under the National Disability Advocacy Program decision support pilot, but unfortunately it seems that many NDIS staff are not properly aware of this program. There have been continued directions by NDIS planners to service providers to apply for guardianship rather than make referrals for advocacy and supported decision-making. We'd add to that that we believe certainty of sufficient funding, and ongoing funding, for advocacy services for NDIS participants is really crucial. It follows that information and awareness of such services on the part of NDIS planners and the broader community are essential to that working properly.<sup>44</sup>

- 8.44 The Tas OPG also expressed concern that advocacy is not being considered and trialled before an application is made for guardianship, noting that the

<sup>40</sup> Family Advocacy, *Submission 35*, p. 5. Family Advocacy observed that in April 2018 the NSW Government announced interim funding for disability advocacy support of \$13 million per annum until June 2020. However, after that time funding for advocacy may cease.

<sup>41</sup> Family Advocacy, *Submission 35*, p. 5. Family Advocacy noted that the Information, Linkages and Capacity-Building (ILC) funding guidelines state that '[the NDIS] will not fund individual or systemic advocacy in ILC'. This appears to refer to National Disability Insurance Agency, *Information, Linkages and Capacity Building Commissioning Framework*, November 2016, p. 20.

<sup>42</sup> Family Advocacy, *Submission 35*, p. 6.

<sup>43</sup> See Australian Government, Department of Social Services, *National Disability Advocacy Program*, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program-ndap> (accessed 12 March 2020).

<sup>44</sup> Ms Kim Barker, Public Guardian, Office of the Public Guardian, Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 28.



appointment of a guardian brings with it an inherent curtailment of an individual's right to exercise choice and control.<sup>45</sup>

- 8.45 Representatives of AMPARO Advocacy expressed similar concerns during the committee's public hearing in Brisbane, noting that:

Sometimes people that we work with do have guardians appointed. Many have families that can support them also in making decisions, but there's no concerted process or funding available...we can't actually refer people because you don't have capacity, so there's very little in Queensland to support people.<sup>46</sup>

- 8.46 Representatives of QAI echoed these concerns, noting that the NDAP pilot is 'very small...basically it's enough for one advocate to cover the whole state'.<sup>47</sup>

#### *NDIA and government position*

- 8.47 At the committee's public hearing in Canberra, the NDIA stated that, while the NDIS does not fund advocacy 'per se', the Information, Linkages and Capacity-building (ILC) grants fund peer support and other programs to assist people with disability to advocate for themselves. The NDIA elaborated on this matter during the committee's public hearing in Canberra:

What we do through some of our grants is fund peer support and other programs to help people with disability understand how they can advocate more for themselves and give them more confidence in certain settings where they once might have needed an advocate so that they can start to develop more capability and feel like they can advocate for themselves. That's important because there are many people who can develop that confidence who once might not have thought that they could and thought they always needed advocates.<sup>48</sup>

- 8.48 In response to questions arising out of this hearing, the Department of Social Services advised that the Commonwealth, states and territories (except South Australia) currently fund disability advocacy, stating that:

The Commonwealth commitment to disability advocacy in 2019–2020 is over \$46 million. The Commonwealth does not hold detailed funding

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<sup>45</sup> Ms Kim Barker, Public Guardian, Office of the Public Guardian, Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 28.

<sup>46</sup> Ms Maureen Fordyce, Manager, AMPARO Advocacy, *Proof Committee Hansard*, 8 October 2019, p. 43.

<sup>47</sup> Ms Michelle O'Flynn, Director, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 8 October 2019, p. 43.

<sup>48</sup> Ms Vicki Rundle, Deputy Chief Executive Officer, Government, Communications and Stakeholder Engagement, *Proof Committee Hansard*, 13 February 2020, p. 10. Ms Rundle also confirmed that the NDIS does not fund systemic advocacy.

information about individual state and territory governments disability advocacy funding.<sup>49</sup>

- 8.49 The Department further noted that the Commonwealth, through the Disability Reform Council, is working with states and territories to better understand the drivers of demand for disability advocacy and decision-making services, and to agree on shared funding arrangements for independent advocacy.<sup>50</sup>

### *Committee view*

- 8.50 Individual advocacy plays an important role for participants seeking to access supports under the NDIS. Advocacy is particularly important for people with high and/complex needs or facing disadvantage, and for people with limited informal supports or networks.
- 8.51 The committee notes the Commonwealth commitment to disability advocacy in 2019–2020, and welcomes the advice that the Commonwealth is working with the states and territories to agree shared and ongoing funding arrangements for independent advocacy.
- 8.52 However, the committee is concerned that there is insufficient coordinated advocacy and decision support available for participants, and in particular for participants seeking to access to SIL. The committee notes that it previously observed a lack of strategic coordination around advocacy and decision support, as well as a lack of clarity around how individual advocacy will be funded following the transition to the NDIS.<sup>51</sup>
- 8.53 The committee is also concerned that while there are initiatives in place to provide advocacy and decision support services to people with disability, these services are not widely available and are not widely understood by participants, planners and other stakeholders.
- 8.54 In light of these concerns, the committee considers that that the Council should progress work to understand and address gaps in the availability of advocacy and decision support as a matter of urgency. The committee also considers that the NDIA should work with government to publish additional information on the availability of advocacy services, and make these available to stakeholders.
- 8.55 Finally, noting the evidence that existing initiatives are not reaching a sufficiently broad range of people, the committee considers that the Australian Government should increase funding to these initiatives, and ensure that they are made available to all people who require advocacy and decision support.

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<sup>49</sup> Department of Social Services, answers to question on notice (SQ20-000073), 13 February 2020 (received 10 March 2020), p. 1

<sup>50</sup> Department of Social Services, answers to question on notice (SQ20-000073), 13 February 2020 (received 10 March 2020), p. 1.

<sup>51</sup> JSC NDIS, *Transitional Arrangements for the NDIS*, p. 76.

### Recommendation 40

**8.56 The committee recommends that the Commonwealth, states and territories, through the Disability Reform Council, progress work to understand and address gaps in the availability of advocacy and decision support services as a matter of urgency.**

### Recommendation 41

**8.57 The committee recommends that the National Disability Insurance Agency, working with the Australian Government, publish and distribute additional information on the availability of advocacy and decision support services.**

### Recommendation 42

**8.58 The committee recommends that the Australian Government increase funding for advocacy and decision support initiatives, to ensure that these initiatives reach the broadest range of people who require these services.**

### Service quality

8.59 Some submitters observed that the services delivered by providers may not always be of sufficient quality to meet the needs of participants in SIL settings, and may not be of a quality commensurate with associated fees.

8.60 For example, the ACT Disability Aged and Carer Advocacy Service (ADACAS) stated it has advocated in many instances where SIL services are not at the needed and expected levels of quality nor of a level that corresponds with fees paid by participants.<sup>52</sup> ADACAS observed that while some assistance is available through advocacy services, official visitors and the Quality and Safeguards Commission, additional work is required in this area.<sup>53</sup>

8.61 Another submitter observed that people with disability who access SIL often have complex or multiple disabilities. The submitter asserted that, to ensure these participants receive high quality care, there must be adequate training for support workers. The submitter observed that inexperienced staff with insufficient training can put the lives of people with disability at risk.<sup>54</sup>

8.62 Mr Peter Rankin asserted that routine failures of management and supervision within a SIL service provider have resulted in 'a culture that accepts mediocre service'. Mr Rankin also observed that:

The absence of effective management is...dangerous. It endangers the residents, and at times the staff, as participants struggle to be comfortable

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<sup>52</sup> ADACAS, *Submission 20*, p. 9. ADACAS noted that this was a particular issue in circumstances where the SIL provider is also the landlord.

<sup>53</sup> ADACAS, *Submission 20*, p. 9.

<sup>54</sup> Name Withheld, *Submission 40*, [p. 2].

in a place which is meant to offer them the highest level of comfort. It also ensures that in the long term the likely reductions in support needs from participant, that could be achieved by quality supports and which would lead to better lives and cost savings, will not occur, and higher levels of support and supervision will continue to be needed.<sup>55</sup>

- 8.63 According to Mr Rankin, the NDIA should consider defining service standards and expectations for SIL providers and developing model service agreements. Further, the NDIA may wish to implement additional monitoring and auditing arrangements for providers, to ensure services are of an acceptable quality.<sup>56</sup>

#### *NDIA position*

- 8.64 The NDIA stated that, with respect to service standards, SIL supports are identical to other supports funded under the NDIA. Providers are required to comply with practice standards and codes of conduct developed by the NDIS Quality and Safeguards Commission. Moreover, written agreements between participants providers will generally exist in SIL settings. These agreements should cover how supports will be delivered in the relevant SIL arrangement.<sup>57</sup>
- 8.65 The NDIA also stated that the NDIS Quality and Safeguards Commission monitors compliance against practice standards and codes of conduct, including conducting investigations and taking enforcement action. It has also commenced SIL provider payment assurance testing as part of its wider provider payment assurance framework. According to the NDIA, this includes determining if there is a service agreement in place between participants and providers in SIL settings, and determining if the requirements of the agreements have been achieved. Any quality matters identified by the NDIA are referred to the Quality and Safeguards Commission.<sup>58</sup>

#### *Committee view*

- 8.66 The committee is concerned that, in some cases, SIL providers may not be delivering services that are of a sufficiently high quality, and/or of a quality that is commensurate with amounts claimed under the NDIS. The committee is also concerned that issues with the quality of service delivery may be creating and exacerbating risks for people with disability accessing SIL.
- 8.67 The committee appreciates that there are service standards in place for participants and providers in SIL settings, and that compliance with these standards is monitored by the NDIS Quality and Safeguards Commission. The

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<sup>55</sup> Mr Peter Rankin, *Submission 45*, p. 2.

<sup>56</sup> Mr Peter Rankin, *Submission 45*, p. 2.

<sup>57</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000034, 13 February 2020 (received 2 April 2020).

<sup>58</sup> National Disability Insurance Agency, answer to written question on notice SQ20-000035, 13 February 2020 (received 2 April 2020).

committee also notes that the NDIA is progressing additional work to monitor compliance with service standards and service agreements through the provider payments assurance framework.

- 8.68 However, it appears from evidence received during the inquiry that issues with service quality persist. Consequently, the committee considers that there may be merit in the NDIA developing and publishing service standards specifically for SIL services. Moreover, the committee considers that the NDIA, and the NDIS Quality and Service Commission, should more actively monitor the quality of services in SIL settings, to ensure concerns regarding service quality and risks to participants may be readily identified and addressed.

### **Recommendation 43**

- 8.69 The committee recommends that the National Disability Insurance Agency, with the Quality and Safeguards Commission, develop and publish service standards specifically for the delivery of Supported Independent Living services.**

### **Recommendation 44**

- 8.70 The committee recommends that the National Disability Insurance Agency and the Quality and Safeguards Commission take a more active role in monitoring the quality of services in residences where Supported Independent Living is delivered, to ensure that participants and advocates can readily identify and address concerns with service quality.**

### **Coordination between the NDIS and state services**

- 8.71 Some submitters to the inquiry observed that coordination issues between state and territory services and the NDIS may result in delays for participants seeking to access reasonable and necessary supports, and increase the length time a person may be required to remain in state care.
- 8.72 For example, the Tas OPG raised concern that the discharge of participants from medical and correctional facilities is often delayed due to a lack of suitable vacancies and the complex planning and coordination of services required.<sup>59</sup> The Tas OPG further argued that—for children exiting state care—there should be greater integration between Child Safety Services (CSS) and the NDIS. This is to ensure planning occurs well before a child turns 18, and children are not left in the position where CSS is no longer responsible for their care but there is no funding under the NDIS for their support needs.<sup>60</sup>

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<sup>59</sup> Office of the Public Guardian Tasmania, *Submission 46*, p. 4. The Tas OPG noted that time is often required for a participant to develop basic skills in readiness for discharge to community living. Behaviour support and additional staff training may also be required.

<sup>60</sup> Office of the Public Guardian Tasmania, *Submission 46*, p. 4.

- 8.73 The Qld OPG observed a number of similar issues in relation to continuity of supports and transitioning from state health facilities to SIL arrangements. According to the Qld OPG, issues include the adequacy of supports to develop skills and progress towards discharge to community SIL placements; delays in discharge while waiting for a suitable SIL placement to become available; and the conduct of staff during the transition from a mental health facility to the SIL home.<sup>61</sup>
- 8.74 The Qld OPG observed a similar lack of provision and coordination of services in other areas, such as unplanned prisoner release which results in a former prisoner urgently needing SIL accommodation. The OPG asserted that while some of these issues may be the responsibility of state agencies, the NDIA should facilitate pre-SIL capacity building supports, and work collaboratively with state agencies to ensure the transition to SIL occurs in a timely manner.<sup>62</sup>

#### *Committee view*

- 8.75 The committee is concerned that gaps in coordination between the NDIS and state and territory services may result in delays for participants seeking to access reasonable and necessary supports, and increase the time a person may be required to remain in state care. This is a particular concern for people in hospital settings, child services and the criminal justice system. It is not clear whether there is a strategy in place to manage this issue.
- 8.76 The committee considers the NDIA, working with the Australian Government and state and territory agencies, should develop, publish and implement a clear strategy to address coordination gaps between state and territory services and the NDIS—particularly for those seeking to access SIL supports.

#### **Recommendation 45**

- 8.77 The committee recommends that the National Disability Insurance Agency, with the Australian Government, develop, publish and implement a clear strategy to address coordination issues between state and territory services and the National Disability Insurance Scheme, particularly for people with disability seeking to access Supported Independent Living supports.**

**Hon Kevin Andrews MP**  
**Chair**

**Senator Carol Brown**  
**Deputy Chair**

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<sup>61</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 10.

<sup>62</sup> Office of the Public Guardian (Queensland), *Submission 37*, p. 10.

# Appendix 1

## Submissions

- 1 Multiple Sclerosis Australia
- 2 The Cram Foundation
- 3 Disability Council NSW
- 4 Samaritans Foundation
- 5 Dietitians Association of Australia
- 6 Sylvanvale Foundation Ltd
- 7 Northcott
- 8 Queensland Advocacy Incorporated
- 9 DARE Disability Support
- 10 Prader-Willi Syndrome Australia
- 11 National Disability Insurance Agency
- 12 Speaking Up For You
- 13 Paragon Support Limited
- 14 Cara Inc
- 15 NSW Trustee & Guardian
- 16 Uniting Vic.Tas
- 17 Scope (Aust) Ltd
- 18 National Disability Services
- 19 Community Mental Health Australia
- 20 ADACAS
- 21 VALID
- 22 Identitywa
- 23 Summer Housing Ltd
- 24 Ross Fear
- 25 Brightwater Care Group
- 26 Queenslanders with Disability Network
- 27 Every Australian Counts
- 28 SOTICA
- 29 ConnectAbility Australia
- 30 Summer Foundation
- 31 Victorian Office of the Public Advocate
- 32 People With Disabilities (WA) Inc
- 33 The Housing Connection
- 34 JFA Purple Orange
- 35 Family Advocacy
- 36 Western Australian Department of Communities
- 37 Office of the Public Guardian (Queensland)
- 38 Northern Territory Office of the Public Guardian
- 39 Mr Brian Stanton

- 40 *Name Withheld*
- 41 Tasmanian Government
- 42 Yooralla
- 43 *Name Withheld*
- 44 Mrs Alison Semple
- 45 Mr Peter Rankin
- 46 Office of the Public Guardian Tasmania
- 47 Making Connections Together
- 48 Ms Jane Wyatt
- 49 Ms Val Johnstone
- 50 Mr Ray Walter
- 51 *Name Withheld*



## Appendix 2

### Public hearings

*Tuesday, 8 October 2019*

Undumbi Room  
Queensland Parliament  
2A George Street  
Brisbane

#### *Every Australian Counts*

- Ms Kirsten Deane, Campaign Director
- Mr Peter Tully, Every Australian Counts Champion

#### *AEIOU Foundation*

- Mr Alan Smith, Chief Executive Officer
- Mr Sean Redmond, NDIS Co-ordinator
- Mr Greg Johnson, General Manager

#### *Assistive Technology Suppliers Australia (ASTA)*

- Mr David Sinclair, Executive Officer
- Mr Ian Rothall, ATSA Director
- Ms Tiffany Heddes, ATSA Member

#### *Vision Australia*

- Ms Caitlin McMorrow, Operations Lead
- Ms Karen Knight, General Manager QLD, NSW, NT, Government Relations and Advocacy

#### *Deaf Services*

- Mr Brett Casey, Chief Executive Officer
- Ms Michelle Crozier, NDIS Project Manager

#### *AMPARO Advocacy*

- Ms Maureen Fordyce, Manager

#### *Queensland Advocacy Incorporated*

- Ms Michelle O'Flynn, Director
- Dr Nick Collyer, Systemic Advocacy
- Dr Emma Phillips, Senior Lawyer - Law Reform & Systems Advocacy

#### *Queenslanders with Disability Network*

- Ms Paige Armstrong, Chief Executive Officer

*Disability Connect Queensland, Department of Communities, Disability Services and Seniors*

- Mr Max Wise, Assistant Director-General
- Ms Alison Bennett-Roberts, Director of Inclusion, Engagement and Assurance

*Town Hall session*

- Mr John Raine, Private capacity
- Mr Chris McCarthy, Chief Executive Officer, Hear and Say
- Ms Michelle King, Private capacity

*Wednesday, 9 October 2019*

Portside Centre

Level 5, 207 Kent Street

Sydney

*Alliance20*

- Mr Drew Beswick, Chief Executive Officer, Oak Possability
- Mr Stephen Doley, Director Disability and Aged Care NSW/ACT, Life Without Barriers

*Northcott*

- Ms Aleta Carpenter, General Manager Supported Living
- Ms Rachel Parker, Claiming and Compliance Manager

*Disability Council NSW*

- Mr Mark Tonga, Disability Council Chair
- Ms Rachael Sowden, Disability Council member
- Mr Jake Fing, Disability Council member
- Mr Paul Zeller, Disability Council member

*Public Interest Advocacy Centre*

- Mr Jonathon Hunyor, Chief Executive Officer
- Mr Chadwick Wong, Senior Solicitor

*DARE Disability Support*

- Mr Andrew Daly, Chief Executive Officer

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*Monday, 28 October 2019*

Committee Room 1  
Tasmanian Parliament  
Cnr Salamanca Place & Murray Street  
Hobart

*Ms Jane Wardlaw, Private capacity*

*HOPES*

- Ms Alison Jacob, President
- Ms Sue Hodgson, Vice President

*Li-Ve Tasmania*

- Mr Paul Byrne, Chief Executive
- Mrs Nicole Parkinson-Cumine, Operations Manager

*Access2Choice Tasmania Pty Ltd*

- Ms Pauline Stanton, Director
- Mr Phillip Drury, Consultant

*Office of the Public Guardian*

- Ms Kim Barker, Public Guardian
- Ms Maddy Russell, Senior Guardian

*Tasmanian Government*

- Ms Ingrid Ganley, Director Disability and Community Services
- Ms Carolan Hands, Policy Analyst Department of Premier and Cabinet

*Town Hall session*

- Ms Rebecca Copeland, Private capacity
- Ms Lisa Denny, Private capacity
- Ms Elise Jeffery, Private capacity
- Mr Warren Lewis, Private capacity
- Ms Kate Polglase, Private capacity
- Mr Peter Rubenach, Private capacity
- Ms Beverley Rubenach, Private capacity
- Ms Amanda Jane Smith, Private capacity

*Thursday, 7 November 2019*

Stamford Plaza Melbourne

Edinburgh Room

111 Little Collins Street

Melbourne

*Women with Disabilities Victoria*

- Ms Leah van Poppel, Chief Executive Officer

*Uniting Vic. Tas.*

- Mrs Tracey Gibson, General Manager, Disability and Mental Health Services
- Ms Sue Gannon, Senior Manager – Disability Residential and Community Services

*National Disability Services*

- Mr David Moody, Chief Executive Officer
- Ms Philippa Anglely, Head of Policy

*Summer Housing*

- Mr Daniel McLennan, Chief Executive Officer
- Ms Queenie Tran, Chief Operating Officer

*Summer Foundation*

- Cathy Bucolo, Clinical Practice Lead

*Allied Health Professions Australia*

- Ms Gail Mulcair, Chair
- Mr Phillip Hermann, Manager – Policy and Communications

*Australian Psychological Society*

- Dr Tony McHugh, Senior Policy Advisor

*Australian Music Therapy Association*

- Ms Bridgit Hogan, Executive Officer
- Ms Michelle Fisher, Disability Advisor
- Dr Melissa Murphy, NDIS Representative

*Occupational Therapy Australia*

- Ms Andrea Douglas, NDIS Advisor
- Ms Anita Volkert, National Manager, Professional Practice and Development

*Maurice Blackburn Lawyers*

- Mr Tom Ballantyne, Principal Lawyer

*Town Hall session*

- Mr George Taleporos, Private capacity
- Ms Karen Clifford, Private capacity
- Ms Linda Bone, Private capacity
- Ms Bianca Brant, Private capacity
- Ms Karen Dimmock, Chief Executive Officer, Children with a Disability
- Ms Marie Sheahan, Private capacity
- Ms Lyn McHugh, Private capacity

*Tuesday, 19 November 2019*

Diamond Room

Mayfair Hotel

45 King William Street

Adelaide

*Cara*

- Mr Matt Law, Chief Financial Officer

*Novita*

- Mr Jeremy Brown, Chief Operating Officer

*JFA Purple Orange*

- Mr Robbi Williams, Chief Executive Officer
- Mr Geoff Barber, Chief Operating Officer
- Mr David Elston, Policy and Research Leader
- Ms Mikaila Crotty, Policy and Research Leader

*First Voice*

- Dr Jim Hungerford, Deputy Chair
- Ms Heidi Limareff, Director

*Aboriginal Health Council of South Australia Ltd*

- Ms Polly Paerata, CQI and Health Policy Coordinator

*South Australia Child and Adolescent Health Community of Practice*

- Ms Maeve Downes, Deputy Chair
- Ms Natalie Hood, Executive Director (Allied Health) - Women and Children's Health Network
- Dr Liberty Gallus, Member

*Darwin Community Legal Service*

- Mr David McGinlay, Manager - Seniors and Disability Rights Service

*National Disability Insurance Agency*

- Mr Sudharsan Raghunathan, Branch Manager - Participant Pathway Design
- Ms Melissa Flanagan, Director - South Australia Service Delivery
- Ms Jamie Lowe, Group Manager - Communications, Media and Marketing

*Town Hall session*

- Mr Bertato, Private capacity
- Ms Jane Gersch, Private capacity
- Ms Mikaila Taylor, Private capacity
- Ms Kate White, Private capacity

*Thursday, 21 November 2019*

Main Committee Room

Parliament House

Canberra

*National Aboriginal Community Controlled Health Organisation (NACCHO)*

- Ms Patricia Turner, Chief Executive Officer

*Services for Australian Rural and Remote Allied Health (SARRAH)*

- Dr Kim Bulkeley, Board Director
- Mr Allan Groth, Director, Policy and Advocacy

*National Rural Health Alliance*

- Dr Gabrielle O'Kane, Chief Executive Officer

*Australian National Audit Office (ANAO)*

- Mr David Brunoro, Executive Director, Performance Audit Services Group
- Ms Rebecca Reilly, Executive Director, Assurance Audit Services Group

*Commonwealth Ombudsman*

- Mr Michael Manthorpe, Commonwealth Ombudsman
- Ms Jaala Hinchcliffe, Deputy Commonwealth Ombudsman
- Ms Fiona Sawyers, Senior Assistant Ombudsman
- Ms Julia Taylor, Director of Disability and Business Intelligence

*National Legal Aid*

- Ms Jackie Finlay, Senior Solicitor Civil Law Division Legal Aid NSW
- Ms Lindsay Ash, Senior Solicitor NDIS, Legal Aid NSW

*National Mental Health Commission*

- Ms Sandra Ofei-Ferri, A/g Director, Mental Health Reform
- Mr Marcus Nicol, Director, Monitoring and Reporting

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*Mental Illness Fellowship of Australia*

- Mr Tony Stevenson, Chief Executive Officer

*Department of Social Services*

- Mr Michael Lye, Deputy Secretary, Disability and Carers
- Mr Peter Broadhead, Group Manager, Participants and Performance
- Mr Andrew Whitecross, Group Manager, Participants and Performance

*National Disability Insurance Agency*

- Ms Vicki Rundle, Deputy Chief Executive Officer, Participant and Planning Experience
- Mr Scott McNaughton, A/g Deputy Chief Executive Officer, Government, Communication and Stakeholder Engagement
- Mr Hamish Aikman, Head of People and Culture
- Ms Liz Neville, A/g Head of Markets, Provider Sector Development

*Town Hall session*

- Mr Bill Aldcroft, Private capacity
- Ms Shaun Cahill, Private capacity
- Mr James Collins, Private capacity
- Ms Michelle Hansen, Private capacity
- Mr Dougie Herd, Private capacity
- Ms Karna O'Dea, Private capacity
- Ms Sarah Mamalai, Private capacity
- Mr Mark Newman, Private capacity

*Thursday, 13 February 2020*

Committee room 2S1  
Parliament House  
Canberra

*Department of Social Services*

- Mr Matt Flavel, Group Manager - Market Capability

*National Disability Insurance Agency*

- Ms Vicki Rundle, Deputy Chief Executive Officer - Government, Communications and Stakeholder Engagement
- Mr Oliver Bladec, Deputy Chief Executive Officer - Strategy Development and Chief Risk Officer
- Mr Scott McNaughton, General Manager - Service Delivery and Performance, Participant and Planning Experience